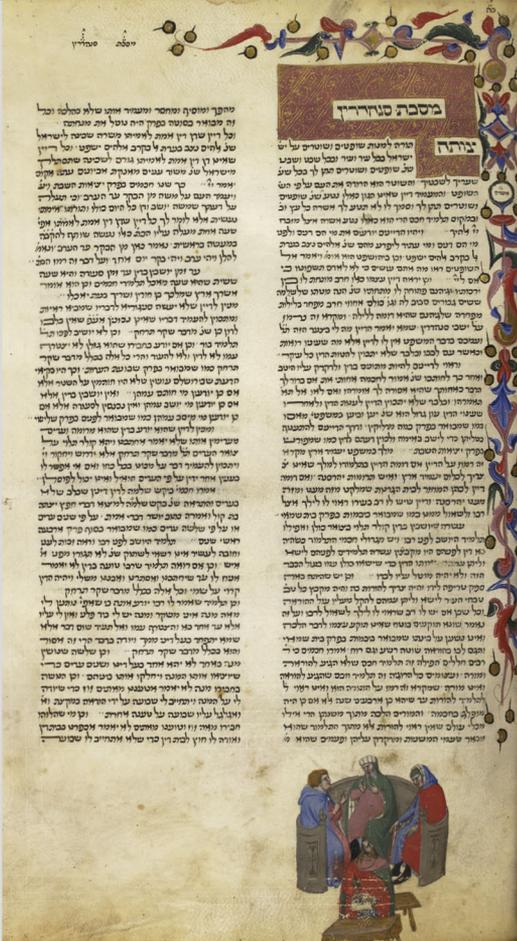


Hakol Kol Yaakov

הקול קול יעקב

The Joel Roth Jubilee Volume

ספר היובל לכבוד ר' יעקב בן צבי רוט



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Edited by
Robert A. Harris
and Jonathan S. Milgram

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Hakol Kol Yaakov

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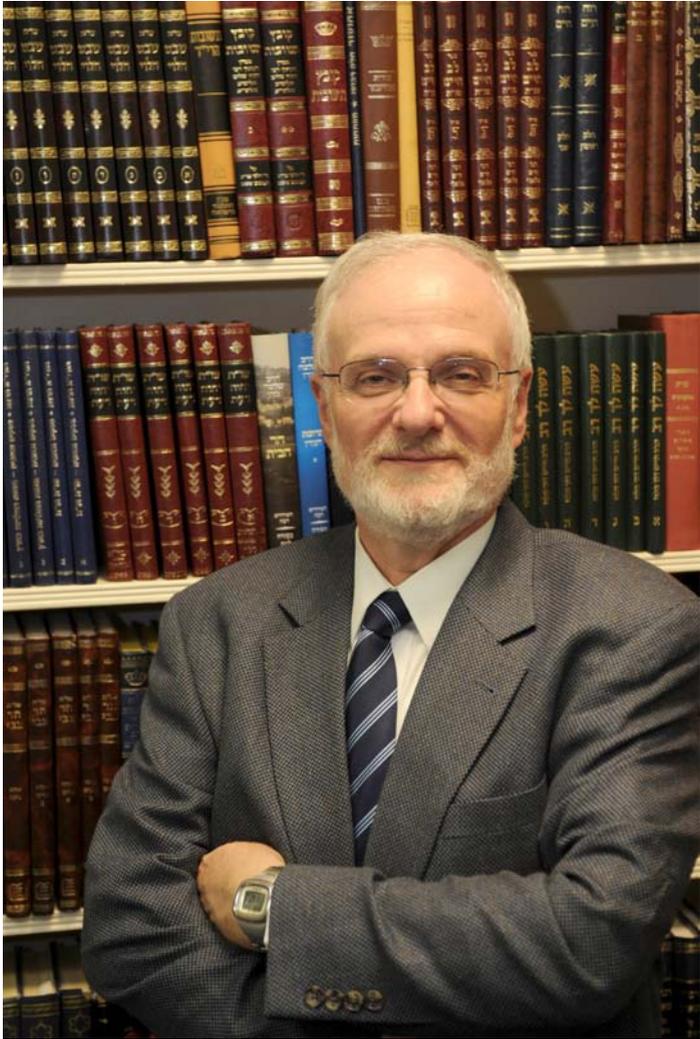
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Rabbi Professor Joel Roth in his Seminary study

Hakol Kol Yaakov

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Preface

In the ancient redactor's epilogue to the biblical book of Koheleth, the anonymous sage, perhaps feeling challenged or weary by Koheleth's heterodox views, observes: *ויתר מהמה בני הזהר עשות ספרים הרבה אין קץ ולהג הרבה יגעת בשר* "A further word: Against them, my son, be warned! The making of many books is without limit, And much study is a wearying of the flesh" (Koheleth 12:12). Reading this text, the 19th century exegete Rabbi Samuel David Luzatto comments, *עשות ספרים הרבה אין קץ: וגם על הקורא תכבד העבודה*, "The making of many books is without limit: and also upon the reader the work is heavy." Far be it from the editors of this volume to rebel against such a well-known biblical dictum, but that is precisely what we would like to state. The work of producing this volume for our teacher and colleague, Rabbi Professor Joel Roth, *הרב יעקב בן צבי רוט*, has been a *simhah shel mitzvah*, a joy akin to performing the Torah's commandments. And it is our fervent expectation that the contents of the present volume, far from being a burden to its many intended readers, will likewise bring them the joy of consuming the wisdom of so many of Rabbi Roth's students and colleagues. We write on behalf of all of this volume's contributors that the debt we owe to Rabbi Roth for his years of scholarship, teaching and dedicated service far outweigh the relatively small token of thanks this volume represents.

In his career, Joel Roth has been known as a *תלמיד חכמים*, a scholar and teacher of Talmud par excellence, and as a master *פוסק הלכה*, without question the preeminent decisor of Jewish law for the Conservative movement of his generation. His primary works of talmudic scholarship and Jewish law include his studies and critical edition of the *Sefer ha-Mordechai* to tractate Kiddushin (R. Mordechai ben Hillel, a thirteenth century Ashkenazi scholar, composed a compendium to the earlier, authoritative legal code of R. Yitzhak Alfasi, *Halakhot Rabbati*). In the meticulous style and approach of the Talmud scholarship of his generation, Roth painstakingly and precisely documented all of the textual variants in the medieval manuscripts of R. Mordechai ben Hillel's halakhic compendium, and added important notes along the way regarding the medieval scholar's own approach to a number of issues of law and in light of the vast literature of the *rishonim* (the earliest rabbinic scholars following the Babylonian *geonim*).

Rabbi Roth also published *The Halachic Process: A Systemic Analysis*. This outstanding work, unique in both its breadth and depth, is an assessment and analysis of the principles and premises of Jewish legal decision-making through the ages and the practical application of his findings for contemporary Jewish legal decision-making. In addition to his learned survey pertaining

to judicial discretion, Roth also discusses factors in legal decision-making such as the role of custom, new medical knowledge and the qualifications of authorities. Among other topics, Roth discusses two areas that are not often systematically addressed by contemporary halakhic authorities and are worthy of highlighting here. In a chapter entitled “Extralegal Sources within Halakhah,” Roth examines the impact of social and economic change on decision-making; in another chapter, “On New Legal Sources within Halakhah,” he considers the significance of developments in the academic field of Talmud—especially the discovery of alternate readings of texts in medieval manuscripts and source critical analyses. In light of Roth’s training and subsequent teaching at The Jewish Theological Seminary, it should come as no surprise that his methodology for deciding halakha would integrate academic methods. Indeed, two academic fields—medieval halakhic historiography and Talmud criticism—witnessed tremendous expansion during the last third of the twentieth century and some of the prime movers, at least in the field of Talmud, were affiliated with the Seminary. During Roth’s formative years, some of the most important studies in medieval halakhic historiography fleshed out the degree to which ‘external’ social and economic factors impacted Jewish legal decision-making at the expense of ‘internal’ processes. At the same time the field of Talmud scholarship began to mature and significant studies on the manuscript traditions of the Talmud and the how the Talmud’s sources were reworked over the ages began to appear. While it is true that Roth doesn’t make extensive use of the works of these scholars in his own scholarly *oeuvre*, it is nonetheless significant that his own approaches developed in tandem with the scholarly developments identified. It is particularly important to point out Roth’s contributions against the backdrop of the regnant academic approaches since he integrates both social change and new textual developments from the perspective of a jurist. In this regard he stands out among many of his colleagues who preferred primarily to integrate the current impact of social change, as imperative on moral and ethical grounds. Regarding Roth’s use of Talmud criticism, his suggestions for judicious use of new textual evidence follows in a long line halakhists—some cited by Roth himself—who implemented legal change on the basis of textual emendations and variants with great caution. While the current context does not allow for an extensive evaluation of Joel Roth’s theory of halakhic development—a desideratum for some future study—certainly the academic study of Jewish law’s development is all the richer due to Roth’s meticulous treatment, and his seminal study should be required reading for students of Jewish law.

It has been as a contemporary interpreter and decisor of Jewish Law that Joel Roth has achieved his most significant renown. Author of dozens of legal

decisions and articles about the role of Jewish law, particularly in institutions associated with Conservative Judaism, Rabbi Roth has helped all who sought his Torah to navigate the problems of integrating the demands of halacha with the opportunities and conflicts associated with living in liberal society. A lifetime of dedication to teaching Talmud and Halacha at the Jewish Theological Seminary; longtime chairmanship of the Rabbinical Assembly's Committee on Jewish Law and Standards; and devoted service as Professor-in-Residence at the Seminary's Camp Ramah in the Berkshires are only the main features of his storied career. Joel Roth is exemplified by what the rabbis call *מסירות נפש*, literally "the conveying of the soul," an expression marking the utter devotion to the principles of rabbinic Judaism. One cannot footnote the contribution that Joel Roth has made to untold numbers of correspondents—both in person, and by mail and telephone—who sought his wisdom about Talmud and Jewish Law, a devotion that continues to this very day.

In the fabled encounter between Isaac and his son Jacob (Genesis 27:22), the aged patriarch, who has become blind, recognizes his son by means of the latter's voice: *הקל קול יעקב*, "the voice is the voice of Jacob." While it must be admitted that within the context of the biblical narrative, it is a most deceitful moment, the ancient rabbinic Sages saw in this declaration an opportunity for midrashic insight: Isaac recognized Jacob, despite his disguise, on account of the wisdom that his voice typically professed (*הא קול דקל חכים*, "behold, this is the voice of a wise man").¹ The book that you are holding, *Ha-Kol Kol Yaakov*, is the product of dozens of admirers of Rabbi Joel Roth, colleagues and students, family and friends. Among these, some have written academic articles, while others have contributed rabbinic responsa. The volume's unique list of articles, including both Talmud scholarship and essays on the practical application of Jewish law, reflects the unique and integrated voice and vision that Joel Roth has brought to the American Jewish community. And let us not forget those whose generosity made the publication of this book possible. All of these people recognize Rabbi Roth as a wise man, and have viewed the project of this volume's production as recognition of the wisdom with which he has touched the lives of countless students and colleagues. It is with the greatest of honors that we devote this volume to him.

Robert A. Harris
Jonathan S. Milgram, editors

¹ J. Theodor and Ch. Albeck, *Bereshit Rabba with a Critical Apparatus and Commentary* (Jerusalem: Wahrmann Books, 1965), 733.

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Jerusalem: Wahrmann Books, 1965.

Acknowledgments

The number of people, friends and admirers of Professor Joel Roth, who reached into their pocketbooks to make this volume possible, is extensive. To them all, we owe a deep debt of gratitude. We would be remiss, however, were we not to single out the exceptional generosity of Skip and Ilana Vichness, who went above and beyond any call of duty, and both contributed deeply out of their hearts, and reached out to others to encourage them to contribute, as well. The behind the scenes work of Phyllis Hoffman Waldman was likewise indispensable. Several members of the Rabbinical Assembly stepped forward and helped to organize our efforts to raise the necessary funds to publish this volume, and in particular, we would like to acknowledge the support of rabbis Vernon Kurtz, Phillip Scheim, and Alan Silverstein. Above all, we are grateful to our alma mater, the Jewish Theological Seminary, for its support and determination to honor our teacher with the publication of this book.

To Professor Arnold Eisen, Chancellor of the Jewish Theological Seminary, and to Professor Shuly Schwartz, incoming Chancellor of the Seminary (and Provost during much of our work), we owe a debt of gratitude for their support of this volume. To Professor Alan Cooper, former Provost under whose leadership this volume first took roots, we likewise offer our thanks. And to Keath Blatt, the Seminary's General Counsel, we are most grateful for your efficient handling of our legal affairs in connection with this volume's publication. Rabbi Jacob Blumenthal, Executive Vice-President of the Rabbinical Assembly, for his help in acquiring the permission to include material originally composed for the Committee on Jewish Law and Standards, the editors express our thanks.

To Erika Mandarino, Assistant Editor, Ancient Near East and Jewish Studies at Brill, we offer a hearty expression of gratitude. Simply put, the volume you are now holding would never have seen the light of day were it not for her tireless effort to get the job done. Her attention to detail, and her good cheer, radiated in every contact and email, helped keep this volume a labor of love. To Katelyn Chin, our initial contact at Brill, thank you for your efficient handling of business affairs and, especially, for putting the project in Erika's capable hands; likewise to Cas Van den Hof for bringing the final stages of this volume to publication. To our style editor, Professor Johan Thom, Stellenbosch University, we also offer an acknowledgement of thanks. We also express our appreciation to Shaul Baruchi and Miriam Meir, for editorial work on this volume's Hebrew articles. To Adam Parker, a most diligent reader, we owe a double measure of gratitude, both for preparing the indices as well as serving, in effect, as a second

style editor. Finally, we are grateful to Professor Alan Avery-Peck, for accepting our volume into the Brill Reference Library of Judaism series, of which he is the Editor-in-Chief.

To the Roth family, we are most grateful for your many unstated contributions to the successful completion of this volume. To Ariel Roth, thank you for your fine essay about your dad. To Akiva Roth, who contributed to some of the style editing, and to both Akiva and Noah Bickart, who prepared the bibliography, many thanks for your attention to this detail. To Barbara, thank you for your steady and continued encouragement throughout the preparation of this wonderful tribute to Joel.

To our families, we editors wish to acknowledge your support during all those hours when, while occupied with preparing this volume, you continued to guard the sanctity of the home and to offer encouragement and love.

Finally, in offering gratitude to all, we also acknowledge the One who supports Torah scholarship. In Midrash Tanhuma, the Sages interpret Koheleth 7:1 and relate the biblical verse to two ships passing one another, one sailing out to sea laden with goods and the other sailing back to port, its journey ended. Contrary to custom, instead of celebrating the ship inaugurating its trip, one town saluted the ship returning home. The people of that town justified their reasoning by stating that they could celebrate the successful conclusion of that ship's journey. Therefore, sailing this ship into its port, the editors are grateful knowing that we have successfully shared this celebration of Joel Roth's teaching and scholarship.

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Appreciation

It's an honor for me as the Chancellor of The Jewish Theological Seminary (JTS)—and a personal pleasure as someone who had been learning from Joel Roth's work for many years—to add these words of congratulation on the publication of this festschrift in his honor.

Scholars and rabbis most likely know Joel for his thoughtful and meticulous work on halakha and the philosophy of halakha. I myself have had occasion to teach chapters from *The Halakhic Process*, and selections from Joel's many essays and responses, in classes on the history of Conservative Judaism. My selection of his writings for that purpose was due not only to the tremendous influence that Joel's work has had inside and beyond the world of Conservative Judaism, but to the crystal-clear quality of the prose and the forceful and cogent quality of the argument. Even when one disagrees with Joel Roth, one cannot but respect the enormous learning that goes into every page, and the commitment to God and Torah that underlies and drives the work. The work, like the man, commands attention by virtue of its integrity and gravitas.

Inside JTS, Joel is better known as a superb, dedicated and passionate teacher. His commitment to his students, as well as to the material he teaches them, is legendary. That commitment extends far beyond the walls of 3080 Broadway; beyond the many decades of teaching Talmud, codes, and Hebrew at JTS; and beyond the years that students spend in his classroom. Many thousands of individuals have learned from Joel at the Conservative Yeshiva and Schechter Institute in Jerusalem, at USY events and Camp Ramah, and at synagogues throughout North America and in Israel. Many rabbis have benefited from his learning during his years of service on the Committee on Jewish Law and Standards, including several years as the group's chair. Joel's long friendship with our late colleague Rabbi Neil Gillman of blessed memory, despite differences in belief and worldview, speaks volumes about his character; I myself have turned to him for guidance more than once during my tenure as Chancellor, and have always found him both courteous and wise. Again and again I am told by alumni, unsolicited, that "Rabbi Roth was the best teacher I had at JTS," "Rabbi Roth was a model of what it is to be a teacher," "Rabbi Roth will always be my teacher."

I join all our colleagues at JTS in kvelling at Joel's achievement and wishing him many more years of teaching and learning Torah.

Arnold Eisen
Chancellor
The Jewish Theological Seminary

We who were privileged to be students of Rabbi Joel Roth view his classes to have been highlights of our Seminary Rabbinic studies. Many of us came to JTS with limited *girsa d'yankuta*, without extensive early-life Talmudic education. Joel's considerable pedagogic skills enabled us to penetrate the pages of Talmud, opening for us a world that otherwise would have been obscure and intimidating. His reverence for his teachers, many of the giants of twentieth-century rabbinic scholarship, combined with his contemporary approach to education taught us that it was not only possible but also essential that old and new be bridged as we, his students, in our own careers, would seek to draw from the past in order to help shape a stronger spiritual future.

It was not by accident that Rabbi Roth, for so many of us, would be our turn-to authority when we would face a *halakhic* challenge, when we would be asked a question that we, on our own, could not answer. We would call Joel not only because, invariably, he would know the answer, but also because he was so welcoming of our questions, so gracious with his time when we needed him. Our professional staff, our leadership, and our members at large often sought his views on matters of policy and practice, which, again, he would offer willingly and in his ever helpful and generous fashion.

The Rabbinical Assembly was enriched by Joel's regular participation in our conventions, in our *Yimei Iyyun*, where his sessions were well-attended and enthusiastically received. Our rabbis appreciated not only his command of the sources, but the many *eytzot tovot*, the pearls of advice he would offer, grounded in a deep understanding of the diverse rabbinic environments in which we serve.

Rabbi Joel Roth, for decades, was a pillar of the *Committee on Jewish Law and Standards of the Conservative Movement*, both as its chair and as a key participant. He would argue strenuously for his positions, never hesitating to take a strong stand even when his view would not be popular, for his positions were grounded in consistency and the solid halakhic process to which he was so deeply committed.

Always a deeply proud Conservative Jew, Joel Roth, by word and example, has reminded us that the center of the Jewish religious world, even though not always easy to inhabit, is the place where we, as rabbis, as educators, as committed servants of the Jewish people need to be.

We, the students, the colleagues of Rabbi Joel Roth, forever will be grateful for his teaching, his guidance, his friendship, and his love of Torah, tradition and the Jewish people.

Rabbi Philip Scheim
Immediate Past-President
The Rabbinical Assembly

Rabbi Joel Roth has served as JTS's halachic advisor to the National Ramah Commission and Ramah camps for decades. He began his Ramah career as a camper and staff member at Camp Ramah in Wisconsin in the 1950s and 1960s. He served as professor in residence first at Camp Ramah in the Poconos, and then at Camp Ramah in the Berkshires for more than twenty years.

As a new lawyer working in a New York City firm in 1985, I had a desire to study more Jewish text and consider a career as a rabbi. Rabbi Roth's kindness and flexibility were key to my decision to leave my legal practice and enroll full time at JTS; I know many other colleagues with similar stories. Joel's warmth, combined with his fervent desire to have more young men and women study to become rabbis, no doubt contributed to a much stronger generation of passionate and well-educated Conservative rabbinic leadership.

Learning with Joel was challenging and rewarding. His amazing ability to clearly explain a text or a concept helped so many of us not only succeed, but also to develop a deep love for Talmud, Midrash, and halachic literature. And his honesty about the challenges facing those of us who took halacha seriously was heartfelt and real. For hundreds of us who call him Rav, Joel has spent decades answering our questions about Jewish law, Jewish life, and Jewish thought, up to this day.

At Camp Ramah in Canada in the 1990's, Joel supported our camp community whenever a difficult question arose. No matter where Joel was in the world, he provided timely and sensitive answers to questions about the reliability of a hechsher, the construction of an eruv, or the consequences of a kashrut mistake in our busy camp kitchen.

And Joel's mentoring and guidance for Ramah continues to this day, even beyond the basic questions and concerns. He has been creative and thoughtful at helping Ramah directors think through more difficult and unique challenges, such as whether we could allow children to swim on Tisha B'Av when temperatures rose above 100 degrees, whether a young person with verbal disabilities could lead us in prayer, or the limits of *pikuach nefesh* when responding to a medical emergency on Shabbat.

Joel has been a trusted colleague and friend to the professionals at the National Ramah Commission, making it easier for us to help every Ramah camp face challenges in Jewish law. No question is too mundane, and no challenge is too difficult. Truly, with Joel on our side, we not only know we will get a clear and timely response to all our inquiries, but we can also be assured that Ramah continues to be a place where halacha is observed and respected.

Despite his long time association with Camp Ramah in the Berkshires, Joel's love of and support for Ramah has known no geographical boundaries. Only recently, I heard from Rabbi Eliav Bock, executive director of Ramah in the Rockies, who wrote:

From the founding of Ramah in the Rockies in 2010, Rabbi Roth has been a resource, teacher, and cheerleader for all that we are doing in Colorado. The first issue Rabbi Roth helped us with was figuring out how to create an eruv on a ranch with nearly two miles of fence line in rugged terrain. As we have grown, he has helped us think through the type of supervision needed in our mainly vegetarian kitchen and issues stemming from washing so many leafy vegetables, and how to create an appropriate and safe atmosphere at 8,000 feet on Tisha B'Av when many campers have not yet acclimatized to the elevation. Rabbi Roth is always only an email or phone call away.

Rabbi Ethan Linden, executive director of Camp Ramah in the Berkshires, echoed those expressions, and has added the following memories:

I remember sitting in a Hebrew class with Rabbi Roth at JTS in the summer of 2000. He told a story about being asked a question about a fire that broke out on Shabbat in the woods at a Ramah camp. I remember very distinctly thinking, "Why would a summer camp need a posek to answer halachic questions? How many could possible come up?" Not for the last time, my assumption about Ramah camping was completely wrong. I have been the asker now in more situations that I can count, both as a pulpit rabbi and now as a Ramah director. Rabbi Roth is unfailingly thoughtful, direct, and helpful. He never judges the question or the questioner. He is the ne plus ultra of a posek: wise, careful, bold when needed, and always, always compassionate. As a student and a Ramah director, I am deeply indebted to him.

The sentiments these two directors have shared speak for all of the Camp Ramah family whose lives have been touched by Joel's service to the entire Ramah movement, and the Torah that he has taught us all. Joel continues to be one of great rabbinic leaders of our generation. On behalf of generations of Ramah directors, staff and campers, I take great pleasure in thanking him for his deep love for and dedicated service to Camp Ramah.

Rabbi Mitchell Cohen

Director of the National Ramah Commission

To Our Father

Ariel Ilan Roth, on behalf of the Roth Children

My father was born on May 15, 1940. Joel Roth came of age during the height of American Jewry's expansionist phase. The completion of the great migration of Europe's Jews to the United States, which had started in the late 19th century, was nearly three decades past by the time of my father's youth. The immigrant parents that built communal associations, Federations, Free Loan societies, synagogues, and camps were now able to watch their children—including my father and his two brothers—enmesh themselves in the institutions that they and their peers had built.

Joel Roth was born to immigrant parents, with his father having come to the US about 1935 from Czechoslovakia. Joel's mother, Esther, was born in Hungary and immigrated with her parents to the United States as a child. Esther, stout of build and clad eternally in a dress and thick heels with hair that seemed immovable even by gale force winds, spoke an unaccented English. Joel's father, a journeyman laborer and machinist, spoke an English that, while clear, was heavily accented, and never quite assimilated the letter "W." Esther was primarily a homemaker, and made sure that each weekday dinner was a certified multi-course repast that always included soup.

Within the family lore, it is unclear whether the relationship between Joel's parents was a romance or an immigration scheme, but whatever its initial impetus, the fact that Herschel and Esther Roth built a strong family is inarguable. Married for well over 50 years, the Roths had three sons. Sheldon, a bookkeeping accountant by training was born in '37, Joel in '40, and Mark, a pediatrician, in '44. The early years of the marriage were very difficult financially and Joel's father had to leave his Michigan home to seek out work in Ohio leaving Esther and the kids behind. By the time the war ended and with the American economy roaring, Herschel never had to leave the family in search of wages again.

No mention of Joel's upbringing would be complete without acknowledging the significant role played by his Aunt Helen and Uncle Ben Weiss. More prosperous and of greater social standing than Joel's own parents, Aunt Helen and Uncle Ben, along with their children Calvin and Danny, shared a duplex with the Roths for much of my father's childhood. The Weisses took a special interest in Joel. When money for special activities was lacking within the nuclear Roth family, Uncle Ben and Aunt Helen made sure that Joel had opportunities,

for example financing his summers at Camp Ramah, or even having him join their family's vacations, which broadened his exposure and worldliness beyond Detroit. In later years, when my father's rabbinic prominence was well established and his bold (if controversial) responsa were changing the face of Conservative Judaism in the United States, Uncle Ben's pride in having made the introductions that set Joel on the path to the Jewish Theological Seminary was stratospheric.

The Roth family was, like many Conservative Jews, more flexible in their religious observance than Joel was comfortable with, even in his youth but very committed to their synagogue community and the institutions of the Conservative movement. Joel's mother, for example, served for a time as president of the Michigan Branch of the Women's League for Conservative Judaism.

Joel's journey in Jewish learning evolved along two paths. The first, more conventional path, came from Joel's enrollment in the United Hebrew Schools of Detroit. In contrast to the way we think of Hebrew School in our own times, mid-century Detroit Hebrew schools were a serious affair, with meetings three times a week and a curricular rigor that rivals today's day schools. The second path, more unique to Joel, was his supplemental Jewish education that came from a private tutoring relationship with an Orthodox rabbi, Isaac Paneth, that lasted from just before Joel's Bar Mitzvah and up till the time that Joel left for Rabbinical school a decade later. It was under Rabbi Paneth's tutelage that Joel was initiated into the world of Talmud, which was not a part of the regular Hebrew School program of study. Reflecting on Joel's career now, it seems safe to conclude that Rabbi Paneth may have been the most pivotal figure in charting Joel's future course, given that he chose a life dedicated to the study of Talmud. Rabbi Paneth must have been a true master teacher. Kindling a love of Talmud so powerful that it burns no less now than it did more than sixty years ago is all the proof I need of his astounding talent. My father's respect for Rabbi Paneth is attested to by his continued marking of Rabbi Paneth's *yahrzeit*, even today. In understanding the transformative impact of this decade long relationship between my father and the man who introduced him to Talmud, I have come to understand and appreciate why the Jewish tradition elevates the respect, awe and duty owed to our teachers to parity with and sometimes even superiority over, the duties owed our parents. I feel great pride in the number of former students, now rabbis, who have shown my father respect over the years even as their own careers and status bloomed.

Finally, Joel's Jewish involvement would never have developed as it did without many summers spent in Camp Ramah in Wisconsin. Joel was exposed to exciting and youthful leaders of Conservative Judaism through that experience

and his decision to attend rabbinical school at JTS was the result of those interactions. Joel's enthusiasm for Ramah did not end in twenties. In later years Joel served as Professor in Residence at Ramah Berkshires for more than twenty years and made sure all three of his children were campers as well. Even today Joel continues to serve on the National Ramah Commission.

During my father's childhood, he was also a talented violinist, and the story I heard from my uncle Sheldon was that Joel's playing was so advanced that his neighborhood teacher told my grandparents that Joel required a more advanced teacher, and directed them to a member of the Detroit Symphony to take over the duties. Siblings and friends from the time also recount Joel's prowess on the baseball diamond. Like nearly all American Jews at the time, my father attended public schools and, based on the inscriptions I found in an old yearbook, Joel seems to have been quite popular. The pledges of life-long friendship promised in the yearbook did not last. I never met a single childhood friend of my father's.

Joel attended college at Detroit's Wayne State University as a commuter and majored in psychology. During these years, he remained active in shul and diligent in his personal learning with Rabbi Paneth. As a young adult, Joel also taught at United Hebrew Schools, and was a counselor at Camp Ramah in Wisconsin. Joel's desire to enter the rabbinate was never in doubt and as far as I know, he never entertained another career. After graduation from college, Joel moved to New York to attend the Jewish Theological Seminary, where he soared through his rabbinic studies, as part of the Talmud program—a research track of the rabbinical school that existed prior to the creation of a dedicated graduate school. Joel was ordained in 1968 and transitioned immediately to becoming a member of the faculty. To this date, Joel has not left the JTS faculty. Over the years, he earned a PhD in Talmud and indeed never took a pulpit except for the High Holidays in his home congregation in Teaneck.

In 1965, while still in rabbinical school, Joel married Barbara Kramer. Barbara, herself a Detroiter and Camp Ramah alumna, a few years younger than Joel. The Kramers were not members of B'nai Moshe, but rather of Shaare Tzedek. Though it is humorously quaint by the light of today's Jewish communal challenges, in the 60's, being members of different synagogues, even within the same movement, was perceived as a semi-serious culture clash and their union constituted a rare and bold relationship.

Newly married, my parents initially lived in Highland Park, New Jersey, not far from the Rutgers campus where Barbara was pursuing a doctorate in Political Science. It was during their Highland Park years that their eldest child, Akiva, was born in 1971, with my birth following four years later. While in High-

land Park, my parents were active in the Highland Park Temple, whose rabbi, the late Yaakov Hilsenrath, was a Conservative rabbi of Haredi extraction. I mention this because it is important for readers to know that the version of the rabbinate of the Conservative movement into which my father was inducted was built by those who came to it from childhoods of both philosophical orthodoxy and strict religious observance. Almost all of them came to Conservative Judaism not because of the strictures of religious practice in Orthodoxy, but as intellectual rebels. Indeed, the wedge between my father's teachers and Orthodoxy, and I would argue between Joel himself and Orthodoxy, remains not one of praxis but of the legitimacy and validity of modern lines of inquiry into traditional texts. As the years have passed and fewer Conservative rabbis come to the movement with an Orthodox praxis that is paired with novel modes of textual scholarship, the vibe of the Conservative movement has changed significantly. I have come to observe as a partial consequence of this shift, that practice trumps philosophy nearly all the time. This explains why in his later years, Joel tends to attend Orthodox synagogues, where people observe Jewish practice as he does, even as he remains deeply committed to the intellectual underpinnings of textual analysis and halachic modes of jurisprudence that he learned from Finkelstein, Lieberman, Dimitrovsky and others.

By the time Joel and Barbara's youngest, Tamar was born in 1980, the family was already living in Teaneck where they would make their home for nearly three decades. Our family was active in the Teaneck Jewish Center where, for the next twenty years, my father would attend shul each Shabbat, sitting towards the back and handing out a candy to any child who showed the good manners to shake his hand and say Shabbat Shalom. Among the exceedingly rare Shabbatot that my father missed of his own volition was that of Tamar's Bat Mitzvah. The Teaneck Jewish Center did not allow women to read from the Torah and so, my folks rented a ballroom at a local hotel, borrowed a Torah and for that one Shabbat, led a renegade minyan so that my sister could *layn*.

Within a few years of arriving in Teaneck, Rabbi David Feldman took over the pulpit of our shul. The Feldmans, with three children nearly identical in ages to the three Roth children, moved in just two houses down, and the families became very close. In the mid-80's, the block received another set of arrivals, Rabbi Stanley and Helen Bramnick. Rabbi Bramnick, another of the Conservative Jews whose origins lay as a Haredi in Brooklyn, had held a pulpit in nearby Fair Lawn for decades but was a firm believer that a retired rabbi should get out of town when a new rabbi arrives.

Joel has many friendships that have originated in his work and, as one would expect given that we are talking about more than a half century of time spent

together, these friendships have come to define his life. The very deepest of these include Rabbi Stephen and Dr. Anne Lerner, and Rabbi Mayer and Renah Rabinowitz. Both the Lerner and the Rabinowitzs also chose to live in Teaneck, have children of similar ages, and all three families watched each other grow up and grow old, celebrating the joys and supporting each other during challenging times.

The friendship with Rabbi Bramnick, though, was unique for Joel in his adult life. In Stanley, Joel found what I can only define as a “pal.” Not that they sat around drinking beers and watching football ... I have no direct evidence of my father having ever done either of those things. Nonetheless, Joel and Stanley were buddies. They would pick each other up on the way to shul literally three times each Shabbat (well, technically, once before and twice on). They sat next to each other in shul for decades, parting only when the arrival of spouses made it a marital imperative to signal that they preferred to sit next to their wives. They grumbled about the length of the service and about Rabbi Feldman’s amusingly eccentric stage presence. Rabbis Bramnick and Roth rarely grumbled about the sermon though, since in a slight breach of decorum, my recollection is that they brought articles to read at that precise time. If on any given Shabbat Helen or Barbara chose not to go, neither man was quite up to explaining to his wife what Rabbi Feldman had spoken about, save for in the most general terms.

In both rabbis Bramnick and Feldman, Joel found friends and colleagues who shared his general philosophy on tradition and change in Conservative Judaism. Though Feldman for sure felt that Joel’s decision on the ordination of women as rabbis was a bad idea and I suspect that Stanley was not wild about it either, Joel had confidence that they were authentic partners in shoring up the erosion to the process of halachic decision making that troubled Joel as it emerged in the later 1980’s and early 1990’s. Joel used his authority as the chairman of the Conservative Movement’s Committee on Jewish Law and Standards (“the Law Committee”),¹ to appoint both Feldman and Bramnick to the committee, and in so doing, ensuring both a regular ride to the meetings and two reliably small-c conservative votes on important matters of the day.

Two other friendships, “the Robbies,” both former students, merit special mention. Robbie Roth, a student of Joel’s from Hebrew School days, is a fellow

¹ The committee charged with definitive adjudication of what is permitted and forbidden in Jewish law for the movement.

Detroiter and one of the only non-family people with whom he maintains a close friendship from before his move to New York. There are no former students with whom Joel shares a friendship like Robbie Harris. Joel met Robbie while Robbie was still an undergraduate. Now a faculty peer, Robbie has been Joel's friend and confidant for over 40 years.

That Joel is an excellent teacher is a fact that literally thousands of students can and will attest to. Joel teaches Talmud and codes with excitement and enthusiasm, and brings clarity to the complex textual obscurities inherent in rabbinic literature. He does this both when teaching to lay leaders who lack the requisite vocabulary and to advanced students whom he leads on journeys that start on the page of Talmud but travel deep into the early and later rabbinic literatures which add textures of complexity to the already complex Talmudic material.

I have already mentioned in these pages that from the moment he walked in the doors of JTS, he was recognized as a serious Talmud and legal reasoning talent. Mentored by Finkelstein and Lieberman, he rose to deanship of the rabbinical school at a very young age and was appointed to the Law Committee at a point of similar youth. Writing about Joel's tenure on the Law Committee, which was a key part of his rabbinic career, is perhaps the most difficult part of this biographic assignment. Despite the festive purpose of the volume to which this essay is contributed, it would be incomplete if I did not discuss the two pivot points of Joel's career associated with his time on the Law Committee that both cost him dearly.

The first was his authorship of the responsum that made it possible for women to be ordained as rabbis in the Conservative movement. The responsum (written for the JTS faculty), nearly 100 pages in length, is a complex argument that established a mechanism by which women and men could achieve a legal equality of obligation for the performance of certain commandments (*mitzvot*). That men and women be under the same legal obligation for the performance of *mitzvot* is the hinge on which the idea of women as rabbinic leaders turns, because of the Jewish legal norm that only those people that are similarly obligated for the performance of a commandment may perform that commandment on each other's behalf.

To be transparently clear about the boldness of Joel's argument and to understand its consequences, the reader must remember that the claim that women *do not* have the same obligation for the performance of the requisite types of commandment is stated both explicitly and unambiguously in the Mishnah and had never been challenged by rabbinic authorities whose commitment to halacha was the paramount factor in their reasoning.

What made Joel's essay so pathbreaking was that he did not come to the question of the ordination of women as rabbis from a sociological perspective—that is, from the idea that the inclusion of women was simply an idea whose time had come—but rather as an exclusively legal question. There is no doubt in my mind that although Joel, on a personal level, wanted to see women ordained, he would have argued otherwise if he did not find the mechanism for establishing the equality of obligation within the norms of halachic decision-making that he inherited from nearly two thousand years of Jewish legal reasoning.

During the early 1980's Joel was widely celebrated for this responsum and it opened the doors to a multitude of invitations to speak at synagogues around the United States. It was a particular joy of mine when my father took me along on these speaking trips. I felt such pride sitting in a shul in some exotic locale (Cincinnati!) and watching my father speak to congregations about the Jewish legal system. The responsum on the ordination of women elevated his stature as a jurist, and for the coming decade, our phone would ring off the hook with rabbis near and far looking for immediate adjudication on their pressing legal questions. Many of them asked the same questions and so we, his children, learned the answers ourselves. Those were heady days, they were the bulk of our childhood years, and they gave us a sense of pride in our father that has never diminished.

The darker side of those days is that in his decision on the ordination of women, Joel took a step of which his teachers, those transmitters of Torah who had ordained and groomed him, whom he revered and whose legacy he felt charged to keep, did not approve. Finkelstein, Weiss-Halivni and most likely Lieberman as well, felt that Joel was wrong and, if not wrong, presumptuous. To their minds, the decision probably caused permanent damage to the movement that they had entrusted him to protect.

In the end, the ordination of women as rabbis did not work out in the way Joel had imagined. Joel had expected that the movement would maintain a pluralistic approach to the question, and that there would be minyanim that were constituted of men and women together as well as those whose quorum was exclusively male. In practice, that proved untenable, since the rejection of women by the male-only quora did not feel like a non-judgmental position. Rather, it felt like an outright rejection of the personhood of women. In time, the institutions of the Conservative movement—synagogues, camps and the like—would move to exclusively egalitarian prayer environments, and the pluralism that Joel anticipated withered rather quickly. The mechanism that Joel had found for equalizing the obligation of men and women was idiosyncratic and complex and it proved to be only a transitional moment. Within short

order, the mechanism for equal obligation was imposed on women rather than being a choice for women, which facilitated the movement's consolidation as exclusively egalitarian.

If the decision to ordain women as rabbis cost Joel his teachers, the second decision for which he will be remembered cost him many of his students, eroded some of his stature and very unfairly exposed him to ridicule and calumny.

Nearly a decade after the ordination of women was resolved, the question of the ordination of LGBTQ people became a pressing concern of the Conservative movement. Joel, at the time, was still chairman of the Law Committee, and undertook to write a responsum on the subject himself. I remember this period with vivid clarity, having been nearly an adult while this took place. For over a year, my father studied about homosexuality to make sure that he understood all aspects of the subject on which he was being tasked to adjudicate. In later years, critics would assume that Joel was a homophobe and never wanted to see queer people in the rabbinate. That is absolutely false and I consider it a slander. The question about LGBTQ rabbis was never a question of how Joel felt about homosexuality and certainly not about queer people. Though his critics don't know him well enough to see it, Joel is not uncomfortable with either homosexuality or with LGBTQ people. I have seen him demonstrate his love and support for queer people in our family time and again. I have seen him attend weddings and dance in celebration of the marriages of queer children of his friends. The question was always only whether Joel could find a mechanism, using the tools of the halachic process, to legitimate sexual practices that, on their surface, are either forbidden by Torah or by long standing rabbinic decree.

The precise details of his responsum are, thankfully, not under my charge to write about. As readers will know, in the end, the Law Committee did adopt Joel's responsum, which continued to exclude queer people from entering the rabbinate. At the same time, the movement also adopted other, more lenient positions. Both the restrictive and lenient positions were considered official responsa, but in practice, as with the ordination of women, the more permissive stance became the exclusive norm. In this case too, adhering to the more restrictive opinion by some members of the community while the rest of the community is guided by the more open position results in a perceived rejection of personhood that is not compatible with community cohesion.

On a personal level, our family again felt the effects of this decision deeply. Joel was vilified by many of his students for being anti-gay, and his prominence in the movement fell remarkably. Because Joel felt that the more lenient positions on homosexuality were driven by compassion (which he shared) but were not reasonably within the guide-rails of halachic decision making, Joel resigned

from the Law Committee, which was the right thing to do, but also took away a platform of authority from which he felt he was doing much good. Speaking invitations became fewer and farther between, and rabbis more aligned with the social trajectory of the movement found themselves in higher demand.

As a son, I feel like this period and its aftermath were cataclysmically unjust to my father and demonstrate a fickle and uncharitable spirit by many in the Conservative movement. The notion that Joel was a committed liberal when it came to the ordination of women and a hidebound homophobe when it came to homosexuality, defies all evidence that social and political attitudes towards feminism and queer rights covary. And indeed, they covary with Joel as well. Joel is equally committed in a secular legal framework, including the US Constitutional system, to the full equality of rights between men and women and, in the case of queer people, the full inclusion of rights, including marriage equality. Joel holds this position because for him, it is all about the norms of the systems of jurisprudence. If the reasoning process of the system can be shown to accommodate a position that he desires to see socially, that is a relief. However, when the legal system cannot accommodate such a position, then he accepts that it cannot, despite the fact that emotionally and ideologically he wishes it would.

I understand that people who feel rejected by Joel's legal positions cannot see that his decision on women and his decision on homosexuality are driven by an identical legal process. As his son, I am anguished by my knowledge of his being vilified for an alleged evil in his heart that he does not bear.

Writing these words on behalf of all his children, I would share with you that Joel was, is and will remain, an excellent father and role model. At a time when few fathers participated in the mundanities of child raising, taking kids to the doctor, to music lessons, dropping off forgotten school assignments, Joel did these things and in so doing demonstrated not just what equality in marriage looked like but also showing me especially, how a father ought to behave. My father also did the things that most fathers do; he taught us to ride bikes, to play baseball and to play card games on long shabbat afternoons. He taught us to anticipate the joy of Shabbat by shopping for special treats in advance. Joel taught us that a hard-boiled egg and a chocolate donut were the exact right nutrients to eat before shul on Shabbat, sustaining energy for davening and lasting till kiddush time, and that nothing caps off Shabbat dinner like a bowl of pretzels, coffee with parve cream, and a Jewish newspaper. Having only ever watched my father lead a Seder, I never understood when friends would complain that Seders were too long, since at ours it was always an open question whether the intellectual feast would surpass the victual feast itself or vice versa.

I want to end though, with perhaps the single most important and complex lesson that I learned from my father: To respect the autonomy of your children and in doing so, to de-couple parental love from possible disappointment in your children's choices. Some of Joel's children have made lifestyle choices in relation to Jewish practice that are far from what Joel wants and certainly deviate from what he imagined for them when he was raising them. It is not easy to see your children reject—even if they do so respectfully—the lifestyle of religious observance that is so valuable to you that you have shaped everything—family, career and even recreation—around it. In many families, maybe even most, when children live so differently from parents, there is emotional distance, tears, and tension. Not so with Joel and his children. My father gave us all the tools to study text, to be culturally fluent in observant Judaism, and live a Torah-centered lifestyle. But it seems what he gave us more was the freedom to choose to do those things, or to not, and not let that choice impact one iota on his love and support. We have seen too many families where that is not true and are grateful to our father that ours is the exception.

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Halakhah, Theology and Psychology: The Case of Maimonides and Obadiah the Proselyte

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לכבוד מורינו ורבינו הרב הפרופסור יעקב רוט



Our sages famously say, אין לדיין אלא מה שעיניו רואות, “a judge should rule solely in accordance with what is before him”.¹ Talmudic sources invoke this principle in order to limit the realm of a judge’s responsibility and authority,² directing judges to issue rulings based on empirical evidence rather than speculation.³ There are instances, however, in which the Talmud authorizes and encourages a judge to transcend normative legal protocols. In monetary cases, the Talmud endorses the use of judicial discretion if one is inclined to believe testimony or evidence that is not technically admissible.⁴ Similarly, in criminal cases, judges are advised to recuse themselves from cases in which they would be forced to issue a ruling based on testimony or stipulations that they believe to be false though they cannot prove this.⁵

It is noteworthy that the originally restrictive principle of אין לדיין אלא מה שעיניו רואות was interpreted expansively in post-Talmudic halakhic discourse. As such it served as a justification for and crystallization of an emerging consensus: namely, that

1 This statement appears three times in the Bavli; its import varies according to context. Its use in b. Sanh. 6a comes closest to the sense in which I am interpreting it. See Maimonides’ formulation of the passage in *Sanhedrin* in his halakhic code *Mishneh Torah* (henceforth: MT), *Laws of the Sanhedrin*, 23:9.

2 See b. Sanh. 6a.

3 b. B. Bat. 131a and b. Nid. 20a.

4 See b. Ketub. 85a. In Maimonides’ formulation of this legal principle in MT, loc. cit., 24:1 he states, “The matter is placed in the hands of the judge in accordance with what he sees as being the appropriate judgment.”

5 MT, loc. cit., 24:3.

in fact *poseqim* have the right—and, at times, obligation—to use judicial discretion to reach rulings at variance with black-letter law. In this reading, the “seeing” in question is insight rather than knowledge. According to this reading the principle of *אין לדיון* should then be translated as “a judge should rule in accordance with his perceptions.”⁶

This principle, in its post-Talmudic sense, became relevant not only in criminal and civil cases but in other areas of halakhah as well. In particular, a skilled *poseq* was expected to discern larger, often unspoken, issues underlying the question being asked. To use therapeutic language, one needed to go beyond the presenting problem to identify and address the deeper one. This skill has proven indispensable to *poseqim* throughout the ages. It is still recognized as being crucial to issuing rulings that are equitable and compassionate as well as firmly grounded in rabbinic sources.

The great scholar and sage Maimonides (1138–1204) was particularly adept at perceiving the true intentions and deeper concerns of litigants and petitioners in cases that either came before him directly or were referred to him. Consequently, he was able to combine insight with adjudicatory virtuosity to arrive at rulings that were both halakhically rigorous and humane.⁷

I wish to analyze a Maimonidean responsum⁸ that demonstrates acuity in discerning and addressing the unstated concerns of the questioner. The question, addressed to him by a convert named Obadiah, is whether or not, as someone not born a Jew, he should use phrases like “the God of our ancestors” in his prayers—a question that, as we shall see, was discussed in Talmudic sources.

6 See, for example, the following statement by Maimonides’ son Abraham in his responsa (No. 97): “I say that a judge who rules only in accordance with what is already on record is frail and feeble. This approach is a rejection of the rabbinic dictum, ‘A judge rules only in accordance with what is before him.’ And it must not be so. Rather, although the fundamental legal principles have been codified, a judge or jurist must weigh them in accordance with each case as it comes before him, to draw an analogy between one case and another, and to extract specific rulings from the fundamental laws.” See also the following footnote.

7 In one of his responsa, Maimonides cites the principle of *אין לדיון* as a basis for limiting the applicability of a Talmudic ruling despite the absence of such a qualification in the Talmud. In doing so he undermines the claim of an unscrupulous litigant, thereby ensuring an equitable verdict; see Joshua Blau, ed. and trans., *Maimonides’ Responsa* [Heb.], 3 vols. (Jerusalem: Hēvrat Meqīṣe Nirdamim, 1961), No. 365 (2:639–641). The numerical designations and pagination accompanying subsequent mention of specific Maimonidean responsa refer to Blau’s edition.

8 No. 293 (2:548–550); Isaac Shilat, ed. and trans., *Maimonides’ Epistles* [Heb.], 2 vols. (Jerusalem: Ma’aliyot Press, 1988), 1:233–235.

As has been noted by others,⁹ it seems likely that this query reflected a broader concern on Obadiah's part about whether he could claim to be as fully and unquestionably Jewish as a born Jew. Anxiety and uncertainty about this question would be understandable, given that Rabbinic Judaism manifests some ambivalence toward proselytes, both through negative characterizations¹⁰ and through halakhic rulings that seemingly impute an inferior status to converts.¹¹ Moreover, we know of another query from the self-same Obadiah¹² in which, having been told by his teacher that Islam was an idolatrous religion, he seeks Maimonides' view on the matter. The fact that, in his teacher's view, he had formerly been an idolater could have only contributed to a sense of inferiority.¹³

This responsum has been studied by numerous scholars from various perspectives.¹⁴ My focus will be an analysis of the stratagems and techniques that Maimonides uses to address Obadiah's fears. A translation of the responsum

9 See, for example, James A. Diamond, *Converts, Heretics, and Lepers* (Notre Dame: University of Notre Dame Press, 2007), 11–31.

10 Such as the dictum, “proselytes are as injurious to Israel as a scab” (b. Qidd. 70b and parallels). The Bavli reports this teaching in the name of the Amora R. Ḥelbo; in Kallah Rab. 2:4 it is cited as a Tannaitic tradition.

11 See, for example, y. Qidd. 3:12, 64c, b. Qidd. 72b–73a and Shulḥan Arukh, Even ha-Ezer 4:22.

12 No. 448 (2:725–728; Shilat, 1:238–241). We know of one other Maimonidean responsum addressed to a proselyte named Obadiah; see No. 436 (2:714–716; Shilat, 1:236–238).

In the superscription and section 1 of the responsum under discussion reference is made to multiple queries on the part of Obadiah (but see n. 17 below). Using the associative principle, the three responsa addressed to a convert named Obadiah can be linked to each other. Both 293 (A) and 448 (B) address matters pertaining to the status of converts. In both 448 (B) and 436 (C) the inquirer Obadiah mentions his teacher, who in no uncertain terms “corrects” him. A is related to B, and B is related to C; hence it follows that A and C are related as well, and that all three responsa are addressed to a single individual.

13 It should be noted that making statements denigrating the former status of a convert is specifically forbidden; see b. B. Meṣ. 58b.

14 See Lawrence Kaplan, “Maimonides on the Singularity of the Jewish People,” *Daat* 15 (1979): English section, v–xxvii; Isidore Twersky, *Introduction to the Code of Maimonides (Mishneh Torah)* (New Haven: Yale University Press, 1980), 485–486; Menachem Kellner, *Maimonides on Judaism and the Jewish People* (Albany, NY: SUNY Press, 1991), 49–57, esp. 50–51, 53; Menachem Lorberbaum, “Maimonides' Letter to Ovadyah: An Analysis,” *S'vara* 3, no. 1 (1993): 57–66; James A. Diamond, “Maimonides and the Convert: A Juridical and Philosophical Embrace of the Outsider,” *Medieval Philosophy and Theology* 11, no. 2 (2003): 125–146; idem, *Converts, Heretics, and Lepers* (Notre Dame: University of Notre Dame Press, 2007), 11–31; Moshe Halbertal, *Maimonides: Life and Thought*, trans. Joel Linsider (Princeton: Princeton University Press, 2014), 208–216, esp. 215–216. I have not seen Philip Matoff Posner, “Maimonides' ‘t'shuva’ to Ovadyah the Proselyte,” *CCAR Journal* 60, no. 3 (2013): 185–202.

from the Hebrew¹⁵ follows;¹⁶ I have divided it into numbered sections to which I will refer in my commentary and analysis by citing section numbers in parentheses where relevant.

[Superscription:] The following are inquiries addressed to our master, Rabbi Moses of blessed memory, by Obadiah the righteous proselyte and his responses:¹⁷

1. Thus said Moses the son of Rabbi Maimon of Spain—may mention of this righteous man bring blessing—who was among those exiled from Jerusalem:
2. We have received¹⁸ the inquiries of our teacher and master Obadiah, the wise and discerning proselyte, may the Lord reward him for his deeds, and may he receive full recompense from the Lord, the God of Israel, under whose wings he has sought shelter.¹⁹
3. You have inquired concerning the [the wording you should use for the following] blessings and prayers when you recite them in private

15 All the versions of this responsum presently available to us are in Hebrew. Maimonides often wrote his responsa in Judeo-Arabic, and some responsa that were previously known in a Hebrew version we now know were written originally in Judeo-Arabic. See the first page of Blau's introduction in volume 1 of *Maimonides' Responsa* (the introduction is not paginated).

16 A number of English translations are available. See Nahum N. Glatzer, ed., *The Judaic Tradition*, rev. ed. (Springfield, NJ: Behrman House, 1969), 395–396; Isadore Twersky, *A Maimonides Reader* (New York: Behrman House, 1972), 475–476; Menachem Lorberbaum, “Maimonides' Letter,” 64–66; Diamond, *Converts*, 12–14; Levi Cooper, “From the Classics: ‘God of our Ancestors’: Biological Ancestry and Spiritual Roots in the Prayers of Converts,” *Building Jewish Identity* 7, no. 2 (Winter 2009), <https://www.lookstein.org/journal/classics-god-ancestors-biological-ancestry-spiritual-roots-prayers-converts/>. Only Lorberbaum translates the responsum in its entirety. The translation provided here is my own; it is based mainly on the version of the responsum published by Blau. I will occasionally mention and discuss variants mentioned in Blau's and Shilat's notes.

17 Some manuscripts: “This is a response to an inquiry sent from the Land of Israel by a righteous proselyte to which the *gaon* our master Moses of blessed memory responded”; see Blau, 2:548, n.1.

18 הגיעו אלינו. Presumably Maimonides is using the royal “we” here; cf. n. 40 below. Shilat, 1:233 n. 2, mentions the variant אלי.

19 Maimonides cites Ruth 2:12 but in the third person rather than the second person of the original verse. Beginning with the rabbinic period the image of entering under the wings of the Divine Presence is used as a metaphor for formal conversion to Judaism. See, for example, b. Šabb. 31a. Maimonides uses this metaphor for conversion throughout MT; see Laws of Character Traits 6:4; Laws of Forbidden Relations 13:4; Laws of Kings and their Wars 8:5. See also his *Sefer Ha-Mitsvot*, Negative Commandments, Commandment 252. Maimonides uses this expression several times in this responsum; see sections 2, 5, 9 and 11.

or with the congregation [given that you are a proselyte]: Should you say “Our God and God of our ancestors”,²⁰ “The One who has sanctified us through His commandments and commanded us,”²¹ “The One who has distinguished us,”²² “The One who has chosen us,”²³ “[the land] that You gave as an inheritance to our ancestors,”²⁴ “You who brought us forth from the land of Egypt,”²⁵ “The One who performed miracles for our ancestors,”²⁶ and other such phrases.

4. You should²⁷ say all this in the prescribed fashion. Change nothing; rather, it is appropriate that you recite the blessings and prayers

20 The reference here is to the opening words of the Amidah, ברוך אתה ה' אלוקינו ואלוקי אבותינו, “Blessed are You, Lord, our God and the God of our ancestors.”

21 אשר קדשנו במצותיו וצונו, the opening formula of all blessings recited prior to the fulfillment of a commandment. Compare the phrase in the *Kiddush* recited on Friday night, אשר קדשנו במצותיו ורצה בנו, “who has sanctified us with His commandments and has favored us.”

22 אשר הבדילנו. Shilat, 1:233 n. 6, observes that this phrase does not appear in any liturgical tradition presently known to us. An almost identical phrase, והבדילנו מן התועים, is found in the so-called קדושה דסידרא (see b. Soṭah 49a), versions of which appear in the daily morning prayers, the afternoon Shabbat service, the evening service at Shabbat's conclusion, and after the reading of the Book of Esther on Purim Eve and the Book of Lamentations on the eve of Tisha Be-Av. Shilat, loc. cit., states that this phrase appears in Maimonides' version of this prayer as recorded in his Seder Tefillot Kol Ha-Shanah, which is appended to the second book of MT, Sefer Ahavah. This is indeed the reading in the standard printed editions of MT. However, Shabbetai Frankel's edition and the Oxford manuscript of Seder Tefillot published by Daniel Goldschmidt (*Mehqerei Tefillah u-Fiyut* [Jerusalem: Magnes Press, 1980], 205) both have not והבדילנו but שהבדילנו, which is identical in meaning to אשר הבדילנו.

This phrase echoes Lev 20:26: “For I have singled you out (ואבדיל אתכם) from among all the nations to be mine.” The *Havdalah* ceremony at the conclusion of Shabbat is centered on this theme.

23 אשר בחר בנו. This phrase appears in various forms in the initial blessing recited by one being called to the Torah, the evening *Kiddush* for festivals, the festival *Amidot*, the blessing before the morning *Shema*, and elsewhere.

24 שהנחלת את אבותינו. This phrase appears in *Birkat ha-Mazon* and the ברכה מעין שלש. Many liturgical traditions have שהנחלת לאבותינו. Maimonides' Seder Tefillot has the wording כי הנחלת את אבותינו.

25 שהוצאתנו מארץ מצרים; cf. Deut 9:28. This phrase appears in *Birkat ha-Mazon* and, with variations, elsewhere in the liturgy. In Exodus and Deuteronomy this phrase appears in the third person; see, for example, Exod 13:16.

26 שעשה נסים לאבותינו. This phrase is to be found in the blessing accompanying the lighting of the Hannukah lights and the reading of the Megillah and is found in variant forms elsewhere in the liturgy.

27 יש לך. Although this phrase sometimes means “you may” or “you can,” the conclusion of the sentence makes it clear that Maimonides is speaking prescriptively.

just as they are recited by those born as Jews,²⁸ both when you are engaged in private prayer and when you are serving as the prayer leader.²⁹

5. The basis for this is that Abraham our Father taught the masses,³⁰ enlightened them, and made known to them doctrinal truth [i.e. monotheism] and [the fact of] God's unity. He rejected idolatry and abolished its practices, and he gathered many under the wings of the Divine Presence.³¹ He provided them with instruction and guidance. He charged his descendants and subsequent "members of his household"³² with keeping the ways of the Lord forever, as Scripture states, "For I have singled him out, that he may instruct his children and his posterity³³ to keep the way of the Lord [by doing what is just and right]."³⁴

28 כל אזורח מִיִּשְׂרָאֵל. כל אזורח and גר often appear conjunctively in verses indicating restrictions or obligations that apply equally to both; see Exod 12:49; Lev 16:29 and 18:26 (see also 17:9–13, 20:2 and 22:18); Num 15:15–16, 26, 29–30 and 19:10. In Lev 19:34 the conjunction of these terms is used to emphasize that the obligations to deal fairly and kindly with sojourners and to do so with Israelites are equally binding.

29 See n. 54 below.

30 כל העם. Maimonides generally uses this phrase to refer to Jews. He uses this phrase in the broader sense only in connection with Abraham's proselytizing mission, here and in MT, Laws of Idolatry 1:2–3. Cf. MT, Laws of Repentance 9:2 (concerning the Messiah): "Therefore he will teach the masses (כל העם) and instruct them in God's ways, and all the nations will come to hear his words." Presumably כל העם refers there to the Jewish people as opposed to "all the nations."

31 As mentioned above, in rabbinic sources this phrase refers to conversion. This sense of the phrase would seem to constitute an anachronism in the present context. See the discussion of this problem below.

32 בני ביתו. I have translated the phrase literally but with quotation marks for the following reason. Maimonides is alluding to Gen 18:19, which he cites immediately afterwards, in which God speaks of Abraham as instructing בניו וביתו אחריו to "keep the ways of the Lord etc." In context the phrase בניו וביתו אחריו seems to mean, as the New JPS translation has it, "his children and his posterity." In rabbinic literature בני ביתו refers to one's household, sometimes specifically in the familial sense and sometimes more inclusively, referring to other household members as well. Maimonides, however, understands ביתו in Gen 18:19 as referring to Abraham's disciples and those of subsequent generations who adhere to his teachings, as he makes clear in section 6 below and in MT, Laws concerning Idolatry 1:3, which I cite further on. Cf. Maimonides' remarks in Responsum 164 (2:313–314): "Only those who adopt one's religion are considered one's household, as is said concerning the members of Abraham's household. They were the ones who embraced his views and adopted his faith. One's slaves and workers who are deniers are not considered members of one's household."

33 וביתו; see the previous note.

34 Gen 18:19.

6. Therefore, throughout the generations, whoever converts to Judaism and whoever³⁵ confesses the unity of the Divine Name, as it is prescribed in the Torah, is counted among the disciples of Abraham our Father, peace be upon him. They are all members of Abraham's household,³⁶ and he it is who brought them back to the good.³⁷
7. Just as he restored his contemporaries [to the true faith] through his oral instruction and his teachings, he [prospectively] brought future generations [to true faith] through the testament he left to his children and household after him. Thus, Abraham our Father, peace be upon him, is the father to those of his descendants who are worthy in that they follow in his ways, as well as the father of his disciples and of all those³⁸ who become proselytes.
8. Therefore, you shall pray, "Our God and God of our ancestors," because Abraham, peace be upon him, is your [spiritual] father. And you shall pray, "[the land that] You have given as an inheritance to our ancestors," for the land was given to Abraham [and consequently to you as well], as it is said, "Up, walk around the land, through its length and its breadth; for I will give it to you."³⁹
9. However, as to the words, "You who brought us forth from the land of Egypt" or "You who performed miracles for our ancestors"—these you may change, if you wish, and say, "You who brought forth Israel from the land of Egypt" and "You who performed miracles for Israel." If, however, you do not change them, no harm has been done. As a consequence of your having come under the wings of the Divine Presence and having attached yourself to Him, there is no distinction between us and you,⁴⁰ and all miracles performed for us have

35 See n. 88.

36 ובני ביתו הם כולם; see n. 32.

37 Maimonides' talk of return and restoration in this and the following section is based on his reconstruction of the origins of idolatry in MT, Laws concerning Idolatry, 1:1–2. In his telling, Adam and his descendants had full and true knowledge of God until the generation of Enosh, at which point the masses were gradually led astray through the adoration and eventual worship of heavenly bodies such as the sun and the moon. Abraham rediscovered the truth that had been forgotten and restored this knowledge to his adherents.

38 See n. 88.

39 Gen 13:17.

40 אין כאן הפרש בינינו ובינך. See n. 18 above. Here it seems likely that, rather than being a self-referential use of the royal "we," "us" refers to native-born Jews. This is certainly true of the "us" in the first sentence in section 10: "For the Torah has been given to us and to the proselytes."

been performed, as it were,⁴¹ for both us and you. Thus is it said in the Book of Isaiah, “Let not the foreigner say, who has attached himself to the Lord, ‘The Lord will keep me apart from His people.’”⁴² There is no difference whatsoever between you and us.

10. You shall certainly say the blessing, “Who has chosen us,” “Who has given us,” “Who has given to us as an inheritance,”⁴³ and “Who has distinguished us”, for the Creator, may He be extolled, has indeed chosen you, set you apart from the nations and given you the Torah. For the Torah [has been given] both to us and to proselytes, as it is said, “One law shall there be both for you of the congregation, and also for the stranger that sojourns with you, a law forever in your generations; as you are, so shall the stranger be before the Lord.”⁴⁴
11. Know that those of our ancestors who left Egypt were mostly idolaters; they had mingled with the Egyptians and followed their practices, until the Blessed Holy One sent Moses our Teacher, the su-

41 באלו. Shilat, 1:234, in his note to line 15, notes the variant באלו; these two words are of course virtually indistinguishable orthographically. It may be that according to this reading the phrase וכל הנסים שנעשו באלו לנו ולך נעשו should be translated as “and all the miracles performed for them were [also] performed [both] for us and for you,” the antecedent of “them” being the Israelites who experienced these miracles personally. Thus, the use of באלו, literally “to them”, in connection with those past generations who lived in an age of miracles and לנו, “for us”, for later generations who did not. Indeed, given that miracles are not supra-temporal concepts like chosenness and covenant but rather events that take place in real time, subsequent generations can claim that the miracles were performed in their behalf only in the broader sense. It is this fact that lies behind the insistence in the עבדים היינו passage in the Haggadah that although we ourselves were never slaves in Egypt we are ultimately the beneficiaries of the liberation from bondage long ago. If באלו is the correct reading and my interpretation an accurate one Maimonides is not, as the reading כאלו would suggest, implicitly acknowledging the weakness of his case in the very moment in which he presents it. On the contrary, he is making the rather persuasive argument that native-born Jews are no more entitled to speak of the miracles of the past being done to or for them than are proselytes.

42 Isa 56:3.

43 אשר הנחילנו. I could not find this phrase anywhere else in Maimonides’ writings, including his Seder Tefillot. In MT, Laws of Shabbat 29:2, Maimonides records the liturgical formula for the Friday night *Kiddush* as including the phrase, “who (אשר) sanctified us with His commands and favored us and who granted us as our inheritance (הנחילנו) His holy Sabbath with love and favor.” Perhaps Maimonides has that phrase in mind and is citing it elliptically, אשר ... הנחילנו. However, the context suggests that the inheritance in question is the Torah rather than Shabbat. This phrase does not appear in Shilat’s recension; see Shilat, 1:234, line 18.

44 Num 15:15.

preme prophet, and⁴⁵ separated us from the nations and brought us under the wings of the Divine Presence, us and all proselytes, and gave to all of us one Law.

12. Do not consider your status as inferior. While we are descended from Abraham, Isaac, and Jacob, yours is a direct relationship with Him through whose word the world was created. This is made explicit in [the Book of] Isaiah: "One shall say, I am the Lord's, and another shall call himself by the name of Jacob."⁴⁶
13. And there is support in tractate Bikkurim for all that we have told you regarding [how you should recite the] blessings, namely that you should not deviate [from the accepted liturgical forms]. The mishnah there states:⁴⁷ A proselyte is obligated to bring first fruits to the Temple but does not recite the requisite declaration⁴⁸ because he is disqualified from reciting the verse "[the land] that the Lord swore to our fathers to assign us."⁴⁹ And when he prays in private he recites [in the first blessing of the Amidah] "our God and the God of Israel's ancestors." And when he prays in public he recites, "our God and the God of your ancestors."⁵⁰ This is the view stated anonymously in the mishnah. It is R. Meir's view,⁵¹ and the halakhah is not in accordance with his position but rather in accordance with what is explained in the Jerusalem Talmud.⁵² It is stated there: It was taught in the name of R. Judah that a proselyte himself offers first fruits and recites the declaration. Why is this so? [Because Scripture states]: "I have made you the father of a multitude of nations";⁵³ in the past you were the father of Aram; from now forward you will be the father to all of humankind. R. Joshua b. Levi says: The halakhah is in accordance with R. Judah. A case came before R. Abbahu and he ruled in accordance with R. Judah.⁵⁴

45 It is not clear in this and the following phrases whether the subject is God or Moses. If the latter is the case a more accurate translation would be "and he [i.e. Moses] separated etc."

46 Isa 44:5.

47 m. Bik. 1:4.

48 Deut 26:3, 5–10.

49 Deut 26:3.

50 In Blau (2:550): *אלוקינו ואלוקי אבותינו*. This is clearly the result of a scribal error; see n. 12 there.

51 See further on.

52 y. Bik. 1:4, 64a.

53 Gen 17:4.

54 Note that R. Judah and R. Joshua b. Levi address only the issue of the first fruits declara-

14. Observe—it has been made clear to you that one should recite “that the Lord swore to our fathers to assign us,”⁵⁵ and that Abraham is the father to you, to us, and to all the righteous [who] follow in his ways. The same is true of the other blessings and prayers; you should change nothing.

[Postscript:] Thus wrote Moses son of Maimon of blessed memory.

On its face, Obadiah's inquiry concerns a matter of halakhah and nothing more, for which a straightforward halakhic response would suffice. However, from the content and structure of his response it appears that Maimonides understood Obadiah's inquiry to be fundamentally an ontological one: is a proselyte as fully Jewish as one who is born a Jew? To use a helpful distinction formulated by Ethan Tucker, Obadiah is apparently seeking confirmation that his halakhic status as a Jew is in absolute accordance with his unconditional embrace of Jewish identity in all its fullness. With this in mind, Maimonides crafts the structure and content of his response with an eye towards reassuring Obadiah

tion and not that of the appropriate liturgical formula for converts. However, as a number of commentators point out (see, for example, the commentary of the 15th–16th-century sage R. David ibn Zimra, known as Radbaz, to MT, Laws of First Fruits 4:3), first fruits were no longer being brought in the days of R. Abbahu, a third-generation Palestinian Amora, who was being consulted on a matter of practical halakhah. It therefore follows that he was ruling on the liturgical issue.

Maimonides rules in accordance with R. Judah regarding the declaration question both in his Mishnah commentary ad. loc. and in MT Laws of First Fruits loc. cit. To the best of my knowledge, his only mention of the prayer issue is in the responsum under discussion. R. Yosef Kafih (Yosef Kafih, ed. and trans., *Maimonides' Mishnah Commentary* [Heb.], 3 vols. [Jerusalem: Mossad Harav Kook, 1963], 1:263 n. 13) points out that the section of Maimonides' Mishnah commentary containing his ruling and the citation of y. Bik. is missing from the first recension. He speculates that this passage was added after Maimonides wrote his response to Obadiah.

Medieval Ashkenazic authorities debated both the meaning of the Yerushalmi and whether in fact a convert was permitted to use the same language in his prayers and blessings as born Jews. In some communities the adoption of the prohibitive view led to the practice of prohibiting converts from serving as prayer leaders or leading a *zimmin* before *Birkat ha-Mazon*; see Tosafot's commentary on b. B. Bat. 81a s.v. לְמַעוּטֵי, and Mordechai's commentary on b. Meg., par. 786. However, the consensus was to adopt the affirmative view and consequently to allow converts to lead both.

For a summary of the interpretational issues and views regarding the passage in y. Bik., see Saul Lieberman, *Tosefta Ki-Fshutah*, 10 vols., 3rd ed. (Jerusalem: Jewish Theological Seminary, 2001), 2:823–825. A survey of rulings on the prayer issue can be found in Menahem Mendel Kasher, ed., *Talmudic Encyclopedia* [Heb.], 40 vols. so far (Jerusalem: Yad Harav Herzog, 1947–), s.v. גַּג (6:258–259).

and validating his status as a Jew to the fullest extent possible. In addition to ruling on the halakhic question and citing Talmudic sources to buttress his decision, Maimonides provides a theological rationale for his ruling and marshals scriptural verses to offer Obadiah support and encouragement.

Let us now consider the structural, rhetorical, and substantive strategies used by Maimonides in the service of his project:

1. A nuanced wording and ordering of his rulings and the relevant Talmudic sources (4, 8–10, 13–14).
2. A restatement of Maimonides' description of Abraham's mission in *Mishneh Torah*, Laws concerning Idolatry ch. 1, adapted in order to serve as confirmation of Obadiah's full status as a Jew (5–7, 11).
3. Homilies that augment his halakhic and theological arguments in an effort to compensate for and/or divert attention from their flaws (9, 12).

Although there is some overlap, one can say that the first strategy focuses on law, the second on theology, and the third on psychology.

Law

A glance at the rabbinic sources cited by Maimonides (13) makes it clear that there was hardly unanimity about whether a convert should recite the first fruits declaration and use the same liturgical language recited by native Jews. The anonymous mishnah cited by Maimonides excludes a convert from doing either. Moreover, an Amoraic comment in the *Bavli*⁵⁶ seems to assume that the mishnah's view is dispositive. It is only in the *Yerushalmi* that we encounter the inclusive view of R. Judah with regard to the declaration, which by implication constitutes an inclusive view regarding the liturgical question as well.⁵⁷ Given the consensus among Maimonides' predecessors and contemporaries that the view of the *Yerushalmi* should be adopted only when not in conflict with the *Bavli* or when serving as an explanation or clarification of a statement in the *Bavli*,⁵⁸ one would have expected Maimonides to rule in accordance with the *Mishnah*.

56 b. Mak. 19a. In the midst of a discussion of whether the first fruits declaration is indispensable to the fulfillment of the *mitsvah* of bringing first fruits R. Ashi, the fifth-century Babylonian Amora, cites the fact that a proselyte does not recite the declaration as evidence that it is not.

57 It should be noted that a number of Amoraim cited in the *Yerushalmi* passage clearly assume the view of the *Mishnah* to be dispositive. Moreover, the *Tosefta* records R. Judah as exempting converts from the first fruits declaration (t. Bik. 1:2).

58 See Menachem Elon, *Jewish Law: History, Sources, Principles*, trans. Bernard Auerbach and

It is true that Maimonides himself sometimes ruled in accordance with the Yerushalmi against the Bavli.⁵⁹ However, assuming that Obadiah was sufficiently learned⁶⁰ to know that, when adjudicating between the views of the Bavli and the Yerushalmi, *poseqim*—including Maimonides—generally followed the Bavli, he would likely see a ruling based on a passage in the Yerushalmi contravening an anonymous mishnah as being less than robust. Even if Obadiah was not aware of this principle, he might well have been troubled by the very fact that the right of converts to recite the established liturgical formulae was a matter of debate. It seems likely that Obadiah was already aware of this; presumably, it was this knowledge that led him to seek Maimonides' counsel. It may even be that he had already been told by his teacher or someone else not to use standard liturgical language.

Maimonides' formulation of his ruling and his presentation of the Talmudic sources suggest an intent to minimize any negative implications that either might occasion. He begins by affirming unconditionally Obadiah's right to use the standard liturgical formulas (4), giving no indication that in fact in some instances it might be appropriate for Obadiah to recite a different version of the liturgy; this he saves for later (9). A presentation of the Talmudic sources, which indicate that the inclusive view championed by Maimonides was far from unanimous, is left until the very end of the responsum (13). Maimonides makes no mention at all of the passage in the Bavli that implies the restrictive view.⁶¹ Moreover, he makes no reference to the discussion in the Yerushalmi

Melvin J. Sykes, 4 vols. (Philadelphia: Jewish Publication Society, 1994), 3:1097–1098 and especially n. 68 on p. 1098.

59 For a discussion of Maimonides' occasional practice of adopting the Yerushalmi's ruling rather than the Bavli's, and a debate as to whether his view on this question shifted over time, see Michael Guttmann, "The Decisions of Maimonides in his Commentary on the Mishna," *HUCA* 2 (1925): 230–231; Aharon Adler, "Maimonides' Stance toward the Jerusalem Talmud" [Heb.], in *Memorial Volume for R. Joseph ben David Kafih* [Heb.], ed. Henil Seri and Zohar Amar (Ramat Gan: Bar-Ilan Press, 2001), 202–235; Dror Fixler, "Maimonides' Stance toward the Jerusalem Talmud as Reflected by His Commentary to Tractate Pe'ah" [Heb.], *Netu'im* 16 (2010): 95–109.

60 Maimonides addresses Obadiah as "our teacher and master Obadiah, the wise and learned proselyte" (2). Maimonides' inclusion of the Talmudic material in his responsum suggests both that Obadiah would be interested in the Talmudic basis for Maimonides' ruling and that he would be capable of understanding it.

61 The 17th–18th-century sage R. Judah Rosanes, in his commentary to MT, Mishneh la-Melekh, challenges Maimonides' ruling based on the passage in Makkot. Interestingly, the 13th-century Provençal commentator Menahem ha-Meiri, in his commentary to b. Mak. 19a (Bet Ha-Behirah al masseket Makkot, s.v. הגר), cites almost verbatim Maimonides' ruling without addressing the Bavli's statement to the contrary.

It may be that Maimonides ignores the passage in the Bavli because of his tendency to minimize the juridical relevance of Talmudic statements appearing in the context of

preceding the section he quotes in which the restrictive view is assumed to be normative, nor to the Tosefta that records R. Judah's view as being restrictive.⁶² On the other hand, he seeks to vitiate the authority of the mishnah by identifying it as the view of a single Tanna, R. Meir, rather than the majority view. This last claim is not without foundation,⁶³ but is not explicit in the Yerushalmi. After presenting the mishnah and the Yerushalmi, Maimonides concludes by reaffirming his inclusive ruling (14).

Theology

Maimonides' second strategy was to treat Obadiah's halakhic question as reflecting an ontological one: was Obadiah entitled to view himself as being as fully Jewish as his fellow Jews? Maimonides answers this question in the affirmative by framing Jewish identity theologically rather than ethno-historically. He does so in four different ways.

Abrahamic Discipleship

According to a midrashic tradition, Abraham and Sarah proselytized among the inhabitants of Ḥaran⁶⁴ and beyond.⁶⁵ It is presumably this tradition that underlies R. Judah's citation of Genesis 17:4, in which God promises Abraham, "you shall be the father of a multitude of nations," as the basis for his view that converts recite the first fruits declaration.⁶⁶ He apparently understands the "multitude of nations" as being specifically those among the nations who

argumentation rather than as explicit rulings. A discussion of this question is beyond the scope of this article.

62 t. Bik. 1:2.

63 The third-century Amora R. Yohanan attributes anonymous statements in the Mishnah to R. Meir (b. Sanh. 86a)—though he may be referring to the formulation rather than the content of these rulings. Based in part on this tradition, the Bavli, when finding a teaching of a named Tanna in conflict with the Mishnah, often resolves the conflict by attributing the mishnah to R. Meir. In doing so the Bavli weakens the mishnah's authority because it is no longer seen as representing a Tannaitic consensus. At times such attribution is used explicitly as a basis for taking issue with an anonymous Tannaitic teaching. See, for example, b. Beṣah 31b. Maimonides uses this strategy here to lessen the authority of the mishnah in Bikkurim by attributing it to an individual, R. Meir—justifiably so, given the Yerushalmi's attestation of R. Judah's dissenting view.

64 Gen. Rab. 39:14 and elsewhere.

65 See Gen. Rab. 39:8.

66 y. Bik. 1:4, 64a.

become proselytes.⁶⁷ God's promise to grant the land of Canaan to Abraham's descendants as their inheritance⁶⁸ would therefore apply to any and all of his progeny, including his spiritual progeny among the nations, i.e., proselytes. Consequently, in opposition to the Mishnah's view, R. Judah saw no reason why a convert could not recite the first fruits declaration with its statement that "I have entered the land that the Lord swore to our fathers to assign us."⁶⁹

This understanding of R. Judah's rationale is reflected in Maimonides' formulation of R. Judah's view in MT:⁷⁰ "A proselyte brings the first fruits and recites the declaration, for it was said to Abraham, 'I have made you the father of a multitude of nations.'⁷¹ Thus, Abraham is the father to all of the world's inhabitants who enter under the wings of the Divine Presence. And it was to Abraham that the promise was initially made that his children would inherit the land."⁷²

R. Judah presumably sees Abraham's role as a father to "[those] who enter under the wings of the Divine Presence," i.e., proselytes,⁷³ as secondary to his identity as the progenitor of the people of Israel. Proselytes are, in effect, Abraham's adoptive progeny who are absorbed into his biological family. Maimonides, on the other hand, portrays converts not as auxiliary members of Abraham's clan but rather as constituent elements of an Abrahamic faith community (5–7). This portrayal is a corollary of Maimonides' depiction of Abraham as proselytizer rather than patriarch. A striking consequence is that Abraham is described as father only to those of his descendants "who are worthy in that they follow in his ways," rather than to all of his progeny (7). In other words, biological descent is an insufficient basis for claiming Abraham as one's father if one does not also share his commitment to monotheism.⁷⁴

67 Cf. Gen. Rab. 49:2, where God's decision to inform Abraham of Sodom's impending doom (Gen 18:17) is explained as being a consequence of his having been designated the father of all nations. "Does one judge a son," says the midrash, "without the [knowledge of his] father!?"

68 Gen 12:7.

69 Deut 26:3.

70 Laws of First Fruits 4:3.

71 Gen 17:4.

72 Maimonides draws upon R. Judah's argument when discussing the formula "[the land that] You have given as an inheritance to our ancestors" in section 8 of the responsum. He cites God's promise of the land to Abraham in Gen 13:17 (rather than Deut 26:3, the verse he cites in MT loc. cit.) and argues that it extends to Abraham's followers, among them converts, as well.

73 See n. 19 above.

74 See n. 32 above.

Maimonides' characterization of Abraham in this responsum is consistent with the portrayal in MT:⁷⁵

[Abraham] began publicly declaring and informing the entire world that there is but one God in the Universe and that it is proper to worship Him [exclusively]. He continued to preach and to gather the masses, traveling from city to city and from kingdom to kingdom, until he reached Canaan where he proclaimed [the existence of the One God], as Scripture states, "And he proclaimed the name of God, Master of the Universe."⁷⁶ When the masses crowded around him seeking to understand his words he instructed each of them until he returned him to the path of truth, until thousands and tens of thousands gathered around him—these are those referred to as the members of Abraham's household.⁷⁷ He implanted this fundamental principle in their hearts and composed books [concerning the true faith], and imparted these teachings to Isaac. Isaac also established himself as a teacher and instructor [of the masses]. He also taught Jacob and appointed him as a teacher.

Both in MT and in his response to Obadiah, Maimonides foregrounds the motif of Abraham as disseminator of monotheistic doctrine, one which is absent from the biblical narrative. At the same time, he ignores the themes of land and progeny that are central to that narrative. By doing so, Maimonides is able to present Abraham as having been tasked with—or, more accurately, having taken upon himself—a universal mission, and therefore a broadly inclusive one, from the moment that God became known to him. Once Judaism, at least in its origins, is defined as a voluntary community of individuals united by their theological convictions rather than their ethnic origins, there is no reason to view a convert as any less Jewish than one who is born a Jew.

Converts as Members of Two Communities

However, one aspect of Maimonides' account in the responsum is problematic. If Abraham's mission was only to teach humanity about the God of the Universe and his Oneness, what need would there be for a (former) Muslim like Obadiah⁷⁸ to convert to Judaism in order to become his disciple?⁷⁹ This

75 Laws concerning Idolatry 1:3.

76 Gen 21:33. Maimonides recasts the verse's description of Abraham's personal call to God as a record of a public proclamation meant to bring the masses to the true faith.

77 See n. 32 above.

78 See Blau, 2:548 n.1.

79 It is true that the midrash (nn. 64 and 65) speaks of Abraham and Sarah actually conver-

difficulty is only intensified by Maimonides' statement elsewhere in MT,⁸⁰ and the reassurance he offers Obadiah in another responsum,⁸¹ that Islam is not an idolatrous religion.⁸²

To understand Maimonides' intent, we need to compare his words here with the continuation of the MT narrative, which follows:

[Jacob] taught others and fortified [the beliefs] of all those who gathered around him. He also taught all of his children. He chose Levi and appointed him as the leader. He established him [as the head of] the academy to teach [members of Jacob's clan] the way of the Lord and to observe Abraham's directive.

[Jacob] commanded his sons that the leadership should not depart from the descendants of Levi, so that the teachings would not be forgotten. This [movement] proceeded and gathered strength among the descendants of Jacob and those who joined them, until there arose a nation on the face of the globe that knew God.

When the people of Israel extended their stay in Egypt, however, they learned from [the Egyptians'] deeds and began worshiping the stars as they did, with the exception of the tribe of Levi, who clung to the directive of the patriarchs [to worship the One God]. The tribe of Levi never served false gods.

Within a short time, the fundamental principle that Abraham had implanted [in the hearts of his followers] would have been uprooted, and the descendants of Jacob would have returned to straying after human-kind's false beliefs. Because of God's love for us, and to uphold the promise He made to Abraham, our patriarch, He designated Moses, our Teacher, as the master of all prophets, and sent him [to redeem the people of Israel]. After Moses, our Teacher, prophesied, and God chose Israel as His inheri-

ting, מגייר\מגיירת, their followers. In general, rabbinic sources, do not speak of Abraham having gentile followers who accepted monotheism. This notion originates with Maimonides.

It is worth noting here the Quranic teaching that there is no need to be a Christian or a Jew but only, and most crucially, to become a follower of Abraham by rejecting idolatry (Sura 2, v. 135).

80 Laws of Forbidden Foods 11:7.

81 No. 448 (see n. 12).

82 Indeed, Kaplan, "Singularity," xx n. 28, notes that, given that Maimonides regarded Muslims as orthodox monotheists, it would follow from Maimonides' description of the Abrahamic community in this responsum that he would regard Muslims as members of that community as well.

tance, He⁸³ crowned them with the commandments and instructed them in the ways of divine service, [and(?)] the laws concerning idolatry and all those who stray after it.

We⁸⁴ can see that Maimonides speaks here of two separate faith communities (in addition to what Lawrence Kaplan calls the ethnic-historical community of Israel, which will be discussed further on). The first, described at the beginning of the MT narrative, consists of Abraham and his disciples, at the core of which are his descendants, who take up his role as teacher and instructor. This community is unable to sustain itself. As Kaplan notes,⁸⁵ apparently at some point the community of disciples who were not members of Abraham's family ceased to exist; in any case, they disappear from Maimonides' narrative. All that is left of the original community is Abraham's descendants, and during their sojourn in Egypt most of them fall prey to the idolatrous ways of the Egyptians. It is only through the persistent embrace of the true faith by the Levites, Moses' prophecies, the Exodus from Egypt and the Revelation at Sinai that Israel as a whole is restored to the true faith.

In his responsum, on the other hand, Maimonides speaks of the Abrahamic community and the people of Israel synchronically as well as diachronically. As Kaplan suggests, Maimonides seems to be speaking of three communities: "1) the Abrahamic community; 2) the people Israel, as an ethnic-historical community, grounded in historical experience and the memory of the exile and the redemption from Egypt; and 3) the people Israel as the spiritual-political, Mosaic community, distinguished from all other peoples by virtue of receiving the divine Mosaic law."⁸⁶ Maimonides delineates and discusses each community separately—the first in detail in sections 5–7, the second in section 9, and the third in section 11. In sections 6 and 7, however, he conflates the first and the third (and in a sense the second as well, through mention of Abraham's descendants) designating converts, who have chosen to join the third community, as members of the first community as well: "Therefore, throughout the generations whoever converts to Judaism and whoever confesses the unity of the Divine Name,⁸⁷ as it is prescribed in the Torah, is counted among the

83 I understand the antecedent to be God, though it is not impossible that it is Moses.

84 As will be evident from my notes, the remarks that follow draw heavily upon Lawrence Kaplan's analysis of the passages in MT and Maimonides' responsum. See in particular Kaplan, "Singularity," xiii–xxi.

85 "Singularity," xix.

86 "Singularity," xx n. 29.

87 See the following note.

disciples of Abraham our Father, peace be upon him" (6). Converts like Obadiah are members of the first community, but not its only members.⁸⁸

Further on, Maimonides emphasizes Obadiah's status as a member of the third community as well. Through his acceptance of the Torah he becomes as fully a member of this community as were the Israelites who were present at Sinai and their descendants. Although it was the ethnic-historical people of Israel who received the Torah, they were able to enter—or, rather, become—the third community only through the process of conversion.

This emerges from section 11 of the responsum, where Maimonides says that God "brought us [= ethnic-historical Israel] under the wings of the Divine Presence, us and all proselytes, and gave to all of us one Law." Maimonides is alluding here to a rabbinic tradition that the Israelites who left Egypt had to undergo a conversion process before they were fit to receive the Torah. In support of this assertion Maimonides cites Numbers 15:15: "One law shall there be both for you of the congregation, and also for the stranger that sojourns with you, there shall be one law for you and for the *ger*, a law forever in your generations; as you are, so shall the stranger be before the Lord." In its biblical context

88 Kaplan, "Singularity," xix n. 26, observes that this point is obscured in Glatzer's and Twersky's translations of a phrase in the passage cited above; I have translated it as "thus, whoever converts to Judaism and whoever confesses the unity of the Divine Name [... is counted among the disciples of Abraham]." Glatzer translates this passage as "thus he who becomes a proselyte and confesses the oneness of God." Twersky's translation is "whoever adopts Judaism and confesses the unity of the divine name." Both of these translations ignore the word **וכל**, inaccurately conveying the idea that for Maimonides only those who convert are counted among those who confess the divine name.

Much more disturbing is the fate that a subsequent sentence suffers at the hands of Shilat. In Blau's edition (2:549) the line reads: "It emerges that Abraham ... is the father of his disciples and [of] all those who become proselytes (**וְכָל גֵּר שִׁתְּגִייר**)." In Shilat's edition (1:234, l. 8) the text reads **וְהֵם כָּל גֵּר שִׁתְּגִייר**, which translates as "they being all those who become proselytes"; that is to say, only proselytes, and not gentile monotheists, are viewed as Abraham's disciples. In his introduction Shilat states that although for each text he follows faithfully the manuscript he considers most preferable, "המשובח ביותר", his notes mention those textual variants that are substantively significant, "משמעותיים מבחינת הלשון" (1:12). Blau's version conveys a very different meaning from Shilat's, yet it is not mentioned in Shilat's notes. Menachem Kellner cites this as an example of what he claims is Shilat's tendency to minimize the universalist aspects of Maimonides' theological views. See Menachem Kellner, "Farteicht un Farbessert (On "Correcting" Maimonides)," in *Meorot: A Forum of Modern Orthodox Discourse* 6, no. 2 (Marḥeshvan 5768/2007): 9–11 and esp. n. 26.

Ironically, Kellner himself blunts the universalist thrust of the phrase discussed at the beginning of this footnote, albeit inadvertently. Despite the fact that Shilat's version of the passage discussed at the beginning of this footnote includes the word **וכל**, Kellner (p. 10) mistranslates this word exactly as Twersky does.

“law” refers to the regulations concerning voluntary sacrifices, and *ger* refers to a sojourner, a resident alien. It permits resident aliens to bring voluntary sacrifices while requiring that they be offered in accordance with the strictures prescribed previously (vv. 1–11) for Israelites.

The rabbis do not read the verse in this way. They understand *ger* as meaning “proselyte”—clearly not the original meaning of the word since the institution of conversion did not exist in biblical times. According to the Talmud, the laws in question are the rituals required for conversion: immersion, circumcision for males, and, in Temple times, a sacrifice. The rabbis assume that the Israelites underwent this conversionary process in preparation for receiving the Torah. The statement “as are you so shall the *ger*”—that is, a proselyte—“be before the Lord” means, therefore: “Just as your ancestors entered the covenant by means of circumcision, immersion, and sacrificial offerings, so too, converts shall enter the covenant by means of circumcision, immersion, and sacrificial offerings.”⁸⁹ By retrojecting the institution of conversion the sages provide it with biblical support and normative status.

Maimonides, while essentially adopting the rabbinic reading of Numbers 15:15, expands and reshapes it considerably. First, he interprets “law” as referring to the entire corpus of biblical commandments. Second, he seems to read “it shall be a law for all time” as meaning that at the moment of Revelation, the Torah was given not only to those present and their descendants but also, prospectively, to any and all who would later choose to enter the covenant. In effect, a convert is seen as accepting the Torah given to him *in potentia* at Sinai rather than embracing it unilaterally.

We can now make sense of Maimonides’ historical-theological narrative as it appears in the responsum and its relevance to Obadiah’s status as a Jew. Obadiah would not have needed to convert had he wished only to join the Abrahamic community of monotheists. Nonetheless, his conversion entailed the acceptance of Abrahamic theology, and as such, Maimonides points out, Obadiah was qualified to use formulae referring to Abraham and the patriarchs as his ancestors.⁹⁰ However, Obadiah was not content to be solely a member of the Abrahamic community. His conversion was motivated by a desire to

89 b. Ker. ga.

90 The fact remains that Maimonides’ description of Abraham’s proselytizing as “gather[ing] many under the wings of the Divine Presence” (5) does not sit well with his use of this phrase elsewhere. In all other instances it refers to conversion proper, not simply accepting the belief in the One God and His unity; see n. 20. Perhaps Maimonides is speaking prospectively; it is due to Abraham that all those who convert are brought under the wings of the Divine Presence.

join the third community as well. This community was initially the product of communal conversion and was based on a covenantal acceptance of the Torah in addition to a commitment to monotheistic belief. As a consequence of becoming a proselyte Obadiah simultaneously entered into the Abrahamic community and the covenant between God and Israel. Maimonides posits that Obadiah's participation in that covenant is relevant with regard to the other liturgical phrases about which he inquired.

It may be that Maimonides' linking of converts with the original Abrahamic community may serve a purpose beyond justifying the use of formulae mentioning the patriarchs. In Maimonides' view, a convert connects himself trans-historically to the faith community that preceded the formation of the covenantal community at Sinai. Thus, a convert can be seen as a disciple of Abraham who adhered to his teachings even after Abraham's other disciples had lapsed into idolatry. In the act of conversion, he arrives at Sinai, as it were, as a spiritual member of the Levitic community, those who held fast to monotheistic beliefs while their fellow Israelites strayed after foreign gods. Obadiah is not, therefore, a latecomer to the Sinaitic covenant, but, on the contrary, a faithful member of the first community who now joins the third. This depiction of the convert is particularly compelling in Obadiah's case given that Maimonides regarded him as having been a monotheist while still a Muslim.

Proselytes as Members of the Chosen People

In sections 10 and 11 Maimonides addresses the question of whether Obadiah could recite formulae referring to Israel's election and the Revelation at Sinai. These phrases present two different challenges. In the case of election, it was ethnic-historical Israel that God separated from the other nations because of a promise made to Abraham concerning his progeny. Maimonides himself acknowledges this in the passage in MT passage quoted above: "Because of God's love for us, and to uphold the promise He made to Abraham ... [He] chose Israel as His inheritance." The Revelation at Sinai was, leaving aside its perpetual significance, also an historical event involving ethnic-historical Israel. Moreover, election and revelation were intertwined; it was God's election of Israel that led to the Torah being given to them exclusively. Obadiah could not claim ethnic ties to the nation that was chosen to be God's people and that stood at Sinai.

Maimonides' response to these challenges is to frame both Israel's election and the Sinaitic covenant as a consequence of their status, as noted above, as the sole continuators of the Abrahamic faith community. The fact that the Israelite nation, even as most of its members fell away from monotheistic belief and worship during their sojourn in Egypt, contained within it the last rem-

nant of Abraham's faith community, the Levites, was thus a crucial factor in God's election of the Israelite nation. Moreover, in order to become to be God's chosen people, the nation as a whole had to return to belief in the One God. Consequently, they had to be separated from the Egyptians, who had led them astray, and be given the Torah. The commandments contained in the Torah are, as Maimonides explains in his *Guide of the Perplexed*, a means of insuring "that every [Jew] ... achieves his first perfection, [meaning] the soundness of beliefs and ... correct opinions through which ultimate perfection is achieved."⁹¹

Like the Israelites, Obadiah, argues Maimonides, had undergone a process of separation that, like the God's liberation of the Israelites, was theologically motivated. Obadiah had separated himself from Islam and, as a consequence, no doubt had to sever many if not all familial and communal ties. In sections 10 and 11 Maimonides equates Obadiah's act of withdrawal from his faith and his people with the Exodus from Egypt, the beginning of Israel's process of separation. Like the people of Israel, then, Obadiah undergoes separation as a prelude to conversion.

It is striking that Maimonides describes Obadiah as having been chosen and separated "from the nations" by God (11). In doing so he seems to ignore if not deny the reality that Obadiah's conversion was the consequence of a conscious and volitional decision on his part, a fact that Maimonides actually highlights in his description elsewhere of Obadiah's spiritual journey.⁹² Apparently, just as Maimonides sees Obadiah's conversion as the acceptance of a pre-existent offer of the Torah at Sinai to all future converts, he sees Obadiah's decision to separate himself from his past as accepting a destiny divinely preordained for him and his fellow proselytes.

Homiletics: Articulating the Heart of the Problem and Engaging Obadiah's Heart

Maimonides turns to homiletics twice. The first instance is after he has dealt with the difficult question of whether Obadiah may recite "You who have brought us out of the land of Egypt" and "You who have performed miracles for our ancestors" (9). These formulae would seem inappropriate for someone not a descendant of the Israelites who experienced God's wondrous and redemp-

91 Book 111, Chapter 27. The translation is taken from Maimonides, *The Guide of the Perplexed*, trans. with an introduction and notes by Shlomo Pines with an introductory essay by Leo Strauss (Chicago: University of Chicago Press, 1963), 511.

92 Responsum 448 (2:728; Shilat, 1:241, lines 5–6). I discuss this passage further on.

tive presence in Egypt and beyond. Consequently, Maimonides concedes that it would be reasonable for Obadiah not to include these formulae in his prayers and blessings (9). Not willing to let this ruling stand uncontested, however, Maimonides immediately shifts from acceptance to approval of Obadiah's use of the standard liturgical formulae, positing that one who joins the people of Israel has the right to claim its sacred history as his own.

The fact remains that even this temporary admission represents a chink in the protective armor with which Maimonides has clothed Obadiah's Jewish status. It is perhaps awareness of this that impels Maimonides specifically at this point to articulate on Obadiah's behalf, as it were, his presumed, albeit unstated, anxiety about his authenticity as a Jew. To do so Maimonides employs a verse that gives voice to the fears of a foreigner seeking to associate himself not only with the God of Israel but with His people as well: "Let not the foreigner who has attached himself to the Lord say, 'The Lord will keep me apart from His people!'"⁹³

The use of this verse is particularly apt in at least four respects. First, the term that I have translated as "foreigner" is *בן הנכר*. The basis for the foreigner's potential disqualification is genealogical; he is of foreign, non-Israelite stock—as is Obadiah. Second, the verse describes a tension between the foreigner's unqualified attachment to the God of Israel on the one hand and his uncertainty about his bond with God's people on the other—which is precisely Obadiah's predicament. Third, the concern of the foreigner, translated as "the Lord will keep me apart," is *הבדל יבדילני*. The verb *bdl* is used in the liturgical formula "who has distinguished us," one of the formulae about which Obadiah inquired.⁹⁴ Fourth, as James Diamond has so brilliantly noted,⁹⁵ God responds to the foreigner's fear of being kept apart, of being an "outsider," with the promise that "My house shall be called a house of prayer for all peoples."⁹⁶ Obadiah's inquiry touches upon the question of his place in God's house of prayer, the synagogue, especially as it concerns his fitness to serve as prayer leader.

Maimonides turns to homiletics a second time after having addressed individually each of the liturgical formulae under consideration; perhaps he hopes that his rhetorical skills will compensate for whatever might be the limitations of his halakhic and theological arguments. Once again, he articulates Obadiah's fear: "Do not consider your origin as inferior," before concluding his theolog-

93 Isa 56:3.

94 See sections 3 and 10.

95 Diamond, "Converts," 9–10.

96 Isa 56:7. The language and content of Isa 56:3, 7–9 clearly indicate a polemical engagement with the views expressed in Ezek 44:7–11 and Neh 9:2.

ical exposition with a homiletical *tour de force* that brilliantly and radically marginalizes and transcends the issues of land, shared historical experience, and peoplehood:

While we descend from Abraham, Isaac, and Jacob, yours is a direct relationship with Him through whose word the world was created. This is made explicit in [the Book of] Isaiah: “One shall say, I am the Lord’s, and another shall call himself by the name of Jacob” (12).

It is precisely the absence of a biological connection with the people of Israel that renders Obadiah’s spiritual journey a reenactment of Abraham’s—an experience foreclosed to native-born Jews. As Maimonides says in another responsum addressed to Obadiah—borrowing from the language of Genesis 12:1—he is “a disciple of Abraham who left his family and his native land to become a follower of God.”⁹⁷ Maimonides’ language in that responsum is suggestively ambiguous. Who is it who left home and family, *שהניח אבותיו ומולדתו*, in a quest to follow God: Obadiah or Abraham? The answer, of course, is that both did, and presumably Maimonides is intentionally merging his description of Obadiah’s journey with that of Abraham’s quest, as he does here less explicitly.⁹⁸

The Issue of Discrepancies

In sum, it may be said that this responsum constitutes a serendipitous instance of Maimonides’ sincerely held view of Judaism being perfectly suited to provide support and validation to his petitioner. Thus, while Maimonides may use the strategies outlined above in framing his response, at no point does he sacrifice his integrity as theologian and halakhist to arrive at his conclusion. In this instance Maimonides would seem not to be vulnerable to the charge leveled by Haym Soloveitchik against his *Iggeret ha-Shemad* in which, according

97 See n. 92.

98 Compare James Diamond’s slightly different analysis in “Converts,” 17–18. Diamond thinks that what sets apart the convert is the certainty that his motives for accepting the covenant and walking in God’s ways are pure, as were Abraham’s. I find this explanation unconvincing for reasons that I will not enumerate here. My understanding is that Maimonides has in mind the willingness of Abraham and Obadiah to adhere to faith in the One God though it meant leaving hearth and home and defying the beliefs and practices of one’s native culture.

to Soloveitchik, Maimonides plays fast and loose with the use and interpretation of rabbinic sources as well as with halakhic methodology.⁹⁹

There is one respect in which Maimonides could be said to be oversimplifying, or even misrepresenting, the Jewish status of a convert. His reassuring words to Obadiah, “There is no difference whatsoever between you and us” (g), ring false. As mentioned above, there are numerous instances in which halakhah assigns converts an inferior status, be it the inability to serve as a judge for *ḥalitzah*,¹⁰⁰ or that they are placed in a separate genealogical category and are therefore allowed to marry *mamzerim*, who are forbidden to native-born Israelites.¹⁰¹ Second, while Maimonides concludes here and in MT that converts are to recite the declaration accompanying the bringing of the first fruits to the Temple, he also rules in MT¹⁰² that converts are not to recite the declaration concerning tithes, because they have no inheritance in the Land of Israel—precisely the same argument made in the Mishnah for a convert not reciting the declaration over the first fruits.¹⁰³ Third, Maimonides himself notes that it is questionable whether Obadiah could in some sense regard himself as a member of the ethnic-historical nation of Israel, with possible halakhic consequences.

To respond to the second objection, we must consider Maimonides’ philosophy of halakhah. As Jose Faur¹⁰⁴ points out, Maimonides posits that the particulars of halakhah are not always in accord with the canons of logic; the authority of Ḥazal as the tradents and interpreters of Torah obligates us to

99 See Haym Soloveitchik, “Maimonides’ ‘Iggeret ha-Shemad’: Law and Rhetoric,” in *Rabbi Joseph H. Lookstein Memorial Volume*, ed. L. Landman (New York: Ktav Publishing House, 1980), 281–319; and David Hartman’s initial dissent in Abraham Halkin and David Hartman, *Crisis and Leadership: Epistles of Maimonides* (Philadelphia: Jewish Publication Society, 1985), 46–83. For an analysis of the dispute between Soloveitchik and Hartman’s dissent, see Yair Lorberbaum and Haim Shapira, “Maimonides’ Epistle on Martyrdom in the Light of Legal Philosophy,” *Diné Israel* 25 (2008): 123–169. A bibliography of Soloveitchik’s and Hartman’s writings on this subject can be found there on p. 124 n. 1. Herbert Davidson adduces the problematic halakhic methodology and reasoning evinced by the epistle’s author as evidence that he is not in fact Maimonides; see Davidson, *Moses Maimonides: The Man and His Works* (Oxford: Oxford University Press, 2005), 501–509 and especially 508.

100 See MT, Laws of Levirate Marriage 4:5.

101 See MT, Laws of Forbidden Relations 15:7.

102 MT, Laws of the Second Tithe 11:17.

103 Commentaries there (Laws of the Second Tithe, loc. cit.) note this contradiction and attempt to resolve it.

104 Jose Faur, *Studies of Maimonides’ Mishneh Torah* [Heb.] (Jerusalem: Mossad HaRav Kook, 1978), 142–147.

follow their rulings nonetheless. The apparent logical inconsistency of Maimonides allowing and obligating proselytes to recite the *miqra bikkurim* on the one hand and excluding them from *vidui ma'aserot* should not, therefore, be regarded as problematic.

Nonetheless, the question remains: How can Maimonides claim equal Jewish status for Obadiah in the face of a number of halakhot suggesting a diminished status for proselytes? I would like to suggest an admittedly speculative answer that draws upon both the content and structure of Maimonides' response to Obadiah.

Maimonides' segregation of the halakhic material from his theological reflections might reflect a view that the nature of Jewish identity transcends and is separate from matters of halakhah. Specifically, Maimonides could be seen as implying that while his ruling on the question was consistent with his characterization of Obadiah's Jewish status, that status was in no way contingent upon that ruling. In Maimonides' view, the covenantal community created at Sinai was rooted in the non-ethnic Abrahamic faith community, and the transition from a theologically-based community to one based on divine commandments was accomplished through a community-wide conversionary process. It is true that God chose a particular nation to become His covenantal partners, but Maimonides regards the ethnicity of Israel as a reason for having been chosen rather than an essential definitional element of that chosenness. Therefore, anyone willing to adhere to Abrahamic monotheism and to undergo the conversionary process vital to joining the covenantal community is to be considered the equal of native-born Jews.

This may be part of what motivated Maimonides' placing his exposition of the Talmudic sources at the end of the responsum. I suggested above that the positioning of the Talmudic material at the end of the responsum may have been motivated in part to downplay its significance, thereby forestalling the possibility that it would lead Obadiah to question both Maimonides' assurances in general and his ruling in particular. What I am arguing now is that ideological convictions as well as strategic considerations guided his segregation and placement of the halakhic material.



The writing of a responsum presents many challenges to the *poseq*. He or she must identify the relevant Talmudic material and analyze it in light of the interpretations of earlier commentaries. Previous responsa addressing the same or related issues must also be considered. However, these are not the only factors that come into play. Consciously or otherwise, his or her views on matters of

theology, social policy, gender roles—to name but a few—may determine his or her ruling or at least some of its particulars. In addition, a *poseq* is responding to a particular petitioner or petitioners: an individual, two or more disputants, perhaps a community. To be effective *poseqim* they must take their audience into account. Part of doing so is to intuit when there are significant psychological, social, or political factors that have not been spelled out in the question.

We have seen how Maimonides, both because of his own theological convictions and through a sensitivity to his questioner, wrote a response that exhibits, both in style and substance, halakhic and theological sophistication and creativity as well as psychological acuity. This last aspect of *pesaq*, which can be found in responsa throughout the ages, has not been given the attention it deserves. It is my intention to address this issue further in the future, and I hope that this article will inspire others to do the same.

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Providing References for Schools or Jobs

Elliot N. Dorff and Marc Gary

In Honor of Rabbi Joel Roth

Joel Roth was my junior counselor at Camp Ramah in Wisconsin when I was fifteen years old. Ever since then, he and I have followed remarkably similar paths in our lives. Both of us became Conservative rabbis and academics, both of us have devoted our lives to teaching rabbinical students, and both of us have served as Chair of the Committee on Jewish Law and Standards, for which we jointly wrote a rabbinic ruling prohibiting the shackling and hoisting of animals destined for kosher slaughter. Both of us take a strong interest in our students while they sit in our classrooms and long after. We chose to focus on different areas of Jewish studies in our scholarship—he in Rabbinics, and I in philosophy—and we do not always agree on specific halakhic issues, for we are, after all, both Jews and rabbis in the deepest argumentative mode of the Jewish tradition as we search to identify and actualize God's will, wisdom, goodness, and truth. The proverbial Martian coming to Earth, however, would be hard-pressed to distinguish us among all the other people of this planet because our similarities far outweigh our differences. To be like Rabbi Roth in all these ways I take as a mark of a life well lived, for Rabbi Roth has modeled for two generations what it should mean to be a teacher, a rabbi, and a Jew. I treasure his deep learning and analytic mind, his remarkable teaching ability, his devotion to the Jewish tradition, his dedication to his students, and, most of all, his friendship.

ELLIOT N. DORFF

I first heard Rabbi Joel Roth teach at a United Synagogue Youth convention in Ventnor, New Jersey in the late 1960's. The theme was "Prayer," and now—fifty years later—I can still remember the heart of his lesson: like teenagers, the rabbis of the Talmud also had a difficult time concentrating on prayer; they too were distracted by extraneous phenomena, in their case birds flying overhead. The fact that a half-century later I can vividly recall Rabbi Roth's lecture is not only a testament to his brilliance, his presentational skills, his wit, and his deep learning. It also reflects a hallmark of Rabbi Roth's pedagogy: the desire to demonstrate the continued vitality of the foundational, sacred texts that he has so admirably mastered. Ever since that first United Synagogue

Youth lesson, I have been privileged to continue to learn from Rabbi Roth, including the fifteen years or so that he and I overlapped as members of the Committee on Jewish Law and Standards, and most recently as Executive Vice Chancellor of the Jewish Theological Seminary, where Rabbi Roth serves as an esteemed member of our Rabbinics faculty. During these many years we have had disagreements over halakhah and policy, but his erudition and commitment to bringing authentic and sophisticated Torah learning to the broader Jewish community, both inside the walls of the Jewish Theological Seminary and beyond, have earned my respect and admiration and the gratitude of generations of his students.

MARC GARY

Sheilah

What norms govern giving oral or written references for schools or jobs?¹

Teshuvah

At first blush, the answer to this question seems obvious: just tell the truth. After all, the Torah itself demands that we *מִדְּבַר־שֶׁקֶר תִּרְחֶק*, “Keep far from falsehood.”² The prophet Zechariah urges, *וְדַבְּרוּ אֱמֶת אִישׁ אֶת־רֵעֵהוּ*, “Speak truth to one another,” and *וְהָאֱמֶת וְהַשְּׁלוֹם אֶהְבּוּ*, “Love truth and peace.”³ In the Talmud, R. Ḥanina declares, *אמר רבי חנינא: חותמו של הקדוש ברוך - הוא אמת*, “The seal of the Holy Blessed One is truth”⁴—and we, after all, are supposed to emulate God. So why is there any question here?

There are two reasons why this is a question worth considering. First, although the Jewish tradition does indeed value truth greatly, it also bids us respect the honor of all God’s creatures (*kevod haberiyot*),⁵ and an important way in which it instructs us to do that is through how we talk to and how we speak about other human beings. In other words, in this area of life, as in most

1 This responsum addresses an issue that has some parallels with the responsum on whistleblowing by Rabbi Barry Leff, to which readers are referred: “Whistleblowing: The Requirement to Report Employer Wrongdoing,” http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/leff_whistleblowing.pdf.

2 Exod 23:7.

3 Zech 8:16, 19.

4 b. Šabb. 55a; b. Yoma 69b; b. Sanh. 64a.

5 b. Ber. 19b; b. Šabb. 81b, 94b; b. ‘Eruv. 41b; b. Meg. 3b; b. Menah. 37b.

others, it recognizes that truth is not an absolute value but rather one that must be balanced with another value, in this case that of *kevod haberiyot*. Exactly how to do that is the topic of this responsum.

Second, Jews are also governed by the laws of the nations in which they live, and so this is a topic where they must consider not only what their religious tradition tells them to do, but also the civil laws and moral norms that govern this area of life. They must then integrate the instructions and guidelines they receive from both legal and moral systems. This responsum will use American law as its example of civil law because the question arose in that context. Jews living in Israel and other countries can and should adopt what is said here about American law to the laws of the nation in which they live and make the changes necessary to our conclusions, but the principles of Jewish law delineated in this responsum apply to Jews worldwide.

Finally, this responsum, as a responsum in Jewish law, applies directly to Jewish employees and owners of a company and the employees, administration, and lay leaders of Jewish nonprofit organizations. Jews, however, function in a largely non-Jewish world, and so it will also address the question of Jews working for a non-Jewish company or agency.⁶ In both contexts this responsum

6 Traditional Jewish law distinguishes in a number of areas of the law, especially commercial law, between what Jews owe other Jews in contrast to what Jews owe non-Jews. Sometimes this distinction was simply a manifestation of what it means to be part of the community, with its incumbent duties as well as rights, as against being outside the community, very much like the distinction between citizens and aliens in duties and rights within many modern nations. So, for example, even though the Rabbis declared (t. Giṭ. 3:18; b. Giṭ. 61a) that Jews must care for the poor (and the sick and mourners) of other nations “for the sake of peace,” and that obligations for the sake of peace have Pentateuchal authority (b. Giṭ. 59b), they also declared that a Jew’s duties are to follow the form of concentric circles, with caring for oneself first, then one’s family, then one’s local community, then the larger Jewish community, and only then the non-Jewish poor (Mekhilta Mishpatim 19 on Exod 22:24; Sifre Deuteronomy 116 on Deut 15:7; b. B. Meṣ. 71a; b. Ned. 80b; Mishneh Torah, Laws of Gifts to the Poor 7:13; Shulḥan Arukh, Yoreh De’ah 251:3). Sometimes, though, this distinction was a response to the persecution and legal discrimination that Jews faced. At the same time, the Torah demands that with respect to aliens living among Israelites **תורה אחת ומשפט אחד יהיה לכם ולגר הגר אתכם**, “The same ritual and the same rule shall apply to you and to the stranger who resides among you” (Num 15:16), on the basis of which the Rabbis maintained that **בא הכתוב והשוה הגר לאזרח**, “The Torah equated the Israelite and the stranger with regard to all the commandments of the Torah” (Sifre Numbers 109 [ed. Horowitz, p. 113]). This, of course, was with regard to the resident alien and not to other non-Jews. In our day, however, when the vast majority of the world’s Jews live either in Israel side by side with non-Jewish citizens, or in Western liberal democracies outside of Israel, where Jews and non-Jews are equal citizens, this thrust in the Torah and Rabbinic literature toward equal treatment should clearly apply.

In this responsum, therefore, the distinction between Jews working for other Jews as against Jews working for non-Jewish companies is not based on rabbinic or medieval re-

addresses when Jews must live up to the standard of Jewish law on this issue, even at the cost of their jobs or of losing in the competitive race of business, and when they need not.

As we will develop below, the question at hand is both what *duty* does an evaluator have to tell the truth—and to whom and how much—and, conversely, what *permission* does an evaluator have to tell the truth—and to whom and how much—despite the real danger of slandering the candidate for the school or job? Further, what are the *grounds* for establishing that duty and that permission? That is, what laws and values in the Jewish tradition require us to tell the truth—and to what extent—and what laws and values in the Jewish tradition permit us to do so despite the fact that because nobody is perfect, evaluations will inevitably involve saying negative things about the person being evaluated?⁷

The Power of Words

On Yom Kippur (the Day of Atonement)—the holiest day of the Jewish year—at each of the five services of the day, Jews recite a long litany of sins for which we ask God's forgiveness. A large proportion of that list involves sins we commit through speaking. Clearly, then, the Jewish tradition takes the ethics of speaking very seriously. In fact, the Rabbis of the Talmud note that if one embarrasses someone else in public, the victim's face often turns white. They compare that to the pale face of the dead so as to say that embarrassing a person is akin to killing him or her:

תני תנא קמיה דרב נחמן בר יצחק: כל המלבין פני חבירו ברבים כאילו שופך דמים. -
אמר ליה: שפיר קא אמרת, דחזינא ליה דאזיל סומקא ואתי חוורא.

sponses to prejudice, for in modern Western countries Jews are thankfully treated in the law as equals with all other citizens. The distinction is rather due to the fact that Jews working for non-Jewish companies are bound by the policies of those companies, and, with a few exceptions noted later in this responsum, must and may abide by those policies in order to keep their jobs. In contrast, Jews working for Jewish companies or nonprofit agencies have an additional Jewish duty to abide by Jewish law, and this responsum spells out what that requires for both employers and employees in the matter of providing references. (We would like to thank Mr. Jerry Abeles for raising the issue of Jews working for non-Jews in responding to an earlier draft of this responsum, and Rabbi David Booth for alerting us to the misconception that readers may have in our making any distinction between the norms that affect Jews in working for Jews in contrast to non-Jews.)

⁷ We would like to thank Rabbi Elie Spitz for suggesting that we alert readers to these two elements of our question early on in our responsum.

Someone taught before R. Naḥman b. Isaac: If a man put his neighbor to shame, it is as if he shed blood. R. Naḥman said to him: Well have you spoken, for we see how the red disappears [in the victim's face] and the pallor comes.⁸

In fact, they go further: such a remark, also “kills” both the speaker and the listener. The Rabbis therefore call slander “the third tongue” (*lishan telitae*) because “it slays three people: the speaker, the listener, and the one spoken about.”⁹ לשון תליתאי קטיל תליתאי, הורג למספרו ולמקבלו ולאומריו.⁹ Not only do speech violations cause death; they also deprive a person of a place in the World to Come:

ר' מנא שמע כולהון מן הדין קריא כי לא דבר רק הוא מכם זה תלמוד תורה כי הוא חיים זה כיבוד אב ואם ובדבר הזה תאריכו ימים זו גמילת חסדים על האדמה זה הבאת שלום בין אדם לחבירו וכנגדן ארבעה דברים שהן נפרעין מן האדם בעולם הזה והקין קיימת לו לעולם הבא ואלו הן ע"ז גילוי עריות ש"ד ולשון הרע כנגד כולן.

R. Manah derived them all from reasoning about a verse (Deut 32:47): “For this is not a trifling thing for you,” this is study of the Torah; “it is your very life,” this is honoring one’s father and mother; “through it you shall long endure,” this refers to acts of loving kindness; “on the land,” this is bringing peace between one person and another. In contrast to these virtues, there are four great sins for which a person is punished in this world, and their capital, or stock, remains in the form of punishment dealt out to him or her in the world to come. These four are idolatry, incest, murder, and slander, the last of which is as bad as all the other three put together.¹⁰

As the Book of Proverbs succinctly put it, מִוֶּת וְחַיִּים בְּיַד־לְשׁוֹן, “Death and life are in the hands of the tongue.”¹¹

Words obviously are not altogether a bad thing; like all our other faculties, the moral quality of our speech depends on how we use it. The following rabbinic story makes this point eloquently:

ארשב"ג לטבי עבדיה פוק זבין לי צדו טבא מן שוקא נפק זבן ליה לישן א"ל פוק זבין לי צדו בישא מן שוקא נפק זבן ליה לישן א"ל מהו דין דכד אנא אמר לך צדו טבא את זבן

8 b. B. Meṣ. 58b.

9 b. 'Arak. 15b.

10 y. Pe'ah 11 [15d].

11 Prov 18:21.

לי לישן וכד אנא אמר לך צדו בישא את זבן לי לישן א"ל מינה טבתא ומינה בישתא כד הוה טב לית טבה מיניה וכד ביש לית ביש מיניה

R. Shimon b. Gamliel said to his servant Tabbai: "Go to the market and buy me good food." He went out and brought back a tongue. He told him: "Go out and bring me bad food from the market." He went out and brought him a tongue. He then asked him: "Why is it that when I said 'good food' you brought me a tongue, and when I said 'bad food' you also brought me a tongue?" He replied: "It is the source of good and evil. When it is good, it cannot be surpassed; when it is evil, then there is nothing worse."¹²

The Misuse of Words

We human beings have been quite creative in developing ways to misuse words, and, as the Yom Kippur liturgy reminds us, we therefore have to be especially careful in how we speak about others and to other people. Moreover, as people created in the image of God, we must have respect for ourselves as well; when we abuse our power to speak, we besmirch ourselves as well as the people to or about whom we are speaking.

In the context of creating references for schools or jobs, the Rabbis' norms banning the following forms of speech are relevant.

Lies (sheker)

Telling lies—that is, knowingly and intentionally telling someone something that you know to be false—undermines people's trust in one another. Indeed, at the extreme—that is, if everyone lied so often that one could never assume that the next person was telling the truth—social cooperation, commerce, friendships, and family relations would become impossible. We would all be living in a terrifying world. It is not surprising, then, that the Torah specifically prohibits lying: לֹא תִשָּׂא שְׂמֵעַ שָׁוָא "You must not carry false rumors (literally, 'worthless words to be heard') ... מִדְּבַר־שֶׁקֶר תִּרְחֶק "Keep far from falsehood (*sheker*),"¹³ and לֹא תִגְנוֹבוּ וְלֹא־תִכְחָשׁוּ וְלֹא־תִשְׁקְרוּ אִישׁ בְּעֵמִיתוֹ "You shall not steal; you shall not deal deceitfully nor lie to one another."¹⁴

¹² Lev. Rab. 33:1.

¹³ Exod 23:1, 7.

¹⁴ Lev 19:11.

R. Ḥiyya b. Abba came to R. Eleazar. He said to him: “Win the favor of R. Yudan, the patriarch, so that he will write on my behalf a letter of recommendation, because I am going abroad to make a living.” He won his approval, and he wrote him as follows: “Lo, we send you a great man as our messenger. He is our agent and is in our status until he comes back to us.” R. Ḥezekiah, R. Doseitai, R. Abba b. Zamina, and some present tell the tale in the name of R. Doseitai the Elder: Thus did he write for him: “Lo, we send you a great man, who is not ashamed to say, ‘I have not heard the answer to your question.’”¹⁸

“I do not know” is a really important sentence to make part of one’s common speech patterns, for then the hearer knows that the provider of the reference is being careful in asserting only what s/he really knows. “I do not know, but I suspect something negative,” though, is a flat violation of the prohibition against slurs (*lashon hara*). On the other hand, “I do not know, but I suspect something positive” indicates exactly how much you yourself trust what you say if you then venture a guess and then explain the basis for your assertion. Under those circumstances nobody is deceived. The hearer may just accept the guess or suggest one of his or her own if the matter does not mean very much to either person. On the other hand, if the hearer or the recipient of a letter of evaluation really needs to know the answer for some practical or personal purpose, the speaker has put him or her on notice that even though the speaker or writer *thinks* that the answer is X, the hearer or recipient will have to go elsewhere to find out conclusively. That is, by saying “I do not know,” the speaker or writer has transferred responsibility for discovering the answer back to the hearer or recipient of a reference letter.

Does such an admission, though, undermine our own self-respect and the honor that others will give us? Not really, for in our heart of hearts we realize that none of us is all-knowing, as the Jewish tradition believes God to be. Therefore, one should not be embarrassed to admit not knowing something. Even if the question is in the hearer’s or recipient’s area of expertise, that person will appreciate an honest admission of a lack of knowledge—especially if the one asked then goes to the trouble to find the answer if one is known. Honesty about what one knows and does not know about relevant, work-related factors that affect the person’s candidacy is always the best policy so that one can avoid telling even unintended falsehoods and thus be trusted.

¹⁸ y. Ned. 10:11, 35b; see also y. Hag. 1:8, 77a. We would like to thank Rabbi Daniel Nevins for directing us to this source.

Slurs (lashon hara) and Slander (motzi shem ra)

While saying false, negative things about a person (slander, *motzi shem ra*) is obviously problematic as a form of lies intended to defame and hurt the person being described, in most situations Jewish law also prohibits negative comments that are true (slurs, *lashon hara*). It even prohibits comments that are not themselves defamatory but imply negative things about someone (*avak lashon hara*, “the dust of saying bad things” or “the dust of slurs”). Maimonides defines these prohibitions this way:

יש עון גדול מזה עד מאד והוא בכלל לאו זה והוא לשון הרע, והוא המספר בגנות חבירו אע”פ שאומר אמת, אבל האומר שקר נקרא מוציא שם רע על חבירו, אבל בעל לשון הרע זה שיושב ואומר כך וכך עשה פלוני וכך וכך היו אבותיו וכך וכך שמעתי עליו ואמר דברים של גנאי, על זה אמר הכתוב יכרת ה’ כל שפתי חלקות לשון מדברת גדולות. אמרו חכמים שלש עבירות נפרעין מן האדם בעולם הזה ואין לו חלק לעולם הבא, עבודת כוכבים וגילוי עריות ושפיכות דמים ולשון הרע כנגד כולם, ועוד אמרו חכמים כל המספר בלשון הרע כאילו כופר בעיקר, שנאמר אשר אמרו ללשונו נגביר שפתינו אתנו מי אדון לנו, ועוד אמרו חכמים שלשה לשון הרע הורגת: האומר, והמקבלו, וזה שאומר עליו, והמקבלו יותר מן האומר. ויש דברים שהן אבק לשון הרע, כיצד מי יאמר לפלוני שיהיה כמות שהוא עתה, או שיאמר שתקו מפלוני איני רוצה להודיע מה אירע ומה יהיה וכיוצא בדברים האלו, וכל המספר בטובת חבירו בפני שונאיו הרי זה אבק לשון הרע שזה גורם להם שיספרו בגנותו, ועל זה הענין אמר שלמה מברך רעהו בקול גדול בבקר השכם קללה תחשב לו, שמתוך טובתו בא לידי רעתו, וכן המספר בלשון הרע דרך שחוק ודרך קלות ראש כלומר שאינו מדבר בשנאה, הוא ששלמה אמר בחכמתו כמתלהלה היותר זקים חצים ומות ואמר הלא משחק אני, וכן המספר לשון הרע דרך רמאות והוא שיספר לתומו כאילו אינו יודע שדבר זה שדבר לשון הרע הוא אלא כשממחין בו אומר איני יודע שדבר זה לשון הרע או שאלו מעשיו של פלוני. כל אלו הם בעלי לשון הרע שאסור לדור בשכונתם וכל שכן לישוב עמהם ולשמוע דבריהם, ולא נחתם גזר דין על אבותינו במדבר אלא על לשון הרע לבד.

There is a sin much greater than this [that is, greater than telling tales about someone else], and it is included in this negative prohibition, namely, slurs (literally, “talk about the bad,” *lashon hara*). That is someone who talks negatively about someone else, even if he speaks the truth. But one who [additionally] tells lies is called “one who spreads a bad name” (*motzi shem ra*) about someone else. One who engages in such slander sits and says: “So-and-so did this,” “So-and-so were his ancestors,” “So-and-so I heard about him,” all of which are [false and] defamatory. For such a person Scripture says, “May the Lord cut off all flattering lips, every tongue that speaks arrogance.” (Ps 12:4)

The Sages said: “For three sins, a person is punished in this world, and he has no place in the World to Come: idolatry, incest/adultery, and murder—and slander is like all of them combined.”¹⁹ ...

There are also words that are “the dust of slurs” (*avak lashon hara*). How so? If A says to B, “Who would have ever thought that C would be as he is now?” Or A says, “Don’t ask about C; I don’t want to tell you what happened,” and similar talk. Also, anyone who compliments a person in front of his enemies speaks the dust of slander, for that [positive talk] will cause his enemies to speak negatively of him. About such speech Solomon said: “He who greets his fellow loudly early in the morning shall have it reckoned to him as a curse,”²⁰ for from his compliment comes defamation. Similarly, one who slurs another through a joke or frivolity, that is to say, he does not speak in hatred [but nevertheless insults a person engages in the dust of slander]. This is what Solomon in his wisdom said: “Like a madman scattering deadly firebrands, arrows, is one who cheats his fellow and says, ‘I was only joking.’”²¹ Similarly, someone who slurs someone through deceit, as, for example, he speaks innocently as if he did not know that what he was saying was a slur, and when people protest, he says, “I did not know that this is a slur or that So-and-So did that” [when he in fact does know the defamatory character of what he was saying is a person who engages in the dust of slurs.] ...

All these are people who slur others. It is forbidden to live in their neighborhood, and even more to sit with them and listen to them.²²

Spreading false, negative comments about people—that is, slandering them—clearly attacks their integrity and reputation, and that is, as Maimonides says, akin to murder. But even slurs—that is, true but negative comments about someone (*lashon hara*)—can be nothing less than lethal. Oliver Sipple is a woe-ful case of this. Sipple, an ex-Marine who saved the life of President Gerald Ford by deflecting the gun directed at him by Sara Jane Moore, became an instant national hero. Despite his request to reporters of “don’t publish anything about me,” many noted in their articles that Sipple was active in the gay community. This led to rejection by his parents, who had not known about that aspect of his life—even to the point of his father telling him that he was not welcome at

19 y. Pe’ah 11, 15a.

20 Prov 27:14.

21 Prov 26:18–19.

22 Mishneh Torah, Laws of Character Traits (*De’ot*) 7:2, 3, 4, 6.

the funeral of his mother—which, in turn, led Sipple to drink heavily and to die alone at age 47. The reporter who first publicized Sipple's homosexuality made this postmortem comment: "If I had to do it over again, I wouldn't."²³

Note that this case illustrates that what constitutes negative information depends largely on how the hearers will respond to it. After all, being gay is not in and of itself a bad thing; for many young people now, it is simply a fact of life, like the fact that some people have blue eyes and some have brown eyes. At the time, though, Sipple knew that his parents would think ill of him if they knew that he was gay, and that was all that mattered.

The prohibition of uttering negative speech applies all the more so if everyone knows that what the person is saying is negative, for then there is a clear intention to defame a person. *We may not defame a person, for we are required to respect each and every person as being created in the image of God:*

בן עזאי אומר זה ספר תולדות אדם זה כלל גדול בתורה, ר"ע אומר ואהבת לרעך כמוך (ויקרא יט), זה כלל גדול בתורה, שלא תאמר הואיל ונתבזיתי יתבזה חבירי עמי הואיל ונתקללתי יתקלל חבירי עמי, א"ר תנחומא אם עשית כן דע למי אתה מבוזה, בדמות אלהים עשה אותו.

Ben Azai said: "This is the record of Adam's line. [When God created man, He made him in the likeness of God; male and female He created them]" (Gen 5:1–2). This is a great principle in the Torah. R. Akiba said: "Love your neighbor as yourself" (Lev 19:18), this is a great principle of the Torah, for one should not say that since I have been shamed, let my fellow person be shamed with me, since I have been disgraced, let my fellow person be disgraced with me. R. Tanḥuma said: If you did so, know whom you are shaming, for "God made him [the human being] in the likeness of God" (Gen 5:1).²⁴

רבי אליעזר אומר יהי כבוד חברך חביב עליך כשלך.

R. Eliezer said: Cherish your fellow human's honor as your own.²⁵

23 Stephen Bates, *If No News, Send Rumors: Anecdotes of American Journalism* (New York: Henry Holt, 1989), 142–143.

24 Gen. Rab. 24:7.

25 m. 'Abot 2:15 (2:10 in some editions).

תא שמע: גדול כבוד הבריות שדוחה [את] לא תעשה שבתורה.

So great is human dignity that it supersedes a negative commandment of the Torah.²⁶

The respect demanded by the Jewish tradition for each and every human being does *not* mean that we must accept everything that anyone does. After all, the Torah is filled with laws that categorize certain forms of human behavior as prohibited and others as required, and if Jews fail to abide by those laws, the Torah demands this:

לֹא־תִשְׁנֵא אֶת־אָחִיךָ בְּלִבְבְּךָ הוֹכֵחַ תּוֹכִיחַ אֶת־עַמִּיתְךָ וְלֹא־תִשָּׂא עָלָיו חַטָּא:

Do not hate your brother in your heart. Reprove your kinsman, and bear no guilt because of him.²⁷

But that reproof must be given in private so as not to disgrace the person in public, and must be done constructively and with respect for the ultimate human dignity inherent in each of us. The Torah applies this even to someone who is to be flogged for violating a negative commandment:

אֲרַבְעִים יִכְנּוּ לֹא יִסִּיף פְּנֵי־יָסוּף לְהַכּוֹתוֹ עַל־אֵלָהּ מִכָּה רַבָּה וְנִקְלָה אָחִיךָ לְעֵינֶיךָ:

He may be given forty lashes, but not more, lest being flogged further, to excess, your brother is degraded before your eyes.²⁸

Certainly, then, in everyday speech we must respect the dignity of each person by avoiding defamatory speech, even if the negative information is true and all the more so if it is false.

This has several important implications for writing letters of reference. First, one should decline to write a letter of reference when the job description or school program for which the person is applying is not clear, for then one will likely be saying things about the candidate that are irrelevant (and thus forbidden *rekhilus*, gossip) and possibly negative (*lashon hara*), even when not intending to do so. An exception to this rule occurs in those circumstances

26 b. Ber. 19b.

27 Lev 19:17.

28 Deut 25:3.

when the applicant is applying for a variety of different university programs or jobs and requests a general letter attesting to the applicant's academic or professional qualifications.²⁹

Second, as we shall develop more fully below, even negative comments about a person must not be general slurs against the person, such as "He is lazy," or "She is irresponsible." Instead, negative evaluations of the person must be justified by reference to specific, relevant things the person did or failed to do that demonstrate the negative evaluation.

When, though, *may* one say something negative about someone else? Indeed, when *should* one do so?

One may share negative information with someone else—and one *should* do so—when ignorance of this information is likely to harm the recipient of the reference. This is in contrast to the many circumstances in which negative speech about a person serves no practical purpose for the listener but is just intended to diminish that person's honor. These are the kinds of lies, slurs, and slander that the Torah and later Jewish legal literature have prohibited, as discussed above. Although the rules about speech begin in the Torah and are developed further in the Talmudim and by medieval authorities, Maimonides in particular. Rabbi Israel Meir HaKohen Kagan (Poland, 1838–1933) arguably wrote the most extensive halakhic treatment of the Jewish laws of speech in the book by which he is often known, "*Hafetz Ḥayyim*," the title of which is based on Psalm 34:12–15. Therein he defines when *lashon hara* is permissible and even mandatory:

6:2. There is of course a distinction between hearing and accepting, because in the case of listening there is no prohibition unless the information has no future relevance to the listener. If, however, the information—should it be true—does have relevance to the listener, for example if the listener realizes at the outset that the speaker wants to show through his story that the subject is untrustworthy or some other such trait, and the listener is considering a business dealing or partnership with the subject, or arranging a marriage for him or any similar involvement, it is permissible to listen in order to explore the information and protect himself. The listener's desire to hear the information must not be to listen to the disparagement of his friend, but rather to protect himself so that he will not sustain damage or end up in a dispute, or any other sort of misfortune.

29 We would like to thank Rabbi Amy Levin for calling our attention to this aspect of providing recommendations.

It is also a principle that if the listener will not benefit by hearing the information, but through his listening good can come to others, it is permissible. For example, if he listens to the information so that he can later verify it and then rebuke the individual in question such that perhaps through [his involvement] the sinner will repent, or he will return stolen goods to their owner, or he will appease the person he incensed, or similar rectifications, his listening would be permissible, as explained above

6:3. Let this not be a surprise to the reader that he should say: “How can we possibly satisfy the expectations of Heaven, for you have defined [the parameters of the law such that] even listening to the disparagement of one’s fellow is forbidden, yet what if the information is relevant to me, with regard to my business or for other reasons?”

The answer is: one who wants to satisfy his obligations with regard to listening [to *Lashon Hara*] should conduct himself as follows: if someone were to approach him and should want to talk about another, and he understands that the speaker wants to speak negatively about the other person, he should ask the speaker, “Will the information that you want to tell me have future relevance to me, or will I thereby be able to rectify a situation by rebuking the offending individual, or some other positive outcome (as discussed above in paragraph 2)?” If the speaker replies that it does have future relevance or that he could correct a situation as discussed above, it is permissible to listen to the information.³⁰

In two other places, Rabbi Kagan creates a list of the conditions under which one has a duty to give negative information about a person to another potential mate, business partner, or employee (and presumably the same would apply to a potential student). Although the lists are somewhat different, they both include the following conditions for revealing such information: (1) only if the problem is serious; (2) only if person providing the reference does not exaggerate the nature or extent of the problem; (3) only if the sole motivation for revealing the information is to prevent harm to the person to whom it is supplied and not from animosity for the person named and discussed; (4) only if there is no way to protect the potential victim without engaging in a slur or gossip; and (5) only if there are reasonable grounds to presume that the information divulged will be a determining factor in making the decision.³¹

30 Ḥafetz Ḥayyim, *Laws of Slurs (Lashon Hara)* 6:2–3, available at <http://torah.org/learning/halashon/chapter6.html> (accessed 9/3/12).

31 Ḥafetz Ḥayyim, *Laws of Slurs (Lashon Hara)* 10; *Laws of Gossip (Rekhilut)* 9. Both are available at <http://torah.org/learning/halashon/rchapter9.html> (accessed 9/3/12).

Although Rabbi Kagan's book is often cited in articulating Jewish laws about speech, one can plausibly interpret it as a book of moral education, *musar*, rather than one aiming to specify the law. In that case, one might understand these norms as moral ones but not legal ones.³² The Torah and the Talmudim, however, include several legal bases for overriding the Torah's bans on slurs and gossip, and it is more likely that Rabbi Kagan intended to lay down legal norms as well as moral ones. Whether he did or not, it is appropriate for us to interpret these norms as demanded by Jewish law as well as Jewish moral concerns. Specifically, these three legal sources are relevant to what he says: Leviticus 19:14, וְלִפְנֵי עוֹר לֹא תָתִין מִכְשָׁל, "Before a blind person do not put an obstacle," which the Rabbis apply not only to a physically-blind person, but also to one who lacks important information that could likely harm him or her;³³ Leviticus 19:16, לֹא תַעֲמֹד עַל-דַּם רֵעֶךָ, "Do not stand idly by the blood of your brother," which the Babylonian Talmud interprets to require that we seek to rescue people who are in harm's way,³⁴ and which the Rabbis in the Sifra, Maimonides, Rashbam, Tosafot, and Sefer HaHinukh apply to monetary harm as well as physical harm;³⁵ and the Babylonian Talmud's law of the pursuer (*rodef*), where a third party must intervene, even lethally, to protect an innocent third party.³⁶ Thus it is not surprising that in the twentieth century, Rabbis Eliezer Waldenberg, J. David Bleich, and Aaron Levine, among others, adopted Rabbi Kagan's

32 We would like to thank Rabbi Elie Spitz for pointing this possibility out to us. Of course, if one sees moral norms as integrally related with Jewish law, then even if Rabbi Kagan had originally intended to articulate only moral norms, it would nevertheless be appropriate for later writers to use his analysis in their legal rulings, as indeed happened, as explained below. For a discussion of the relationship between Jewish law and morals, see Elliot N. Dorff, *For the Love of God and People: A Philosophy of Jewish Law* (Philadelphia: Jewish Publication Society, 2007), ch. 6.

33 Sifra, Qedoshim 3:14 on Lev 19:14; b. Ned. 62b. They also apply this verse to prohibit tempting those who are morally blind—that is, prone to violate a moral norm or a commandment: B. Mo'ed Qat. 17a; b. B. Mets. 75b; b. 'Abod. Zar. 6b.

34 b. Sanh. 73a.

35 Sifra, Qedoshim 4:8 on Lev 19:16; Maimonides, Sefer HaMitzvot #297; Rashbam and Tosafot on b. B. Bat. 39b; Sefer HaHinukh #237.

36 b. Sanh. 72b; see also *ibid.*, 57a, where R. Yonatan b. Sha'ul asserts that the least damage must be done to accomplish the rescue, and the rescuer is liable if she/he injures the pursuer more than necessary. The duty to rescue is much stronger and broader in Jewish law than in American law, where it exists only in ten states, and in them the failure to intervene is punished only under limited conditions and leniently. All the other states follow the common law, according to which anyone ignoring someone in distress is not liable for anything. For a summary of the states that have legislated a duty to rescue, and what that duty is, see <http://www.volokh.com/2009/11/03/duty-to-rescuereport-statutes/> (accessed January 19, 2014).

line of reasoning in their own legal rulings and used these three sources of justification for determining when revealing negative information about a person is legally permissible and, further, when the extent of the potential danger to a third party makes disclosure of the negative information actually mandatory.³⁷

So, for example, if A has asked you to write a letter of recommendation for him or her to be sent to B, a potential employer, you have a duty to B to be honest about A's qualifications for the job as you see these qualifications. Presumably A would not ask you to write a letter of reference unless A thinks that you will be generally positive, but even if that is true, you should share with B whichever of A's weaknesses you anticipate will affect A's performance at that job. You should also be sure to indicate where you have no grounds for assessment about how A would function in specific aspects of the job so that B will not think that by omitting those areas you want to indicate that you evaluate A negatively in those respects. If you really do not think that A is qualified, it would not only be kind on your part to tell that to A candidly, but also a duty of yours to refuse to provide the reference because of the prohibition of uttering true but negative facts about a person (slurs, *lashon hara*), and then A may reconsider applying for the job or ask someone else to write on his/her behalf. As discussed below, however, even in the absence of writing a letter for A, if the employer contacts you about A, you must answer the employer's questions about A's qualifications for the job truthfully, but, in accord with the prohibition on slurs, you should not volunteer negative information about an aspect of the person's candidacy that was not directly asked, except if the candidate poses significant danger to the school or job. The same would apply to letters of recommendation for schools.

Jewish law also places demands on the recipient of a reference. Normally potential employers and schools are wary of extreme praise of a candidate. Some recommendation forms for schools actually instruct writers to avoid general praise and to list specific weaknesses as well as strengths. That is not only a good practice, but one that invokes Jewish duties. As part of one's duty to protect both oneself and the welfare of the institution considering the applicant, recipients of a positive but very general reference should seek further

37 Eliezer Waldenberg, *Tzitz Eliezer* 13:81; J. David Bleich, *Contemporary Halakhic Problems* (New York: Ktav and Yeshiva, 1983), 2:74–80, esp. 76; Aaron Levine, *Case Studies in Jewish Business Ethics* (Hoboken, NJ: Ktav; New York: Yeshiva, 2000), 280–320, where he discusses the legal and ethical issues in student evaluations and employment appraisal systems, which involve many of the same issues of slurs and gossip. We thank Professor Steven Resnicoff of DePaul University College of Law for suggesting these sources.

information from the recommender, including specific examples that support the positive recommendation and a list of any weaknesses relevant to the academic program or job.

Jewish law instructs recipients to be wary of negative information too. On the one hand, the recipient of negative information may and indeed should take such information into account and not dismiss it out of hand as prohibited slurs (*lashon hara*). This is justified by b. Nid. 61a, where the Talmud indicts Gedalyah b. Aḥikam, governor of Israel after the destruction of the First Temple, for not taking seriously the warnings of Yoḥanan b. Karaḥ that opposition leader Yishma'el ben Netanyah was planning to attack him. One has, in other words, a duty to protect both one's person and one's assets—and thus should listen to plausible threats to either.

On the other hand, the laws that we have been discussing that prohibit uttering lies and even saying truthful but negative things about people require restraint on the part of the hearer in listening to such accusations and prohibit even more strongly encouraging such negative talk about the person with follow-up questions. This is especially important in our day, when the internet is filled with outright lies as well as truthful, but negative information about people. Thus Rabbi Kagan says this:

[Although he is permitted to listen to it,] the listener should not believe the information when he hears it; rather, he should only suspect [its veracity] until he investigates the matter.

However, if the listener understands from the speaker's response that there is no purpose in what he says, or he detects that the information is merely words of spite and hatred, such that the speaker wickedly ascribes false accusations to the subject and defames him out of sheer hatred, listening is prohibited

With regard to any of these exceptions that we have discussed with regard to listening [to Lashon Hara] one should take great care not to definitively believe it when it is heard, but only to suspect its veracity. [The listener should follow this guideline carefully] so that he is not also caught in the snare of the sin of accepting Lashon Hara.³⁸

Such suspicion of negative reports about an applicant is especially important in two circumstances: (1) when the applicant does not know who is being asked for a reference, and (2) when the applicant knows the source of a reference but

38 Ḥafetz Ḥayyim, *Laws of Slurs (Lashon Hara)*, 6:3.

is not allowed to see the evaluation. In both cases, the applicant cannot explain or defend him/herself with regard to the negative information reported. Recipients should be especially suspicious of general assessments of the applicant (negative or positive) and should depend instead on specific examples of what the applicant did or did not do in circumstances relevant to the job or school for which she/he is applying.

Note that here the Jewish tradition demands more honesty than what currently happens under American law, where many employers are reticent to share negative information—and sometimes even positive information—about a former employee lest they be sued. Similarly, teachers will write honestly about a former student—or agree to write at all—only if the student waives his or her rights under the Buckley Amendment to see the letter of recommendation. Jewish law requires people who have been asked about a person applying for a job or for acceptance to a school to be honest and forthcoming about both the positive and negative things they know because such information has practical implications for the potential employer or school. To refuse to do that, or to lie in favor of the person, ultimately harms the third party, and that we may not do.³⁹

At the same time, another Jewish value comes into play here. We are, after all, required to help those in need,⁴⁰ and, as Maimonides' famous ladder of *tzedakah* asserts,⁴¹ the highest form of doing that is employing that person or, by extension, educating the person to be able to succeed at a job. Thus, if the candidate has some negative qualities vis-à-vis the school or job for which she/he is applying, but they do not rise to the level of completely disqualifying the person or making it dangerous for the school to admit him/her or for the employer to hire her/him, then the evaluator can and should say, if it is true, that the person will benefit from the kind of support that the school or employer can give him/her in carrying out the required tasks. Many schools

39 Another kind of situation in which a person should say something negative about someone else is if that person is doing something wrong. That is precisely the case where the Torah demands that we reprove someone. In the extreme, where the person is misleading people into worshipping other gods, the Torah demands that even the closest of relatives shun the person and contribute to the person's death (Deut 13:7–12). This is not directly relevant, though, to our topic in this responsum.

40 Among the many verses in the Torah that require that we assist others in attaining the basic necessities of life, see, for example, Lev 19:9–10 and Lev 25 and Deut 15 generally. For a discussion of this obligation, see Elliot N. Dorff, *The Way into Tikkun Olam (Repairing the World)* (Woodstock, VT: Jewish Lights, 2005), ch. 5.

41 Mishneh Torah, Laws of Gifts to the Poor 10:7–14.

now offer such support to students with special needs, and, in part because of the Americans with Disabilities Act, more and more employers are making accommodations for some forms of disability as well. So evaluators should definitely identify whatever negative qualities will affect the job or academic performance of the candidate, but they should also note when specific forms of support can enable him/her to succeed in the school or job for which s/he is applying.⁴²

Oppressive Speech (ona'at devarim)

Aside from lies and slander, which one might have guessed would be banned in Jewish law, and aside from telling tales, negative truths, and even the “dust” of such language, about which readers might not have thought previously, Jewish law bans another form of speech that it calls “oppressive.” The foundation for this prohibition is two verses in the Torah that assert that we must not wrong one another: וְכִי־תִמְכְּרוּ מִמֶּכֶר לְעֵמִיתְךָ אוֹ קָנָה מִיַּד עֵמִיתְךָ אֶל־תּוֹנוּ אִישׁ אֶת־אָחִיו: “When you sell property to your neighbor, or buy any from your neighbor, you shall not wrong one another” (Lev 25:14); and וְלֹא תוֹנוּ אִישׁ אֶת־עֵמִיתוֹ, “Do not wrong one another” (Lev 25:17). The Rabbis, following the interpretive principle that nothing in the Torah is superfluous or redundant, determine that the first verse applies to wronging one another in material goods, as the context suggests, and the second, which actually ends the same section about buying and selling, nevertheless refers to wronging people through words:

תנו רבנן: (ויקרא כ"ה) לא תונו איש את עמיתו – באונאת דברים הכתוב מדבר. אתה אומר באונאת דברים, או אינו אלא באונאת ממון? כשהוא אומר (ויקרא כ"ה) וכי תמכרו ממכר לעמיתך או קנה מיד עמיתך – הרי אונאת ממון אמור, הא מה אני מקיים (ויקרא כ"ה) לא תונו איש את עמיתו – באונאת דברים.

Our Rabbis taught: “Do not wrong one another” (Lev 25:17). Scripture refers to verbal wrongs.—You say verbal wrongs, but perhaps that is not so but rather monetary wrongs is meant?—When Scripture says: “You shall not wrong one another” (Lev 25:14), monetary wrongs are already dealt with. Then to what can I refer, “Do not wrong one another?” (Lev 25:17). To verbal wrongs.⁴³

42 We would like to thank Rabbi Susan Grossman for pointing out this aspect of the situation to us.

43 b. B. Meṣ. 58b.

The Mishnah then defines what is included in this ban on verbal oppression:

כשם שאונאה במקח וממכר. כך אונאה בדברים. לא יאמר לו בכמה חפץ זה. והוא אינו רוצה לקח. אם היה בעל תשובה, לא יאמר לו זכור מעשיך הראשונים. אם הוא בן גרים, לא יאמר לו זכור מעשה אבותיך, שנאמר (שמות כב) וגר לא תונה ולא תלחצנו.

Just as there is wronging others in buying and selling, so too there is wronging others done by words. [So, for example,] one must not ask another: “What is the price of this article?” if he has no intention of buying. If a person repented [of his sin], one must not say to him: “Remember your former deeds.” If a person is a child of converts, one must not say to him: “Remember the deeds of your ancestors,” because it is written [in the Torah], “You shall neither wrong a stranger nor oppress him” (Exod. 22:20).⁴⁴

The Mishnah’s second example is what is relevant to our question. The Jewish tradition demands quite a lot of someone who has harmed another person in requiring the wrongdoer to complete the process of return (*teshuvah*) described in Jewish sources. That process includes acknowledgment of one’s wrongdoing, remorse expressed in words to the harmed party, compensation to the victim to the extent that that is possible, and ultimately better behavior when the same kind of situation arises again.⁴⁵ Once a person has completed the process of *teshuvah*, however, this mishnah demands that people in society not even mention the person’s former troubles with the law, for that would be to engage in oppressive speech. Why? Because one thereby labels the person by his or her former offense, undermines and distrusts the process of return, and denies the person the possibility of righting his or her former wrong and taking on a new, better identity—writing a new personal script, as it were. This mishnah thus starkly contrasts with the practice in many American states, where former convicts have to list their convictions on any job application, are ineligible to apply for any government job, and, in some states, lose the right to vote.

44 m. B. Meṣ. 4:10, 58b.

45 Mishneh Torah, Laws of Repentance (*Hilkhot Teshuvah*), chs. 1–2. For an exposition of this process, see Elliot N. Dorff, *Love Your Neighbor and Yourself: A Jewish Approach to Modern Personal Ethics* (Philadelphia: Jewish Publication Society, 2003), ch. 6. For a discussion of how these norms might apply to one community forgiving another for past or present wrongs (the case discussed is Catholics asking Jews for forgiveness for what the Catholic Church did and failed to do during the Holocaust), see Elliot N. Dorff, *To Do the Right and the Good: A Jewish Approach to Modern Social Ethics* (Philadelphia: Jewish Publication Society, 2002), ch. 8.

Similar to what we saw earlier with regard to negative but true speech, however, there is an exception to this rule. If the person applies for a job that entails dealing with situations similar to the one in which he or she committed the offense and thus would tempt him or her to do the same thing again, people who know of the person's past may describe the offense, and potential employers may refuse to take the chance of exposing the person to the same temptations again. In fact, such people have a duty to take these steps to protect other people and even the applicant, for the Rabbis interpret the principle of *lifnei iver* (before the blind), that is, "Do not place a stumbling block before the blind" (Lev 19:14), to include not only those who are physically blind, but those who are morally blind as well.⁴⁶ So, for example, people may and should tell potential employers in a school, camp, or youth group that they should not hire a given person because he or she has abused children in the past.⁴⁷ For that matter, someone with a history of child abuse should not apply for such a position because the principle of *lifnei iver* applies to each individual Jew and not only to employers. Similarly, someone with a record of embezzlement should not seek, and should not be hired, to work in a company's financial office. In general, then, people should not put themselves or others in positions where they will be sorely tempted to do something wrong, *and if they do, it is the responsibility of potential employers to deny them such jobs.*

This category of forbidden language has another important implication for our question. How much personal information may/should the evaluator reveal about the applicant? American law forbids asking about personal matters in job or school interviews or in the materials submitted as part of an application to a school or job with one exception—namely, applicants to religious institutions may be asked questions relevant to the religious purposes of the institution.⁴⁸ Thus a religious institution may ask about a person's religious

46 b. Pesah. 22b; b. Mo'ed Qat. 17a; b. B. Meş. 75b. See also n. 33 above.

47 So b. Pesah. 22b; b. Mo'ed Qat. 17a; b. B. Meş. 75b. So Elliot Dorff ruled in his responsum for the CJLS, "Family Violence," http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/dorff_violence.pdf (accessed 9/3/12), reprinted in Dorff, *Love Your Neighbor and Yourself*, 155–206.

48 Title VII of the Civil Rights Act of 1984 prohibits, among other things, religious discrimination in employment and therefore, as a general matter, employers are advised not to question applicants about their religious beliefs or practices. Section 702(a) of Title VII, however, creates an exception for religious corporations, religious associations, and religiously-affiliated educational institutions with respect to the employment of individuals of a particular religion to perform work connected with the organizations' or institutions' activities. 42 U.S.C. § 2000e-1(a). See also Section 703(e)(2) of Title VII, 42 U.S.C. § 2000e-2(e)(2) ("It shall not be an unlawful employment practice for a school, college, university or educational institution ... to hire employees of a particular religion if such

beliefs and actions in a way that secular institutions may not. As a result, this question becomes especially difficult with regard to references for Jewish institutions: When may or should personal information be revealed, and of what type; and when, on the other hand, does revealing such information violate the ban on oppressive speech, similar to the examples in the Mishnah of asking about a person's former misdeeds or his or her ancestors?⁴⁹ It is easiest to justify revealing actions for which the person has been convicted in a court of law—sexual abuse, for example—but Jewish institutions might legitimately want to know personal information beyond violations of the law, as, for example, that the candidate married a non-Jew, believes that Jesus is the Messiah, or eats non-kosher foods.

Here again the pragmatic test suggested by the Ḥafetz Ḥayyim and by American law seems appropriate—namely, people should be asked only about that personal information that is relevant to the job or school for which she/he is applying. So, for example, it is both fair and proper to ask about a person's religious practices and beliefs—and even the religious identity of the candidate's spouse—if the candidate is applying to rabbinical school or for a job to become a teacher or youth leader at a synagogue, but not if the person is applying to be a secretary, custodian, or accountant for the synagogue.

... institution of learning is, in whole or in substantial part, owned, supported, controlled or managed by a particular religion or ... if the curriculum of such school ... is directed toward the propagation of a particular religion.”

In addition, under First Amendment principles, courts have held that clergy members cannot bring claims under the federal employment discrimination laws, including Title VII, the Age Discrimination in Employment Act, the Equal Pay Act and the Americans with Disabilities Act, because “the relationship between an organized church and its ministers is its lifeblood.” *McClure v. Salvation Army*, 460 F.2d 553, 558–560 (5th Cir. 1972). This “ministerial exception” to the federal anti-discrimination laws ensures that the government will not impede the free exercise of religion and become impermissibly entangled in religious authority. Thus, courts will not ordinarily consider whether a church or synagogue's employment decisions concerning its clergy were based on discriminatory grounds. See, e.g., *Rweyemamu v. Cote*, 520 F.3d 198 (2nd Cir. 2008) (Title VII race discrimination claim by African-American priest was barred by ministerial exception); *Petruska v. Gannon Univ.*, 462 F.3d 294 (3rd Cir. 2006) (ministerial exception bars sex discrimination claim by female Catholic chaplain against school, alleging that she was forced out as chaplain after she advocated on behalf of alleged victims of sexual harassment).

49 We would like to thank Rabbis Susan Grossman and Jonathan Lubliner for bringing this issue to our attention.

Revealing Positive or Negative Bias⁵⁰

Part of telling the truth about a candidate involves telling the truth about the evaluator too. For example, if the evaluator is a relative of the candidate, she/he must disclose that. Similarly, if the candidate owes the evaluator money, the evaluator must disclose that as well.

The Mishnah makes relatives ineligible to serve as witnesses, and, by extension, judges, and that injunction is referenced in later Jewish law as well.⁵¹ In addition, any party who has a vested interest in the case, whether on the side of the plaintiff or defendant, may not testify in court.⁵² In the case of writing an evaluation, the evaluator is indeed making a judgment about a person, and he or she may indeed have a positive or negative bias toward the candidate. The evaluator's opinion, however, is usually only one of several that are procured by the school or employer, and so no evaluator alone has the authority to determine the outcome. Furthermore, as serious as it may be for a person's life to get or be denied a job or a place in a school, that is not a legal penalty. So even though relatives and those with a vested interest are ineligible to serve in the legal capacities of either judge or witness, they may serve as evaluators, as long as they disclose this fact to the potential employer or school.

Rationales for Fudging the Truth or Outright Lying: Tact, Peace, or Hope

The Jewish tradition values truth very highly, not only for the practical reason that social relations depend upon being able to trust what others say, but also because God demands it and is even the paradigm of truth-telling: "The seal of God is truth";⁵³ "God hates the person who says one thing with his mouth and another with his mind."⁵⁴ As a result, the general Jewish maxim is that one should tell the truth: "R. Jose ben Judah said: Let your 'yes' be yes and your 'no' be no."⁵⁵

Rabbinic literature, though, describes some exceptions.

50 We would like to thank Mr. Jerry Abeles for bringing this issue to our attention.

51 m. Sanh. 3:4; Mishneh Torah, Laws of Evidence 13.

52 Mishneh Torah, Laws of Evidence 15:1.

53 See n. 4 above.

54 b. Pesah. 113b (cf. b. Soṭah 42a, b); b. B. Meṣ. 49a.

55 b. B. Meṣ. 49a.

Tact

When there is no practical purpose requiring the truth and those hearing it will only have their feelings hurt, the Rabbis tell us to choose tact over truth, especially when the truth is a matter of judgment in the first place. The following excerpt is very problematic in its sexism—it assumes that only brides, not grooms, are to be evaluated for their looks, and worse: evaluating the beauty of brides is juxtaposed with evaluating something someone has bought in the market, thus making a bride seem like an object that the groom has bought. This is clearly a product of the historical context in which it was written, and in modern times we clearly disavow these attitudes. That said, the Rabbis in this source are clearly struggling with balancing truth with tact, and the School of Hillel, which determines the later law on this, prefers tact over truth when someone's feelings, self-esteem, and joy will be hurt, and there is no practical gain in doing that because the marriage or business deal has already taken place:

תנו רבנן: כיצד מרקדין לפני הכלה? בית שמאי אומרים: כלה כמות שהיא, ובית הלל אומרים: כלה נאה וחסודה. אמרו להן ב"ש לב"ה: הרי שהיתה חיגרת או סומא, אומרין לה, כלה נאה וחסודה? והתורה אמרה: מדבר שקר תרחק אמרו להם ב"ה לב"ש: לדבריכם, מי שלקח מקח רע מן השוק, ישבחנו בעיניו או יגננו בעיניו? הוי אומר: ישבחנו בעיניו, מכאן אמרו חכמים: לעולם תהא דעתו של אדם מעורבת עם הבריות.

What words must be used when dancing before the bride? The School of Hillel said: "Say, 'O bride, beautiful and gracious.'" The School of Shammai said: "If she is lame or blind, is one to say, 'O bride, beautiful and gracious'?" Does it not say in the Torah, "Keep far from lying?" (Exod 23:7). The Hillelites said: "Then, if someone makes a bad purchase in the market, is one to commend it or run it down? Surely one should commend it." Hence the Sages say: "Always make your disposition sympathetic to that of your neighbor."⁵⁶

Peace

A second exception to the requirement to tell the truth is when one is engaged in an effort to bring peace. The Rabbis deduce this exception from the very words of God, who changed Sarah's words to say that she was worried that she was too old to have children rather than that Abraham was too old; from the

⁵⁶ b. Ketub. 16b–17a.

lie Joseph's brothers told Joseph after Jacob's death to try to attain his forgiveness and peace among the brothers; and from God's advice to Samuel to lie to Saul that he was coming to bring a sacrifice even though his real purpose was to tell him that God had decided to wrest the throne from him and give it to David.⁵⁷ The ultimate principle, then, is that "all lies are forbidden unless they are spoken for the sake of making peace."⁵⁸

Clearly, there are some important limits to this. Lies have a way of being discovered, and so lying even in the interests of making peace may not only fail to work, but may make both parties angry at the peacemaker. Moreover, lies cannot cover up realities; if the parties really hate each other, no false reports will magically make things right. On the contrary, both parties, upon finding out about the false report, may now not only be reconfirmed in their animosity toward each other, but now also distrust the reporter who was trying to make peace. Peace, if it is to be had, must rest on stronger foundations than lies, so one must take these biblical precedents with the proverbial grain of salt. One surely can and should omit nasty comments if one is trying to make peace; one can speak of each party's benign, broader intentions; and one can even interpret remarks made by one party about the other more positively than the speaker probably meant them; but actually changing what someone said is asking for trouble, even if it is in the name of making peace.

Hope

Finally, rabbinic literature records some Rabbis who condone and even demand that those visiting very sick people lie to them about the seriousness of their disease so as to help them retain hope for recovery. Those who take this position base themselves on the biblical stories of Elisha's lie to the emissary of Ben-Hadad, King of Aram (2 Kgs 8:8–10, 14), and the change of fate of King Hezekiah (Isa 38:1–7; also 2 Kgs 20:1–7; Ecclesiastes Rabbah on Eccl 5:6), for in both cases the patient recovers despite predictions of their demise. The Rabbis extend the concern about maintaining hope and the determination to fight illness to patients hearing about others' death:

תנו רבנן: חולה שמת לו מת - אין מודיעין אותו שמת, שמא תטרף דעתו עליו.

57 Sarah: Gen. Rab. 48:18, based on Gen 18:11–14. Joseph's brothers and God's advice to Samuel: b. Yebam. 65a, based on Gen 50:16–17 and 1 Sam 16:2.

58 Baraita Perek HaShalom.

Our Rabbis taught: If the close relative of a sick person dies, we do not inform the sick person lest he be emotionally overwhelmed (*tittaref da'ato*).⁵⁹

These sources elevate the value of retaining hope for recovery over truth, both because one never really knows whether the patient will get better or worse, and also to avoid depriving the patient of hope. Despite the wise warning in these sources about negative prognoses, in modern times, when the advances in medicine may give patients and their families unrealistic hope for recovery, we should not exaggerate what medicine can do either. Rather, one should be truthful with patients so that they do not lose trust in what their physicians and family are telling them, for deceiving patients about their diagnosis or prognosis will surely produce a feeling of betrayal and abandonment. One *should* point out what the patient can realistically hope for and help the patient realize those hopes, if possible—hopes, for example, of reducing pain through more or different medication, of reconciling with someone before death, or completing an ethical will. Pretending that the patient's physical condition is not as bad as it is, however, or that the prognosis is something other than what it is, ultimately serves neither the patient nor the value of truth.⁶⁰

This concern for fostering hope—but only realistic hope—applies to providing references as well. In doing so one may indicate how a person may overcome deficiencies in their qualifications with appropriate help, and one should do so when there are reasonable grounds to believe that specific interventions will indeed resolve particular problems in the person's candidacy. The recommender, though, should not suggest that such interventions will work when she/he does not have realistic grounds to believe that that hope can be realized.

Providing a Reference for Someone You Do Not Know Well

How well do you need to know a person to provide a reference without misleading the recipient? Our knowledge of everyone, including those whom we think we know well, is always incomplete. The remedy for that is to indicate

59 b. Mo'ed Qat. 26b; see Shulhan Arukh, *Yoreh De'ah* 338:1.

60 For more on how this concern applies to the prognosis that physicians offer patients and how they offer it, as well as what visitors say to patients, see Elliot N. Dorff, *Matters of Life and Death: A Jewish Approach to Modern Medical Ethics* (Philadelphia: Jewish Publication Society, 1998), ch. 10; and Dorff, *The Way into Tikkun Olam*, 93–98.

clearly how we know the applicant and for how long and then to indicate what we do not know about the applicant that is probably relevant to his or her candidacy for the school or job. That general rule suffices for most cases, for following it provides the truth about both what one knows and what one does not know. As indicated earlier, one should also state that what one does not know is not necessarily a negative evaluation of the candidate in that aspect of the qualifications for the school or job; it is simply a lack of knowledge on the recommender's part.

Once in a while, though, one is asked to provide a letter of reference for someone one does not know well. For example, one may be the candidate's employer but not his or her immediate supervisor or the principal of a school but not the student's teacher. Under those circumstances, one should decline to provide the reference altogether or indicate in the reference the limited knowledge one has about the applicant.

In a fascinating responsum, R. Menasheh Klein, one of the authors of responsa during the Holocaust and the author of *Mishneh Halakhot*, applies this rule even to someone asking for a letter affirming that he is indeed poor and that others should therefore give him food or money. Even though, as the author points out, we generally have a rule that we should provide a day's worth of food to those who ask for it with no questions asked, if you affirm in a letter that this person is poor and you do not know that he is, your letter in the case that the person is not really poor is both deceiving potential donors and aiding the beggar to steal from them.⁶¹ So even in such a case, where we have a special duty to a class of people, we must be sure that what we say is accurate and limited to what we know about the applicant.

Summary of the Jewish Side of this Issue

How, if at all, do these factors that mitigate the duty to tell the truth affect someone giving a reference? They inform the way one tells the truth but do not justify distorting the truth. So, one may and should express any reservations about the candidacy of the person being evaluated in respectful and even tactful terms, but ultimately the evaluator must tell the truth about the candidate's weaknesses for the school or job in question as well as his or her strengths. Peace, although a very important value of our tradition, is not really relevant here because although negative comments about the candidate will probably

61 Mishneh Halakhot 12:145.

upset the candidate if he or she ever comes to know them, the failure to communicate them will definitely upset the recipient of the reference if the person is admitted or hired based on the incomplete reference and then later demonstrates that she or he is not fit for the school or job. Hope is also an important part of our tradition, but it must be realistic. Thus although one can always hope that people overcome their weaknesses and one may even suggest to the school or employer the kind of support that would help the candidate do that, failing to note a person's weaknesses for a school or job out of hope that the person will in the future be able to overcome her/his weaknesses is not appropriate in a reference. None of the exceptions to the tradition's mandate to tell the truth, then, excuse an evaluator from telling the truth, although they do inform how that should be done.

Furthermore, the three factors that we have been discussing—tact, peace, and hope—establish limits to the duty to tell the truth, and they thereby express a reticence to communicate negative facts about a person even if true and even if they are potentially harmful to the recipient. Thus they reasonably establish a *middle ground*.⁶² That is, one must clearly not tell lies about a person. One must also avoid communicating impressions, whether positive or negative, that are unsubstantiated by facts that can be and are delineated. One must also refuse altogether to respond to a request for an evaluation if the job description or school program is not clear, for then one will likely be saying things about the person that are irrelevant and possibly even utter forbidden slurs unless the candidate is applying to multiple schools or jobs and specifically asks for a general letter of reference. At the same time, one is required to tell relevant truths about the candidate because none of the excuses to avoid doing so directly applies.

These three factors that limit truth telling in the Jewish tradition and the general values and laws guiding our speech described above, however, indicate that the evaluator is not necessarily obligated to tell the whole truth. Instead, one should be guided by the questions being asked. When first asked for a reference, one might say to the school or employer: "What do you want to know?" and respond only to those questions. The one exception to this approach—and it is an important one—is if there is something about the candidate that would make him or her dangerous in the school or job for which she or he is applying, for then one has a duty to warn the questioner about that danger based on Lev 19:16, לֹא תַעֲמֹד עַל־דַּם רֵעֶךָ "Do not stand idly by the blood of your brother." Short

62 We would like to thank Rabbi Daniel Nevins for pointing out the need to find this middle ground in providing evaluations.

of that, however, one has no duty to reveal everything that one knows about the person, positive or negative. Similarly, if one is not listed by the candidate as a potential evaluator but one nevertheless finds out that the candidate is applying for the school or job, one does not have either the right or the duty to contact the school or employer to provide an evaluation of the candidate, especially a negative one, unless the candidate will pose a significant danger to the school or job.⁶³ This middle ground—telling the truth but not revealing everything unless some characteristic or past action of the candidate poses a significant danger—is, on one hand, a recognition of the great value that the Torah itself and the rest of the Jewish tradition place on both telling the truth and protecting people from harm and, on the other hand, a reflection of the reluctance that Jewish sources express about saying anything negative about a person and also an acknowledgement that past actions many years ago do not always predict current or future behavior.

In providing references one should also state clearly what one does not know. Sometimes, though, “no comment” with regard to a person’s performance is taken to be a negative reaction because the listener thinks that the recommender is trying to hide something, and so when the recommender does not know something about the candidate, he or she should also clearly state that his or her lack of knowledge about some aspect of a person’s candidacy is not intended to be a negative reflection on the candidate, but rather just a statement of the limits of the recommender’s knowledge about that person. The recommender might even suggest that the questioner ask someone else who is likely to know more about the candidate’s performance in the area in question.

The result of these considerations, then, is that the overarching demand of Jewish law to tell the truth applies to references. Especially because references inevitably involve evaluations about which people working with the candidate can legitimately disagree, one must support one’s evaluation with concrete examples of the candidate’s past actions that lead one to evaluate the person in the way she/he does so that the evaluation can, as much as possible, avoid being simply one’s unsubstantiated, subjective opinion and thus potentially harmful to either the candidate or the recipient. At the other end of the spectrum, one should also avoid unjustified superlatives about the person, for truth requires a realistic assessment of the positive aspects of a person’s candidacy as well as the negative ones.⁶⁴

63 We would like to thank Rabbis Adam Kligfeld and Elie Spitz for reminding us to address this situation.

64 We would like to thank Rabbi Jonathan Lubliner for pointing out this aspect of telling the truth.

Recipients of evaluations also have duties under Jewish law. They must investigate to determine whether what they are hearing about a person is indeed true. Otherwise they may be listening to outright lies, assertions based on rumors or unsubstantiated assumptions, or irrelevant, even if truthful, speech, thereby illegally aiding the evaluator to violate the law (*mesaye'a lidvar 'aveirah*) and probably also harming the candidate. Thus recipients of recommendations should not believe whatever they find on the internet about the person, and they should consult with several people who know the candidate in order to confirm what any one of them says.

American Law on References

Whether Jews own their own companies or work for a company or nonprofit agency owned and operated by Jews or non-Jews, they clearly have a duty to avoid actions that will harm the company or agency by making it liable to pay a significant amount of money in a lawsuit or bring down the company or agency altogether. Aside from the American laws regarding fiduciary duties,⁶⁵ Jewish law also forbids harming both oneself and others, not only physically but monetarily.⁶⁶ So how would following Jewish law in telling the truth about a candidate for a job or school, as delineated above, fare in American law, for example?

The large majority of employers⁶⁷ in the United States follow what is known as an NRS (“Name, Rank, and Serial number”) Policy in response to requests

65 See Section 801 of the Restatement (Third) of Agency: “An agent has a fiduciary duty to act loyally for the principal’s benefit in all matters connected with the agency relationship.” Comment G makes it clear that this general fiduciary principle applies to employees: “As agents, all employees owe duties of loyalty to their employers.” See also *Combs v. Price-waterhouseCoopers*, 382 F.3d 1196, 1200 n.2 (10th Cir. 2004) (“an employee normally owes fiduciary duties to his employer”).

66 This is the topic of much of Bava Qamma, Bava Metzia, and Bava Batra in both the Mishnah and Talmud. So, for example, Jewish law provides penalties for assaulting others (m. B. Qam. 8:1) and for damaging their property (e.g., m. B. Qam. 1:1), and Jewish laws governing bailments (m. B. Meş. 7:8) make the various kinds of bailees responsible to varying degrees for the property under their temporary control. See also the sources in n. 6 above, according to which people need to take care of themselves first, then their family, then their community, and only then others in concentric circles of responsibility.

67 Middle schools, high schools, and universities usually require that potential students provide transcripts, and colleges, graduate programs, and some high schools also require test scores and letters of recommendation that disclose much more information than NRS. Some schools also require that students sign the Buckley Amendment waiver that

for references from prospective employers. That is, they give out only neutral information such as the dates of employment and title without commenting on performance, attendance, or expertise—the very subjects that employers are most interested in learning about. This practice not only undermines articulated public policy, but also—as discussed above—contravenes important Jewish values and in certain circumstances may be at odds with obligations imposed by Jewish law. The question, then, is what does American law actually require, and if the law does not require such reticence, why do employers adopt the NRS policy?

Providing employment references implicates a variety of common law and statutory duties. First and foremost, is the law of defamation from which the vast majority of legal claims relating to employment references arise. Under common law principles of defamation, an employer may be held liable if he or she (1) makes a false and defamatory statement of fact concerning a present or former employee (2) to a prospective employer or other third party (3) in at least a negligent manner (4) causing injury to the employee.⁶⁸ From this list of elements, it is clear that truth is an absolute defense to a defamation claim and opinions, as opposed to statements of fact, are not actionable at all. What is more, an employee cannot successfully maintain an action for defamation where he or she has authorized the employer to discuss the information with a prospective employer, as often occurs.

In spite of these protections, employers have been reluctant to take advantage of them because of the expense and disruption of litigation which may result from providing a negative reference. In fact, the 1980s saw a rash of lawsuits brought by employees who claimed that they had been denied jobs because of negative references, and as a result, employers largely adopted policies that prohibited their managers from providing substantive references. State legislatures, concerned that discouraging candid references was poor public policy, began to pass legislation granting employers a “qualified privilege” when providing employment references. Currently, more than forty states have passed such legislation, and most of the remaining states have developed a common law “conditional privilege” that provides employers with protections similar to those provided by statute in other states.

indicates that the student waives his or her right to see the recommendation for the recommendation to be taken seriously and count as a recommendation. With regard to employees, however, schools and universities may follow the same NRS policy as many businesses do. We would like to thank Rabbi Pamela Barmash for reminding us of these practices among schools and universities.

68 *Restatement (Second) of Torts*, § 558 (1977).

In general, the qualified or conditional privilege provides that employers will not be liable for defamation claims when providing references, unless the employer knowingly or recklessly provided false information, acted out of malice, or excessively published the information to a broader audience than necessary. For example, the Texas legislature found that “the disclosure by an employer of truthful information regarding a current or former employee protects relationships and benefits the public welfare.”⁶⁹ Therefore, the legislature enacted a statute that creates immunity for solicited employment references pertaining to an employee’s job performance “unless it is proven by clear and convincing evidence that the information disclosed was known by that employer to be false at the time the disclosure was made or that the disclosure was made with malice or in reckless disregard for the truth or falsity of the information disclosed.”⁷⁰ By imposing both a significantly higher standard of proof (“clear and convincing evidence” as opposed to the usual “preponderance of the evidence” standard) and by requiring knowing fabrication or reckless disregard for the truth (as opposed to simple negligence), this statute and others like it were intended to give employers the comfort and encouragement to provide candid employment references.⁷¹

These statutory and common law qualified immunities have not been effective in encouraging substantive employment references for several reasons. First, the qualified nature of the immunity means that one has to be careful to stay within the boundaries of the protected conduct. For example, the North Carolina statute applies only to solicited references where the response is limited to information about job performance or job history.⁷² Information that falls outside of those categories or which is volunteered rather than solicited would not qualify for the immunity. As a practical matter, in large companies,

69 Tex. Lab. Code §103.001.

70 Tex. Lab. Code §103.004.

71 See also R.I. Gen. Laws §28-6.4-1 (2012) (immunity from civil liability under Rhode Island statute unless reference is knowingly false, deliberately misleading, disclosed for malicious purpose or violative of the employee’s civil rights); N.C. Gen. Stat. §1-539-12 (2011) (under North Carolina statute, employer is immune from liability for statements regarding job performance unless the statements were false and the employer knew or reasonably should have known that the information was false). See also *Conway v. Herman Smerling et al.*, 37 Mass. App. Ct. 1, 7-8 (1994) (under Massachusetts common law, employers providing references are immune from liability, even if the statements contain false information, unless the employer acted in bad faith or maliciously); *Erickson v. Marsh & McClellan Co.*, 569 A.2d 793, 805 (N.J. 1990) (New Jersey common law provides a qualified privilege to an employer who responds in good faith to the specific inquiries of a third party regarding the qualifications of an employee).

72 N.C. Gen. Stat. §1-539-12 (2011).

it is extremely difficult and time consuming to train managers to stay within these types of boundaries and, even with the best training, some managers will inevitably stray from the protected limits. Furthermore, even though it is more difficult to overcome the limited immunities created by statute and common law, it is not impossible to do so, and therefore employers remain exposed to the expense, reputational harm, and diversion of management resources inherent in defending a defamation case. Better to play it safe, reason many corporate managers, than to expose the company to those types of costs, even if the employer would ultimately prevail at trial.⁷³

State defamation claims are not the only risks employers may face in providing candid employment references. Title VII of the Civil Rights Act as well as other employment discrimination and retaliation statutes have generally been interpreted to cover former as well as current employees. Therefore, when an employer provides a negative reference, former employees have a potential claim that the reference constitutes an adverse employment action improperly motivated by their membership in a protected class (e.g., race or gender) or their protected activity (e.g., filing a discrimination complaint).⁷⁴

Claims for invasion of privacy and tortious interference⁷⁵ have also been asserted in response to negative employment references, although much less

73 Businesses can purchase insurance against defamation claims either as part of a general liability policy or a special slander and libel policy. Although such insurance policies may provide a level of protection against attorneys' fees and settlement costs (up to policy limits), they do not relieve the business distraction and diversion of management resources which is endemic to this type of litigation. Moreover, such policies often have exceptions (e.g., for intentional defamation) which may expose a business to the full threat of monetary damages.

74 See *Robinson v. Shell Oil Co.*, 117 S. Ct. 843 (1997) (US Supreme Court held that former employee may sue for retaliation under Title VII when he was given a negative reference after he filed a discrimination charge against his former employer). Although some have argued that giving even neutral employment information for someone in a protected class could give rise to a discrimination claim where it can be shown that positive references were given by the same employer for non-protected class members, several courts have rejected that theory. See, e.g., *Cooper v. Charlotte-Mecklenburg Board of Education*, 2007 U.S. Dist. Lexis 1287, at *6 (W.D.N.C. 2007) (giving neutral and limited information about an employee where that is the employer's common practice is not an adverse employment action and therefore cannot form the basis for a retaliation or discrimination claim).

75 Tortious interference claims are a variation on defamation claims, and most of the principles that apply to defamation claims apply equally in this context. The principle distinction between the two claims is the requirement of malice in tortious interference claims. That is, the employee must show that the former employer's actions were malicious in the sense that the harm was inflicted intentionally and without justification or excuse. Because this is a difficult standard to meet, these claims typically fail in the ordinary con-

frequently than defamation or discrimination/retaliation claims and with much less success. In general, invasion of privacy claims typically arise when an employer proactively reaches out to a third party to alert them of certain information regarding a prospective employee. Employers can avoid invasion of privacy claims by providing information about an employee only in response to a specific request and requiring the employee to sign a consent form if any substantive information is to be provided to potential employers. Moreover, because the new employer is usually contacting the former employer only after the employee authorized it to check his or her references, the employee's consent to the former employer's provision of that information is often implied even without a signed consent form.

While most claims arise from the provision of a negative reference, there have been some cases brought because of what is alleged to be an unwarranted positive reference. These cases are generally based on claims of misrepresentation and arise when a new employer (or someone in his or her business or institution) suffered harm from a new employee who was the subject of a misleadingly positive recommendation. If the former employer had provided truthful information and by doing so, the new employee would not have been hired, thereby preventing the harm, the actions of the former employer may be actionable. For example, in *Randi W. v. Muroc Joint Unified School District*, 14 Cal.4th 1066, 929 P.2d 582 (Cal. 1997), a student who alleged sexual abuse by a school employee successfully brought a claim against the school district in which that employee had previously worked. The employee had been forced to resign from that school district as a result of sexual misconduct towards students, but the school district gave him a positive recommendation anyway. The student claimed that if the school district had not given such a reference, the new employer—another school district—would not have hired the employee as vice principal at the school where the student attended and where he was allegedly abused by the new employee.⁷⁶ It should be noted, however, that the law in this area is less uniform and prevalent, given that—under American law—employers do not have any duty to provide information in response to reference requests. In the absence of a duty to warn, courts have

text of a negative reference. See, e.g., *Friel v. Angell Care, Inc.* 440 S.E. 2d 111, 114 (N.C. Ct. App. 1994) (interference claim relating to reference fails absent evidence of malice by former employer).

76 See also *Singer v. Beach Trading Co.*, 876 A.2d 885, 890–894 (N.J. Super. Ct. App. Div. 2005) (discussing other states' approach and determining that under New Jersey law, a former employee asserting a misrepresentation claim must show that the former employer negligently disseminated false information).

hesitated to find that employers have been negligent in performing that duty, except in egregious circumstances.

Summary: Balancing the Duty and Danger of Disclosure

In light of the Jewish and American laws on giving references, what should Jewish employers and employees do, and what policies should Jewish companies and nonprofit organizations have?

In general, in light of the strong mandate of Jewish law to tell the truth about candidates for schools or jobs and the protections in American law for those who do so when they support their assertions with a record of the candidate's actions, Jewish-owned companies and nonprofit institutions should adopt policies that abide by the guidance of this responsum. Furthermore, if a company or school, whether Jewish or non-Jewish, does not have a policy regarding references, Jewish employees should abide by the guidance of this responsum.

Jewish employees working for Jewish or non-Jewish companies or nonprofit institutions, however, must abide by their employer's policy with regard to giving references for two reasons: morally, the employee accepted the conditions of employment in taking the job and thus effectively promised to abide by those conditions, including the employer's rules governing references; and pragmatically, the employee presumably does not want to be fired. Thus, if a Jewish or non-Jewish company, non-profit institution, or school has an NRS policy, a Jew must abide by it.

The only exception to this is if serious injury could result from following the NRS policy with regard to a particular candidate for a school or job. Under those circumstances, a Jewish employee asked for a reference should act in accordance with this responsum in disclosing the danger of harm despite the NRS policy. For example, if a Jewish school employee is asked for a reference for someone who was dismissed from a public or private school for sexually abusing a student, or if the candidate committed a felony, especially one relevant to the position for which she/he is applying, the Jewish person providing the reference is obligated to provide sufficient factual information to warn a potential employer, particularly where the employer is another school. Obviously, to keep one's job it would be prudent for the Jew asked for a reference in such a case to discuss the situation with his/her employer before taking such action with the goal of convincing the employer to make an exception in this case and possibly even to change the policy itself to permit warning in such cases of danger to the potential employer. Even without either of those ways to justify

violating the NRS policy, however, the Jewish employee does have the duty to warn other schools or companies of the dangers involved in accepting such a student or hiring such an employee, even if doing so costs the Jew his/her job.

That said, one must recognize that there are many gray areas between someone convicted of a crime, where the danger has been demonstrated, and someone for whom there is mere suspicion of posing harms to a school or company. There is also a range of harms that a person might cause. These factors of the degree of certainty regarding the actions of the applicant and the degree of harm the applicant caused or is alleged to have caused must be taken into account when deciding whether to violate an NRS policy or not. More generally, these factors must also be considered when deciding what one says in providing any reference.

Ruling (Pesaq Halakhah)

1. *The general rule: tell the truth about the candidate.* On the Jewish side of this question, because none of the exceptions to the rule to tell the truth apply to the context of providing references, we are left with the demand to tell the truth. Evaluators are cautioned to limit their remarks to what they know well about the candidate and indicate when they do not know about salient aspects of the person's candidacy, emphasizing that their statement to that effect is not intended to be a negative reflection on the candidate, just a statement of the limits of the recommender's knowledge. To make this yet clearer, the recommender might suggest that the potential employer or school contact other people who know more about aspects of the candidate's work that the evaluator does not know. In accordance with the reluctance expressed in the Jewish tradition about saying negative things about people, and in recognition of the fact that past actions do not always predict future behavior, however, evaluators, whether listed by the candidate as people the school or job should contact or not, should respond to the questions asked and not volunteer negative information about a person except if that information clearly establishes that the person would be dangerous for the school or job (see paragraph 7 below). At the other end of the spectrum, one should also avoid superlatives about the person unsubstantiated by the candidate's specific actions, for truth requires a realistic assessment of both the positive and negative aspects of a person's candidacy. Evaluators should phrase any comments, whether negative or positive, with reference to the candidate's specific *actions* rather than describe his or her character generally. Moreover, negative comments should be phrased in clear but respectful and tactful terms, and they should indicate what forms of

support the school or employer might realistically offer to help the candidate overcome his/her weaknesses and thrive in the school or job. Even though providing a reference may include disparaging remarks about the person, this is not a form of prohibited slurs (*lashon hara*) because the recipient has a practical need to know the disqualifications of the applicant for the school or job as well as the qualifications.

2. *Telling the truth about the evaluator*: Evaluators should disclose any positive or negative bias that they have toward the candidate, such as the fact that the candidate is a relative of the evaluator or owes him or her money.
3. *When to refuse to provide a reference*: People asked by a candidate to provide a reference for jobs or schools should refuse to do so if they cannot say anything substantive about the candidate. They should also decline to give a reference if the job description or the school program for which the candidate is applying is unclear, for then the evaluation is likely to include either irrelevant or unsubstantiated negative information about the candidate. An exception to this last rule occurs in those circumstances when the applicant is applying to a variety of different schools or for a number of jobs and requests a general letter of reference attesting to the applicant's academic or professional qualifications. If one is not listed by the candidate as a potential evaluator but nevertheless finds out that the candidate is applying for the school or job, one does not have either the right or the duty to contact the school or employer to provide an evaluation of the candidate, especially a negative one, or provide a reference without the consent of the candidate unless the candidate will pose a significant danger to the school or job, in which case one should inform the potential employer or school even if not asked (see paragraph 7 below). If one does not know the candidate well, one should generally refuse to provide a reference; if, however, one is an obvious person to consult (e.g., one is the candidate's employer but not one's immediate supervisor), one must disclose the limits of one's knowledge of the candidate and his/her work in the evaluation and limit it to what one actually knows.
4. *Recipients of evaluations*: Recipients of evaluations also have duties under Jewish law. They must investigate to determine whether what they are hearing about a person is indeed true. Otherwise they may be listening to outright lies or irrelevant, even if truthful, speech, thereby illegally aiding the evaluator to violate the law (*mesaye'ah ledavar aveirah*) and probably also harming the candidate. Recipients of recommendations should definitely *not* believe whatever they find on the internet about the person, and they should consult with several people who know the candidate in order to confirm what any one of them says.

5. *The effects of American law on this ruling:* Nothing in American common law or statutory law prohibits an employer or former employer from providing truthful information regarding an employee's job performance, evaluation history, or other substantive information, whether positive or negative. In fact, the overwhelming majority of states have passed legislation designed to protect employers who—particularly in response to specific requests—provide candid job performance assessments to potential employers. To the extent that Jewish law (as described above) requires such candid references, American law does not stand as an insurmountable obstacle. Nevertheless, in our litigious society, we must recognize that employers who provide substantive references beyond the NRS Policy adopted by most major companies risk facing the expense and disruption of the assertion of legal claims. Given the compelling values underlying Jewish law on this issue, however, we believe that those are risks that Jewish employers, employees, and nonprofit organizations must accept in fulfilling their halakhic obligations. In the rare circumstances where, based on legal advice, an employee of a Jewish organization reasonably believes that a reference will subject his or her employer to severe financial hardship, the employee—acting consistently with his or her fiduciary duty to the employer—should formulate the reference in a way that best serves the underlying purposes of this responsum while protecting his or her employer.
6. *Jews working for a non-Jewish employer:* Jews working for non-Jewish employers should follow this ruling when their employer has no policy about references, with the same caveat about acting consistently with one's fiduciary duty to protect his or her employer when the risk of severe financial hardship is present. When the non-Jewish employer has an NRS policy, Jews should generally abide by it, but see the next paragraph of this ruling.
7. *A candidate who poses known risks of danger for a school or job:* Regardless of whether a Jewish employee's employer is Jewish or not, and regardless of the financial risk involved, if the person asking for a reference has engaged in sexual abuse of children, committed a felony, or acted in other significantly dangerous ways relevant to the school or job for which s/he is applying, the Jewish employee has the duty to warn the recipient of the reference of such dangers, spelling out the specific past behavior of the person that demonstrates such danger. If the employer has an NRS policy, the Jewish employee is advised to consult with his/her employer before revealing the significant risk that the candidate poses with the goal of convincing the employer either to make an exception to the NRS

policy in this case or to amend the policy itself to permit a warning in such circumstances. Furthermore, a Jew who knows that a person will pose significant risk of harm to a school or job has a duty to inform the potential school or company even if not asked. In all such circumstances, however, one must recognize the range of certainty about the candidate's behavior and the degree of harm involved in deciding whether to violate or amend the NRS policy or to inform a potential school or employer without being asked.

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Mikveh and the Sanctity of Being Created Human

Susan Grossman

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Sheilah

How should we, as modern Conservative Jews, observe the laws traditionally referred to under the rubric *Tohorat HaMishpahah* (The Laws of Family Purity)?¹

Teshuvah

Introduction

Judaism is our path to holy living, for turning the world as it is into the world as it can be. The Torah is our guide for such an ambitious aspiration, sanctified by the efforts of hundreds of generations of rabbis and their communities to

1 The author wishes to express appreciation to all the following who at different stages commented on this work: Dr. David Kraemer, Dr. Shaye Cohen, Dr. Seth Schwartz, Dr. Tikva Frymer-Kensky, z"l, Rabbi James Michaels, Annette Muffs Botnick, Karen Barth, and the members of the CJLS Sub-Committee on Human Sexuality. I particularly want to express my appreciation to Dr. Joel Roth. Though he never published his halakhic decisions on *tohorat mishpahah* ("family purity"), his lectures and teaching guided countless rabbinical students and rabbinic colleagues on this subject. In personal communication with me, he confirmed that the below *psak* (legal decision) and reasoning offered in his name accurately reflects his teaching. The positions otherwise expressed in this paper, as well as any errors, remain my own. (Minor editorial changes have been made in the version printed here which have no effect on the substance or conclusions of this *teshuvah* presented and approved in 2006.)

interpret and apply its teachings to the large and small questions of living in the real world. This is true for the grand ethical statements of the Torah, such as, “Justice, justice shall you pursue,”² as well as for the detailed directives that guide our most personal activities.³

The laws relating to a woman’s menstrual period and the appropriateness of sexual activity during it certainly fall within these most intimate of categories.

At first glance, the original Levitical context for the source of these laws (the diagnosis and public safety protocols for skin diseases and genital discharges) might be more appropriate for inclusion in an ancient medical text. In this context, the priest of the Biblical period served as diagnostician and doctor, as well as pastor (in the sense of visiting the sick), in addition to his other cultic responsibilities dealing with the sacrifices and the care of the central sanctuary. (Women never served as priests, *per se*, although women of priestly families enjoyed some priestly privileges, such as eating of the priestly portion of the sacrifices.)

Nevertheless, generations of Jews interpreted the words of Leviticus 15:19–24 in conjunction with those of Leviticus 18:19 as prohibiting sexual relations. These laws were grouped together under the rubrics of *Hilkhot Niddah* or more recently *Tohorat HaMishpahah*, the Laws of Family Purity, still observed today in many observant communities. Traditional practice prohibits all physical contact between a woman and her husband during her menses and for seven “clean” or “white” days following the cessation of any appearance of blood.⁴ Intimate relations, or any physical contact, are not to be resumed until the woman immerses in a *mikveh*, a ritual pool. From the onset of menstrual symptoms until immersion in the *mikveh*, the woman is considered a *niddah* and ritually impure.

Much has been written about the cultural and psychological significance of the menstrual laws.⁵ They contain the potential for great beauty and significance but have also been the source of great pain and prejudice.

² Deut 16:20.

³ My colleague R. Joshua Gutoff many years ago suggested that the modern aversion to giving up our autonomy over what might be perceived of as purely personal activities may be largely responsible for the fact that halakhic restrictions on sexuality have largely fallen into disuse, even among those who are otherwise observant outside the Orthodox community.

⁴ Traditionally this was interpreted to mean a minimum of twelve days of separation, a minimum of five for the woman’s period plus seven “white” days.

⁵ E.g., Jacob Milgrom, “Comments—Genital Discharges,” in his *Leviticus 1–16*, Anchor Bible 3 (New York: Doubleday, 1991), 948–1009; David Kraemer, “A Developmental Perspective on the Laws of *Niddah*,” *Conservative Judaism* 38, no. 3 (Spring 1986): 26–33.

For Conservative *halakhah*, see: Isaac Klein, *A Guide to Jewish Religious Practice* (New York: Jewish Theological Seminary, 1979), 510–522, who permits an outdoor, in ground swimming

The development and observance of these laws in Judaism have been criticized as reflecting the primal fear of blood, as reflected in cultural blood taboos,⁶ and the casting of women as “other” in a society defined by men. Such critiques found cause in how the menstrual laws were expanded over the centuries to proscribe a menstruant’s contact with the Torah and involvement in the synagogue and even in familial society. However, as we will see below, such rules, which compromised the existential beauty of *mikveh* and the sanctification of a woman’s bodily cycle, particularly in the context of marriage, were not based on Jewish law and therefore could be easily and appropriately relegated to folkways.

In their place, a growing number of Jewish women turned to the observance of the laws of *Hilkhot Niddah* as an area of “women’s *mitzvot*,”⁷ women’s commandments. This is part of a larger effort on the part of Jewish women during

pool to be used when a *mikveh* or other source of living water is not available, following a Law Committee decision based on the *teshuvah* (responsa), “May a Swimming Pool be Used as a *Mikveh*?” by R. Kreitman (p. 522). The articles, “*Niddah*,” and “Purity and Impurity,” *Encyclopaedia Judaica* 12:1141–1148; 13:1410 ff., offer a brief survey of relevant sources.

For modern Jewish responses, see: Rachel Adler, “*Tumah and Taharah—Mikveh*,” in *The First Jewish Catalogue* (Philadelphia: Jewish Publication Society, 1973), 167–171, also published in *The Jewish Woman: An Anthology*, ed. Liz Koltun (Philadelphia: Jewish Publication Society, 1973), 117–127. Adler rebuts her original position in “In Your Blood, Live: Re-Visions of a Theology of Purity,” *Tikkun* 8, no. 1 (1993): 38–41. See also, Susan Grossman, “Feminism, Midrash, and *Mikveh*,” *Conservative Judaism* 44, no. 2 (Winter 1992): 7–17, and *People of the Body: Jews and Judaism from an Embodied Perspective*, ed. Howard Eilberg-Schwartz (Albany: SUNY, 1992).

Many books have been written from the Orthodox perspective. The most popular include Norman Lamm, *A Hedge of Roses: Jewish Insights into Marriage and Married Life* (New York: Feldheim, 1966); and the mystical approach of Aryeh Kaplan, *Waters of Eden: An Exploration of the Concept of Mikvah* (New York: National Conference of Synagogue Youth, 1976), esp. 40–46, 62–73. Blu Greenberg offers an Orthodox-Feminist defense, “In Defense of the ‘Daughters of Israel’: Observations on *Niddah* and *Mikveh*,” in her *On Women and Judaism: A View from Tradition* (Philadelphia: Jewish Publication Society, 1981).

For comparative material, see James Frazer, *The Golden Bough* (New York: Avenel, 1981), ch. 2, “The Perils of the Soul,” 1109–212; and Robert Parker, *Miasma: Pollution and Purification in Early Greek Religion* (Oxford: Oxford University Press, 1983).

- 6 On blood taboos, see Mary Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (London: Routledge and Kegan Paul, 1966; London: Ark Paperbacks, 1984); Milgrom, “Comments,” 949; Kraemer, “A Developmental Perspective,” 33. See also n. 8 below. A comparison between rabbinic and contemporaneous, e.g. Hellenistic, attitudes toward the menstruant and parturient is beyond the scope of this particular *teshuvah*.
- 7 Cf. m. Šabb. 2:6; *AdRNB* ch. 9 (Schechter, p. 25) and ch. 42 end (Schechter, p. 117), b. Šabb. 31b–32a, y. Šabb. 2:6, 5b, Tanhuma Buber Genesis, p. 28, Leviticus, p. 53. Cf. Anthony Saldarini, *The Fathers According to Rabbi Nathan (Avot de Rabbi Nathan Version B)* (Leiden: Brill, 1975), 83 n. 10.

the last three decades to reappropriate, through redefinition and reinterpretation, areas of observance once reserved for women. Such efforts seek as much to link the experiences of contemporary women with that of our foremothers as to create a meaningful framework within which to celebrate the uniqueness of being a female member of the Covenant as women enter the mainstream of Jewish observance long barred to them. Some women have turned to the celebration of menses and immersion in the *mikveh* as a Jewish *Our Bodies Ourselves*, an affirmation of the wholeness of our bodies, created in God's image and functioning according to God's will, with the generative potential that enables us to be partners with God in creating life.⁸

Some Jewish women have also embraced *mikveh*, which traditionally served as a powerful symbol of transformation,⁹ as a symbol of healing and renewal. Women visit the *mikveh* to mark the renewed hope for pregnancy upon completing the first menstruation following a miscarriage. Some immerse to strengthen prayers for the ability to carry life in cases of infertility. Others seek holiness following rape or wholeness following a hysterectomy or a mastectomy. While all these situations are covered by the *gomel* prayer, recited upon recovering from illness, some women find that the public setting of the *gomel* prayer, recited following an *aliyah* to the Torah during services and in front of the congregation, seems too public for such a private grief. Instead, countless women have found profound comfort in immersing in the primordial waters of the *mikveh*, whose source comes directly from heaven.

There is another aspect of these laws that relate not only to the woman, but to a woman within the context of a loving and committed relationship. For millennia, the laws of *niddah* were seen as contributing to the stability and sanctity of a marriage. On one hand, a period of monthly abstinence transformed the marital relationship from one solely focused on sexual satisfaction to one

8 Grossman, "Feminism, Midrash, and *Mikveh*," 13 n. 2.

9 The use of the *mikveh* to symbolize transition and change of status is as ancient as its use to purify (a change of status from impurity to purity), e.g. m. Miqw. 8:1 ff., and for conversion (a change of status from non-Jewish to Jewish), e.g., b. Yev. 47a. For an interesting discussion of the significance of *mikveh* in conversion, cf. Michael Chernick, "*Mikveh*: A Medium for Change of Status," *Journal of Reform Judaism* 35 (Spring 1988): 61–64. As for the existence and use of the *mikveh* in antiquity, cf. *Encyclopedia Judaica* 11:1541–1544, s.v. "*Mikveh*." For an example of first-century *mikvaot*, cf. Yigael Yadin, *Masada: Herod's Fortress and the Zealots' Last Stand* (New York: Random House, 1966), 164–167. For more scholarly discussions, see Ronny Reich, "Archaeological Evidence of the Jewish Population at Hasmonean Gezer," *Israel Exploration Journal* 31, nos. 1–2 (1981): 48–52; his "The Hot Bath-house *Baleum*, the *Miqveh* and the Jewish Community in the Second Temple Period," *Journal of Jewish Studies* 39 (Spring 1988): 102–107; and Bryant Wood, "To Dip or Sprinkle: The Qumran Cisterns in Perspective," *American Schools of Oriental Research Bulletin* 256 (Fall 1984): 45–60.

founded upon intellectual and interpersonal companionship and compatibility. On the other, a period of monthly abstinence served to regularly rekindle the physical desire between a man and a woman that might otherwise become stale over the years. Sometimes it is what we cannot have that we most desire. Enforced separation and the concomitant setting aside of time for the resumption of sexual intimacy each month, something that may otherwise be ignored in modern times due to our busy lifestyles, ideally can help support the long term health of a marriage.

It is true that we are obligated to observe regardless of our ability to find compelling significance and meaning (*taamei mitzvot*). This is why, for some women, it is enough to observe the *niddah* laws simply because they are commanded to do so; *hilkhot niddah* are *mitzvot*, part of the received tradition of how we live as Jews in service to God.

In light of all of the above, and for all those seeking to make sense of how we relate to the Torah and its commandments, the Levitical laws relating to menstruation can offer a deep, meaningful and beautiful opportunity to sanctify our intimate relationships and express our profound appreciation for having been created in God's image.

Biblical and Talmudic Evolution

Let us begin our discussion with Leviticus 15. For the sake of brevity, I will cite only those verses dealing with the woman in a ritual state of impurity, though the chapter contains parallel verses for a man.

יט וְאִשָּׁה כִּי-תִהְיֶה זָבָה, דָּם יְהִיָּה זָבָה בְּבִשְׂרָה—שְׁבַעַת יָמִים תִּהְיֶה בְּנִדְתָּהּ, וְכָל-הַנִּגְעַ בָּהּ יִטְמָא עַד-הָעֶרֶב. כ וְכָל אֲשֶׁר תִּשְׁכַּב עִלְיָו בְּנִדְתָּהּ, יִטְמָא; וְכָל אֲשֶׁר-תִּשָּׁב עִלְיָו, יִטְמָא. כא וְכָל-הַנִּגְעַ, בְּמִשְׁכָּבָה—יִכָּבֵס בְּגָדָיו וְרַחֵץ בַּמַּיִם, וְיִטְמָא עַד-הָעֶרֶב. כב וְכָל-הַנִּגְעַ—בְּכָל-כְּלִי, אֲשֶׁר-תִּשָּׁב עִלְיָו: יִכָּבֵס בְּגָדָיו וְרַחֵץ בַּמַּיִם, וְיִטְמָא עַד-הָעֶרֶב. כג וְאִם עַל-הַמִּשְׁכָּב הוּא, אוּ עַל-הַכְּלִי אֲשֶׁר-הוּא יִשְׁבַת-עִלְיָו—בְּנִגְעוֹ-בוֹ: יִטְמָא, עַד-הָעֶרֶב. כד וְאִם שָׁכַב יִשְׁכַּב אִישׁ אֶתְּהָ, וְתִהְיֶה נִדְתָּהּ עִלְיָו—וְיִטְמָא, שְׁבַעַת יָמִים; וְכָל-הַמִּשְׁכָּב אֲשֶׁר-יִשְׁכַּב עִלְיָו, יִטְמָא. {ס} כה וְאִשָּׁה כִּי-יִזוּב זָוֵב דָּמָהּ יָמִים רַבִּים, בְּלֹא עֵת-נִדְתָּהּ, אוּ כִי-תִזוּב, עַל-נִדְתָּהּ: כָּל-יָמֵי זָוֵב טִמְאַתָּהּ, כִּימֵי נִדְתָּהּ תִּהְיֶה—טִמְאַתָּהּ הוּא. כו כָּל-הַמִּשְׁכָּב אֲשֶׁר-תִּשְׁכַּב עִלְיָו, כָּל-יָמֵי זָוֵבָה—כְּמִשְׁכָּב נִדְתָּהּ, יְהִי-לָהּ; וְכָל-הַכְּלִי, אֲשֶׁר תִּשָּׁב עִלְיָו—טִמְא יְהִי, כְּטִמְאַת נִדְתָּהּ. כז וְכָל-הַנִּגְעַ בָּסָ, יִטְמָא; וְכָבֵס בְּגָדָיו וְרַחֵץ בַּמַּיִם, וְיִטְמָא עַד-הָעֶרֶב. כח וְאִם-טָהְרָהּ, מִזֹּזָבָה—וְסִפְרָה לָהּ שְׁבַעַת יָמִים, וְאַחַר תִּטְהַר.

19 When a woman has a discharge, her discharge being blood from her body, seven days will she be in her infirmity and all who touch her will be impure until evening. 20 And anything she lies on during her infirmity will be impure and anything she sits on will be impure. 21 And anyone who

touches her bedding shall launder his clothing and wash in water and be impure until evening. 22 And anyone who touches any object on which she sat, shall launder his clothing and wash in water and be impure until evening. 23 And whether it was bedding or an object on which she sat, on touching it, he shall be impure until evening. 24 And if a man surely lies with her, her infirmity is communicated to him, and he shall be impure seven days and any bedding that he lies on will be impure. 25 And if a woman have an issue of her blood many days not in the time of her impurity, or if she have an issue beyond the time of her impurity; all the days of the issue of her uncleanness she shall be as in the days of her impurity: she is unclean. 26 Every bed whereon she lieth all the days of her issue shall be unto her as the bed of her impurity; and every thing whereon she sitteth shall be unclean, as the uncleanness of her impurity. 27 And whosoever toucheth those things shall be unclean, and shall wash his clothes, and bathe himself in water, and be unclean until the even. 28 But if she be cleansed of her issue, then she shall number to herself seven days, and after that she shall be clean.

Leviticus 15 deals with four types of individuals, grouped in two categories, who contract ritual impurity through a genital discharge: The *zav* and *zavah*, a man or woman who suffer an irregular genital discharge, on one hand, and the ejaculant and menstruant, the man and woman with normal genital flows, from semen and from menstruation, respectively, on the other.

The *zav* and *zavah* are required to wait seven days after the discharge ceases, immerse in *mayim hayim* (literally living water, such as a spring or river, now understood to be a *mikveh*, or ritual pool) and bring a sacrifice before being fit to reenter the sancta (the Tabernacle and later the Temple) as part of the worshiping community. While the phrase *כִּימֵי נִדְתָּהּ תִּהְיֶה* (as the days of her *niddah*) in verse 25 above could be read to imply that all the restrictions relating to the *niddah* should be applied to the *zavah*, including that of prohibiting sexual relations, the Torah does not specifically prohibit having sexual relations with a *zavah*, even though it specifically repeats all the other rules regarding contact with items that would have come in contact with the woman's blood flow, already delineated regarding the menstruant. Similarly, though the Torah in Leviticus specifies the severe punishment of *karet*¹⁰ for a man who lies with a menstruant,¹¹ it does not do so for a man who lies with a *zavah*.

10 *Karet*, literally being cut off, is understood to mean being excommunicated from the community or having one's life cut short prematurely by God.

11 Lev 18:19, 29.

The ejaculant (the man experiencing a seminal emission, referred to in later rabbinic literature as a *baal kerī*) is required to wait one full day and then wash (but not specifically in *mayim hayim*) before reentering the sacred precincts of the Tabernacle. If he has relations with a woman, she similarly takes on his ritual impurity and is required, like him, to wait until evening and bathe.¹²

The menstruant waits seven full days (presumably to allow for the conclusion of the menstrual flow). While the text does not specify that she must wash at the end of seven days, most commentators assume she is so required. This is consistent with the fact that, as with the other categories, the text requires someone who merely touches her linens, etc., to wash. However, immersion is not required by the *peshat* (the literal meaning) of the text. Physical contact with anyone experiencing a genital discharge is not otherwise restricted, except for touching anything in direct contact with their genital discharge (e.g., bedding, a saddle, clothes or through intimate relations). Such contact spreads the contagion of ritual purity which is to be subsequently purified as specified in the chapter depending on the category of ritual impurity.

The categories of the *zav* and *zavah* on one hand and the menstruant and ejaculant on the other represent only a few of the myriad of categories of impurity within the ritual purity system operative from the time of the Tabernacle until the destruction of the Second Jerusalem Temple in 70 CE by the Romans.

Much has been written about the purity and impurity system in the Torah and its significance.¹³ Some scholars have focused on the role of the purity system in social control, e.g. the control of sexuality.¹⁴ Others have suggested the mythic symbolism that the central sanctuary served as locus of activity for the perfect human being, who does not experience death. In such a construct, anyone who has a life leak, understood as anyone with a bodily discharge, would be barred from the sacrificial rites.¹⁵ (This is perhaps why a dead body is the most serious and powerful form of ritual impurity and the ritual for its purification the most complex.¹⁶ Judaism as a religion that sanctifies life, makes a distinction

12 Lev 15:16–18.

13 E.g., Tikva Frymer-Kensky, "Pollution, Purification and Purgation in Biblical Israel," *The Word of the Lord Shall Go Forth: Essays in Honor of David Noel Freedman*, ed. Carol Meyers (Winona Lake, IN: Eisenbrauns, 1983), 399–414; Jacob Neusner, *The Idea of Purity in Ancient Judaism* (Leiden: Brill, 1973); Milgrom, *Leviticus 1–16*.

14 E.g., Douglas, *Purity and Danger*, 114–158, cf. 41–57; Janice Delany et. al., *The Curse: A Cultural History of Menstruation* (New York: Dutton, 1976); Penelope Shuttle, *The Wise Wound: Eve's Curse and Everywoman* (New York: Marek, 1978).

15 E.g.: Rachel Adler, "Tumah and Taharah—Mikveh."

16 Num 19.

between life and death in removing death from its ritual center and ritual officiants. Even today, a priest, a *kohen*, is prohibited from participating in a funeral or entering a cemetery except for immediate family.)

Most, though not all, of the laws of ritual impurity fell into disuse with the destruction of the Temple by the Romans in 70 CE.

With the destruction of the Temple in 70 CE, sacrifices could no longer be brought. It was therefore no longer possible to prepare the ashes of the red heifer for the purification ceremony necessary to cleanse one from contact with the dead. A supply of ashes from the last red heifer, sacrificed before the destruction of the Temple, seems to have been available through part of the rabbinic period, since the cultic laws of ritual purity regarding sanctified food items remained in effect for a period of time after the Temple's destruction.¹⁷ Since then, no purification from contact with the dead has been available and therefore all Jews, from that time on, can be considered to fall within the category of *tumat met*, impurity from contact with the dead, which is a highly contagious form of impurity.¹⁸ Immersion not being a sufficient purification for *tumat met*, anyone who immersed, even in a *mikveh*, remained as impure, *tameh*, after immersion as before immersion.¹⁹

For all intents and purposes, therefore, the ritual purity system had been flattened so that all Jews were, and are, in the same state of ritual impurity regardless of any individual's physiological condition.

While the Mishnah still retains the laws referring to the ritual purity system, for example in *Seder Tohoroth*, the Talmud contains a *gemorah* on very few of them.²⁰ The abandonment of these categories of ritual impurity made sense

17 See for example, b. Nid. 6b. Cf. Mishneh Torah, Hilkhot Tumat Okhlim (The Laws of Impure Foods) 16:8–11. Joseph L. Blau suggests that, while some ashes of the Red Heifer (necessary for purification after contact with a corpse) remained available for a limited time following the destruction of the Temple, the many post first century rabbinic references to the ashes of the red heifer may reflect eschatological references to the restoration of the Temple. Joseph L. Blau, "The Red Heifer: A Biblical Purification Rite in Rabbinic Literature," *Numen* 14, no. 1 (1967), esp. 72–73.

18 The Beta-Israel community in Ethiopia retained the biblical purity laws, including that of the red heifer. See Emanuela Trevisan Semi, "The Beta Israel (Falashas): From Purity to Impurity," *Journal of Jewish Sociology* 27 (1985): 103–114. A note of appreciation to Shaye Cohen for pointing out this and several other sources cited in this *teshuvah*.

19 Similarly, the sacrifice to complete the period of *zavah* could also not be brought.

20 The notable exception in *Seder Tohorot* is Tractate Niddah. Other tractates may have been compiled for the Palestinian Talmud but are no longer extant. The Babylonian Talmud contains nine of the 11 tractates in *Kodashim*, none of which are extant in the Palestinian Talmud. Hermann L. Strack, *Introduction to the Talmud and Midrash* (New York: Atheneum, 1972), 66–67, 358. The only reference to Mishnah Zavim in the Talmud

within the context of the collapse of the purity system for want of a functioning sacred center in the Temple. In addition, the sacrifices necessary for the purification rituals of a number of impurity categories (such as for the *zav* and *zavah*) could no longer be brought.

Even so, vestiges of the purity system remained actively part of Jewish life for several centuries, though no longer centered around the Temple.²¹ The category of *zav*, for men who had a non-seminal genital emission, became operationally non-functional by the second century, as evidenced by the fact that *Mishnah Zavim* does not have a *gemorah*. (See also below for a discussion about how Rabbi Akiva effectively eliminated the application of the category).²² However, the rules for the ejaculant remained in effect longer, as men who had experienced a seminal emission were prohibited from engaging in words of Torah or reciting benedictions.²³ The Talmud offers a reason: so that the Sages would not behave like roosters, always seeking relations with their wives.²⁴ In this way the sexual purity laws served to provide religio-social control over the male sex drive.

As such, the rabbinic tradition regarding ejaculants became stricter than that required by the Torah. Such strictures are attributed to a *takanah* (an ordinance) by Ezra:

ותנאי בדעזרא קמיפלגי ונחזי עזרא היכי תקן אמר אביי עזרא תקן לבריא המרגיל מ' סאה ובריא לאונסו ט' קבין ואתו אמוראי ופליגי בחולה מר סבר חולה המרגיל כבריא המרגיל וחולה לאונסו כבריא לאונסו ומר סבר חולה המרגיל כבריא לאונסו וחולה לאונסו פטור מכלום אמר רבא נהי דתקן עזרא טבילה נתינה מי תקן והאמר מר עזרא תקן טבילה לבעלי קריין אלא אמר רבא עזרא תקן טבילה לבריא המרגיל מ' סאה ואתו רבנן והתקינו לבריא לאונסו ט' קבין ואתו אמוראי וקא מיפלגי בחולה מר סבר

(b. B. Meṣ. 105b, citing m. Zabim 3:1) does not refer to a *zav* at all. Rambam does include the *zav* in his comprehensive *Mishneh Torah, Hilkhoh Metamei Mishkav v'Moshav* (The Laws of Impurity Imparted By Those who Lie and Sit), see especially 5:1ff, although Karo, discussing *mitzvot* still operative, does not include a section on *zavim* in his *Shulḥan Arukh, Yoreh Deah*.

21 I will focus only upon the purity aspects relating to bodily emissions, rather than other expressions of the purity system, such as those relating to food and vessels.

22 m. Zabim 2:2. Cf. this discussion in Judith Hauptman, *Rereading the Rabbis* (Boulder, CO: Westview Press, 1998), 154–156.

23 Attributed to a *takanah* promulgated by Ezra, b. B. Qam. 82a–b.

24 b. Ber. 20b–22b; m. Ber. 3:4–6; t. Ber. 2:13, ed. Zuckerman; y. Ber. 3:4, 6c. See Shaye Cohen, “Purity and Piety: The Separation of Menstruants From the Sancta,” in *Daughters of the King: Women and the Synagogue*, ed. Susan Grossman and Rivka Haut (Philadelphia: Jewish Publication Society, 1992), 107 and 114 n. 8. Note that women, whether as *zavot* or menstruants, are not included in these restrictions and so would be permitted to engage in prayer and the study of the Torah and laws.

חולה המרגיל כבריא המרגיל וחולה לאונסו כבריא לאונסו ומר סבר לבריא המרגיל מ' סאה וחולה המרגיל כבריא לאונסו ט' קבין אבל לחולה לאונסו פטור מכלום אמר רבא הלכתא בריא המרגיל וחולה המרגיל ארבעים סאה ובריא לאונסו תשעה קבין אבל לחולה לאונסו פטור מכלום.

The dispute between all these Tannaim and Amoraim is as to the ordinance of Ezra. Let us see then what Ezra did ordain! Abaye said: Ezra ordained that a healthy man whose emission is voluntary must immerse in forty *se'ahs*, and a healthy man whose emission is involuntary must use nine *kabs*, and the Amoraim came and differed over the sick person. One held that a sick person whose emission is voluntary is on the same footing as a healthy person whose emission is voluntary, and a sick person whose emission is involuntary as a healthy person whose emission is involuntary; while the other held that a sick person whose emission is voluntary is on the same footing as a healthy person whose emission is involuntary and a sick person whose emission is involuntary requires nothing at all. Raba said: Granted that Ezra ordained immersion, did he ordain throwing? Has not a master said: Ezra ordained immersion for persons who have had a seminal emission? Rather, said Raba, Ezra ordained for a healthy person whose emission is voluntary forty *se'ahs*, and the Rabbis [after Ezra] came and ordained for a healthy person whose emission is involuntary nine *kabs* and the [Tannaim and] Amoraim came and differed with regard to a sick person, one holding that a sick person whose emission is voluntary is on the same footing as a healthy person whose emission is voluntary and a sick person whose emission is involuntary as a healthy person whose emission is involuntary, while the other held that a healthy person whose emission is voluntary requires forty *se'ahs* and a sick person whose emission is voluntary is on the same footing as a healthy person whose emission is involuntary and requires nine *kabs*, while a sick person whose emission is involuntary requires nothing at all. Raba said: The law is that a healthy person whose emission is voluntary and a sick person whose emission is voluntary require forty *se'ahs*, a healthy person whose emission is involuntary requires nine *kabs*, and a sick person whose emission is involuntary requires nothing at all.²⁵

Even though the restrictions on the ejaculant were derived from a *takanah*, these restrictions were already falling into disuse even among segments of the

²⁵ b. Ber. 22b.

rabbinic class in some Jewish communities during the Talmudic period.²⁶ By the time of Maimonides in the eleventh century, restrictions on the ejaculant had been generally abandoned.²⁷ Maimonides writes:

ועזרא ובית דינו תיקנו שלא יקרא בעל קרי לבדו משאר הטמאין, עד שיטבול; ולא פשטה תקנה זו בכל ישראל, ולא היה כוח ברוב הציבור לעמוד בה—לפיכך בטלה.

And Ezra and his Court ordained (*tikkenu*) that an ejaculant, in particular among those who are [categorized] as impure, not read [the Shema] until he immerses. But this ordinance (*takanah*) did not spread among Israel and the congregation [of Israel] did not have the strength to uphold it, therefore [the ordinance] was annulled.²⁸

Maimonides explains that the *takanah* was annulled for two reasons: because it did not become widespread among the people of Israel and because the majority of the *tzibbur* (the community of the observant) did not have the strength to maintain it.

The application of the commandments of Leviticus 15 regarding women, however, not only remained in force but were expanded over the centuries to broaden the social restrictions under which the menstruant, and by extension all women, functioned within Jewish society. (See the discussion below.)

One reasonable explanation for why Leviticus 15 remained in force for women at all is because it was linked to Leviticus 18:19, prohibiting sexual relations with a *niddah*.

Leviticus 18:19 reads: וְאֵל-אִשָּׁה, בְּנִדְתָּ טְמֵאָתָהּ—לֹא תִקְרַב, לְגִלּוֹת עֲרוֹתָהּ. “Do not come near a woman in her period of impurity to uncover her nakedness.”

So, for example, the mid-second century sage Rabbi Meir teaches:

ר”מ אומר מפני מה אמרה תורה נדה לשבעה מפני שרגיל בה וקץ בה אמרה תורה תהא טמאה שבעה ימים כדי שתהא חביבה על בעלה כשעת כניסתה לחופה.

26 y. Ber. 3:4, 6c records that Hanina (first generation *Amorah*) ridicules the sages of Israel as “morning bathers.” b. Ber. 22a records a tradition in the name of R. Zeira (third generation *Amorah*) that those in Israel had abolished immersion as a requirement for the *baal kerī*.

27 Except for those who preferred to be *maḥmir* (strict with themselves) and thus retain such strictures, as explained, for example, in *Taz* on Oḥ 88.

28 Mishneh Torah, Hilkhot Kriat Shema 4:8, Hilkhot Tefillah 4:4–6, Shulḥan Arukh, Oḥ 88, cf. Magen Avraham, on Oḥ 88, s.v. *veaḥar kach bitlu*, and Tur, Oḥ 88 Cf. Cohen, “Purity and Piety,” 103–115. Note also that immersion was not unanimously required. See R. Elliot Dorff in his *Rabbinic Letter on Intimate Relations for the Rabbinical Assembly*, p. 43, n.32.

Rabbi Meir used to say: Why did the Torah say (that the status of) *niddah* (lasts) seven days? Because (if) he (the husband) would become accustomed to her (his wife), he would loathe her, (therefore) the Torah made her impure for seven days so that she would be as beloved to her husband as at the moment she entered the *huppah*.²⁹

Rabbi Meir, clearly speaking to other men from the male perspective, argues that “absence makes the heart grow fonder,” suggesting that the Torah ordained a seven day period of abstention from relations with the menstruant because, if men could have their wives whenever they wanted them, they would develop a loathing for them.

While Rabbi Meir’s explanation is homiletic in nature, that the Torah ordained seven days of abstinence to enamor a woman to her husband, there is more than a homiletic message here (though see below for a discussion on the contemporary significance of supporting marital sanctity): relying upon the concepts that *ulfi darcheinu lamadnu* (and according to our practice it is deduced)³⁰ and *afilu sihat hulin shel talmidei hachamim tsericha limud* (even the casual conversation of Torah scholars demands study),³¹ we can safely posit that this teaching reflects Rabbi Meir’s position on the proper observance of the laws relating to the menstruant, namely that abstinence was required for seven days and seven days only.

It is important to note the halakhic implications of Rabbi Meir’s teaching here. Rabbi Meir assumes that the total time of separation between the husband and the wife is seven days (not 12 or 14). This means that he interprets the law as requiring abstinence for the seven days of the woman’s menstrual flow. He does not require any additional white days, clearly following the *peshat* of the Biblical verses of Leviticus cited above.³² In other words, the tannaitic practice was clearly that menstruants observed sexual abstinence only for the seven days, counted from the beginning of their menses.³³ This is supported by the fact that Rabbi later stringency assumes this earlier tannaitic practice.

29 b. Nid. 31b.

30 m. Sukkah 21.

31 b. Sukkah 21b.

32 b. Nid. 31b, cf. Rashi, ad. loc. Rabbi Meir seems to be assuming that women are only observing seven days of separation from the onset of their menstruation. The suggestion that he would assume abstinence during menstruation was a given by his male listeners and therefore only had to explain the extra seven days, seems less compelling. See Milgrom, “Comments,” 935. On Rabbi Meir speaking from the man’s point of view (i.e. the man’s interest in his wife), cf. Adler, “In Your Blood, Live,” 38–41.

33 Citing b. Nid. 69a., Hauptman, *Rereading the Rabbis*, 156, goes farther, arguing that all rab-

By the end of the second century, we see a different observance pattern possibly developing:

אמר רב יוסף אמר רב יהודה אמר רב התקין רבי בשדות ראתה יום אחד תשב ששה והוא שנים תשב ששה והן שלשה תשב שבעה נקיים אמר ר' זירא בנות ישראל החמירו על עצמן שאפילו רואות טפת דם כחרדל יושבות עליה שבעה נקיים.

R. Joseph, citing Rab Judah who had it from Rab, stated: Rabbi ordained at Sadoth: if a woman observed a discharge on one day she must wait six days in addition to it. If she observed discharges on two days she must wait six days in addition to these. If she observed a discharge on three days she must wait seven white days. R. Zeira stated: The daughters of Israel have imposed upon themselves the restriction that even if they observe a drop of blood of the size of a mustard seed they wait on account of it seven white days.³⁴

This ruling of Rabbi (Rabbi Judah Ha-Nasi, the editor of the Mishnah) is traditionally understood as conflating the restrictions on the menstruant with those of the *zavah*, so that a menstruant remained impure for seven additional days after the end of her bleeding just like a *zavah*.³⁵ Rashi, picking up on the mention of Sadoth, explains that it was because Sadoth was a community where the women were unable to distinguish between their *niddah* and *zavah* days.³⁶

By the fourth century, the Palestinian sage R. Zeira reports that *Banot Yisrael*, the daughters of Israel, took upon themselves the stricter category of *zavah* and

binic practice (not just tannaitic) was to require only seven days total for the menstruant.

34 b. Nid. 66a. As Rabbi Judy Hauptman notes, Rabbi's words are cryptic. According to Rashi (s.v. *shishah v'hu; shana'im*) Rabbi treats the blood of the first and second days as menstrual blood and only with the third day treats her as a *zavah* (Hauptman, *Rereading the Rabbis*, 157 ff.).

35 Hauptman, *Rereading the Rabbis*, 158, understands it differently: that Rabbi, and by extension Rabbi Zeira, are speaking only about *zavot*, not menstruants. Therefore, women took on the extra stringency not for their periods but only in case of intercycle staining.

36 Rashi, b. Nid. 66a, s.v. *sadoth*. Cf. Mishneh Torah, Hilkhot Issurei Biah 11:3, Magid Mishneh, ad loc. On the problems with the rabbinic efforts to establish a process for determining the days of *niddah* and *zavah* by counting cycles of 7 and 11 days, and the confusion such a system engendered since it is inconsistent with biological reality, see m. Nid. 4:4,7 and Meiri on b. Ber. 31a. The Shullhan Arukh is silent on the 7/11 counting system and instead relies on the fact that most women have a standard period (*veset*) by which they can distinguish between menstrual and *zavah* blood (Yoreh Deah, 183, 184).

extended it to whenever they saw a stain as small as that of a mustard seed.³⁷ In other words, the *takkanah* Rabbi promulgated for the conditions relevant for Sadoth remained in force because *Banot Yisrael* continued to observe it as their *minhag* (custom).³⁸ (See below for the halakhic implications of this for today.)

Women and the Ritual Purity System

While the restrictions on the menstruant may have remained in force largely because of their association with the prohibition of sexual relations with a menstruant, as delineated in Leviticus 18:19, the language and psychology of ritual purity and impurity that shaped these laws were carried over from their

37 b. Nid. 66a.

38 According to Rabbi Roth, in a private interview. In addition to whatever difficulty they may have had in distinguishing between different types of blood, these women may have had other reasons as well for supporting Rabbi's *takkanah*. The Biblical archaeologist and scholar Carol Meyers suggests that these women sought to free themselves from being dependent upon the male rabbis for an interpretation of a woman's monthly cycle. Carol Meyers, *Discovering Eve: Ancient Israelite Women in Context* (New York: Oxford University Press, 1988), 36–37. Their decision to extend the days of sexual abstinence may also have been an effort to affect a form of birth control. Ancient medical knowledge assumed a woman was most fecund immediately after menstruation. Cf., 2 Sam 11:2–5 (in which Bathsheva conceives with David shortly after washing, which the text explains as *mitkadeshet mitumatah*, sanctifying herself from her impurity). According to the historian Keith Hopkins, this knowledge was widely known and used as a form of birth control (as an ancient rhythm method) by women of many social stations in the Roman world. Cf. Keith Hopkins, "Contraception in the Roman Empire," *Comparative Studies in Society and History* 8 (1965–1966): 124–151, esp. 140 and n. 47. (My appreciation to Seth Schwartz for familiarizing me with this source and to David Kraemer for suggesting this subject.) Cf. Mishneh Torah, Hilkhot Issurei Biah 11:15, in which Rambam applies the harsh term *apikorsot* (apostates) to parturients who refuse to have relations with their husbands for the entire biblically proscribed purification period (probably to allow themselves to heal). Other scholars, most notably Saul Lieberman in such works as *Greek in Jewish Palestine: Studies in the Life and Manners of Jewish Palestine in the 11–IV Centuries C.E.* (New York: Jewish Theological Seminary, 1942), have demonstrated the level of familiarity and integration of Roman knowledge and culture in the Palestinian Jewish community of which these women would have been part. It is perhaps not unreasonable to suggest that the daughters of Israel sought to reduce their chances of becoming pregnant by extending the time for which they would not engage in sexual relations and thereby missing what they thought to be their most fertile time of month. It is important to remember that, until modern times, many women died in child birth. (Of course, for many women today, ovulation occurs right at the end of the extra seven "white" day period of abstinence. Nevertheless, the concern for infertility has generated much discussion on how to help women whose ovulation occurs during the seven white days. See full discussion on infertility below.) Either way, one could posit the desire by *Banot Yisrael* to exert control over their own bodies even in a man's world.

cultic setting in Leviticus 15. This may have been part of a larger trend reflecting the rabbis' growing concern with ritual purity in the home, in general, as expressed through washing of the hands before eating and other observances.³⁹ We also begin to see restrictions on the menstruant carried over to sacred ritual. This is not surprising since the identification of a *niddah*, menstruant, as one defiled and a source of defilement, is an ancient one. Although not present in Leviticus as a negative value, the term *niddah* already appears as a negative symbolic motif as early as the work of the sixth-century B.C.E. prophet Ezekiel.⁴⁰ By the end of the Rabbinic period, a text called *Baraita de Niddah*, which scholars posit comes from sixth or seventh century Palestine, seeks to revive the purity and impurity system by extending it to all areas of religious life in the home and synagogue. The text places restrictions on ejaculants and prohibits menstruants from preparing food for their families as well as from reciting prayers, touching a prayer book or Torah Scroll, or entering a synagogue.⁴¹

While restrictions regarding ejaculants do not become widespread, the restrictions regarding menstruants spread throughout the women's communities of Europe, often feeding superstition. So, for example, no less eminent a scholar than Naḥmanides, commenting on Genesis 31:35 (where Rachel explains she cannot rise because the way of women is upon her), writes:

והנכון בעיני כי היו הנדות בימי הקדמונים מרוחקות מאד, כי כן שמן מעולם "נדות" לריחוקן, כי לא יתקרבו אל אדם ולא ידברו בו כי ידעו הקדמונים בחמתם שהבלן מזיק,

39 t. Šabb. 1:14 seems to indicate that the rabbinic class prohibited eating with a menstruant to maintain the cultic purity of the table, cf. Saul Lieberman, *Tosefta Kephshuta Shabbat*. 12–13, lines 33,34 (Jerusalem: Jewish Theological Seminary, 1992) and *Avot de Rabbi Natan* A ch. 2, Schechter, pp. 8–9, in which the menstruant is not permitted to eat with her husband. There is some discussion about whether women lived separately during their menses, cf. m. Nid. 7:4, on a house of isolation and Rashi, b. Nid. 56b, s.v. *Beit Tuma'ot*; Roš Haš 26a, in which R. Akiva reports that in the Roman area of Gaul they call the *niddah* a *galmuda*, segregated, Cf. AdRNB ch. 42 Schechter p. 117, saying that the menstruant is driven from her home (*grushah mbeitah*). Cf. Milgrom, "Comments," 949; and Susan Grossman and Rivka Haut, "From Persia to New York: An Interview with Three Generations of Iranian Women," in Grossman and Haut, *Daughters of the King*, 220. Archaeologist Avraham Faust suggests, based on excavations of a Biblical period Israelite four room house, that menstruants were separated for purity reasons within the home during the Iron Age. See his article, "Purity and Impurity in the Iron Age," *BAR* 45, no. 2 (March/April 2019): 36–43, 60, 62.

40 Ezek 36:17, 25.

41 Yedidyah Dinari, "The Violation of the Sacred by the Niddah and the Enactment of Ezra" [in Hebrew], *Teuda* 3 (1983): 17–37; and "The Customs of the Impurity of the Niddah" [in Hebrew], *Tarbiz* 49 (1979–1980): 302–324; Cohen, "Purity and Piety."

גם מבטן מוליד גנאי ועושה רושם רע כאשר בארו הפילוסופים, עוד אני עתיד להזכיר נסיונם בזה (ויקרא יח יט), והיו יושבות בדד באהל לא יכנס בו אדם, וכמו שהזכירו רבותינו בברייתא של מסכת נדה, תלמיד אסור לשאול בשלמה של נדה, רבי נתמיה אומר אפילו הדבור היוצא מפיה הוא טמא, אמר רבי יוחנן אסור לאדם להלך אחר הנדה ולדרוס את עפרה שהוא טמא כמת כך עפרה של נדה טמא, ואסור ליהנות ממעשה ידיה.

The correct interpretation appears to me to be that in ancient days, menstruants kept very isolated, for they were ever referred to as *niddot* on account of their isolation since they did not approach people and did not speak with them. For the ancients in their wisdom knew that their breath is harmful, their gaze is detrimental and makes a bad impression, as the philosophers have explained. I will yet mention their experiences in this matter. And the menstruants dwelled isolated in tents where no one entered, just as our Rabbis mentioned in the *Beraitha of the Tractate Niddah*: “A learned man is forbidden to greet a menstruant.” Rabbi Nechemyah says, “Even the utterance of her mouth is unclean.” Said Rabbi Yochanan: “One is forbidden to walk after a menstruant and tread in her footsteps, which are as unclean as a corpse; so is the dust upon which the menstruant stepped unclean, and it is forbidden to derive any benefit from her work.”⁴²

42 *Ramban, Commentary on the Torah: Genesis*, trans. Charles B. Chavel (New York: Shilo, 1971), 387–388. Milgrom, “Comments,” 936–937, notes that this isolation was in contradistinction to the tendency of the Torah to minimize the impurity of the menstruant, limiting such impurity to the items that may have been touched by her menstrual flow, i.e. those things she sat upon, as opposed to her touch or her breath, as held in other Ancient Near Eastern cultures.

Little is known about *Beraitha de Niddah* (ed. Chaim M. Horowitz, *Tosefta Atiqata*, 1889). Scholars generally agree to its Palestinian origin around the geonic period (c. 1000 C.E.). Milgrom, “Comments,” 948, notes that restrictions on the involvement of the menstruant in household chores contradicts BT Ket. 61a. Nevertheless, ethnographic studies indicate that in Persia, Jewish women refrained from touching family food or dishes during their menses; see Susan Grossman and Rivka Haut, “From Persia to New York: An Interview with Three Generations of Iranian Women,” trans. Parvin Khoubian, in Grossman and Haut, *Daughters of the King*, 219–220. The eldest informant spoke about being treated as “a dead mouse,” isolated in the corner of her house during her menses.

There are some indications that women were isolated during their menses even before and during the rabbinic period: Josephus writes that menstruants were secluded until the seventh day. Josephus seems to equate these days with the days of isolation observed by the leper and the one having contact with a corpse, which might imply the same seven days following cessation of contact with the impurity (*Ant.* 3.11.3; Loeb, 261). t. Šabb. 1:14 seems to indicate that the rabbinic class prohibited eating with a menstruant to maintain the cultic purity of the table, cf. Saul Lieberman, *Tosefta Kpeshuta* (Jerusalem: Jewish

By the sixteenth century, the major Ashkenazic authority, the Rema, Rabbi Moses Isserles, while acknowledging that such traditions have no basis in Jewish law, encourages women to refrain from touching a Torah scroll, entering a synagogue, touching a prayer book, or reciting prayers.⁴³ Traditional communities of Iranian women, for example, also observed the severe restrictions of the *Baraita de Niddah* until their Westernization through modern urbanization and immigration.⁴⁴

Interestingly, all the classical commentators and codifiers who mention these traditions note that such observances are not grounded in Jewish law but are “women’s traditions.”⁴⁵

Regardless of the reason, the extension of the original Toraitic exclusion of menstruants from the sancta (of Tabernacle and then Temple) effectively excluded women from public synagogue life. Despite a fine article by the Orthodox Rabbi Avi Weiss explaining why women cannot defile a Torah,⁴⁶ many Orthodox synagogues today still refuse to allow women to touch the Torah scroll.

Vestiges of this tradition can even be found today in the folk piety of women in Conservative congregations who still refuse to touch a Torah scroll either

Theological Seminary, 1992), 12, lines 33–34; and *Avot de Rabbi Natan A* ch. 2, Schechter, pp. 8–9, in which the menstruant is not permitted to eat with husband; m. Nid. 7:4, on a house of isolation, cf. Rashi, b. Nid. 56b, s.v. *Beit Tuma’ot*, b. Roš Haš. 26a, in which R. Akiva reports that in the Roman area of Gaul they call the *niddah* a *galmuda*, segregated, Cf. *AdRNB* ch. 42 Schechter p. 117, saying that the menstruant is driven from her home (*grushah mbeitah*). Cf. Milgrom, “Comments,” 949.

In Ethiopia, Jewish menstruants and parturients were also segregated in a menstrual hut, during which time all their household duties are taken care of by other women in their family. Ethiopian immigrants to Israel complain of how difficult it is, for example, to have a new child on one’s own and not have the community support to allow the mother to rest and recover during her period of isolation. Cf. Emanuela Trevisan Semi, “The Beta Israel (Falashas): From Purity to Impurity,” *Journal of Jewish Sociology* 27 (1985): 103–114.

43 Rema to Shulḥan Arukh, Oḥ 88. For a complete discussion, see Shaye Cohen, “Purity and Piety,” 103–115.

44 Grossman and Haut, “From Persia to New York,” 219–220.

45 The historian Shaye Cohen has posited that women initiated and spread these traditions as a way to express their piety. Excluded from meaningful involvement in synagogue services or communal leadership, women grasped those aspects of observance within their power: protecting or defiling the sanctity of the synagogue and its most sacred object, the Torah. See Cohen, “Purity and Piety.”

46 Avraham Weiss, “Women and *Sifrei Torah*,” *Tradition* 20, no. 2 (Summer, 1982), 106–118. His defense is based upon the idea that a Torah cannot contract ritual impurity. He still assumes that menstruants are ritually impure.

all the time or during their periods. Over the last few decades, several questions have been directed to the Committee on Jewish Law and Standards asking whether menstruants can lead prayer services or read from the Torah Scroll. The response has been, and should continue to be, that there is no basis in *halakhah*, Jewish law, for restricting a menstruant's involvement in the synagogue or any religious role or function.

As we have seen, there is no *halakhic* basis for restricting a menstruant from public or private prayer, from serving as *shlihat tzibor* (prayer leader) or as *baalat korei* (Torah reader), from access to the synagogue, or from touching a *Sefer Torah* or other scrolls or holy books.⁴⁷ Conservative congregations would be wise to ignore such customs restricting menstruants because they were never based on *halakhah* and certainly do not reflect contemporary sensitivities among observant Conservative Jews nor general society, which no longer considers a menstruant a potentially dangerous force or contaminant.

Implications for Contemporary Practice and Halakhic Application

Jewish observance seems to have gone far a field from Leviticus' original, almost egalitarian formulation that the anthropologist Mary Douglas points out is so "meticulously balanced between the sexes."⁴⁸ As others have pointed out, the Torah establishes a clear parallel between men and women in this *parsha*, grouping them into two categories: people with irregular genital discharges and people with regular (healthy) genital discharges.⁴⁹ Male and female are treated

47 See, Cohen, "Purity and Piety"; and on touching a *sefer Torah*, Weiss, "Women and *Sifrei Torah*."

48 In *Reading Leviticus: A Conversation with Mary Douglas*, ed. John F.A. Sawyer (Sheffield: Sheffield Academic Press, 1996), 139. Similarly, the Biblical scholar Jacob Milgrom points out that the Torah includes no prohibition barring the menstruant from touching anyone, which signifies that her hands do not transmit contagion. See his commentary, *Leviticus* 1–16, 936.

49 Kraemer, "A Developmental Perspective," 33; and Mary Douglas, in *Reading Leviticus*, 139. The seven days ascribed to the impurity of the woman's *niddah* (meaning literally flow) in Lev 15:19 are understood by David Kraemer and others to be counted beginning with the first day of the woman's menses and constituting the full number of days of the woman's impurity. He argues that limiting to seven days the total number of days a menstruant refrained from sexual activity would more accurately reflect the original intent of the text here ("A Developmental Perspective," 27). Cf. Lev 12:2 ff., regarding the parturient. It is important to note, however, that whenever the Torah mentions seven days in relation to a category of impurity, such a time period refers to the period of purification following cessation of the condition which caused the impurity, for example, following contact with a corpse (Num 19:11), purification of an individual suffering from *tzara'at*, a scaly afflic-

alike in all aspects of these laws, except for the seven days allotted to the menstruant, though not to the ejaculant, necessary to distinguish between a normal and irregular discharge. (Parturients are dealt with in Lev 12.)

As we saw above, in the tannaitic period, Rabbi Meir held that only a total of seven days sexual abstinence is required for a menstruant, i.e., for Rabbi Meir, no extra seven white days were required.⁵⁰ Rabbi's *takanah* also assumes such a tannaitic practice.

This same practice has been the recommended practice (*halakhah l'maaseh*) for several generations of rabbinical students, and upon ordination, their congregants, as guided by the instruction of Rabbi Joel Roth, a teacher of great piety and one of the preeminent halakhicists of our Movement.

Rabbi Roth comes to his decision based upon the following application of rabbinic law:⁵¹ It is clear that the two categories of *niddah* and *zavah* are distinguishable according to the Torah. While the classical position of Jewish tradition has ignored the distinction in practice, particularly regarding counting an additional seven white days following menstruation, the majority of the *Rishonim* (excluding Maimonides) do recognize that the distinctions between *niddah* and *zavah* are not so complex as to be undeterminable. The fact that Rabbi decreed the *takanah* at Sadot presents the *takanah* as conditional upon the situation at Sadot, which Rashi understands as the incapability of the women there to distinguish between their menstrual and *zivah* blood. According to Rabbi Roth, the reference to the town of Sadot in this *baraita*, comes to teach us that Rabbi made his decision particularly for the conditions that were operative for the women of the community of Sadot at that time, specifically that they could not distinguish between their menstrual days and their days of *zivah*, and not for all women for all time. (This is supported by Rashi, as cited

tion of the skin erroneously identified in the New Jewish Publication Society translation as leprosy (Lev 14:8), and ending the period of impurity for a *zav* and a *zavah* (Lev 15:13, 25–30). On the translation of *tzara'at* as leprosy, see Milgrom, *Leviticus 1–16*, esp. 823–824. The man who has had relations with a menstruant takes on her impurity and remains unclean for seven days following contact with her (Lev 15:24). Ethiopian Jewish practice, which was unaware of rabbinic tradition, also holds that the seven days of the menstruant in Lev 15:19 are the white days of purification following cessation of the flow. A.Z. Eshkoli, "Halakha and Customs among the Falasha Jews in Light of Rabbinic and Karaite Halakha" [in Hebrew], *Tarbiz* 7 (1936): 121–125. See the discussion in Milgrom, *Leviticus 1–16*, 269, 935. However, the concern for the seven white days is eliminated if we are no longer concerned about the ritual purification for which seven white days was required since the destruction of the Temple and the suspension of the sacrificial system.

50 b. Nid. 31b, discussed above.

51 Based upon a private interview with Rabbi Roth and the video lectures he made for the Student Life Office of Jewish Theological Seminary. Any errors are my own.

above.) In other words, the *takkanah* was *beSadoth*, regarding Sadoth, for those women and not our women.

Citing Rabbi Zeira, who credits *Banot Yisrael* with extending the *humra* (the stricture) conflating *niddah* and *zavah*, Rabbi Roth further argues that the continued conflation of these two categories is a tradition, created by the women, and is not a mandate of law. Precedents exist to stop observing traditions, even strictures however widely observed, which are not grounded in a legal requirement but rather in a mistaken assumption that the custom in question is a legal requirement (rather than a law).⁵² That is the situation here.

Rabbi Roth writes:

This possibility, in turn, raises again the question of the status of customs that are popularly, although mistakenly, thought to be law rather than custom. The Rosh addresses this question too. He writes:

Matters concerning which it is known that they are observed customarily as forbidden because the people wish to be more strict with themselves, you may not declare permitted before them. But if their customary behavior is based upon an error, namely, that they believe that the behavior is actually forbidden when, in fact, it is permitted, you may permit it before them ... Similarly, too, a man whose customary behavior forbids something that is permitted, as a fence or a self-imposed restriction (*perishut*), no sage ought to declare the act permitted to him. But a sage may permit it to him if he expresses regret (*lehat-tir lahem ha-haratah*). [i.e., declares that he regrets having accepted the custom upon himself, and wished to be released from its observance].⁵³

By this reasoning, even though Rabbi Zeira knew that the women of his time were in error in choosing to be strict with themselves (i.e. that they were not, in fact, fulfilling an obligation since Rabbi's *takanah* was only for Sadoth), he would not have declared what they were doing in error because the women themselves were making the decision to be strict with themselves. However, where the observance is in error (that it is custom and not law) and particularly where the individual regrets the custom, the Sage can make permissible what had otherwise been forbidden.

52 This material is available on a tape that Rabbi Roth created for the students of Jewish Theological Seminary. Rabbi Roth concedes that most later *poskim* would assume the requirement for seven clean or white days as mandate of law, though it is not.

53 Joel Roth, citing Piskei Rosh Pesahim 4:3, in *The Halakhic Process: A Systematic Analysis* (New York: Jewish Theological Seminary, 1986), 219.

According to Rabbi Roth, this is the situation in which we find ourselves today: the continued conflation of *niddah* and *zavah* was in error (in that it is custom and not law) and the majority of observant Conservative women of our time regret the custom of conflating *niddah* and *zavah* (in requiring seven white days for both) and wish to be released from the strictures of its observance. According to the Rosh, they can be so released and what was prohibited (in error) can now be permitted.

We always must be wary of seeking the lowest common denominator of observance and thereby doing damage to the integrity of Jewish tradition and our covenantal responsibilities. That is not the case here. It is true that the majority of observant in our communities found the additional restrictions of Rabbi's *takanah* so onerous that observance of the *niddah* laws, even the biblical or tannaitic prohibition of relations for the seven days of menses followed by immersion, was largely ignored by them for decades. However, largely as a result of Rabbi Roth's ruling that makes these laws sustainable in our community, observance of the *niddah* laws has grown exponentially among the observant of our Movement. Rabbi Roth's ruling does so not by annulling the law but by re-establishing its precedence over *minhag*.

My own random sampling of colleagues and observant Conservative women has shown that the majority of observant Conservative women who take seriously the sense of being obligated to Torah and *mitzvot*, observe *mikveh* today without the seven extra white days and would object to having to keep an additional seven white days.

Contemporary Conservative women prefer keeping this original tannaitic proscription for many diverse reasons. One reason may be the reality of contemporary society that makes it very difficult for couples to spend time together. An unprecedented number of our congregants are on the road each week traveling for work. When added to obligations for night meetings (for work or community service) plus child care and other responsibilities, couples today find it difficult to attend to the intimate aspects of their lives that is such an important part of a healthy marriage. (This may be one factor in the rising number of divorces, though such a discussion is beyond the scope of this paper.) Under such conditions, the difference between keeping seven or 12 (or more) days of abstinence can make the difference between whether the couple can or cannot have relations that month and whether they will even both try to observe these timeless laws of sexual sanctity.

It must be remembered that, unlike women taking on shofar blowing or *omer* counting, the extension of *niddah* into a *zavah* was a *minhag* and a *humra*, rather than the embracing of a *hiyuv*, a religious obligation. We therefore find

ourselves with a community of women, and the men with whom they are united, among our most observant members, who “regret” having to be obligated to observe the extra restrictions placed upon them by the application of a *takanah* by Rabbi, which was promulgated not for us, but for a particular community of women. In such a situation, there is ample rabbinic precedent to allow women to return to the original tannaitic practice of observing only seven days of abstinence beginning with the first day of their menses, and no longer requiring the addition of seven white days following the cessation of blood.

Those who would prefer to continue to observe seven white days may certainly do so. However, the majority of contemporary Conservative women will be able to fulfill the commandment of *niddah* by the requirement of abstinence a total of seven days beginning with the first day of their menses.

Up until this point we have specifically been discussing the rules of *dam niddah*, a woman’s menstrual period. What of *dam zivah*, blood which appears outside a woman’s regular period, also referred to as mid-cycle staining?

Traditional observance required that a woman who had seen a stain (*zavah ketanah*) wait from day to day, to see if she would stain again, in the meantime refraining from sexual relations. If she stained three days in a row, she “officially” became a *zavah* (*zavah gedolah*) which required that sexual relations not be resumed until seven white days were observed after staining stopped (determined by *bedikah*, internal checking for blood in the vaginal cavity) and immersion was performed in the *mikveh*.

As we have shown above, the categories of *zavah* and *niddah* are distinguishable. *Doraita*, a menstruant and her husband are explicitly prohibited from sexual relations for seven days. This is a commandment independent of the purity system of the Temple and equally obligatory upon the husband and wife today. *Zavah* is a different situation, however. As discussed above, the Torah does not explicitly prohibit sexual relations with a *zavah*.

Once we disentangle the laws and observance of *niddah* from *zavah*, *zavah* can be seen on its own terms.

We have seen, above, that the ritual purity concerns regarding men’s genital emissions for a *zav* became effectively inoperative fairly early, as evidenced by the lack of a gemorah on it. This is not surprising since much of the purity system collapsed with the destruction of the Temple. As with the *baal keri*, we cannot reconstruct the exact moment that the laws of *zav* became effectively inoperative. However, we do have a tannaitic source that indicates one of the ways the category of *zav* began to be inoperative:

בשבעה דרכים, בודקין את הזב עד שלא נזקק לזיבה—במאכל, ובמשתה, במשא, ובקפיצה, בחולי, במראה, ובהרהור. היררהר עד שלא ראה, או ראה עד שלא היררהר; רבי יהודה אומר, אפילו ראה בהמה וחיה ועוף מתעסקין זה עם זה, אפילו ראה בגדי צבע האישה. רבי עקיבה אומר, אכל כל מאכל, בין רע בין יפה; ושתה כל משקין. אמרו לו, אין כאן זבים, מעתה. אמר להם, אין אחריות זבים עליכם ...

Along seven lines is a *zav* examined as long as he had not entered the bounds of *zivah*: as to his food, drink, what he had borne, whether he had jumped, whether he had been ill, what he had seen, or whether he had impure reflections before he saw or whether he had seen (a woman) prior to his reflections. Rabbi Judah adds: even if he had watched beasts, wild animals or birds having relations with each other, even if he had seen a woman's colored undergarments. R. Akiva says, even if he had eaten any (kind of) food, good or bad, or had drunk any liquid, They said to him, (according to your view) there would henceforth be no *zavim* in the world. He replied to them: you are not responsible for the existence of *zavim* ...⁵⁴

The Mishnah challenges Rabbi Akiva on this point, noting that he had effectively made it impossible to consider any man a *zav* from this point on. He replies that there is no requirement (any longer) that there be *zavim*.⁵⁵

For Rabbi Akiva, the essential fact in determining *zav* was no longer just the source of the genital emission but also the cause. Thus Rabbi Akiva, while not annulling the law, made it inoperative. Rabbi Akiva defined such a broad variety of sources that would render an emission permissible, that they could essentially be universally applicable, thereby effectively rendering any man suffering a flux fit rather than a *zav*.

Something similar can be applied to the category of *zavah* for woman, particularly when there are mitigating circumstances. The most compelling of these mitigating conditions relates to issues of infertility treatment in the Jewish community.

54 m. Zabim 2:2.

55 m. Zabim 2:2; *Tiferet Yisrael* on m. Zabim 2:2, n. 15. Rambam on m. Zabim 2:2 notes that the halakhah does not follow Rabbi Akiva (or Rabbi Judah) here. However, within a few generations, no one was considered a *zav* any longer. It is interesting that Rabbi Akiva held his position, that one does not need *zavim*, even though he sided with those who sought Jewish independence and presumably the reconstruction of the Temple.

Infertility and Dam Zivah

For many reasons outside the scope of this discussion, there is an increased problem of infertility in the Jewish community. More and more couples face great heartbreak in trying to fulfill the *mitzvah* of *peru urvu* (be fruitful and multiply) while trying to be observant of Judaism's traditional understanding of the laws surrounding marital sanctity.⁵⁶

Some women struggling with infertility find that they are most fertile during the seven white days following the cessation of their menses, making conception impossible for those following the traditional observance of *niddah* which requires sexual abstinence during the seven white days. For those, this *teshuvah* will help by eliminating the need for the white days following regular menstrual flow, allowing sexual relations to resume on the eighth day.

For others, opportunities for conception are restricted by mid-cycle staining.

Orthodox *poskim* are not unsympathetic to the plight of Jewish infertility. They suggest many ways around considering mid-cycle staining sufficient to require sexual abstinence.⁵⁷

Women are advised to wear colored underwear so the stain is not visible or considered of sufficient color to be considered *dam zivah*, blood qualifying her as a *zavah*. Some *posekim* ignore any stain on a garment, and only count fresh blood, for example on a part of the body. Without commenting on the philosophical implications of such a solution, such a strategy is not efficacious for women who find fresh blood, on their skin, etc. that traditionally would qualify as *dam zivah*.

Women who experience mid-cycle staining during ovulation can also resort to chemical therapies. However, such medications present possible long-term health dangers to women who sometimes must take these drugs for several years.

Doctors often turn first to clomiphene (also known as Clomid) to treat mid-cycle staining. This is the same drug used in infertility treatments and is contraindicated where liver disease, ovarian cysts, or a history of ovarian cancer is present. Side effects are generally minor but can include nausea and vomiting along with severe abdominal pain; pelvic pain or bloating; sudden shortness of breath; changes in vision, blurred vision, seeing double, and eye sensitivity to bright light. Clomiphene can also actually reduce mucus, thereby reducing the chances for fertility. A small minority of women may experience more severe

56 See Michael Gold, "Mikveh as a Fertility Problem," in his *And Hannah Wept: Infertility, Adoption and the Jewish Couple* (Philadelphia: Jewish Publication Society, 1988), 94–100.

57 On counting the seven white days in cases of infertility and other leniencies, see Avrohom Blumenkrantz, *Gefen Porioh: The Laws of Niddah* (Far Rockaway, NY, 1984), 26 ff.

side effects such as ovarian hyperstimulation which generally disappears without treatment but, without proper monitoring, can become dangerous. Potential complications include kidney problems, liver problems, fluid collection in the lungs and stomach, or twisting of the ovaries.

We are commanded, *vchai bahem* (“And you shall live by them”),⁵⁸ protecting life and health), a *mitzvah* that overrides all others but three.⁵⁹ Protecting life overrides other *mitzvot* even in a case of doubt.⁶⁰ As discussed above, when other solutions fail them, observant women who experience staining at ovulation often must resort to chemical treatments that may bring long term complications and health risks. In such a situation, the commandment to protect one’s health, *vchai bahem*, should take precedence over the restrictions of *zavah*. Thus, women who have mid-cycle staining no longer need to undergo the pain and, for some, the danger, of manipulating their cycles to merely to avoid mid-cycle spotting.

For other women, the infertility treatments themselves cause staining in a way that would traditionally qualify the woman as a *zavah*, ironically making conception impossible because intercourse would be prohibited. Such couples are often counseled to utilize artificial insemination, which can be costly financially and emotionally, putting an additional terrible strain on the marriage.

Pru urvu (“Be fruitful and multiply”)⁶¹ is so compelling that, even though women are exempt from this *mitzvah*,⁶² the Rabbis allowed a husband to be

58 Lev 18:5.

59 Cf. Sanh. 74a (outlining the exceptions for murder, sexual violence, and idolatry).

60 t. Šabb. 15:17 (setting the *grundnorm* allowing the overriding of other *mitzvot* to save a life, even in a case of doubt.) See the discussion in Roth, *The Halakhic Process*, 183–185. Roth cites the Radbaz who writes: “You asked of me that I inform you regarding one for whom the evaluation was made that (saving his life) required the violation of the Sabbath; yet he does not wish that the Sabbath be desecrated on his account because of piety. Does his wish reflect piety, in which case, it should be honored, or should it not be honored? Response: Indeed, such a one is a foolish Hasid (*hasid shoteh*) and the Lord will requite his own blood from him for the Torah said, ‘And live by them.’ Not die by them.” (Responsa of Radbaz, pt. 2, no. 139.)

61 Gen 1:28.

62 m. Yebam. 6:6. Jewish law traditionally exempts women from the obligation of *peru urvu*: m. Yebam. 6:6; Shulḥan Arukh, Eben Haezer 1; Elliot Dorff, “Artificial Insemination, Egg Donation, and Adoption” (CJLS, 1994), 2–6; David Feldman, *Marital Relations, Birth Control, and Abortion in Jewish Law* (New York: Schocken, 1978), 46–59. This is because pregnancy endangers her life and one is not obligated to endanger oneself. Such an exemption strengthens the woman’s right to protect her health over that of a fetus that endangers her. However, the Talmud recognizes the permissibility to ease halakhic restrictions to enable women to conceive, e.g. b. Yebam. 65b, in which a woman initiates and is granted a divorce with her *ketubah* because she wants children and cannot them with her husband.

forced to divorce his barren wife at her request.⁶³ The impact of infertility on the larger Jewish community, let alone the agony experienced by the individuals involved, has always found sympathy within rabbinic jurisprudence. For those women, for whom medical intervention does not effectively stop ovulatory staining, they have no redress: The woman is faced with the terrible dilemma of whether to abandon her commitment to Jewish law and observance to try to conceive even if staining.⁶⁴

There is a larger issue as well. While Jewish fertility is down today for a wide variety of reasons beyond the scope of our discussion, one significant component is the rising infertility crisis among married Jewish women. If ever we, as a Movement, have talked about easing restrictions for reasons of timely need, *sh'at hadhak*,⁶⁵ the infertility crisis in the Jewish community today should certainly be among the most compelling, particularly where we are not talking about compromising a biblical injunction, but rather permitting the release from a rabbinic stringency.

Rabbi Akiva can provide the precedent to allow us to permit sexual relations when a woman is experiencing mid-cycle staining. How? Rather than determining if someone was a *zav* based on the source or nature of a man's genital emission, Rabbi Akiva looked to its cause. He identified causes that were common and therefore could be widely applied so as to effectively include all men, thereby effectively eliminating the instance of *zav* even though Rabbi Akiva did not eliminate the theoretical category of *zav*. The same can apply here, particularly since *zav* and *zavah* are analogous biblical and rabbinic categories, which we can see now that *zavah* has been separated from the separate commandment of *niddah*. Where the cause of a woman's staining could be the result of diet, medical treatment, physical exertion, or illness, any emission would be considered permissible, and the woman would not become a *zavah*.

63 Yebam. 65b. For a fuller discussion, see Hauptman, *Rereading the Rabbi*, 130–146.

64 Rabbi Michael Gold presents a similar dilemma in his book on infertility.

65 See, for example, b. Šabb. 45a (regarding moving the Hanukkah lights); Nid 6a–b, although there is some debate about the efficacy of his ruling in the gemorah, Rabbi Eliezer relies on *shat hadakah* to rule leniently regarding ritual purity, cf. b. Nid. 9b. These two sources also make clear that the restrictions on the menstruant and *zavah* were firmly rooted within the larger rabbinic approach to the purity rules they imported from the Temple to the homes of the rabbinic class in Palestine concurrent with and following the destruction of the Temple. The farther removed from the Temple, generally fewer were the purity laws observed.

Effectively, since diet is certainly applicable to all women, therefore, a woman who experiences staining at a time other than her regular period need not refrain from sexual relations (as long as such is medically advisable) or require counting, checking or immersion. While this is particularly helpful to women specifically struggling with infertility, it is not limited to them.⁶⁶

Those who wish to be *mahmir* (strict with themselves) can do so, refraining from sexual relations when evidence of staining is found, as well as counting seven white days after three or more days of staining followed by immersion. (If ever the Temple were to be rebuilt and the purity system reestablished, the *zav* and *zavah* status would be applicable to contact with the Temple and its holy things.)

While one would normally be hesitant to undermine such a long standing tradition, there are mitigating circumstances to do so, and, to paraphrase Rabbi Akiva, we are not obligated to have *zavot* in the world.⁶⁷ By following the guidelines above, sexual relations in most situations of early ovulation and mid-cycle staining would no longer be precluded.⁶⁸ Thus we would provide real relief for the many observant and religiously dedicated Conservative Jews who struggle to fulfill both the *mitzvah* of *peru urvu* (be fruitful and multiply) and the *mitzvah* of halakhically appropriate sexual intimacy as well as other women who suffer from medical conditions that cause mid-cycle staining.⁶⁹

The Use of Mikveh

The *Mikveh* has been referred to as kissing waters, for it contains fresh water (often rain water) that is specially collected in a way that flows into the *mikveh* and then “kisses,” through a small hole in the wall, water that is more conventionally piped in.⁷⁰ For thousands of years, men and women have found in the warm waters of the Jewish ritual bath, the *mikveh*, a profound and

66 For example, there are women who have had a hysterectomy, and therefore lack a womb, nevertheless can experience staining as a result of tamoxifen treatments.

67 One could also apply the argument of the Rosh, above, as to the permissibility of permitting a previously observed stricture on the basis that it is merely *minhag*, even if treated as law, and where, as here, it is regretted. See discussion above, regarding Rabbi.

68 Cf. Gold, “*Mikveh* as a Fertility Problem,” 94–100.

69 See n. 66 above.

70 A full discussion of the structure and *halakhah* of the *mikveh* is beyond the scope of this *teshuvah*. A naturally occurring body of flowing water (river, lake, ocean) can be used as well (CJLS 020458B, 071763). Some permit the use of an outdoor pool where no other option is available. See Benjamin Kreitman, *Proceedings of the RA*, 1969, 219–222. The conversion of a woman who was *niddah* at the time of her immersion in the *mikveh* is valid after the fact (CJLS 070678B).

transformational experience. Converts were (and continue to be) reborn as Jews through its waters.⁷¹ Hasidic Masters conversed with God while standing chest deep in its watery shadows. Thousands of generations of women washed away the unrealized potential for life as they began again the miraculous cycle that makes women partners with God in creation.

Mikveh was traditionally observed by Jewish women for three main purposes: Before one's wedding; for pietistic purposes, especially before Yom Kippur and, in some traditions, before Passover; and before resuming sexual activity after a period of abstention (for *niddah*, *zivah*, or birth).

It is a tradition for the bride to visit the *mikveh* the night before her wedding with her closest female relatives and friends. We should revive this tradition of bringing the bride to *mikveh*. Sephardic communities use this time as the equivalent of a spiritual bridal party, at which close female family members and friends attend the bride as a queen to the *mikveh*, sing to her while she is immersing in private, and shower her with candies or flower petals as she rejoins them as they sing wedding songs and hold beautiful lit candles. A modern version of this might include going out for coffee (at a kosher restaurant) with one's closest female friends and families after the visit to the *mikveh*. (See below regarding the role of the groom.)

Prayers are traditionally considered more efficacious when recited in the *mikveh*, particularly before the third, and last, immersion. This is the source for women taking a moment to add their personal *bakshot*, personal requests and prayers, to God before their final immersion. This tradition is not restricted to women. Hasidic story collections are full of tales of rebbes who threaten to stand for hours in the *mikveh* until God reverses the evilness of the decree on someone.

In recent years, the *mikveh* has also been turned to as a place of healing and recovery after miscarriage, hysterectomy, mastectomy, rape, and therapeutic abortions.⁷²

There is ample precedent for these accretions. Regardless of ages and marital status, generations of women have attended *mikveh* to immerse before Yom Kippur and, according to some traditions, also before Passover. Although not traditionally obligated by Jewish law and tradition (indeed, at one time, not

71 For an interesting discussion of the significance of mikveh in conversion, see Michael Chernick, "Mikveh: A Medium for Change of Status," *Journal of Reform Judaism* 35 (Spring, 1988): 61–64.

72 See Susan Grossman, "Finding Comfort after a Miscarriage," in Grossman and Haut, *Daughters of the King*; and Nina Beth Cardin, *Tears of Sorrow, Seeds of Hope* (Woodstock, VT: Jewish Lights).

having immersed in a *mikveh* was considered a sufficient deterrent to premarital relations), such women should not be stigmatized nor made uncomfortable if they would like to utilize the *mikveh* for such observances. Single women have pointed out that at times they feel the tradition excludes them and punishes them for something over which they have no control. Some single women could use the *mikveh* as an opportunity to pray that God will send them their *besheret*, their intended. Others could experience immersion as an opportunity to feel good about themselves within the context of their Judaism.

In a similar vein, post-menopausal woman can also choose to utilize the *mikveh*, though obviously they would not be required to do so. The question would be, when should post-menopausal women attend *mikveh*? It seems fitting that in memory of a monthly cycle, a post-menopausal woman could choose to visit the *mikveh* on *Rosh Hodesh* (traditionally a woman's holiday) or before *Shabbat Mevorchim*, the Sabbath on which the New Month is announced which has been adopted as a special Sabbath by most women's davening groups. Alternatively, an individual may choose a special anniversary date, perhaps of getting through an operation or a medical procedure successfully.

Similarly, immersion rituals marking menarche and menopause are appropriate, as are immersion rituals, already mentioned above, for healing following miscarriage, rape, therapeutic abortions, and such surgeries as hysterectomy and mastectomy. (Such immersions would not substitute for the traditional recitation of *birkat gomel* in the synagogue but would provide support through trying times within the context of one's Judaism that the more impersonal and public recitation of *birkat hagomel* may make difficult.)

Under this *teshuvah*, immersion in a *mikveh* is still required before one's wedding and upon the completion of the seventh day following the beginning of a woman's menstrual flow. (For a fuller discussion of the use of the *mikveh*, see below.)

A note on men and *mikveh* is apropos here. Rabbi Joel Roth and others have taught for years that husbands should also go to *mikveh* before resuming sexual relations with their wives as an expression of the mutuality of their relationship and obligation for the sanctity of their relationship. In addition, similar to the bride attending *mikveh* before the wedding, a groom could have an equivalent ceremony with his male relatives and friends, a refreshingly spiritual alternative to the bachelor party.

The further development of Conservative *mikvaot* can make it easier for our congregants to observe any and all of these alternative uses of the *mikveh* as part of their personal piety and efforts to draw closer to God and their Judaism.

An Alternative Construction of Significance

The idea of framing one fourth of a woman's existence within the context of ritual purity continues to drive many women away from embracing the *mitzvah* not to engage in sexual relations during one's period.

Perhaps a more useful construction for us today regarding women's menstruation would be to turn from the concept of ritual purity and impurity to that of holiness, something to which we all strive and which reflects positive connotations of the highest order.

For all that Rabbi Meir was speaking to men in a way that may sound discordant to our modern sensibilities, there is something to be said for the sweet denial of access to sexual relations to whet the appetite of desire for some people. Perhaps more significantly, particularly in long term marriages and where parents may be running between jobs and childcare, setting aside time at the end of a woman's period to fan the flames of desire is good for marriage. These laws focus attention on the sexual component of the marriage that is often lost as lovers become parents. The obligation to engage in sexual relations upon the completion of the period of abstention (while perhaps logistically challenging in a home hopefully filled with children) helps ensure that attention to each partner's sexual satisfaction remains part of the regular interaction between the partners. (Such conscious attention can also hopefully stimulate more frequent romantic interludes beyond this monthly ritual.) Sexual satisfaction is an element of marital stability. Therefore such observances are good for the longevity of marriage. This is especially important today when marriage itself seems under siege with the rising divorce rate.

A response must be added here to critiques that may acknowledge the benefits of self-restraint and sexual abstinence in a marriage but argue that the couple should be able to choose when to set aside such time and not be restricted to the seven days of a woman's period. To such critiques there are several responses. First, for the faithful, the answer acknowledges that the observance to abstain specifically during the seven days of the woman's menses is the practice received in the Torah, applied by the Rabbis and sanctified by generations of our ancestors. As implied above, changes in such a received tradition, while possible, must be justified by a compelling reason, hopefully such as those made herein.

Second, an answer lies in the nature of communally shared ritual and its power to connect us as a People beyond the boundaries of time or space.

Finally, an answer also lies in the power of a spiritual discipline to raise in the individual a sense of service and purpose beyond one's self. By definition, the rules of that spiritual discipline must come from outside the individual, for

part of the nature of a spiritual discipline is submitting to an authority higher than oneself. Judaism is not a religion of abstinence. God created us with the natural inclination to enjoy sexuality, as Rabbi Elliot Dorff so eloquently discusses in the Conservative Movements' *Rabbinic Letter on Intimate Relations*. Just as we control our instinctual drives for food, through *kashrut*, and for territory and security, through the laws of business ethics, so, too, can we direct our instinctual drive for sex to holy ends through self-control. We can best celebrate the sanctity of a relationship enjoyed with mutual respect, consideration, and self-control through refraining from sexual relations during a regularly set time. As members of a covenantal community we submit to the structure of sexual abstinence during a woman's menses for seven days (as defined by the Torah and our Sages, the Tannaim) just as we submit to the laws of *kashrut* which determines that a cow is kosher and a pig is not.

As valid and important as all these observations are, it would be remiss not to also include the observation by Rachel Adler that such constructions of the laws of menstruation (regarding sexual availability) are troubling when they see women only in relation to men, i.e. as a sexual partner, rather than as primarily in relationship to God as our Creator and Commander.⁷³

Under the influence of modern science, we now understand menstruation as a natural process. Freed of superstition, self aware of primal fears, and recognizing women as equal members of our covenantal community, perhaps we can finally transform what had at one time been seen as a stigma into a celebration of the wholeness and sacredness of woman being created by God with the potential to join God as a partner in creating new life.

Judaism believes we are created by God with a system of ducts and tubes that must open and close and expel and leak appropriately for us to exist.⁷⁴ Unlike in Hellenistic thought, which creates a dualism between the purity of the soul and the degradation of the body, Judaism presents the body as being created in God's image and therefore worthy of care and respect⁷⁵ and important to our wholeness in serving God.⁷⁶ This refers to the female body as much as the male body. Women can finally celebrate the wholeness and sacredness of being created by God with the potential to join God as a partner (along with

73 Adler, "In Your Blood, Live," 38–41 (rebutting her first article).

74 This is expressed in the *Asher yatzar* prayer recited daily.

75 Gen 1:27, cf. the story about Hillel, Lev. Rab. 34:3.

76 This is one possible reason for the importance of resurrection as a foundational belief of the Pharisees and Rabbis according to Will Herberg, *Judaism and Modern Man* (New York: Atheneum, 1983), 229.

their spouses) in creating new life, made possible by the ebb and flow of their monthly menstrual cycles.

Observance of a woman's menstrual period through self-care and reflection, followed by immersion in the warm waters of the *mikveh* with its blessing, then, can become part of a ritual designed to raise within us a radical sense of appreciation and wonder, like the rituals of reciting the blessings on going to the bathroom, eating, or engaging in a myriad of other normal human functions. Such blessings, expressing appreciation for being created as we are, can be pertinent to all women, whether married or single, sexually active or celibate.

Such a reinterpretation may require a reconfiguration of the language that surrounds the development of these laws in a way that captures this sense of holy awareness. The language of *Tohorat HaMishpahah*, popularized in the early twentieth century,⁷⁷ carries with it not only the negative connotations of the ritual purity/impurity system, but also the focus on a woman only when she is married, in relationship with a man.

Maimonides writes:

כל הכתוב בתורה ובדברי קבלה מהלכות הטומאות והטהרות אינו אלא לענין מקדש וקודשיו ותרומות ומעשר שני בלבד, שהרי הזהיר את הטמאין מלהיכנס למקדש או לאכול קודש או תרומה ומעשר בטומאה.

Whatever is written in the Torah and in traditional teaching about the laws relating to things impure and pure is relevant only to the Temple and its hallowed things and to heave-offering and second tithe, for it warns those impure against entering the Temple or eating anything hallowed, or heave-offering, or tithe in impurity.⁷⁸

That is true here as well.

I have elsewhere suggested we substitute the traditional usage of *Tohorat HaMishpahah* (the purity of the family) with the language *Kedushat HaMishpahah*, the sanctity of the family.⁷⁹ While retaining the focus on the beauty and sanctity of the marriage, which has value in this age of trying to keep families together, such language nevertheless ignores the very real challenge of defining women's experience as women in relation to God rather than just in relation to men.

⁷⁷ My appreciation to Rabbi Miriam Berkowitz for researching this point.

⁷⁸ Mishneh Torah, Tumat Okhelim 16:8.

⁷⁹ Grossman, "Feminism, Midrash, and *Mikveh*," 14–15.

Today, I would revise that suggestion with the substitute terminology *Kedushat Yetzirah*, the Sanctity of Creation, or the sanctity of a created being. This terminology has many significant allusions, i.e., to the female form of created being (*ytzir-h*), to creation itself (as partners in creation) (*ytzirah*), to self-control (*kibush hayetzer*).⁸⁰ Either of these terms (*Kedushat Mishpahah* or *Kedushat Yetzirah*) offer an authentic Conservative contribution to the evolution of halakhic ritual language.

The term for a menstruant would be based on the more neutral term for blood, *dam*, following current Israeli colloquial usage, as in *ishah medamemet*, instead of the term *niddah*, which we have seen above has negative connotations of spiritual impurity and sinfulness.⁸¹ This is also why I do not prefer what others might consider the neutral language of *Hilkhot Niddah* in referring to these laws.

Using the language of *kedushah* focuses us on the command to be holy that culminates the list of sexual commandments in Lev. 18, the source for refraining from sexual relations during menses. More importantly, it focuses us on the real reason we do this: to bring holiness into our lives through Jewish observance even in our most personal experiences.

It is important to note that the commandment to mark one's menses (Lev. 15) was not given in the Torah to married women, but to all women. While immersion in that ritual context outside of sexual activity is not required (*hayav*), all women, not just those in a sexual relationship, may have the desire to enjoy the spiritual benefits of monitoring their cycles and immersing in a *mikveh*.

Summary of Details of Observance

1. **Ritual Purity:** Women today know their bodies and can distinguish between *dam niddah* and *dam zavah*.
 - a. In response to a question received by the CJLS whether a menstruant imparts impurity to that which she touches: Today, when the

80 In a previous paper, "Feminism, Midrash, and *Mikveh*," I had suggested the terminology "*Kedushat Mishpahah*." However, a growing number of single Jewish women have expressed interest in celebrating the cycle of potential life that God has given them through their periods. In light of the requests of some of these women, and in consideration of the critique of Adler, "In Your Blood, Live," 38–41, who argues against *mitzvot* directed at women that do not treat the woman as the commanded, I now prefer this broader category that moves beyond the narrow definition of the family to encompass the broader category of God's creation and creative powers.

81 Similarly, the suggestion by Rabbi Miriam Berkowitz to substitute the more normative *Hilkhot Niddah*, while accurate and preferable to *Tohorot HaMishpahah*, has the disadvantage of carrying with it the historical negative connotations of impurity.

Temple no longer stands, the menstruant does not impart impurity to the items she touches or sits upon, to others who touch her, or the things the others have touched, or sat upon. No ritual restrictions are to be placed upon a menstruant. There is no *halakhic* basis for restricting a menstruant from public or private prayer, from serving as *shlihat tzibor*, from access to the synagogue, from touching or reading from a *Sefer Torah*, or other scrolls or holy books, or serving in, or participating in, any other ritual role or function.⁸²

2. **Seven White Days:** The categories of *niddah* and *zavah* are distinguishable. The custom to conflate the two, while representative of tradition, is not a binding legal mandate. Therefore, a menstruant need not observe seven white days following the cessation of her menses. She must observe the minimum requirement of seven days of abstinence, the counting for which begins with the first day of her menses, followed by immersion.
 - a. While seven white days are no longer required before immersion and the subsequent resumption of marital relations,⁸³ any women who prefers to follow the tradition of observing the extra seven white days may, of course, do so.
3. **Sexual Relations:** The menstruant should refrain from sexual relations for seven days beginning with the first day of her flow. She can immerse after the seventh day, or after the cessation of blood flow, if longer than seven days. (See below for more details)
 - a. Because this is a *mitzvah* about sexual self control, and because we, as a Movement, have recognized and provided guidelines about sexual relations prior to marriage,⁸⁴ these laws are obligatory upon all sexually active adults, not only when the partners are married.
 - i. There is a ladder to aspiring to holiness as we walk towards God's holy mountain, to utilize the imagery from our Movement's statement of belief, *Emet vEmunah*. For some that may mean participating in a loving, committed relationship that hopefully will someday culminate in marriage. Applying these laws to the unmarried does not blur the boundaries between

82 See Cohen, "Purity and Piety"; and on touching a *sefer Torah*, see Weiss, "Women and *Sifrei Torah*."

83 Rabbi Roth has been counseling rabbinical students for years that they need not count the extra seven days following cessation of the woman's period, but merely wait one day to be sure the period is over.

84 In Rabbi Elliot Dorff's *Rabbinic Letter on Sexual Intimacy*.

marital relations (which are encouraged) and pre-marital relations (which are discouraged) as much as it hopefully motivates thoughtful and mature discussions and decisions about whether to engage in premarital relations with a significant other.

- b. Although a full discussion regarding parturients, particularly the differentiation of periods of abstinence based upon the child's gender, is beyond the scope of this paper, couples should abstain from sexual relations for at least two weeks following birth (or one week after the birth of a boy, in the case of a particular hardship during which both partners desire sexual intimacy). However, couples should not resume relations until the woman feels she is sufficiently healed, physically, to be able to enjoy intimate relations.
4. **Determining the Beginning and End of Menses:** For our purposes, a menstruant would be defined as one experiencing her menstrual flow. While the normal menstrual flow (a *veset*, regularly occurring period) has traditionally been understood to be from three to seven days, we can rely on a woman's acumen that she can distinguish for herself when her flow begins and ends, even when her periods are irregular and even when her period runs for more or fewer days than the 3–7 average. In the case of abnormalities, the woman can rely on the expertise of her doctor and can consult her rabbi.
 - a. We can rely on the woman to notify her partner when sexual relations should be suspended, i.e., when the woman feels the onset of her period is imminent. If a woman gets her period when the couple is in the middle of relations, the couple merely separates.⁸⁵
 - b. *Bedikah*, internal inspection, is not necessary before resumption of sexual relations because we assume women know when their periods are completed. A woman who is particularly pious and has had a period of irregular length can choose to inspect herself (*bedikah*) with a soft cloth or check her tampon⁸⁶ to be extra sure she has completed her period. If a woman is unsure whether she is finished with her menstrual flow, she should wait one day to determine whether

85 See *Teshuvot Poskim Uminhagim*, R. Meir Bar Barukh M. Rotenberg (Maharam), ed. Yitzhak Zev Kahana, vol. 2 (Jerusalem: Mosad HaRav Kook, 1957), 146, cf. *sheilot* 90–103.

86 Although Orthodox halakhah frowns on the use of a tampon because it cannot reach every part that needs to be checked (*Gefen Porioh*, 29, 219 n. 21), b. Nid. 66a seems to offer a precedent for its use, especially since newer tampons are designed to be soft, absorbent, and expansive.

- her period is over, unless such a wait would endanger the possibility of conception in the case of infertility. (See below.)
- c. The woman must wait the requisite seven days from the first day of her period before attending *mikveh* and resuming relations.
 - d. In the case of infertility problems, and if there are medical reasons why waiting until the eighth day to resume relations is problematic, the woman should consult with her rabbi to see if there is a way to start her count earlier. For example, in the rare case where a woman ovulates on the seventh day from the beginning of her full flow, if she began staining several days preceding her full flow, and her full flow only lasts five days, it may be possible to count the days of staining that preceded the start of her full flow as the beginning of her actual flow and therefore part of the requisite seven. Then what might appear as the seventh day (if counted from the beginning of a full flow) really is the eighth, ninth or tenth day and is therefore permitted, since the counting could begin from the day she first began staining. This leniency should only be relied upon for special cases of extenuating circumstances regarding infertility.
5. **Mid-Cycle Staining:** We assume that mid-cycle staining is caused by one of a variety of external reasons (diet, medicine, treatment, physical exertion, illness) which would be permitted and therefore such blood would not be considered *dam zivah* prohibiting sexual activity.
- a. In all cases of infertility, we should be *makil* (lenient).
 - b. When ovulation can take place during the period where a woman continues to experience bleeding or staining continuously beyond her seventh day, and when a woman is battling with infertility, even here we can assume this is permissible blood (as above) and therefore *mikveh* can take place and sexual relations can be resumed. This is important because ovulation for some women occurs immediately following their periods or coincides with staining. In such cases, the *mitzvot* of *pekuach nefesh*⁸⁷ (protecting the woman's life from the long term effects of drug therapy) and *peru urvu* (procreation) take precedence. (For how to determine the end of a woman's menses for women without a compelling need, see above.)
6. **Physical contact during the week of abstinence:** We live in a society that, while sensitized to sexual harassment and abuse, also treats touch-

87 On *pekuach nefesh*: e.g., b. Šabb. 151b, *Halal alav Shabbat ahav kdae shyshmor Shabbatot harbeh*. (One should transgress this one Shabbat in order that one may observe many Shabbatot.)

ing between sexes very casually. Therefore, even during a period of sexual abstinence, types of physical contact which provides support, comfort, and companionability (such as that appropriate between adult siblings) can, and should, continue. A handshake, a hug, holding someone's arm, shoulder or hand (especially in times of illness or stress, such as at a funeral or in the hospital), even a kiss on the cheek or a light kiss on the lips is common between relatives and friends of opposite sexes, with no sexual innuendo. Therefore, some physical contact can continue between partners during the woman's menstruation as long as it is limited to that which is generally accepted in society between siblings.⁸⁸

- a. Under these guidelines, partners should not sleep in the same bed unless clothed and should exercise modesty in undressing and dressing in front of each other during this time period. Newlyweds (and especially unmarried sexually active partners) must be particularly careful not to be drawn into physical intimacy which we might colloquially describe as necking or heavy petting.
- b. One or both partners might very normally experience this period of sexual abstinence as a time of submerged tensions, of feeling ignored or of experiencing self-doubt. This time of sexual abstinence should be utilized by the couple not to ignore each other, but to heighten their sensitivity to each other, perhaps by putting aside time for extensive and intimate discussions. The couple may choose to utilize this time to study together some of the extensive literature that is available that helps us better understand how intimacy functions in our relationships. The week of sexual abstinence then can serve as an opportunity for doing the serious interpersonal work that helps strengthen the foundation of the marriage, particularly around honest and intimate communication. In this way, the period of sexual abstinence becomes a time to reaffirm the non-sexual component, the intellectual and emotional partnership, of the relationship.⁸⁹ Hopefully, such conscious effort during the days of abstinence can infuse the entire relationship, throughout each

88 Whereas, previously it would have been prohibited, even to the extent of not passing anything to each other and not sleeping in the same bed, even when dressed, all in order to provide a fence by which to protect against touching that might lead to conjugal relations. Cf., Num. Rab. 10:8 which prohibits embracing, kissing, conversation, and sleeping together, and discourages the menstruant from beautifying herself. R. Akiva reversed the latter, arguing that a woman should not appear repugnant to her husband, b. Šabb. 64b; cf. Saldarini, *AdRNB*, 44–45, nn. 1–5.

89 My appreciation to R. James Michaels for suggesting this.

day of the month, with such sanctity that each partner can see the other, in every interaction, as an equal reflection of godliness worthy of deep and abiding respect and concern, as I and Thou, according to Martin Buber's beautiful construction of the ideal possible in relationships.

- c. Although a full discussion of the parturient is outside the scope of this paper (particularly regarding the fact that the gender of the child determines the length of sexual abstinence), regarding physical, non-sexual, contact: the partner can be present during birth and should not hesitate to touch the birthing woman to support her during the birthing process and to give comfort and support during the weeks following birth, as outlined above in paragraph 6.
7. **Mikveh:** Immersion in the *mikveh* should take place after the seventh day following the beginning of menses.
- a. Immersing while having a flow does not transmit impurity to the *mikveh*.⁹⁰ Therefore in the case of a woman who is experiencing staining after the seventh day, she may attend *mikveh*, particularly if she is grappling with infertility and resuming sexual relations after the seventh day will help support the infertility treatments or is on advice she has received from her doctor.
 - b. Ideally, both members of the couple should try to immerse in the *mikveh*.⁹¹ Most *mikvaot* today have time periods set aside for women and men, to protect modesty.
 - c. Women can immerse in the *mikveh* during daylight, *b'od yom*.⁹² Certainly for reasons of safety, but even for convenience to encourage *mikveh* use, *mikvaot* should set aside regular hours for women to attend the *mikveh* during the day, in which case the woman would immerse on the day following the end of her period.
 - d. The *mikveh* should be open to any women who would like to immerse (e.g. singles, brides, women going for healing ceremonies, or just for pietistic reasons not related to their periods or particular health or fertility concerns).

90 The water of a proper *mikveh* cannot become impure. Responsa Chatam Sofer, Yoreh Deah 213. This implies that for those who permit the use of a swimming pool as a *mikveh* (see above herein), where there is continued staining, a swimming pool should not be relied upon.

91 Rabbi Joel Roth has been recommending this for years to rabbinical students.

92 Shulhan Arukh, Yoreh Deah 197:4 permits daytime immersions when there is concern for safety.

- e. We in the Conservative Movement should encourage the building of Conservative *mikvaot* and the use of *mikvaot*.
 - f. We should reintroduce the tradition of bringing the bride to the *mikveh* and develop a parallel ceremony for the groom as a substitute for the bachelor party.
8. **Making the time of resumption of relations special:** The night following the completion of the woman's menstrual flow can be a special romantic interlude. This is especially important for today's couples who often find themselves so busy with dual careers or, even in one career families where with the daily challenges of raising kids, partners often have little time to themselves to keep the romantic spark alive between them. The night following the completion of the woman's menses and immersion in the *mikveh* should be set aside whenever possible for the couple to spend together. Parents can arrange for a sitter and go out. (Possibly they can first go to the *mikveh* and then out to dinner.) This can be a night to set aside for enjoying the special *mitzvah* of sexual relations within marriage. In long term relationships (marriages of ten years and more), this ensures that a sexual component remains alive as part of the relationship.
- a. When ovulation takes place later than the eight day, and where there are infertility concerns, the couple may wait until the day of ovulation to resume sexual relations so as to maximize chances for conception.⁹³
9. **Choosing to be Mahmir (Stricter):** Anyone who prefers to be *mahmir*, stringent with themselves, may continue to observe seven white days, as long as doing so does not pose a possible danger to the woman's health (for example, by relying on medical intervention that would be necessary only to conform to the *mahmir* position) for to do so is not piety but prohibited foolishness.⁹⁴
10. **Language and Context:** The term *Tohorat HaMishpahah* continues to be loaded not only with negative implications and symbolism but also very real social stigma for women today. That changing language is difficult should not eclipse the significant changes being initiated that would help spread observance and help ameliorate the challenges faced by infertile couples. Therefore, we will just suggest here that, for those who have the interest and the will, that more positive language can be substituted for

93 This follows medical guidelines to maximize the amount of semen that can be available during ovulation.

94 Cf. Responsa of Radbaz, pt. 2, no. 1139. See Roth, 183–185.

the relatively new term *Tohorot HaMishpahah* which, we should remember, only became popular in the last century. *Kedushat Mishpahah* may appeal to some who seek to strengthen the focus on family. *Kedushat Yetzirah* is a more neutral term that focuses on each woman's direct relationship with, responsibility to, and appreciation of God. In either case, instead of referring to the menstruant as a *niddah*, which has carried a negative connotation since later Biblical and rabbinic literature, the menstruant can be called by the more neutral term *ishah medamemet*, which is currently in use in Israel. Similarly, the term *Hilkhot Niddah*, while preferable to *Tohorat HaMishpahah*, is not recommended since it continues to be burdened with the negative connotation of *niddah*. Following a suggestion by Rabbi Miriam Berkowitz, the permissibility of sexual relations can be noted with the simple terminology of *mutar* (permitted) and *asur* (prohibited).

Summary

First it is important to reiterate that even under Jewish law as it currently stands, there are no religious or social restrictions on the role of the menstruant in the synagogue and its rituals. Similarly, under current Jewish law, there is no fear of contracting ritual impurity from contact with a menstruant or with that which the menstruant has sat upon.

When we apply this view consistently to men and women in our communities, we remove the stigma and disadvantages experienced by women by being labeled impure. For centuries now, men have been treated no differently whether or not they are *zavim* or *baalei ker*. So too, we can now recognize that women are not to be treated differently for being *zavot* or *nashim medammemot* (menstruants). We are all technically in the ritual state of *tumat met*, impure from contact with the dead. If and when the Temple were to be rebuilt, we could reactivate the detailed observances of these largely inactive categories of ritual purity and impurity.

That said, even with the flattening of the purity system, we are still obligated to self-control in our sexual relations as delineated in Leviticus 18, which proscribes sexual relations when a woman is in her period. The Tannaim held abstinence for only the biblical proscribed seven days. Rebbe conflated the menstruant with the *zavah* (adding the seven white days of the *zavah*) at Sadath. His ruling was for the women there at the time because they did not know how to distinguish between the two types of blood. However Jewish women today can distinguish between the two. Following the Rosh, we can permit that which was previously prohibited where it is based upon *minhag* (even where it is commonly mistaken for law) and when observance of the stricture is regretted.

This is the case for the majority of observant women of our Movement, who, unlike their foremothers, regret the obligation of the additional seven white days. Therefore, women need count only seven days from the first day of their period and immerse on the eighth before resuming sexual relations.

We can rely on the earlier rabbinic precedent of Rabbi Akiva to consider the cause, rather than the source, of a genital emission as determinative, and assume that a woman's mid-cycle staining is permissible as the result of diet, medicine, treatment, physical activity, or illness.

This ruling has the immediate advantage of easing the challenges faced by couples who are observant and struggling with infertility therapies, as described above, although it also provides assistance to women encountering mid-cycle staining for other reasons, for example cancer treatment, as well. Therefore, based upon our concern for the commandments of *vahai bahem* (to protect life and health, even in cases of doubt) and for the emergency concerns of fertility in the Jewish community and for individual couples in their efforts to fulfill the *mitzvah* of *pru urvu* (procreation), and since the Torah never explicitly prohibits sexual relations with a *zavah*, sexual relations are to be permitted during mid-cycle or ovulatory staining, because such staining is considered permissible since it is due to diet, medicine, treatment, physical activity, or illness. When confronted with infertility issues, the local rabbi as *morah d'atra* should make every effort to be *makil*.

Finally, in order to support, pedagogically, the embracing of the *mitzvah* of self control and distinguish it from the negative attributes and disadvantages women have been placed under by the continuing identity of the observance of sexual abstinence during a woman's menstruation with the purity system, it is recommended, though not legislated, that rabbis and teachers begin to utilize a different terminology than has previously been used: substituting for *Tohorat HaMishpahah* either *Kedushat HaMishpahah*, the sanctity of the family, or preferably the more neutral term *Kedushat Yetzirah*, the sanctity of creation, for the entire category of observance, and, in either case, substituting for the word *niddah*, the more neutral term *ishah medammemet*, for the menstruant.

Conclusions

There are no social or religious restrictions on the role of the menstruant in the synagogue and its rituals.

Women should abstain from sexual activity for seven days following the onset of their menses. Sexual relations can resume on the eighth day without recourse to counting seven white days, following tannaic precedent.

Mid-cycle staining does not preclude sexual relations, particularly in the case of infertility, since we assume, based upon tannaic precedent, that such

staining is caused by diet, medical treatment, physical exertion or illness. Staining therefore is not to be considered *dam zivah* that would preclude sexual relations, but rather permitted blood.

It is recommended that the language used to describe this *mitzvah* reflect concerns for the sanctity of the individual and her family, rather than the negative connotations of the purity system, by relying on such terms as *Kedushat HaMishpahah* or the more neutral term *Kedushat Yetzirah*, and referring to the menstruant herself by the current Hebrew term *ishah medammemet*.

Submitted with Yirat Shamayim by Rabbi Susan Grossman Tishrei, 5767. Revised Iyar 5779.

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On the Recitation of “Amen” between Ge’ulah and Tefillah of the Shaḥarit Service

Robert A. Harris

Encomium¹

I am both honored and delighted to dedicate this teshuvah to my Rav and mentor, Rabbi Joel Roth, רב רב ישראל ופרשיו, אבי, אבי! The great 13th-century commentator, Ralbag (R. Levi b. Gershon, or Gersonides) glossed this verse (2 Kgs 2:12) as follows: הנה כמו שהתלמידים נקראים בנים, כמו בני הגביאים, כן הרב יקרא אב, “Just as disciples are considered as children, as in the expression ‘children of the prophets,’ so too is a rabbi called father, because he gives birth to the student’s wisdom.” From the day I met Rabbi Roth and through to the very day of this writing, he has been a father to me, and whatever wisdom there may be in this teshuvah reflects but a small portion of what he has helped me to develop. I am forever grateful.

Sheilah

The practice is widespread that during the Shaḥarit service that the *shalī’ah tzibbur* becomes silent during the *berakhah* “*ga’alyisrael*,” just before the beginning of the Shaḥarit Amidah. This is presumably for the purpose of avoiding a break between the blessing and the beginning of the Amidah.² However, this custom appears contrary to the whole purpose of having a *shalī’ah tzibbur* in

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- 1 This teshuvah was approved by the Rabbinical Assembly’s Committee on Jewish Law and Standards on October 31, 2001. For the original publication, and acknowledgments for the help I received in writing the responsum, see https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/20012004/oh_66_7_2003-1.pdf.
 - 2 Thus R. Isaac Klein, *A Guide to Jewish Religious Practice* (New York: Jewish Theological Seminary, 1979), 20: “It has become customary for the reader to say the concluding words of the benediction quietly lest the congregation have to respond with Amen and thereby interrupt the sequence of prayer.”

first place, i.e., to enable one who does not know the prayer to fulfill his/her obligation by responding “amen” to the blessing of the *shali'ah tzibbur*.

Shall the one leading services fall silent for the blessing just before the Amidah, in accordance with this custom? Or should she/he say the blessing *audibly* so that those who hear the blessing (including those who do not know the blessing or have not yet recited it) can respond “amen” to the blessing?

Teshuvah

On the surface, the question would appear to be quite easily answered. R. Yosef Karo (Shulḥan Arukh, Oḥ 66:7) addresses the issue succinctly, and decides the question in the negative:

אינו אומר אמן אחר גאל ישראל משום דהוי הפסק.

One should not say “amen” after (the blessing) “who redeemed Israel,” because it constitutes an interruption.

Thus, the principle of “joining *ge'ulah* with *tefillah*” (סומכין גאולה לתפילה) is considered by R. Karo to be so absolute that even the mere recitation of the word “amen” would be enough to violate it. Presumably, the custom of falling silent just *before* the blessing is to avoid tempting the congregation to respond “amen,” even though R. Karo does not state this explicitly here.³ Although R. Moshe Isserles provides a gloss that diverges somewhat from R. Karo, his ruling does not seem to have affected the prevalent custom:

הגה: ויש אומרים דעונין אמן, וכן נוהגין לענות אחר השליח צבור אמן. אבל אם התפלל לבד, אין עונין אמן.

3 See previous footnote, and also Max Arzt, *Justice and Mercy: Commentary on the Liturgy of the New Year and the Day of Atonement* (New York: Holt, Rinehart and Winston, 1963), 80–81: “This blessing ... is recited by the reader in an undertone, to obviate the necessity of the congregations’s responding ‘Amen.’” Likewise, see Daniel Sperber, *Minhagei Yisrael* [in Hebrew] (Jerusalem: Mossad Harav Kook, 1989), 4:26–28. Sperber reasons as Klein and Arzt do, i.e., that the *shali'ah tzibbur* lowers his voice so that no one will respond “amen.” However, he found no source accounting for that part of the custom! See esp. p. 26, n. 9, and p. 28 (בכתובים, אמנם), כאמור, טרם מצאתי את הדברים. The custom of the *shali'ah tzibbur* falling silent before the blessing *gal yisrael* is related to the practice of not reciting “amen” after the blessing. Below, we will analyze the Bet Yosef to Oḥ 66, which cites the Zohar in connection with this latter issue.

Gloss: There are those who say that we do respond “amen,” and so is it the custom to answer “amen” after the *shali’ah tzibbur*. But one who has prayed alone should not respond “amen.”⁴

R. Karo repeats his ruling in a subsequent section of the Shulḥan Arukh (111:1):

צריך לסמוך גאולה לתפלה ולא יפסיק ביניהם אפילו באמן אחר גאל ישראל, ולא בשום פסוק חוץ מה שפתי תפתח.

One must join *ge’ulah* to *tefillah* and not interrupt (with any words) between them, neither with (the response of) “amen” after (the blessing) *ga’al yisrael* nor with (the recitation of) any verse other than “O Adonai, open my lips ...” (Ps 51:17).⁵

Likewise, as he had done earlier, Isserles demurs from R. Karo’s ruling:

הגה: ויש אומרים שמותר לענות אמן על גאל ישראל, וכן נוהגין.

Gloss: And there are those who say that it is permissible to respond “amen” for (the blessing *ga’al yisrael*), and such is the custom.

In both instances (66:7 and 111:1), Isserles relied upon the ruling of the Arba’ah Turim for his position. We will have occasion to review the ruling of this source below.

The prevalent custom, i.e., of not responding “amen” after the blessing of the *shali’ah tzibbur*, is indeed reflected in the Mishnah Berurah (Oḥ 66:7, paragraph 32):

אינו אומר אמן: בין אחר עצמו ובין אחר הש"ן.

One should not say “amen”: i.e., whether in response to one’s own (blessing) or in response to the (blessing of) the *shali’ah tzibbur*.

4 I.e., to his own blessing. The Mishnah Berurah (n. 34) observes that some believe that even a lone worshipper would respond “amen” at this point to his/her own blessing, since it marks the conclusion of the segment of the service entitled “the Shema and Its Blessings” (בין שהוא סיום של סדר ברכות של קריאת שמע).

5 See b. Ber. 4b for the explanation of why the recitation of this verse and, likewise, the recital of the *hashkivenu* prayer in the evening service, are not considered to be interruptions between the blessing *ga’al yisrael* and the beginning of the Amidah.

Likewise, the Arukh Hashulhan (66:14–16) essentially agrees with the position that the obligation to juxtapose *ge'ulah* with *tefillah* includes the prohibition against reciting “amen” at that point in the service. While he admits that there are differences of opinion on the subject (ובענין עניית אמן של גא'ל ישראל), and as well reviews many opinions on the various occasions in which answering “amen” is either permitted or required, he nonetheless rules in this instance that—whatever logic or correctness there may be in reciting “amen”—one should maintain the opinion of R. Karo in not so reciting (מכל מקום מנהגינו אינו כן).

Background of R. Karo's Ruling

The reason for R. Karo's ruling that the response of “amen” is prohibited at this point in the service is ostensibly based on the principle of *תומכין גאולה לתפילה*, the necessity to “juxtapose the blessing *ga'al yisrael* with the beginning of the Amidah.”⁶ The principle is articulated in the following Talmudic text (*y. Ber. 2d, 6a*):⁷

ד[א]מר ר' זעירא בשם ר' אבא בר ירמיה: שלש תכיפות הן: תכף לטמיכה שחיטה; תכף לנטילת ידים ברכה; תכף לגאולה תפילה

For R. Zeira said in the name of Abba bar Yirmiya: Three things should follow one immediately upon the other: immediately after the laying-on of hands, the sacrifice should be slaughtered; immediately after the washing of hands, the blessing for food should be recited;⁸ immediately after (the blessing) *ga'al yisrael*, the prayer (i.e., the Amidah) should be recited ...⁹

6 For a review of the ancient rabbinic texts, and particularly the dissonance between the Babylonian and the Palestinian Talmuds, see Israel Ta-Shma, “Semichat Geulah Litefillah,” in *Hatefillah haashkenazit hakedumah* (Jerusalem: The Magnes Press, The Hebrew University, 2003), 101–109. Ta Shma does not address our question with respect to the recitation of “amen” in between the end of the “Shema and its blessings” and the beginning of the Amidah, since the question did not come up in antiquity. I am grateful to my colleague, Dr. Jonathan S. Milgram, for referring me to this article.

7 See the parallel text in *b. Ber. 42a*.

8 There is a controversy between the Bavli and the Yerushalmi whether this statement refers to the washing of the hands before a meal, to be followed by the *motzi* blessing; or if it refers to the *mayyim aḥaronim* at the end of a meal, to be followed by the blessings after food. See Louis Ginzberg, *A Commentary on the Palestinian Talmud* [in Hebrew] (New York: Ktav Publishing House, 1971), 1:71–72.

9 The continuation of this text describes many of the benefits accruing to those following the

Juxtaposing the blessing *ga'al yisrael* with the beginning of the Amidah is also praised in the Babylonian Talmud (b. Ber. 9b). Just as we saw in the Yerushalmi, so, too, in the Bavli the suggestion is followed by aggadic-type comments promising rewards to those who follow the ruling:

דאמר רבי יוחנן: ותיקין היו גומרין אותה עם הנץ החמה. תניא נמי הכי: ותיקין היו גומרי אותה עם הנץ החמה, כדי שיסמוך גאולה לתפילה ונמצא מתפלל ביום ... העיד רבי יוסי בן אליקים משום קהלא קדישא דבירושלים: כל הסומך גאולה לתפילה אינו נוזק כל היום כולו ... אמר ליה רבי אלעא לעולא: כי עיילת להתם שאיל בשלמא דברב ברונא אחי במעמד כל החבורה, דאדם גדול הוא ושמה במצות; זימנא חדא סמך גאולה לתפילה ולא פסיק חוכא מפומיה כוליה יומא.

For R. Yoḥanan said: the clever ones¹⁰ used to finish it [the recital of the Shema] with sunrise. It was (also) taught thus as a Tannaitic teaching: the elders used to finish it [the recital of the Shema] with sunrise, in order to join the *ge'ulah* with the *tefillah*, and say the *tefillah* in the day-time ... R. Yosi b. Eliakim testified in the name of the holy community of Jerusalem: if one joins the *ge'ulah* to the *tefillah*, he will not meet with any mishap for the whole of the day ... R. Ela said to Ulla: When you go up there [to Eretz Israel], give my greeting to my brother R. Berona ... once he succeeded in joining *ge'ulah* to *tefillah*, and a smile did not leave his lips for the whole day.¹¹

The Yerushalmi found Biblical precedent for the principle, in that the final verse of Psalm 19 (יהיו לרצון אמרי פי והגיון לבי לפניך ה' צורי וגאלי), which it considered to

rule, e.g., “and everyone who juxtaposes *ge'ulah* to *tefillah*—the Satan may not indict him that day.” Louis Ginzberg explains that Jews in rabbinic antiquity were expected to “pray” five times a day, if one counts the two readings of the Shema and the three recitations of the Amidah. The Yerushalmi is thus proposing in this passage that the total number of required prayers be limited to three, by joining the Amidah in the morning and the evening to the prescribed Shema of that time of day. See Ginzberg, *Commentary*, 1:72–75; see also p. lxxii.

10 See David Golinkin, “The Meaning of the Terms ‘Vatikin,’ ‘Vatik’ and ‘Talmid Vatik’ in Ben Sira and Rabbinic Literature” [in Hebrew], *Sidra* 13 (1997): 47–60.

11 See the analogous text in b. Ber. 4b: “For R. Yoḥanan says: who inherits the world to come? The one who follows the *ge'ulah* immediately with the evening *tefillah* ... Mar b. Rabina raised an objection. In the evening, two blessings precede and two blessings follow, the Shema. Now, if you say he has to join *ge'ulah* with *tefillah*, behold he does not do so, for he has to say *hashkivenu* in between! Then I reply: since the rabbis ordained the blessing, *hashkivenu*, it is as if it were a long *ge'ulah*.”

signify the blessing *ga'al yisrael*, was “immediately” followed by the beginning (not counting the superscription) of Psalm 20 (יענך ה' ביום צרה), which signified the beginning of the Amidah.¹² However, none of the foregoing aggadic texts in any way indicates that the principle of joining *ge'ulah* to *tefillah* explicitly prohibits the recitation of “amen,” or indicates that its recitation constitutes a kind of prohibited interruption.¹³

Halakhic Sources in Disagreement with R. Yosef Karo

Earlier, we noted that R. Moshe Isserles, in his glosses on the Shulḥan Arukh, had disagreed with R. Karo's ruling. Relying on the Tur, Isserles had decided that the response of “amen” after the blessing *ga'al yisrael* did not constitute a prohibited interruption. Here is the relevant text of the Tur (OH 66):

... וחוותם: ברוך אתה ה' גאל ישראל, ואומר אמן—אפילו יחיד אחר ברכותיו—כיון שהוא סיום של סדר ברכות.

... and he completes (the blessing *emet ve-yatziv*, following the Shema, with the words): “Praised are you, O Adonai, Who has redeemed Israel,”

12 y. *Berakhot* 2d [6a]: יהיו לרצון אמרי פי—מה כתיב בתריה? יענך ה' ביום צרה.

13 R. David Golinkin directs my attention to the additional objections to reciting “amen” raised in R. Gedaliah Felder's *Sefer Yesodei Yeshurun* (Toronto, 1954), 284. The most serious of these is R. Felder's claim that the *Seder Rav Amram* prohibits the recitation of “amen” after *ga'al yisrael* (כתב רב עמרם גאון שאין עונין אמן אחר גאל ישראל משום הפסק), (ושצריך לסמוך גאולה לתפלה). Were this to be true, it would be a most serious impediment to the contention of this teshuvah. However, I cannot locate a text within the *Seder Rav Amram* that addresses our specific issue. Indeed, in its presentation of the liturgy at the transition between the Shema and Its Blessings and the Amidah, the *Seder Rav Amram* essentially reaffirms the general rule of not making an interruption between *ge'ulah* and *tefillah* that we have already reviewed. See Daniel S. Goldschmidt (ed.), *Seder Rav Amram Gaon* [Hebrew] (Jerusalem: Mossad Harav Kook, 1971), 20: ברוך אתה ה' גאל ישראל ... ואין להוסיף דבר על ה' ימלוך ... ואין אומרים דברים אחר אמת ויציב, כדי שיסמוך אין אומר דברים אחר אמת ויציב). The Seder invokes here *Tosefta Berakhot* 3:6 (אבל אומר דברים אחר תפלה ...). Professor Lieberman has, of course, already explained this passage as referring to the prohibition of reciting *piyyutim* at this point in the service אין לפייט ולומר קילוסין לפני תפלת שמונה עשרה אחרי אמת ויציב, מפני שאינו סומך גאולה (לתפלה); it does not address the question of whether the recitation of “amen” is permitted or prohibited. See Saul Lieberman, *Tosefta Ki-Fshutah: A Comprehensive Commentary on the Tosefta: Order Zera'im, Part I* [Hebrew] (New York: Jewish Theological Seminary of America, 1955), 31.

and says “amen”—i.e., even an individual after (having recited) his blessings—since this is the conclusion of the order of the Blessings (surrounding the Shema).

In a second passage, after reviewing many of the blessings (recounted in the two Talmudim) accruing to one who joins *ge’ulah* to *tefillah*, the Tur enlarges upon its earlier ruling (OH III):

... אבל אמן אחר גאל ישראל לא הוי הפסק, ומצווה לענותו כיון שהוא אחר סיום ברכות
של קריאת שמע ...

... But the (recitation of) “amen” after *ga'al yisrael* does not constitute an interruption, and it is a commandment to respond with it, since it follows the conclusion of the blessings surrounding the Reading of the Shema.

These two rulings of the Tur themselves have earlier medieval precedents. Let us begin by examining the ruling of the Rif, R. Yitzḥak Alfasi on b. Ber. 33b.¹⁴

... תני: הפורס על שמע והעובר לפני התיבה ... והמברך על כל אחת מכל מצות האמורות בתורה, לא יענה אחר עצמו אמן. ואם ענה הרי זה בור. אית תנא דתני: הרי זה חכם. אמר רב חסדא: מאן דאמר הרי זה בור, בעונה על כל ברכה וברכה; ומאן דאמר הרי זה חכם, בעונה בסוף.

A baraita teaches: the one who leads (the congregation in reciting) the Shema, and the one who passes before the ark (to lead the congregation in the Amidah) ... and the one who says a blessing with regard to any of the commandments mentioned in the Torah, should not respond “amen” after himself (i.e., after his own blessing). And if he did respond, he is a boor. There is a Tanna who teaches: he is a wise man. Said Rav Ḥisda: the one who said “he is a boor” (said so) with regard to one who responded (“amen”) to any individual blessing; the one who said “he is a wise man” (said so) with regard to one who responded (“amen”) to the end of (an entire section of the liturgy).

¹⁴ Its source is t. Meg. 3:27 and y. Ber. 5:4 [9c]; see also b. Ber. 45b. I am grateful to R. Joel Roth for calling these sources to my attention.

The students of Rabbenu Yonah extrapolate ad. loc. from this ruling of the Rif that the recitation of “amen” after *ga'al yisrael* does not in fact constitute an interruption:

ונמצאנו למדים שצריך שיאמר האדם אמן אחר סיום התפלה כשיגיע להמברך את עמו ישראל בשלום אמן. וכן צריך לומר אמן אחר גאל ישראל שהוא סיום, ואין בזה הפסקה, כיון שצריך לאומרו.

It follows from this that we learn a man must say “amen” after the conclusion of the Amidah, when he reaches to the One who blesses His people Israel with peace—amen. And so must he say “amen” after (the blessing) *ga'al yisrael*, which is also an ending—and this does not constitute an interruption, since he must say it.

The Shiltei Hagibborim (on the same passage in the Rif here) rule similarly:

הגאונים כתבו דכל ברכה שהיא סוף הענין אפילו אינה רק ברכה א' ... יש לענות אמן. ורבינו יונה ורש"י כתבו דדוקא אחר ברכה שהיא סיום ברכות, כגון אחר סיום "ח ואחר גאל ישראל

The Ge'onim wrote that every blessing that marks the end of a (liturgical) section, even though it only is one blessing, one must respond “amen.” And Rabbenu Yonah and Rashi¹⁵ wrote that (this is the rule) specifically after a blessing that is the end of (a series of) blessings, as in the case of the end of the Amidah and after *ga'al yisrael*

Thus, from all of these sources one could reasonably conclude that the halakhah should be decided in favor of those who would permit or even require the recitation of “amen” after the blessing *ga'al yisrael*, since that blessing constitutes the conclusion of a major liturgical unit.

It would seem that Rambam, R. Moses Maimonides, would also rule in this fashion (Hilkhot Berakhot 1:16):

... והעונה אחר ברכה שהיא סוף ברכות אחרונות הרי זה משובח, כגון אחר בונה ירושלים בברכת המזון ואחר ברכה אחרונה של קריאת שמע של ערבית. וכן בסוף כל ברכה שהיא סוף ברכות אחרונות עונה בה אמן אחר עצמו.

¹⁵ We will examine Rashi's position, below.

... And the one who responds (“amen”) after a blessing that is the end of last blessings, such a one is praiseworthy, as in the case of (responding “amen” to) “Who builds Jerusalem” in the Birkat Hamazon, and after the last blessing of the evening Reading of the Shema. And so it is with regard to the end of every blessing that is itself the end of last blessings, he responds “amen” after himself.

It must be admitted that Rambam explicitly mentions the individual reciting “amen” after his own blessing, regarding the final blessing before the evening Amidah; this is because he doesn’t allow it for a single blessing, and in the morning service there is only one blessing after the Shema. Nonetheless, one can surely infer the position of Rambam that the community responds “amen” after the blessings of the Shaḥarit Shema, since he rules at *Hilkhot Tefillah* 8:5:

וכן לא יהיה אחד מברך ברכת שמע והכל שומעים ועונין אחריו אמן אלא בעשרה.

And so one should not recite a blessing of the Shema, with everyone responding “amen” after the recitation, except when a minyan is present.

Likewise, Rambam’s ruling seems clear at *Hilkhot Tefillah* 9:1, which gives the prescriptions for the leader of community prayer and includes the following provision:

ומתחיל ופורס על שמע בקול רם, והם עונים אמן אחר כל ברכה וברכה.

He begins to lead the Shema (section of the liturgy) aloud, and they (the congregants) respond “amen” to each blessing.¹⁶

A crucial source for some of the medieval discussions on the subject is found in the Talmud (*b. Ber.* 45b):

¹⁶ The continuation of the Mishneh Torah here reads in our editions: והיודע לברך ולקרוא גא'ל ישראל עמו קורא עד שמברך גא'ל ישראל, “and the one who knows how to bless and read with him (the leader) reads until he recites the blessing *ga'al yisrael*.” R. Karo notes that some manuscripts he has examined include the word “amen” at the end of the sentence. R. Karo rejects that reading as a scribal error, and declines to draw any halakhic implications from it. See *Kesef Mishneh ad. loc.*, and on *Hilkhot Berakhot* 1:16; see also *Bet Yosef* on the Tur; 0ḥ 66. See also Moses Hyamson, ed., *Mishneh Torah, by Maimonides, Edited According to the Bodeleian (Oxford) Codex ...* [in Hebrew] (Jerusalem, 1965), *ad. loc.*; there, the text likewise reads without the word “amen.”

תני חדא: העונה אמן אחר ברכותיו, הרי זה משובת. ותניא אידיך: הרי זה מגונה. לא קשיא: הא בבונה ירושלים, הא בשאר ברכות.

One baraita taught: the one who responds “amen” after his own blessings—such a one is praiseworthy. Another baraita taught: such a one is disgraceful. This (contradiction) is not a problem: one (is teaching) about (the blessing in Birkat Hamazon) “Who builds Jerusalem,” and the other one (is teaching) about all other blessings.¹⁷

Thus, according to this source it would appear that this baraita regards one who answers “amen” after his own blessing, in every case other than the blessing “Who builds Jerusalem” in Birkat Hamazon, as a boor. However, this text does not refer to one who responds “amen” after another’s *berakhah*.

In his commentary on this Talmudic passage, the Rosh, Rabbenu Asher, rules similarly to the Rif and his interpreters; like them, he regards the recitation of “amen” at the conclusion of a major unit of liturgy as an obligation (on b. Ber. 7, par. 10):

תני חדא העונה אמן אחר ברכותיו הרי זה משובת, ותני אידיך הרי זה מגונה. לא קשיא—הא בשאר ברכות והא בבונה ירושלים ... דלאו דוקא נקט בונה ירושלים אלא כל סיום ברכה כעין בונה ירושלים, דליכא למימר דוקא בונה ירושלים ... אלא ודאי כל סיום ברכות כעין ישתבח, דהוי סיום ברכה לסוף פסוקי דזמרה; וכן יהללוד דהלל, וסוף ברכות דשמונה עשרה; וכן אמן אחר גאל ישראל, ואין בזה הפסק, כיון דצריך הוא לאומר.

One baraita taught: one who answers “amen” after his own blessings—such a one is praiseworthy; another baraita taught that this is disgraceful. It is not a difficulty—one rules with regard to all blessings, while the other speaks specifically about “Who builds Jerusalem” ... [That baraita] did not rule specifically about “Who builds Jerusalem,” but rather about every concluding blessing along the lines of “Who builds Jerusalem,” for one should not say that [the ruling] was specifically with regard to “Who builds Jerusalem” ... But certainly [one should respond “amen” after] every concluding blessing like *yishtabakh*, since it marks the end of *pesukei dezimrah*; likewise with regard to the blessing *yehalelukha* (since it marks

¹⁷ With regard to the expression **הא ... והא**, it should be noted that the expression is somewhat ambiguous; thus in this instance, it is not entirely clear which practice is “praiseworthy” and which “disgraceful.”

the end of) Hallel; and so [it should be at] the end of the blessings of the *Shemoneh Esrai*. And so it should be after the blessing *ga'al yisrael*. This [recitation of “amen”] does not constitute an interruption, since one must say it.

Thus, Rabbenu Asher comes down squarely on the side of those who would obligate worshippers to respond “amen” after the blessing *ga'al yisrael*.¹⁸

With similar reasoning, Rashi rules in favor of reciting “amen” after *ga'al yisrael* (on b. Ber. 45b, s.v. “הא בבונה ירושלים”):

הא בבונה ירושלים: שהיא סוף הברכות, הרי זה משובח. וכן בסוף ברכות דקריאת שמע
שחרית וערבית ...

This is in regard to “Who builds Jerusalem”: (This is so) since it is at the end of the (section of statutory) blessings; thus it is praiseworthy (to say “amen”). It is also true at the end of the blessings of the Reading of the Shema, both in the morning and in the evening service.

In fact, R. Yosef Karo himself cites Rashi’s position, in his commentary (Kesef Mishneh) on *Hilkhot Berakhot* 1:16:

וכתב רש”י שאחר סיום כל ברכות עונה אמן, ואפילו אחר גאל ישראל דשחרית וערבית.
ולא הוי הפסקה בין גאולה לתפלה, כיון שצריך לאומר.

Rashi wrote that after the end of all of the *berakhot* one responds “amen,” even after (the blessing) *ga'al yisrael* of the morning and the evening service. And this does not constitute an interruption between *ge'ulah* and *tefillah*, since one must say it.

R. Mordecai Jaffe, author of the *Levush* and a younger contemporary of R. Karo, provides a useful contrast to R. Karo’s approach. He, too, recognizes that the

¹⁸ In this context, we may also refer to a liturgical variant that adds at least historical, if not necessarily halakhically-relevant, weight to our argument. It is found in a manuscript of the prayer *אמת ויציב*, and is cited in Ismar Elbogen, *Jewish Liturgy: A Comprehensive History*, trans. Raymond Scheindlin (Philadelphia: Jewish Publication Society; New York: Jewish Theological Seminary, 1993), 21. The conclusion of the citation of the alternative version reads: *בא”י צור ישראל וגואלו אמן*: “Praised are you, Adonai, Rock of Israel and its redeemer. Amen.” It would seem that the practice indicated by this variant would have included the recitation of “amen” following the blessing (whether by the congregation alone or also by an individual worshipper is unimportant for our purposes).

halakhah as decided by the Rishonim would be to say “amen” after *ga'al yisrael* (OH 66:7) (כיון שהיא סיום: של סדר ברכות של קריאת שמע ומן הדין היה לו לענות אמן אפילו יחיד אחר ברכת עצמו, “it is reasonable to think that one should respond ‘amen’—even an individual after his own blessing, since it is the end of section of blessings surrounding the Reading of the Shema.” Likewise, he understands that there are people who do not wish to say it on account of the *סוד גדול*, or “deep (kabbalistic) secret” represented by the principle of “joining *ge'ula* and *tefillah*.”¹⁹ However, in spite of his understanding of the kabbalistic ramifications, he rules in both paragraphs that the recitation of “amen” does not constitute an interruption, and should be recited in communal prayer after *ga'al yisrael* (אבל עם הצבור חייב לענות אמן אחר ברכת החזן אפילו אחר גאל ישראל, (ולא הוי הפסק בין גאולה לתפלה).

So far we have seen that, while all authorities presumably uphold the rabbinic principle of *סומכים גאולה לתפילה*, many Rishonim specify that the response of “amen” to the blessing *ga'al yisrael* before the Shaḥarit Amidah does not constitute an interruption. Among these Rishonim, we may note, are Rashi, and R. Yitzhak Alfasi,²⁰ Rabbenu Asher, and Rambam. These last named *poseqim* are of particular importance, we may add, since they are ostensibly the halakhic determinants followed by R. Yosef Karo in the Bet Yosef, and consequently, in the Shulḥan Arukh. We also cited the Arba'ah Turim in support of this position, and we may add R. Mordecai Jaffe, even though we recognize that he is not considered as authoritative a decisor as R. Yosef Karo.

Kabbalah as the Source of R. Yosef Karo's Ruling

Why, then, would R. Karo move in the direction of the law he enacted, prohibiting the recitation of “amen,” in the face of this considerable rabbinic opinion to the contrary? Let us examine the Bet Yosef on OH (66), and review the evidence it offers. After reviewing the positions of many of the authorities cited above,²¹ R. Karo writes:

19 R. Mordecai Jaffe, *Sefer Levush Malkhut* (reprint of Prague ed., 1623). See his presentation of the halakha at OH 110:1, where he slightly expands on his understanding of the “secret.”

20 In determining Alfasi's view, let us recall, we relied on the understanding of the Shiltei Hagibborim and the students of Rabbenu Yonah.

21 Rabbenu Asher, Rashi, and the students of Rabbenu Yonah. R. Karo also refers to Rambam, *Hilkhot Berakhot* 1:18, in which it is stated: האחרונה שקדמה, “... one only recites ‘amen’ after a final blessing that was preceded by another blessing.” According to R. Karo, then, Rambam would not allow the recitation of “amen” after *ga'al yisrael* since the liturgical section beginning *emet ve-yatziv* contains

ועכשיו נהגו העולם שלא לענות אמן אחר גאל ישראל ... אלא טעמא משום דחשבי ליה הפסק בין גאולה לתפלה. וכבר כתבתי בסעיף נ”א שעל פי הזוהר נהגו שלא לומר אמן אחר גאל ישראל

But now the whole world is accustomed not to respond “amen” after *ga’al yisrael* ...²² Rather the reason is that they consider it to be an interruption between *ge’ulah* and *tefillah*. And I have already written in Section 51²³ that it is according to the Zohar that they became accustomed not to say “amen” after *ga’al yisrael* ...²⁴

It is on the basis of this one source that the question turns, according to R. Karo: the Zohar, in his mind, overrules all of the other halakhic opinions and precedents.

However, R. Karo appears to misrepresent the Zohar in his affirmation that the custom of not responding “amen” after *ga’al yisrael* can be traced to that source: no text corresponding specifically to R. Karo’s ruling has been found in the Zohar.²⁵ While the possibility always exists, of course, that he was referring to some version of a Zohar text that is no longer extant, it is also possible that R. Karo’s reference to “the Zohar” was for public consumption only, as that work was already an authoritative text within the Jewish community. Indeed,

only one blessing; thus, “amen” would only be allowed in the case of a liturgical section containing at least two successive berakhot. See also R. Karo in the Bet Yosef to Oḥ 51.

- 22 This clause (“now the whole world is accustomed ...”) remains an enigma at this point in my research. Since I have not found antecedent to R. Karo a source prohibiting the recitation of “amen” after the blessing *ga’al yisrael*, it appears to me rather that R. Karo is essentially an innovator in this regard. A thorough perusal of *siddurim*, *sifrei minhagim*, *aḥaronim*, and responsa would be required to determine which communities at the time of the writing of the Bet Yosef recited “amen,” and which did not.
- 23 In truth, in the long note he writes in the Bet Yosef to Oḥ 51, R. Karo doesn’t explain this reference to the Zohar at any greater length than he does in 66. He writes, simply: אבל אחר גאל ישראל נהגו שלא לענות אמן על פי הזוהר “but after *ga’al yisrael* they were accustomed not to respond ‘amen,’ according to the Zohar.” See also the judgment of Moshe Hallamish, *Kabbalah in Liturgy, Halakhah and Customs* [in Hebrew] (Ramat Gan: Bar Ilan University Press, 2000), 165; שכן אין שום מקום בבית יוסף ציון מדויק לדברי הזוהר ...
- 24 Note ad. loc. that the commentaries *Darkhei Moshe* (of R. Moshe Isserles) and *Derishah* both rule against R. Karo, and affirm the recitation of “amen” after *ga’al yisrael*.
- 25 In another case, with regard to the degree to which women may participate in funerals R. David Golinkin has demonstrated that R. Karo exceeded the clear ruling of the Zohar, upon which Karo’s own more stringent ruling is ostensibly based. See R. David Golinkin, “The Participation of Women in Funerals” in *The Rabbinical Assembly of Israel: Va’ad Halakhah Responsa 5747* (Jerusalem, 1987), 2:31–40; especially 35, n. 13, where Golinkin discusses the issue of the relative weight of Talmud and Zohar in halakhic decisions.

as we shall see, it seems that the tradition to which he was referring originated not within the Zohar itself but in his own mystical experience. Nevertheless, let us consider what the Zohar does teach regarding the principle of *סומכין גאולה לתפילה*, i.e., the “juxtaposition of the blessing *ga'al yisrael* with the beginning of the Amidah.” It should come as no surprise that the Zohar places a high value on maintaining this rule. The Zohar, of course, is following in the footsteps of the Talmudic tradition we examined above. However, it invests that ancient rabbinic instruction with mystical insight. In several passages,²⁶ the Zohar holds that when the Shema and its blessings are recited, followed by the Amidah without interruption, the worshippers enact the moment of union between female *Shekhinah* and male *Tiferet* (via *Yesod*)—and it is understood that nothing must interrupt that *yihud*, or “union.” However, the Zohar mentions nothing with regard to the recitation of the word “amen,” let alone stating that it constitutes an interruption.

While various *Aḥaronim* mention customs predicated on R. Karo's ruling, none can find a supporting source antedating the Shulḥan Arukh; we will consider this material below, in the conclusion to this teshuvah. The *Kaf Haḥayyim* of R. Yaakov Ḥaim Sofer²⁷ provides the key for finally explaining how it came to be that R. Karo considered the recitation of “amen” to constitute a prohibited interruption between *ge'ulah* and *tefillah*. R. Sofer suggests that the basis for R. Karo's decision is not, in fact, the Zohar itself. He refers his readers instead to the *Sha'ar Hakavanot*, the Lurianic Kabbalistic work of R. Ḥaim Vital, and as well to the *Maggid Mesharim*; this latter work describes the visitations and instructions of R. Karo's own *maggid*, or heavenly messenger. In this case, the *maggid*, representing the personified voice of the Mishnah, is reported to have instructed R. Karo²⁸ specifically not to respond “amen” after the blessing *ga'al yisrael*.

Let us examine these passages. R. Sofer directs us to the end of the Lurianic expounding of the Reading of the Shema.²⁹ The relevant passage reads as follows:

ובזה יובנו דברי רז"ל שאמרו כל הסומך גאולה לתפלה כו' והי' צ"ל כל הסומך תפלה לגאולה שכן הוא האמת שצריך לסמוך ולעלות ולחבר את התפלה שהיא המלכות למעלה עם הגאול' שהוא היסוד. אמנם יובן עם הגו' שהנה בתחילה אנו מורידין הארת

26 E.g., Zohar 1:32b; 1:205b; 1:228b; 2:238b.

27 *Kaf Haḥayyim* (Jerusalem, 1964), comment on Oḥ 66:7.

28 ... שצווה המגיד לבית יוסף לזוהר שלא לענות ...

29 “Kabbalistic Yeshiva,” *Sha'ar Hakavanot* (Jerusalem, 1997), 246. It should be noted that this type of literature encompasses much coded language, meant to be understood only by the initiate.

היסוד הנקרא גאולה למטה אל המלי' הנקרא תפלה העומד בברי' וזהו ממש סמיכות גאולה לתפלה ואח"כ עולה התפל' למעל' עם הגאולה באצ' ואז איננו סמיכות והארה בלבד רק גאולה עצמיות ולא סמיכות לבד

And in this way the words of our Sages, may their memory be a blessing, be understood when they said “all who juxtapose *ge'ulah* to *tefillah*, etc.”³⁰ And they should have said, “all who juxtapose *tefillah* to *ge'ulah*,” since that is the truth,³¹ that one must juxtapose and to cause to ascend and to join the *tefillah*—which is the *malkhut*, upwards with the *ge'ulah*—which is the *yesod*.³² Consequently, it will be understood with that which was mentioned, that at the outset we cause to descend the illumination³³ of the *yesod*, that is called *ge'ulah*, downwards into the *malkhut*, that is called *tefillah*, standing in the *beriah*.³⁴ And this constitutes the actual “juxtaposition” of *ge'ulah* to *tefillah*. And after this the *tefillah* ascends upwards with the *ge'ulah* in the *atzilut*. And thus it is not “juxtaposition” and illumination alone; rather, it is (the) *ge'ulah* of *atzmiyut*³⁵ and not mere “juxtaposition.”³⁶

30 I.e., that all who juxtapose *ge'ulah* to *tefillah* will be blessed; the reference is to the Talmudic passages cited above.

31 In other words, that is what the worshipper actually does—juxtaposes *tefillah* to *ge'ulah*, and not the other way around as the oft-cited principle expresses it.

32 These two, *malkhut* and *yesod*, are mystical terms denoting, respectively, the female and male parts of the Godhead (or, in the case of *yesod*, at least this represents the conduit through which Divine male unites with Divine female).

33 I have translated the term הארה as “illumination.” R. Jeremy Kalmanofsky (private email communication, June 22, 2000) alerts me to the possibility of “significant wordplay” in the text at this point: the term הערה means “penetration,” and that in fact reflects the kabbalistically-contemplated “act” taking place between *malkhut* and *yesod*.

34 From R. Jeremy Kalmanofsky I have learned that “*Atzilut*, *Beriah*, *Yetzirah*, and *Asiyah* are the four ‘worlds,’ or ontologically-unfolding dimensions of creation, each one more physical and less divine than the one before. There are ten *sefirot* in each, so the Lurianists always speak of, for example, ‘*Yesod d'Asiyah*, i.e., the ‘*Yesod* level of the *Asiyah* realm.’ *Atzilut* is the realm of the Godhead and the *sefirot* as they are. The lower realms are derivative. So *Shekhinah/Malkhut* ‘standing in the *beriah*’ would mean that she (her ‘legs,’ her ‘train,’ or something approximating that) stand at the border of the world of divine unity and the world of extra-divine/angelic/demi-god diversity” (private email communication, June 22, 2000). I am most grateful to R. Kalmanofsky for his learned insight.

35 Or “redemption of the essences.” By this phrase (גאולה עצמיות), I think he means an actual “folding over” or “superimposition” of the male and female *sefirot* into one independent and unified whole. In other words, in the Lurianic sense the term סמיכות, that we have been translating all along as “juxtaposition,” really indicates not a linear closeness but a four-dimensional, theurgic event. I am thinking along the lines of the “parallel universe” concept in science fiction (!), but I do not think I am too far off the mark.

36 The text I have presented and translate here, describing the assimilation of *malkhut* into

The implications of this passage are clear: if the Lurianic position is indeed that there ideally should be not only a “juxtaposing” of *ge'ulah* to *tefillah*, but rather a (sacramental) act by the worshipper that causes an actual “superimposition” of that part of the Godhead represented by *ge'ulah* into or onto that part of the Godhead represented by *tefillah*, then any interruption—even of momentary silence!—of that event by the worshipper is fraught with danger and sin, and hence, should be avoided. While the passage does not explicitly teach this with specific regard to the recitation of “amen,” it seems reasonable to conclude that with such a momentous theurgic event in process, the author would consider even this type of otherwise-sanctioned interruption to be forbidden. Moreover, sources such as this help us to understand the mystical milieu in which to consider the following, more significant, text.

The passage in the *Maggid Mesharim* actually provides the immediate source of R. Karo's ruling. It is remarkable in its own right, and deserves to be cited in its entirety:

אור ליום שבת ח"י לכסליו השכמתי כמנהגי לקרות במשניות וקריתי כמו מ' פרקים ועוד הלילה גדולה וחזרתי וישנתי עד שהשמש זרח על הארץ וחזרתי לקרות והייתי מצטער אולי נשכחתי מלהפקד כפעם בפעם ותמיד הייתי קורא בלי הפסק ובתוך זה נאמר לי חזק ואמץ אל תערוץ ואל תחת שאעפ"י שחשבת כי נטשתיך עזבתיך שכחתיך מן הדין כן היה ראוי לעשות יען כי שכחתי ונטשתי עזבתי והפרדת מחשבתך ממני ואותי השלכת אחרי גווד והנה אתה מתפלל לפני הקב"ה שיורד דרכי תשובתו ואני מדריכך בדרך זו תלך ותשלך דברי אחריך והנה לא נכון הדבר אשר אתה עושה לכן שוב אלי ואני אשיבך ככל אשר דברתי לך. ותמיד תהרהר בתורת ויראתי ועבודתי ולא תפסיק מחשבתך אפי' רגע והטוב בעיניך מה שעשית אמש להפסיק בין גאולה לתפלה כי באותה שעה גרמת שתפול כ"י על ירך והפרדת אותה מן זוגה. ובעבור זה קמו מקטרגי עליך לולא שאני וחיילותי התפללנו לפני הקב"ה שירחם עליך לכן מכאן והלאה הזהר מאוד אל תפסיק כלל ואפי' בעניית אמון וחוש מכבוד ר' יעקב שאמר מצוה לענות אמון אחר גאל ישראל לא ירד לעומקן של דברים אדרבה עבירה היא בידו ולא מצוה ולכן אין להפסיק כלל. ועל אודות האיש ההוא אשר דברת הנה תקנתיו לך מהרה תראה פלאות ותתמה לכן השלך על ה' יהבך. ומחר בעת הזאת אבא אליך ואדבר עמך הסוד ההוא יותר בארוכה ועתה תראה היקרך דברי אם לא תדבק בי ובתורת ובמשניות וכו' בהתהלכת תנחה אותך ובשכבך תשמור עליך בשכבך ממש כמא דאת אמר בשכבך

yesod, reflects a major kabbalistic theme. See Elliot Wolfson, “Crossing Gender Boundaries in Kabbalistic Ritual and Myth,” in his *Circle in the Square: Studies in the Use of Gender in Kabbalistic Symbolism* (Albany: SUNY Press, 1995), 79–121. Wolfson's work endeavors to demonstrate that Kabbalah seeks *Shekhinah's* reintegration from independent female to the newly androgynous phallus. I am grateful to R. Jeremy Kalmanofsky for directing me to this source.

ובקומך דהא כד את נאים מגו הרהורא דמתנייתא ז' עולמין דילי נטרין יתך וכד את מיקץ מגו דאת נאימת' בהרהורא דמתנייתא היא היא ממללא בפומך ורחושי מרחשן שפוותך.

On the Eve of the Sabbath, the 18th of Kislev,³⁷ I arose early as is my custom to recite mishnayot, and I recited approximately forty chapters.³⁸ And while the night was yet long, I returned and slept until the sun was already shining on the earth. And I returned and recited, and I was disappointed that perhaps I had been forgotten from receiving my usual visitation. And I would always read³⁹ without interruption. And in the midst of this, it was said to me: "*be strong and of good courage; do not be terrified or dismayed* (Josh 1:9), for even though you thought that I had abandoned you, left you, forgotten you, it would have been appropriate for that to have been done! For indeed you have forgotten me and abandoned me; you have left me and have caused the separation of your thoughts from me! It is me whom you have cast away behind your back! And take heed: you pray before the Holy One, Blessed be God to cause to descend⁴⁰ the ways of returning to God.⁴¹ And I am guiding you on this path, (whereas) you cast and send forth my words behind you! And take heed: it is not correct, that thing that you are doing! Therefore, return to me and I will cause you to return, according to all that which I had spoken to you. And always meditate in my Torah and my Awe and my Worship, and do not interrupt your thoughts, even for a moment. Was it proper in your eyes what you did last night,⁴² to interrupt between *ge'ulah* and *tefillah*?! Indeed, in that very moment you caused "the Congregation of Israel"⁴³ to fall by your hand, and you separated it from her mate. And on account of this my detractors arose against you (and would have been victorious) were it not that I and my forces prayed before the Holy One, Blessed be God to have compassion upon you. Therefore, from now on be extremely careful: do not interrupt at all, even with the recitation of "amen." And seek forgiveness on behalf of R. Yaakov, who said it is a mitzvah to respond "amen"

37 I do not know the year of the vision that R. Karo relates.

38 The implication is that R. Karo recited the Mishnah chapters by heart and at great speed, in order to induce the mystical visitation of his *maggid*.

39 I.e. he would read the Shema and its blessings, along with praying the Amidah; this understanding is made clear further in the narrative.

40 Understanding יוריד for יוריד.

41 I.e., the ways for R. Karo to repent of his error and restore his closeness to God.

42 Or, "yesterday."

43 This term, i.e. בנסת ישראל, is another mystical term denoting *malkhut* or *shekhinah*.

after *ga'al yisrael*.⁴⁴ He did not descend to the (true) depths of the matters. The opposite is the case: it is a sin at his hand, and not a mitzvah! And therefore, one must not interrupt at all. And as regards that man of whom you spoke, take heed: I have corrected him for you; quickly you will see wonders and be astonished. Therefore, *Cast your burden on the LORD and He will sustain you* (Ps 55:23). And tomorrow at this time I will come to you and I will speak with you that secret additionally, at great length, and you will see if my words come (true?) to you or if you do not adhere to me and to my Torah and to my mishnayot, etc. Upon your walking it will guide you, and upon your lying down it will guard you. At your actual lying down, as (the Torah) says: *at your lying down and your rising up* (Deut 6:7). For when you doze⁴⁵ in your meditation in the Mishnah, its seven worlds will protect you; and when you awaken from your dozing in the meditation in the Mishnah, it is that which will fill your mouth and cause your lips to flutter.”⁴⁶

At last we understand the basis for R. Karo's *pesaq*: his own private instrument of mystical vision instructed him of the dire consequences, regarding that which occurs within the Godhead, of reciting “amen” between *ge'ulah* and *tefillah*.⁴⁷ In his important study of R. Yosef Karo and the Maggid Mesharim, R.J. Zvi Werblowsky points to the remarkable similarity between this passage and the apocryphal teshuvot ascribed to R. Yosef Gikatila, and in fact he considers this work to be the source of the Maggid in this instance.⁴⁸

The question still remains as to why, in the Bet Yosef, R. Karo referred to the Zohar as the source underlying his ruling. It may be that R. Karo understood that the Zohar was already recognized in his own day as an authority that may have halakhic resonance, as his own private visions did not. If he were to pre-

44 Thus, the text alludes in passing to a difference of opinion among the Safed kabbalists about whether or not to recite “amen” at this point in the service.

45 Perhaps, “enter your mystical trance.”

46 Maggid Mesharim 45:64. Although when I wrote the original *teshuvah*, I consulted a printed volume, the text I cite and translate here is available at: https://www.sefaria.org/Maggid_Mesharim.45?lang=bi. The image of awaking from sleep (and immediately speaking) is presented as a type of life-affirming resurrection; see, e.g., b. Sanh. 90b.

47 While it is surely not the purpose of this *teshuvah* to delve into the question of the role of “the prophetic spirit” in post-biblical Judaism, interested readers may wish to consult Benjamin Sommer, “Did Prophecy Cease? Evaluating a Reevaluation,” *Journal of Biblical Literature* 115, no. 1 (1996): 31–47 (see especially the excellent bibliographic footnotes).

48 R.J. Werblowsky, *Joseph Karo: Lawyer and Mystic* (Philadelphia: Jewish Publication Society, 1977), 180–181. This judgment is reaffirmed by Hallamish, *Kabbalah*, 165: אין ספק שמקורו: הדברים הוא בשו"ת המיוחסים לר' יוסף ג'קטילה.

vent those dire consequences, of which the Maggid warned him, from occurring, he would need to invoke the authority of the Zohar. It must be recognized that although this is a somewhat mercenary view of R. Karo’s decision-making, it is nonetheless a plausible explanation. It is also possible, and more charitable, to imagine that once the Maggid had given him the instruction regarding the recitation of “amen,” R. Karo understood that interpretation to actually inhere in the text of the Zohar.⁴⁹ The fact that he acquired this knowledge through the intervention of his Maggid did not mean in his mind that it was an independent revelation, but rather that the vision-acquired report, received within the context of his own mystically-informed consciousness, became for R. Karo the one and only possible meaning of the Zohar. It was therefore not disingenuous for R. Karo to attribute to the Zohar that which was, in reality, his own contribution.

Thus, the Shulḥan Arukh rules that even responding “amen” between the Shaḥarit blessing *ga’al yisrael* and the beginning of the Amidah constitutes a *hefseq* (a proscribed “interruption”), and therefore the congregation should omit that response. Subsequent *poseqim*—and, indeed, almost universal practice—echo this ruling.

Several possible conclusions emerge from our discussion of the sources considered thus far; any one of these may legitimately serve as the basis for halakhic observance:

1) Since in considering this liturgical question, no ethical dilemma presents itself, congregations may surely choose to maintain the mystically-based custom of falling silent at the transition from the Shema and Its Blessings to the Amidah.⁵⁰ Even though this determination would assuredly contradict the sources and the discussion presented in this responsum (as well as the sentiments of its author!), it must nonetheless be recognized that no actual “harm” befalls any person following what has by this time become the traditional practice. Therefore, despite the precedents R. Yosef Karo overturns in arriving at his *pesaq*, it may serve as the basis for continued practice.

However, in this case, an important caveat must be noted: I do not think I have to emphasize the danger to any legal system when important legal

49 A similar view is suggested by Hallamish, *Kabbalah*, 165: או שאין הזוהר אלא סמל של אוטוריקה קבלית. Still another possibility is that the very idea of a “Zohar text” is an anachronism, even as late as R. Karo’s own day and age; see Eitan P. Fishbane, *The Art of Mystical Narrative: A Poetics of the Zohar* (Oxford: Oxford University Press, 2018), 38–50, and the many bibliographic references Fishbane cites there.

50 This is *unlike* the situation encountered, for example, by R. David Golinkin in the teshuvah relating to women’s participation in funeral practices, considered above.

decisors can claim that legal decisions may be rendered on the basis of explicit Divine instructions—especially when those instructions so directly contradict the inherited legal tradition! Despite the tremendous prestige and halakhic authority of R. Yosef Karo, considering him to be in effect his own halakhic validator is itself a dangerous jurisprudential precedent. Whatever liturgical beauty and/or comfort may be adduced in favor of retaining the liturgical custom based on his ruling should not be construed as providing the basis for additional halakhic decisions in cases where there would be any deleterious ethical implications or possibility of human exploitation.

2) In contradistinction to the preceding, Magen Avraham relates a stringent position, practiced by “particularly careful worshippers” (OH 66:7):

והמדקדקים ממתינים בצור ישראל כדי לענות אמן ובס"ט משמע שיש להמתין בשירה חדשה.

And particularly careful worshippers pause at *Tzur Yisrael* in order to respond “amen,” and in paragraph nine⁵¹ it is made explicit that one should pause at *Shirah Hadashah*.

It should be emphasized that the first suggestion reported by this important Aḥaron is to wait specifically in order to be able to respond “amen” to the blessing of the *shali'ah tzibbur*!

3) Another solution, that averts any disruption in the liturgy whatsoever, is to encourage the congregation to recite the blessing *ga'al yisrael* aloud and together with the *shali'ah tzibbur*. This is the suggestion personally advocated by the Magen Avraham (also on OH 66:7, immediately following his report about the מדקדקים):

וגראה לי דאם ירצה יוכל לכוין לסיים עם הש"ץ ואז אינו מחויב לענות אמן.

And it seems to me that if the worshipper wishes, he may plan to finish together with the *shali'ah tzibbur*, and then he is not obligated to respond “amen.”

Likewise, when R. Solomon Ganzfried, author of the *Kitzur Shulḥan Arukh*, articulates the need to juxtapose *ge'ulah* and *tefillah*, he apparently is aware that the recitation of “amen” does not exactly violate that need. He recommends the proposal of the Magen Avraham:

51 I.e., OH 66:9.

לא יפסיק בין גאל ישראל לשמונה עשרה, אפילו לקדיש וקדושה וברכו, מפני שצריך להסמך גאולה לתפלה. וטוב שיצמצם לגמור ברכת גאל ישראל עם השליח צבור בשוה, כי אם יגמור הוא תחלה, ואחר כך השליח צבור, יש ספק אם יענה אמן על בברכת השליח צבור או לא, אבל כשהוא גם כן גומר את הברכה, ודאי אין צריך לענות אמן, דאין עונים אמן על ברכת עצמו.

One should make no interruption between *ga'al yisrael* and the Amidah, even for *kaddish* and *kedushah* and *barkhu*,⁵² since one must juxtapose *ge'ulah* and *tefillah*. It is best to arrange it to conclude the blessing *ga'al yisrael* together with the *shali'ah tzibbur*, simultaneously. For if he should finish it first, and afterwards the *shali'ah tzibbur*, it is unclear whether he should respond "amen" to the blessing of the *shali'ah tzibbur* or not. But if the worshipper finishes together with the *shali'ah tzibbur*, it is certain that there is no obligation to respond "amen," since one is not obligated to respond "amen" after one's own blessing.⁵³

4) However, the avowed purpose of this *teshuvah* is to suggest a return to the understanding of the Talmudic tradition by the Rishonim and several later authorities. It maintains that the blessing *ga'al yisrael* should be recited aloud by the *shali'ah tzibbur*, and that congregations should be instructed to respond "amen" in the manner usual with all other blessings.

The response to R. Karo's ruling in the Bet Yosef advocated in this *teshuvah* is to ask—whether or not he is correct in his citation of the Zohar—to what extent is it halakhically-tenable to rely on a mystical work like the Zohar to override the rulings of the significant Rishonim who preceded him? And how much the more so ought this question be raised if in fact the halakhic decision is rooted not in a source sanctioned by tradition but in the private meditative experience of an individual, however great his authority?! In the face of such strong precedent among a wide representation of Rishonim, it is reasonable to at least suggest that R. Karo was not justified in rejecting their positions in favor of one that was more sympathetic to his own mystical inclinations. Thus, a congregation that would prefer to encourage worshippers to respond "amen" to the *shali'ah tzibbur* today should feel free to revert to the position held by this majority of authoritative Rishonim.

52 Note that in listing things for which one must make no interruption, Ganzfried does not include the recitation of "amen" between *ga'al yisrael* and the beginning of the Amidah.

53 Solomon Ganzfried, *Code of Jewish Law (Kitzur Shulhan Arukh)* [in Hebrew] (New York: Hebrew Publishing Company, 1927), 1:56. I have modified Goldin's translation. See also the opinion of R. Shneur Zalman, below.

It is my firm opinion that mystically-inclined sources such as the ones reviewed in this teshuvah should not be considered in the halakhic process (when these depart from the tradition of the Talmud, the Rishonim, and the early Codes). From an historical point of view, they only serve to strengthen the position taken in this teshuvah: R. Karo's *pesaq* is an anomaly, without precedent or parallel in the halakhic process; we shall urge its rejection as the basis for liturgical practice.

As R. Karo himself makes clear in the *Bet Yosef*, his ruling is based on an idea that he attributes to the *Zohar*. In fact, all three of the major *poseqim* on whom he generally relies (i.e., R. Yitzhak Alfasi, Rambam, and Rabbenu Asher) rule that the response of "amen" does not constitute a *hefseq*; thus, as is the case with any *berakhah*, one should respond by saying "amen." In addition, such authorities as Rashi, R. Yaakov ben Asher (the author of the *Arba'ah Turim*), R. Moshe Isserles, and others, all rule that the recitation of "amen" does not constitute an interruption between *ge'ulah* and *tefillah*.

Although they were cited above, let us repeat both texts containing Isserles' rejection of R. Karo's ruling (on OḤ 66:7 and 110:1):

הגה: ויש אומרים דעונין אמן, וכן נוהגין לענות אחר השליח צבור אמן. אבל אם התפלל לבד, אין עונין אמן.

Gloss: There are those who say that they may respond "amen," and so is it the custom to answer "amen" after the *shali'ah tzibbur*. But one who has prayed alone should not respond "amen."⁵⁴

הגה: ויש אומרים שמותר לענות אמן על גא'ל ישראל, וכן נוהגין.

Gloss: And there are those who say that it is permissible to respond "amen" for the blessing *ga'al yisrael*, and such is the custom.

Since Isserles remains the principal late authority (at least for Ashkenazic Jewry), his opinion, bolstered by the Tur and the Rishonim cited above, may be considered authoritative by those wishing to revert to the liturgical practice of reciting "amen" after the *ga'al yisrael* blessing.⁵⁵

54 I.e., to his own blessing. The Mishnah Berurah (n. 34) observes that some believe that even a lone worshipper would respond "amen" at this point to his/her own blessing, since it marks the conclusion of the segment of the service entitled "the Shema and Its Blessings."

55 One should also not ignore the several Aḥaronim supporting our position, cited in the body of this teshuvah. For example, see also the opinion of R. Barukh Halevi Epstein: צריכין לענות אמן אחר ברכה זו כדעת הגמרא וממילא צריך הש"ץ לומר ברכה זו בקול רם

Moreover, additional support for our ruling may be adduced through reference to many Aḥaronim. Even were one to be of the opinion that kabbalah and other forms of Jewish mysticism are sources that ought to inform our liturgical practice, and so be inclined to reject the tenor of this teshuvah, one should consider that many mystically-inclined halakhic decisors nevertheless reject R. Karo’s opinion on this specific issue, and rule that “amen” must be recited after the *ga’al yisrael* blessing. Even though it is the contention of this teshuvah that sources of Jewish mysticism such as the Zohar should not be considered as the basis of *pesaq* (when such a source flies in the face of overwhelming evidence to the contrary in texts far more authoritative in the halakhic decision-making process, such as the Talmud, the Rishonim, and the Codes), it would still be worthwhile to examine Jewish legal sources that often rely on mystical literature. As we shall see, this further study will only serve to make the problematic nature of R. Karo’s *pesaq* even greater.

R. Mordecai Moshe Hakohen Karfman, in his commentary (מראה כהן) on the Shulḥan Arukh of R. Yitzḥak Luria, calls attention to the fact that “many kabbalists” cite the Zohar as the source for not responding “amen” to the blessing *ga’al yisrael*. However, he, too, cannot find any explicit source which would account for the practice. He writes:

והנה באמת המקובלים הביאו בשם הזוהר שלא לענות אמן, ואנו לא מצאנו זה בזוהר בשום מקום בפירוש, כי אם במשמע מכמה מקומות אשר תפלה מיושב ותפלה מעומד מדמה לתפלה של יד ותפלה של ראש. ומכאן בודאי למדו: מה שם אין עונין אמן ביניהם גם כאן אין לענות ... ומה בין אמן לאדני שפתי תפתח, שהוא כתפלה אריכתא כיון שתיקנו רבנן, אמן נמי תיקנו רבנן ... על כן נראה שיש לכל בעל נפש לענות אמן ... ואני נוהג בעצמי כדברי הטור והראש״ש ז”ל, לענות בכל סיומי ברכות אמן אחר ברכת עצמי, ומכוון אני לענות עם הש״ץ יחד לענות אמן אחר גאל ישראל אחר ברכת עצמי.

In truth, the kabbalists cite in the name of the Zohar not to respond “amen;” however we have not found this [rule] anywhere in the Zohar explicitly, but only by inference in several places, in which prayer [recited while] sitting and prayer [recited while] standing are compared with

וככל הברכות, ממילא צריך לענות אמן כבכל הברכות, “We must respond ‘amen’ after this *berakhah* (i.e., *ga’al yisrael*) in accordance with the opinion of the Gemara; and in any event the *shaliah tzibbur* must recite this *berakhah* aloud like the rest of the prayers. And in any event one must respond ‘amen’—as with all *berakhot*.” *Sefer Barukh She’amar: Perush ‘al Tefillot Hashanah* (Tel Aviv: Am Olam, 1968), 112–113. This source was cited by R. Hayyim Herman Kieval in “The Case of the Lost Amen: Victim of an Erroneous Custom,” *Journal of Synagogue Music* 19, no. 1 (July, 1989): 72–76. I am grateful to R. David Golinkin for alerting me to this article.

hand tefillin and head tefillin. And it was from this [comparison] that probably enabled them to learn [the rule]: just as in that case [of tefillin] one does not recite “amen” [if he has heard the blessing] between the two [hand and head tefillin], so too here [with regard to prayers] one does not respond “amen” ... [between the Shema and its blessings, and the Amidah]. And what difference is there between [reciting] “amen” [after the blessing *ga'al yisrael*, before the Amidah] and *O Lord, open my lips* [which likewise is recited between *ga'al yisrael* and the beginning of the Amidah], which is considered as though it were part of a long [Amidah] prayer. [Were you to say that the recitation of] *O Lord, open my lips* is permitted since its recitation was ordained by the Rabbis, [the recitation of] “amen” was also ordained by the Rabbis ... Therefore it seems that everyone should respond “amen” ... And I myself practice according to the rulings of the Tur and the Rosh, may their memories be for a blessing, to respond “amen” at all the endings of blessings [i.e., major units of liturgy] after my individual blessing. And I intend to respond together with the *shal'ah tzibbur*, to respond “amen” after [the blessing] *ga'al yisrael*, following my own blessing.⁵⁶

Thus here we have a case of a mystically-inclined commentator who cannot find the source for R. Karo's ruling, and who testifies that he himself follows the Rishonim and early Codes.

Similarly, R. Yitzhak Safrin of Komarna, an important figure in nineteenth-century Hassidic Kabbalah, also rules specifically that one must say “amen” even after one's own blessing—and how much the more so, after that of the *shal'ah tzibbur*:

לא יפסיק בין גאולה לתפלה בשום דבר כי אם באמן, שהעיקר שחייב לענות אמן אף אחר ברכת עצמו. אם כן הוא מעיקר התפלה, ומכל שכן שיכול לענות אחר ברכות אחרים.

One should not make an interruption between *ge'ulah* and *tefillah* with any word, except for “amen,” for the essential point is that one is obligated to respond “amen” even after one's own blessing. Therefore, it (the recitation of “amen”) is of the essence of the prayer, and how much the more so may one respond (“amen”) after the blessings of others.⁵⁷

56 Mordecai Moshe Ha-Kohen Karfman, *Shulhan Arukh of Rabbenu Yizhak Luria* (Jerusalem, 1984), 55.

57 R. Yitzhak Eizek Yehudah Yehiel Safrin, *Siddur Heikhal Habarakha* (Jerusalem, 1990), 207. I am grateful to R. Jeremy Kalmanofsky for directing me to this source.

Thus, R. Yitzhak is an additional figure who, despite the mystical tradition espoused by R. Karo, disregards R. Karo's *pesaq*.

In addition, the Shulhan Arukh HaRav of R. Shneur Zalman rules likewise that the response of "amen" does not constitute an interruption; although he records the opinion of not saying "amen," he favors the position that encourages the recitation (וכן נוהגין):

צריך לסמוך גאולה לתפלה ... ולכן יש אומרים שאין עונין אמן אחר גאל ישראל, לא אחר ברכת עצמו ... ולא אחר הש"ץ. ויש אומרים שעניית אמן אינה חשובה הפסק, כיון שהוא צורך הברכה וסיומה. וכן נוהגין במדינות אלו, לענות אמן בין גאולה לתפלה אחר שמסיים הש"ץ ברכה זו, אבל לא אחר ברכת עצמו ... ומי שרוצה לצאת לדעת הכל יוכל לכוין לסיים עם הש"ץ, ואז אינו מחוייב לענות אמן אחר הש"ץ לפי מנהגינו, שאין עונין אמן אחר ברכת עצמו ... ויש מדקדקים להמתין בצור ישראל כדי לענות אמן אחר הש"ץ

One must juxtapose [the blessing] *ga'al yisrael* with [the beginning of] the Amidah ... Therefore, there are those who say that one may not respond "amen" after [the blessing] *ga'al yisrael*, neither after one's own blessing ... nor after that of the *shali'ah tzibbur*. And there are those who say that the response of "amen" is not considered an interruption, since it is said for the purpose of the blessing and its conclusion. And so do we conduct ourselves in these lands, to respond "amen" between [the blessing] *ga'al yisrael* and [the beginning of] the Amidah, after the *shali'ah tzibbur* concludes this blessing, but [we do not do so] after one's own blessing. One who wishes to fulfill both opinions may intend to conclude together with the *shali'ah tzibbur*, and then he is not obligated to respond "amen" according to our custom, since one does not respond "amen" after one's own blessing ... And there are those who practice exactly to pause at *O Rock of Israel* specifically to respond "amen" after [the blessing of] the *shali'ah tzibbur*.⁵⁸

Thus, this important Hassidic halakhic work seems at one with the important Rishonim and Codes that form the basis for the decision rendered by this teshuvah.

58 Shneur Zalman, Shulhan Arukh, Oḥ 66:9 (Brooklyn: Otzar Haḥasidim, 1978), 59.

Conclusion

This responsum affirms that one should not decide questions of halakhah on the basis of the Zohar or mystical traditions when these contradict the Talmudic tradition.⁵⁹ Even as we continue to be informed and enriched by the literary treasures of classic Jewish mysticism, especially in homiletical and theologically-educative contexts, the general approach exemplified by this teshuvah should characterize the halakhic inclinations of our decisors and decision-making institutions.

Nevertheless, in considering the question of whether or not a worshipper should respond “amen” following the blessing *ga'al yisrael*, this teshuvah concedes that it is permissible to maintain one of several minhagim:

- 1) One may decide to continue to support the decision of R. Yosef Karo, maintaining the mystically-based custom of falling silent at the transition from the Shema and Its Blessings to the Amidah.
- 2) One may adopt the position of the Magen Avraham, and choose to complete one's blessing together with the *shali'ah tzibbur* without saying “amen,” and thereby avoid any conflict.
- 3) One may adopt the practice of the מִדְקָדְקִים, and make a special effort—even to the extent of delaying the completion of one's own blessing—to respond “amen” to the blessing of the *shali'ah tzibbur*.
- 4) However, whether or not one accepts the stringency of the מִדְקָדְקִים, this *teshuvah* maintains that the *shali'ah tzibbur* ought to recite the blessing *ga'al yisrael* out loud and that worshippers should respond by reciting “amen.”

59 The question of the relationship between Kabbalah and Halakhah is of course a very old and a very complex one, and I do not wish to make light of the subject. It may well be that the Committee on Jewish Law and Standards will wish to explore this topic in some formal venue in the future. For now, interested readers may consult Jacob Katz, *Halakhah and Kabbalah: Studies in the History of Jewish Religion, Its Various Faces and Social Relevance* [in Hebrew] (Jerusalem: Magnes Press, Hebrew University, 1984); and see also Katz's “Halakhah and Kabbalah as Competing Disciplines of Study,” in *Jewish Spirituality: From the Sixteenth-Century Revival to the Present*, ed. Arthur Green (World Spirituality: An Encyclopedic History of the Religious Quest 14; New York: Crossroad, 1987), 34–63. The comprehensive book by Moshe Hallamish, *Kabbalah in Liturgy, Halakhah and Customs* [in Hebrew], cited above, would also be a resource in this endeavor. Hallamish devotes an entire chapter (161–179) to the influence of Jewish mysticism on the halakhah of R. Karo, and treats our specific question on 164ff.

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Nishmat Kol Hai: A Literary and Spiritual Commentary

Jeffrey Hoffman

It is a delight to dedicate this essay to Rabbi Joel Roth. Rabbi Roth inspired me early in my rabbinic training as my Talmud teacher (including a wonderful-group study of a chapter of *Sanhedrin* with now-rabbis Phil Scheim and Jay Rosenbaum) and has sustained me ever since as my *Poseq*. Rabbi Roth's passion for studying and teaching the classic texts of our tradition, and his dedication to living the life of a scholarly religious leader provided a wonderful model for his students. The following commentary, part of a larger work I am preparing on the Siddur, represents one small *shibboleth* of the *lekhet* that has come to fruition from the seeds planted by this master-teacher.

Literary Commentary

One of the most prominent differences between the weekday and Shabbat *Shaḥarit* service is found at the conclusion of *Pesukei DeZimra*. On weekdays, *Yishtabah* is the blessing that forms the concluding bookend paralleling the opening bookend of *Barukh She'Amar*. On Shabbat and festivals, *Yishtabah* itself constitutes the concluding paragraph of a much longer poem called (after its first three words) *Nishmat Kol Hai*, "The Breath of All." I will briefly survey some of the history of this text and then analyze its interesting literary structure.

When the Mishnah discusses the Passover Seder,¹ it says that the chanting of *Hallel* (Psalms 114–118) is followed by *Birkat HaShir*, "The Blessing of Song." Two sages of the Talmud were divided regarding the identity of this blessing.² One held that this blessing is *Yehallelukha*, "May They Bless You." The blessing concluding *Hallel* in post-talmudic prayer collections begins with the word *Yehallelukha*. The other held that it was *Nishmat Kol Hai*. As is typical of the

¹ m. Pesah. 10:7.

² B. Pesah. 118a.

Talmud, the full versions of these prayers are not recorded, assuming perhaps, that its readers were quite familiar with the wording. We cannot, therefore, be confident that extant versions completely match the putative Talmudic wording.³ Since the Talmud does not come to a conclusion as to which one of these is *Birkat HaShir*, many Haggadot include both. Nevertheless, only *Nishmat Kol Hai* concludes *Pesukei DeZimra* on Shabbat and festivals.

A series of verses found in *Nishmat Kol Hai* is also cited as one talmudic sage's version of a blessing to be recited upon the appearance of rain after a drought.⁴ The series of verses begins "Were our mouths as full as song as the sea and our mouths (full of) song as the roar of the sea ..., we still would not adequately thank You." Perhaps the two allusions to water comprise the connection to the rain that the blessing celebrates. It may be that one blessing borrowed the phrase from the other or it could have been a stock expression of praise.⁵

A remarkable comment found in the 12th century *Maḥzor Vitry* and other contemporaneous sources denies that the author of *Nishmat Kol Hai* was

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- 3 An interesting connection between later versions of *Yehallukha* and *Nishmat Kol Hai* is that they both share the exact wording of one sentence: *yodu vivarkhu vishabhu vifa'aru viromemu vey'a'aritzu veyakdishu veyamlikhu et shimkha malkeinu*, "let them thank and bless and praise and exalt and glorify and exalt and sanctify and accept the sovereignty of Your name, our king." Whether one blessing borrowed this wording from the other is not clear. An amazing cantorial rendition of this line, emphasizing, in staccato fashion, the repetition of eight synonymic verbs in a row, was recorded by Yossele Rosenblatt. This famous version is found, among other places, on *The Complete Cantorial Collection* (Tel-Aviv: Israel Music, 2006).
- 4 m. Ber. 9:2; b. Ber. 59b. The citation in the Talmud is *Ilu finu malei shirah kayam*, etc., *ein anu maspikim lehodot lekha Adonai Eloheinu ad 'tishta'aveh*; "Were our mouth as full of song as the sea, etc., we still would not adequately thank You, Adonai, our God, until 'bow.'" This parallels over one hundred words in the modern version of *Nishmat*, but again, it is not clear what the version was in the Talmudic period.
- 5 When the Talmud discusses at what point, early in the rainy season, one should recite the blessing over rain (i.e., when the first droplets appear or when the rain is steady, etc.), it replies, "From the time the groom goes out to meet the bride," that is, when drops of rain ricochet from puddles back up toward the rain that is falling. It may be that because this marriage imagery is associated in rabbinic literature with Shabbat, that *Nishmat Kol Hai* was transferred from the Haggadah to the conclusion of *Pesukei DeZimra* on Shabbat (and from there, to the pilgrimage festivals). While that is possible, marriage imagery is found in many settings in rabbinic literature, and even granting the major connection between marriage imagery and Shabbat, there are dozens of other images in this long prayer, and the groom/bride to which he refers isn't even mentioned in the prayer itself; it is mentioned in the context of another setting (the onset of rain) for one passage from this prayer. More evidence than this is needed before one can account for the transference of *Nishmat* from *Pesah* to Shabbat. Below, I suggest a connection between the very beginning of *Nishmat* and the wording of the service on Shabbat morning just before and just after its location in the service.

Simon (also called Peter), the apostle of Jesus! If this suggestion had to be denied, it is evident that at least some people had asserted that he was, indeed, the author:

There are those who say that that scoundrel Simon Peter the ass⁶ is the author of this and other prayers when he was on the rock. This is an error (worthy of) hell. God forbid that such a thing should occur among Israel. Anyone who makes this claim will have to bring a substantial, large sin offering when the Temple is rebuilt.⁷

This tradition can be traced back to a short medieval Jewish text sometimes called *Aggadeta deShimon Kefa*, “The *Aggadah* of Simon Kefa” (*Kefa* is Aramaic for “Peter,” i.e., “rock,” a reference to Matt 16:13–19).⁸ The identification of the author of *Nishmat Kol Ḥai* with the apostle Peter must be regarded as in the realm of myth since there is no historical evidence to support it. However, the attribution of this prayer to Simon/Peter the Apostle is part of a larger, extraordinary, legend found in these texts. According to these teachings, Simon/Peter, an elder among the Jews at the time of Jesus, volunteered to “go undercover,” as it were, and infiltrate the newly emerging Christian religion in order to protect Jews and Judaism. Christian tradition teaches that Simon/Peter was made

6 A play on Exod 34:20, *u’feter hamor*, “the firstling of an ass.” Reading the Hebrew word *feter*, “firstling” as a transliteration, the phrase may be read as “Peter, the ass.” Especially since according to the rules of Hebrew grammar there are occasions when a *peh* at the beginning of a word loses a *dagesh*, it may be all the more appropriate that *u’feter* could be construed as a reference to Peter.

7 Aryeh Goldschmidt, ed., *Mahzor Vitry* by R. Simḥah bar Shmuel (Jerusalem: Mekhon Otsar Ha-Poskim, 2004), 2: 412. And see the notes there regarding the other prayers attributed to Simon the Apostle. The editor, in n. 20, observes that the previous critical edition of *Mahzor Vitry* (the 1860 edition edited by Simeon Hurwitz and Heinrich Brody) emended this passage to read *ta’ut shel Roma* (“error of Rome”) by changing the *dallet* of *Duma* (“Hell”) to a *resh* (“Roma”). The editor criticizes this emendation since there is, he claims, support for understanding the image of *Duma* itself as a symbol of Rome, and then marshals as evidence y. ‘Abod. Zar. 3:6, 42d–43a and Gen. Rab. 39. However, I find no support for this claim in those two passages, though there is support in another place in the Palestinian Talmud, namely, y. Ta’an. 1:1, 64a in which it is said that in R. Meir’s copy of The Book of Isaiah, the prophecy of doom pronounced against the locale called “Duma” is identified as Rome.

8 Three versions of this tradition were published by Adolph Jellinek: *Bet ha-Midrash: Sammlung kleiner Midraschim und vermischter Abhandlungen aus der alteren judischen Literatur* (Vienna, 1873 and 1878 = Jerusalem, 1938), 5:60–62; 6:9–11, 155–156. English translations and analysis may be found in Wout Van Bekkum, “The Rock on Which the Church Is Founded: Simon Peter in Jewish Folktales,” in *Saints and Role Models in Judaism and Christianity*, ed. Marcel Poorthuis, Joshua Schwartz (Leiden: Brill, 2004), 289–310. See also idem, “The Poetical Qualities of the Apostle Peter in Jewish Folktales,” *Zutot* 4 (2004): 16–25.

the first bishop of Rome (and so, the first Pope). These medieval Jewish traditions claim that this appointment was all part of the Jewish Simon/Peter's plan. In Rome, he had a tower built for himself wherein he could live alone and conduct a secret Jewish life, while at the same time, he could issue laws that separated Christianity from Jewish practice, thus protecting Judaism. He also issued instructions not to harm Jewish communities and individuals. These legends go on to say that during his years in Rome, he composed numerous liturgical poems.⁹

It may be that *Nishmat Kol Hai* was identified as one of the hymns composed by Simon/Peter because this prayer contains wording which clearly asserted that there is no other god or savior other than the one God:

And other than You, we have no king who redeems, saves (*moshi'a*, same root as *Yeshu*, Jesus), rescues, sustains and deals mercifully at every instance of difficulty and distress. We have no king but You ...

While this is reasonable, it must also be said that the passage cited from *Nishmat Kol Hai* constitutes a very small segment of this long prayer and both its wording and the supposedly supportive commentary of Rabbi Eleazar of Worms (who does not mention Simon/Peter at all) constitute stock monotheistic declarations found throughout the liturgy.

Most interesting is the proposal for explaining the reason that the *Sheli'ah Tzibbur* who leads *Shaharit* in Ashkenazic custom begins chanting from the words *shokhen ad* within *Nishmat Kol Hai* instead of from *Barekhu* (which actually is the beginning of *Shaharit*). The suggestion is that the letter *shin* (the first letter of Shimon, "Simon" in Hebrew) with which *shokhen ad* begins is, according to a folk tradition, meant to invoke the name Shimon, which itself is encoded and spelled backwards over various intervals in *Nishmat Kol Hai*.¹⁰ This theory, while suggestive, lacks substantiation and so must be left in the realm of the speculative.

In any case, the wording of this lengthy blessing is nearly identical in all rites, which may attest to its ancient pedigree.¹¹

9 Shmuel David Luzzatto (1800–1865), in the introduction to the Italian Prayer Book mentions him as the author of a hymn for *Yom Kippur* and cites a responsum by Rabbenu Tam (1100–1171) establishing Simon/Peter as the author of another *piyyut* for *Yom Kippur*. See the citations in van Wout, "The Rock on Which the Church Is Founded," 307, and nn. 69–71.

10 The folk tradition is mentioned by J.D. Eisenstein, *A Digest of Jewish Laws and Customs* [in Hebrew] (New York: Hebrew Publishing Company, 1938), 279. I am happy to express thanks to my colleague and friend, Prof. David Golinkin, for alerting me to this citation.

11 Ismar Elbogen, *Jewish Liturgy: A Comprehensive History* (Philadelphia: Jewish Publication Society; New York: Jewish Theological Seminary, 1993), 96.

The location of this prayer at the conclusion of *Pesukei DeZimra* may be related to the fact that its first words parallel those of the last verse of Psalm 150. It is likely that the original core of *Pesukei DeZimra* comprised the last six psalms of the Book of Psalms, Psalms 145–150.¹² Thus, this prayer begins by invoking the last words of the last psalm:

Psalm 150: *Kol ha-neshamah* ... (“all that breathes ...”).

The prayer: *Nishmat kol ḥai* (“The breath of all”).

This literary link may continue toward the beginning of the next section of the service, in *Shaharit* itself. There, the prayer *ElAdon* contains wording that adds another echo to the end of Psalm 150 and the beginning of *Nishmat Kol Ḥai*:

Psalm 150: *Kol ha-neshamah* ... (“all that breathes ...”).

ElAdon: *Kol neshamah* (“everyone that breathes”).

These three examples of nearly identical wording may constitute an aural thread connecting *Pesukei DeZimra* with *Shaharit*.

An important key to the literary structure of the prayer is that the writer of *Nishmat Kol Ḥai* was very fond of lists; there are several individual lists, or litanies, of praises within it. The lists are not merely individual thought-units within a longer piece, but rather connect to form an extended and complete thought. That thought is: Even though the gratitude to God that our puny bodies are capable of expressing is wholly inadequate, all we have is our bodies; and therefore it falls to us to utilize all the parts and powers of our bodies to do our inadequate best in expressing our thankfulness. This message culminates with two midrashic interpretations of Scripture; and some individual units within the prayer contain their own midrashic citations of, or expansions on, biblical verses. Indeed, the entire prayer may, in a sense, be viewed as one long midrash.

The first midrashic interpretation is of “All of my bones shall say who is like You” (Ps 35:10), taking this phrase to mean that our limbs themselves ought to be the vehicles of praise to God, and we should not only utilize verbal praise. The second is extracted from Psalm 103:1, “(Let) my soul bless the Lord and (let) all my innards (bless) his holy name.” “Soul” and “innards” taken together add up to one’s entire physical body. The idea of using one’s physical body in praise of God is rare in Jewish liturgy where oral expression is the default mode, and so this prayer stands out in its call for whole body worship.

¹² Elbogen, *Jewish Liturgy*, 72.

The art of this prayer is expressed in the ways that the individual lists are woven together creating the larger call for worship through the physicality of the human body. The following is a chart of the essence of *Nishmat* that tracks how the lists combine to form the larger message. **The bolded words** serve as key phrases in the narrative arc of the poem:

The breath of all blesses Your name ...

Beside You, we have no
 King
 Redeemer
 Savior
 Liberator
 Rescuer
 Sustainer
 And merciful one

At every time of trouble and distress.

Aside from You, we have no king ... (Note how this last phrase parallels the phrase at the beginning of this list).

YHWH “does not sleep nor slumber” (Ps 121:4)

He wakes the sleeping
 Arouses the slumbering
 Gives speech to the dumb
 Supports the fallen
 Raises the bowed low

IF ONLY:

Parts of the body	Description	Simile
Our mouths (were)	Full of song	As the sea
Our tongues	(Full of) exultation	As the roar of its waves
Our lips	(Full of) praise	As the breadth of the sky
Our eyes	Shining	As the sun and moon
Our hands	Outstretched	As the eagles of the heavens
Our feet	Swift	As deer

WE WOULD STILL NOT MANAGE TO THANK YOU (BECAUSE):

Our situation	God's salvation of us
From Egypt	You redeemed us
From the House of Bondage	You saved us
In famine	You fed us
In plenty	You sustained us
From the sword	You rescued us
From plague	You sheltered us
From severe enduring sickness	You released us

THEREFORE ...

Parts of our body	Which you put in us
Limbs	Which You placed within us
Spirit and Breath	Which You blew into our nostrils
Tongue	Which You put into our mouths

THEY THEMSELVES (SHALL) ...

Thank
 Bless
 Praise
 Extol
 Exalt
 Glorify
 Sanctify
 Crown

BECAUSE EVERY ...

Body part	Will extol God in these ways
Mouth (shall)	Acknowledge You
Tongue (shall)	Swear allegiance to You
Knee	Shall bend to You
Back	Shall bow to You
Heart (shall)	Stand in awe of You
Innards and Entrails	Shall sing to Your name

**AS IT IS WRITTEN, “ALL MY BONES SHALL SAY WHO IS LIKE YOU ...”
(PS 35:10).¹³**

Who compares to You?
Who is equal to You?
Who matches You?

“God great, mighty and awesome” (Deut 10:17).
“Supernal God, creator of heaven and earth” (Gen 14:19).

We shall sing to You
We shall praise You
We shall extol You
We shall bless Your holy name

AS IT SAYS, “OF DAVID: LET MY SOUL BLESS GOD, LET ALL MY INNARDS (BLESS) YOUR HOLY NAME” (PS 103:1).

(Now expanding on each word of Deut 10:17, quoted above):

GOD in the power of Your strength
GREAT through the glory of Your name
MIGHTY forever
AWESOME in Your awesomeness.

¹³ Elsewhere, this verse is also cited as a possible text for the congregation's response in an

Thus, the separate components of the poem—many of which comprise lists and encompass biblical verses accompanied by midrashic interpolations—add up to a greater whole: An artfully put together appeal for the worshiper to utilize the entire body in expressing praise and gratitude to God.

Spiritual Commentary

If any prayer called out for expression in movement it would be *Nishmat Kol Hai*. To merely recite the words of the prayer seems to miss its very point: All parts of our body must be marshalled to express the gratitude that is due to God for sustaining us in every way. That is both the least we can do—and the most we can do. And the prayer makes the case that we ought to do the most we can do to convey our thanks for God's steadfastness in good times and in bad. The recitation of this prayer calls for swaying in one's seat. It also calls for dance. It calls for creative souls to compose melodies for parts of the poem, or all of it, so that it may be sung and danced to at joyous occasions, and not just at *Shaharit* of Shabbat and holidays.¹⁴ It also lends itself to guided meditation of bringing various parts of the body into service of the divine.

Given the religious polemic involved in attributing the prayer to Simon/Peter, recital of this prayer also calls for some thought about the division and conflict that religion has wrought, along with all of the beauty that religion brings. In opposition to the Jewish-Christian clash embedded in the prayer's history, the opening words of the prayer strike a note of universality:

The breath of all that lives shall bless Your name, and the spirit of all flesh shall glorify and exalt You forever.

The substantial fruits rewarding close reading of this prayer leads one to lament the fact that this richness is usually missed not only by the many worshipers

undertone to the precentor's chant of *Modim*, "we acknowledge" in the midst of the *Amidah* and this, too, is a moment of physicality, namely bowing. See y. Ber. 1:8, 3d.

14 As we have seen, this prayer migrated from one place in the liturgy—the *Haggadah shel Pesah*—to another—the conclusion of *Pesukei DeZimra* on Shabbat and Festivals. Both of these became permanent locations for it. I encourage us to consider other places that the prayer as a whole, or in part, may contribute to the spirit of an occasion on a temporary or one-time basis. It conjures, for me, the Dixie Chicks' 1999 song, "Some Days You Gotta Dance" (Troy Johnson and Marshall Morgan).

who tend to arrive at the service after *Nishmat Kol Hai* is recited, but also by those who—following the example of their prayer leaders—are likely to speed-daven through it.

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Mar'it Ozen: From the Ancient Water-mill to Automated Electronic Devices

Joshua Kulp and Jason Rogoff

*In the fall of 2017, students from the Jewish Theological Seminary Rabbinical School and the Conservative Yeshiva studied Tractate Shabbat. This article is an outgrowth of our *hevruta* and the *shiurim* we delivered on the subject. We will demonstrate how academic Talmud study helps us gain a deeper understanding of medieval interpretations of the Talmud and modern halakhic rulings.*

When reflecting on the differences between a prayer service at a typical Orthodox synagogue and one at a typical Conservative synagogue, the first that usually comes to mind is related to the role of women. Conservative synagogues do not have a *meḥitzah*, and for the most part women participate in the same roles as do men. Many Conservative synagogues shift the liturgy in order to reflect egalitarian ideals. But there is another difference that equally affects the experience undergone in these prayer services, one that almost uniformly distinguishes between Orthodox and non-Orthodox synagogues—the use of a microphone.¹ This paper is not a halakhic responsum on the use of a microphone on Shabbat. Such a discussion would have to discuss all facets of its use, including the use of electricity. Rather, we focus here on two Talmudic prohibitions that become intertwined in the Yerushalmi and Bavli and then separated again in late responsa literature. The first is the notion that one's vessels must rest on Shabbat. This is known in the Bavli as “the resting of vessels.” The second is the prohibition of making loud noises on Shabbat. We will show how literary considerations in the Bavli impacted post-Talmudic halakhah² and then trace how these two issues play out among several modern halakhic authorities. This case is an excellent example of how the modern academic approach to the

1 In fact, there was a brief period in which some Orthodox rabbis allowed and even used a microphone in the synagogue. See Louis Bernstein, “The Emergence of the English Speaking Orthodox Rabbinate” (Ph.D. diss., Yeshiva University, 1977), 82–85. Our thanks to Professor Jonathan Sarna and Rabbi Zev Eleff for their help in locating this reference.

2 See Ethan Tucker's discussion of this phenomenon in his chapter in our book, *Reconstructing the Talmud*, 2nd ed. (New York: Hadar Press, 2016), 149–170.

study of Talmud can potentially impact our adaptation of ancient halakhah into the rapidly changing technology that so characterizes our society.

The Resting of Vessels

The first chapter of Mishnah Shabbat contains a well-known debate between Beit Shammai and Beit Hillel concerning whether it is permissible to begin a process of work on erev Shabbat (Friday afternoon, before dark) that will continue on Shabbat. In the Mishnah and in the parallel in the Tosefta there are multiple points of disagreement between the two houses (in each of these cases Beit Shammai prohibits and Beit Hillel permits) and at least two points of agreement. In our *Reconstructing the Talmud: Volume II*, we explain the overall reasoning behind these debates.³ Here we will only briefly outline our conclusions. According to Beit Shammai, one is not allowed to begin processing a material on erev Shabbat if that material will be ready for use on Shabbat and could in theory be used on Shabbat. An example is soaking ink. It does not matter to Beit Shammai that the person is not actively performing work with his own hands on Shabbat, nor does it matter that the object probably will not be used (it is forbidden to use ink on Shabbat). In contrast, Beit Hillel says that as long as one is not performing the work with his own hands on Shabbat, and he will likely not use the item on Shabbat (such as ink), it is permitted to set the process in motion before Shabbat.

Following a debate between the two houses and a citation of midrashic support for both positions, the Tosefta continues with another source which seems to relate in general to the same topic: the beginning of processes before Shabbat that will continue on Shabbat. But this time neither house is mentioned, nor does there seem to be any debate about the issue.

תוספתא שבת א:כג

פותרין מים לגנה בערב שבת עם חשיכה, והיא שותה והולכת בשבת.
נותנין קילור לעין ואספלונית למכה בערב שבת עם חשיכה, והן מתרפין והולכין כל
השבת כולה.

נותנין גפרית תחת הכלים בערב שבת עם חשיכה, והן מתגפרין והולכין בשבת.
נותנין מגמר על גבי גחלים בערב שבת עם חשיכה.
ואין נותנין חטים לרחים של מים אלא כדי שייטחנו.

3 Joshua Kulp and Jason Rogoff, *Reconstructing the Talmud: Volume II* (New York: Hadar Press, 2019), 83–124.

t. Šabb. 1:23

One may conduct water into a garden on Friday afternoon just before dark, and it may go on being filled the whole day.

And one may place an eye salve on the eye and a plaster on a wound on Friday afternoon just before dark and it will continue healing all day.

And one may place sulfur under [silver] vessels on Friday afternoon just before dark and it may continue making sulfurous odor all day;

And one may place incense on top of coals on Friday afternoon just before dark.

But one may not place wheat in a water-mill unless it can be ground [when it is still day].

There are essentially two parts to this baraita: The first part lists processes that may be set in motion before Shabbat and the second part lists one process which is forbidden even if set up before Shabbat. In our aforementioned book, we explain that Beit Shammai would allow the activities in the first section for they do not consist of processing material. The person is not processing the water, sulfur, salve, bandage, or incense. Rather he is starting a process involving one substance, water, sulfur, salve, bandage, or incense, that aids something else, garden, vessel, eye, wound, or clothes. Since he is not processing an item on Shabbat, even Beit Shammai would permit these activities. Put another way, unlike the example of processing dyes, most of these substances are used up in the process which they are undergoing, much in the same way that oil is used up by a lamp, and wood is used up by a burning fire; both activities which Beit Shammai permits setting in motion on Friday right before Shabbat. The second half of the baraita can be explained according to our general reasoning as a point where Beit Hillel agrees with Beit Shammai. When it comes to grinding wheat, an item is being processed, and since this is a food item that potentially could be eaten on Shabbat,⁴ even Beit Hillel would agree that it is prohibited.

Yerushalmi

Since in this article we focus primarily on the placing of wheat into a water-mill and the justification for this prohibition, we will quote here only the section of the Yerushalmi relevant for the issue at hand.

⁴ Ground wheat can be chewed, see t. Ber. 4:6.

ירושלמי שבת א:ד (ג, ד)

אין נותנין חיטים לריחים של מים אלא כדי שיטחנו כל צורכן מבעוד יום.
 אמר רבי חגי: מפני שהן משמיעות את הקול.
 אמר ליה רבי יוסי: יאות, רבי, סבר כרבי יהודה.
 ברם כרבנין, כמה דאינון אמרין תמן, משום לא הותחל בכל טיפה וטיפה. כן אינון אמרין
 הכא, משום לא הותחל בכל חיטה וחיטה.
 אמר רבי יוסי בי רבי בון: מפני שהוא שכח ותוקע את היתד.

y. Šabb. 1:4, 3d

One may not place wheat in a water-mill unless it can be fully ground when it is still day.

R. Ḥaggai says: Because it makes noise.

R. Yose said to him: What you say is true, Rabbi, if you hold like R. Yehudah. But according to the other rabbis, it is like we said there, for each drop has not yet begun [to drip into the lamp]. So too we say here that [the grinding] has not begun with each piece of wheat.

R. Yose son of R. Bun said: Because he will forget and he will put in the peg.

Following the quote of the baraita, we have three different explanations from Amoraim from Eretz Yisrael as to why it is prohibited to place wheat into a water-mill on erev Shabbat. R. Ḥaggai explains that the problem with grinding wheat on Shabbat is that it will make noise, and thus is prohibited even if the process is set in motion on erev Shabbat. The prohibition of creating a noise on Shabbat is well-documented in both Talmudim. R. Ḥaggai's explanation reflects the general ban on noise-making found in Eretz Yisraeli texts. Activities such as ringing a bell, clapping, shaking a rattle, and knocking on a door are prohibited because they are a disruption of the tranquil atmosphere of Shabbat.⁵ In light of the intention of this prohibition, it does not matter that the process is set in motion before Shabbat. The noise will be made on Shabbat, and therefore it is prohibited. This concern will be the focus of our analysis of the Bavli and medieval commentators below. The Yerushalmi contains two other Amoraic explanations of the water-mill prohibition, neither of which appears in the Bavli. These explanations are not germane to the subject of this paper. However, it is worth noting that the Yerushalmi does not entertain the possibility that Beit Hillel would permit putting wheat in a water-mill. Nor does the

⁵ See m. Beṣah 5:2; t. Šabb. 13:15–17; y. Beṣah 5:2, 63a; b. 'Erub. 104a. See Avraham Goldberg, *Commentary of Mishnah Erubin* (Jerusalem: Magnes Press, 1986), 312 n. 55.

Yerushalmi seem to struggle as to why Beit Hillel would prohibit this action, but permit the other actions which are the subject of the Mishnah and the earlier section of the Tosefta. While there is some dispute as to why this particular action is prohibited, it is abundantly clear in the Yerushalmi that it is prohibited by both Houses.

Bavli

The Bavli begins with the Toseftan baraita and then offers the same explanation that appears in the Yerushalmi.

בבלי שבת יח ע"א

ת"ר פותקין מים ... אבל אין גותנין חטין לתוך הריחים של מים אלא בכדי שיטחנו מבעוד יום.

מאי טעמא?

אמר רבא: מפני שמשמעת קול.

b. Šabb. 18a

Our rabbis taught: One may conduct water ... But one may not place wheat in a water-mill unless it can be ground when it is still day.

What is the reason? Rava⁶ answered: Because it makes a noise.

Up until this point, the sugyot in the two Talmudim are identical, and both relatively simple to explain. In contrast, the structure of the continuation of the sugya in the Bavli is exceedingly difficult, it contains some strained points, and as we shall see, it is the source of the differences in the halakhic rulings of the Rishonim.

א"ל רב יוסף: ולימא מר משום שביתת כלים! דתניא: ובכל אשר אמרתי אליכם תשמרו (שמות כג, יג) לרבות שביתת כלים.

6 All textual witnesses of our sugya, including genizah fragments, manuscripts, and the majority of printed editions, attribute this statement to Rava. The Vilna printed edition, influenced by the emendation of R. Solomon Luria (16th century), reads Rabbah. The early medieval commentators also attribute this statement to Rabbah because the sugya presents his statement as a direct response to R. Yosef, his colleague. In our analysis below of the medieval and modern halakhic authorities we will attribute the statement to Rabbah in order to remain consistent with their attribution. On the difficulty of determining the attribution of statements to Rava/Rabbah see Shamma Friedman, "Orthography of the Names Rabbah and Rava," *Sinai* 110 (1992): 140–164.

אלא אמר רב יוסף: משום שביתת כלים.
 והשתא דאמרת לב"ה אית להו שביתת כלים דאורייתא, גפרית ומוגמר מאי טעמא
 שרו? ...
 והשתא דאמר רב אושעיא אמר רב אסי: מאן תנא שביתת כלים דאורייתא? ב"ש היא
 ולא בית הלל.
 לב"ש בין קעביד מעשה בין דלא קעביד מעשה אסור, לבית הלל אע"ג דקעביד מעשה
 שרי.

R. Yosef said to him: Let the master say it is on account of the resting of vessels? For it was taught: *And in everything that I have said to you take heed* (Exodus 23:13) this includes the resting of vessels.

Rather R. Yosef said: it is on account of the resting of vessels.

Now that you say that Beit Hillel holds that the resting of vessels is a biblical commandment, why did they permit sulfur and incense? ...

Now, however, that R. Oshaya said in the name of R. Assi: Which tanna [holds that] the resting of vessels is a biblical commandment? It is Beit Shammai.

Then according to Beit Shammai, whether it [the utensil] performs an action or not, it is forbidden, while in the opinion of Beit Hillel even if it performs an action it is permitted.

R. Yosef asks why Rava did not explain that the prohibition was "because of the resting of vessels." R. Yosef then cites a midrashic baraita supporting the idea that one is commanded to allow one's vessels to "rest" on Shabbat.⁷ He then replaces Rava's explanation as to the water-mill prohibition with his own reasoning, because of "resting of vessels" (*shevitat keilim*).

According to the arrangement of the material in the sugya, which assumes that the baraita is agreed upon by both Houses, R. Yosef is supposed to be explaining the baraita such that it will accord with both **Beit Hillel** and Beit Shammai. R. Yosef seems to posit that Beit Hillel prohibits using a water-mill not because of a specific problem with this particular activity but due to a larger category of prohibitions which he terms "the resting of vessels on Shabbat." This is, we should note, the earliest appearance in rabbinic literature of this broad term. The problem is that the notion that Beit Hillel agrees with Beit Shammai that one's "vessels must rest on Shabbat" contradicts Beit Hillel's generally permissive position as reflected in Tannaitic sources. How can Beit Hillel

⁷ This baraita is not found in Tannaitic midrashim. It was included in the printed edition of the Mekhilta de-Rabbi Shimon bar Yohai but this portion of that composition is based on a medieval collection and is not found in any manuscript.

hold that one's vessels must rest when they permit nearly all of the other activities discussed in the Mishnah, including those in the baraita! "*Shevitat keilim*" might be able to explain why Beit Hillel would prohibit grinding wheat in a water-mill, but only if we totally ignore Beit Hillel's overall approach to the issue.⁸ Furthermore, without any particular difficulty, the sugya later reverses this position, citing a statement by R. Oshaya in the name of R. Assi who limits the concept of *shevitat keilim* to Beit Shammai. It is not at all clear from the sugya whether this position opposes R. Yosef or simply clarifies his statement. Ultimately, the Bavli's presentation of the Amoraic explanations of the baraita creates the impression that Rava believes that Beit Hillel would prohibit using a water-mill because of the loud noise it makes while other Amoraim, certainly R. Oshaya in the name of R. Assi attributes the restriction on the water-mill to Beit Shammai because of *shevitat keilim*.⁹ Beit Hillel, who does not agree with such a general prohibition, would indeed allow one to put wheat into a water-mill on erev Shabbat. The Bavli offers no explanation whatsoever as to why this is not an infringement on the prohibition of making a noise.

We should emphasize here that early literature agrees that it is prohibited to place wheat in a water-mill before Shabbat. This is stated anonymously in the Tosefta, is explained in three different fashions in the Yerushalmi, and is explained by Rava in the Bavli. No Amora ever waives this prohibition, at least not explicitly. In a reconstruction of this material that we offer in our book, we interpret R. Yosef as stating that Beit Shammai would prohibit the action due to their general mandate that one's vessels must rest on Shabbat. This does not, however, mean that R. Yosef would necessarily say that Beit Hillel permits. However, the construction of the sugya by the editors of the Bavli creates a direct dispute between Rava and R. Yosef. If one follows Rava, then placing wheat in a water-mill is prohibited because it makes noise. If one follows R. Yosef, who, according to the Stammaitic arrangement of his statement, attributes the baraita to Beit Shammai exclusively and not to Beit Hillel, then the action is permitted because we assume the halakhah does not follow Beit Shammai.

This sugya is thus another example as to how the Stammaitic editors create dialectical sugyot, passages in which Amoraim raise difficulties on one another, respond to each other's explanations of Tannaitic material, and seamlessly shift their dialogue from one topic to another. While their aims are primarily literary, such creations have significant impact on post-Talmudic halakhah. Halakhah

8 See Tosafot s.v. וְלִימָא מַר.

9 For a full analysis of the reconstruction of the sugya see Kulp and Rogoff, *Reconstructing the Talmud: Volume II*, *ibid.*

can, at times, significantly shift without any sage actually having intended for such a shift to occur. Post-Talmudic halakhah is sometimes the result of literary processes of earlier editors, and not just of the legal decisions made by earlier halakhic authorities.

Geonim

The impact of the Bavli's construction of the sugya can already be seen in the Geonic period. R. Natronai Gaon, in a responsum concerning a Jew who leases his mill to a non-Jew, assumes that a Jew is permitted to set up a mill before Shabbat.

תשובות רב נטרונאי גאון סימן נח

וששאלתם: ישראל שיש לו רחים מחוץ לתחום ונותן אותם לגוי בקבלה, מהו שיטחן גוי בשבת?

כך ראינו: כיון שהשכירו לגוי קנאו גוי, דקאמרינן: שאלה—קנייה; אגרה—קנייה. ואי משום שביתת כלים, בית שמאי הוא דאסרין, אבל בית הלל לא אמרין שביתת כלים ולא אסרין, דקאמרינן: אבל אין נותנין חטים לרחים שלמים אלא אם כן שיטחנו מבעוד יום.

והא בריתא בית שמאי היא, דקאמרינן לקמן: השתא דאמר ר' אושעיא אמר רב אסי: מאן תנא שביתת כלים? בית שמאי היא, דאי בית הלל מישרא שרו—הכי מסקנא כבית הלל דשרו.

Teshuvot of Rav Natronai Gaon no. 58¹⁰

And that which you asked concerning a Jew who has a mill outside of the Shabbat border (*tehum*) and leases it to a gentile, may he [the gentile] use it for grinding on Shabbat?

Thus we have seen: Since he leased it to the gentile, the gentile has acquired it. As we say: borrowing—he acquires it; leasing—he acquires it. And if you say [there is the problem of] “resting of vessels,” it is Beit Shammai who forbids. But Beit Hillel does not hold “resting of vessels” and does not prohibit, as we say: “But one may not place wheat in a water-mill unless it can be ground when it is still day.”

And that baraita is according to Beit Shammai, as we say further, “Now that R. Oshaya said in the name of R. Assi: Which Tanna [holds] the rest-

10 Text of responsum from Robert Brody, ed., *Teshuvot Rav Natronai bar Hilai Gaon* (Jerusalem: Makhon Ofeq, 2011).

ing of vessels? It is Beit Shammai, for Beit Hillel permits"¹¹—this is the conclusion according to Beit Hillel who permits.

We will begin with an analysis of the question. M. 'Abod. Zar. 1:9 prohibits leasing a bathhouse to a gentile because it is referred to as belonging to the Jew. b. 'Abod. Zar. 21b cites a baraita (= t. 'Abod. Zar. 2:9) where R. Shimon b. Gamaliel explains that the prohibition exists because the gentile will operate the Jew's bathhouse on Shabbat. This will lead onlookers to think that either the Jew himself or the gentile at the behest of the Jew is performing forbidden labor on Shabbat.¹² The questioner asks the Gaon whether it is permissible to lease a mill to a gentile outside of the town limits, a place where Jews would not be able to travel on Shabbat.¹³ The location of the mill removes the concern for *mar'it ayin*, the appearance that the Jew is doing work on Shabbat.¹⁴ This leaves the Gaon with the independent question of whether a Jew's vessels must rest on Shabbat.

R. Natronai Gaon begins by quoting a short piece of Talmud found on b. 'Abod. Zar. 15a. The statement, which is ultimately refuted at the end of the sugya, suggests that a gentile legally acquires whatever he borrows or leases from a Jew.¹⁵ Therefore, there would be no prohibition preventing the gentile from using it on Shabbat. R. Natronai adds that since the vessel is leased and thus there is not a complete transfer of ownership, some might suggest that the gentile's use is prohibited because of "the resting of vessels." However, the mandate for "resting of vessels" is held only by Beit Shammai. Beit Hillel does not have such a halakhic category, and thus there is no problem with the Jew's

11 It is likely that R. Natronai has a version of the Bavli which explicitly states that Beit Hillel would permit. See *ibid.*, 166 n. 1.

12 See also responsum no. 59 about leasing a bathhouse that is not widely recognized as belonging to a Jew. See *ibid.*, 166–167.

13 The distinction between the ruling in and out of the town limits is based on b. Mo'ed Qat. 12a. We follow Brody who believes that the mention of the town limits was part of the original question. It is possible that R. Natronai rules that *mar'it ayin* would not apply to a mill as it would a bathhouse, in which case his lenient ruling would be applicable in all cases. See Brody, *ibid.*, n. 3.

14 A similar question is asked about Jewish–Gentile partnerships. If a business and all of its assets are co-owned by a Jew and gentile how can the Jew be certain he will not benefit from the forbidden labor performed on Shabbat. The question is particularly relevant when the partners own a bathhouse, bakery, olive press, or mill. All are examples of fixed locations which would carry the name of the Jewish owner. There is less of a concern with movable property. See Joel Mueller, ed., *Geoney Mizrah Uma'arav* (New York: Mekhon Menora, 1959), no. 50.

15 This is true even if the gentile does not acquire the vessel according to the final halakhah. See Brody, *Teshuvot*, 165 n. 2.

mill being used by a gentile on Shabbat. Note that R. Natronai is clearly following what seems to be the conclusion of the sugya—Beit Hillel does not prohibit the use of the water-mill. Beit Hillel is not the author of this baraita. R. Natronai does not even refer to Rava's explanation that putting wheat in the water-mill is prohibited due to the noise; he reads the sugya as rejecting Rava's reading of the baraita in favor of that of R. Yosef. He fully accepts R. Yosef's explanation of the prohibition as being due to "resting of vessels" as well as R. Oshaya's ascription of the Toseftan baraita to Beit Shammai. In sum, since the mill is found outside the town limits there is nothing to prohibit its use by the gentile on Shabbat.

Rishonim

In direct contrast to the geonic leniency, R. Ḥananel holds that Beit Hillel prohibits using the water-mill because it makes a noise and that we should rule in accordance with this opinion.

רבינו חננאל שבת יח ע"א

ואף על גב דקיימא לן כבית הלל, ובית הלל לית להו שביתת כלים, נתינת חטים ברחיים של מים בע"ש להטחן בשבת אסור. דלא אמרו משום שביתת כלי אלא רב יוסף. אבל רבה אמר מפני שמשמעת את הקול, וכוותיה מסתברא.

Rabbenu Ḥananel on b. Šabb. 18a

Even though we follow Beit Hillel, and Beit Hillel does not hold "resting of vessels," placing wheat in a water-mill on erev Shabbat in order to grind it on Shabbat is forbidden. For only R. Yosef said it is prohibited because of "resting of vessels." Rabbah said it is because it makes noise. And his logic is reasonable.

R. Ḥananel reads the sugya as a debate between R. Yosef and Rabbah concerning why it is prohibited to place wheat in a water-mill. Were we to explain that it is prohibited because of "the resting of vessels," then we would have to permit the action because only Beit Shammai rules this way. But R. Ḥananel insists that the halakhah follows Rabbah,¹⁶ probably due to the general preference for Rabbah over R. Yosef.¹⁷

16 Rif 6a–b presents both explanations without making an explicit decision. He begins with the geonic position that Beit Hillel permits use of the water-mill and then adds "there are those who say it is forbidden because of noise." Both Ran and R. Zerachia HaLevi take this as an indication that the Rif himself is lenient.

17 See b. B. Bat. 114b. This is stated explicitly in Tosafot HaRosh b. Shabbat 18a.

The Tosafists continue the debate over the appropriate halakhic ruling in light of the ambiguity of the sugya.

תוספות שבת יח ע"א והשתא

אומר רבינו תם: דהלכתא כרב יוסף, דמוקי ברייתא כב"ש דהא רב אושעיא קאי כוותיה. ולפי זה, ריחים מותרים דלדידיה לב"ה שרי אפי' היכא דקעביד מעשה ולא חייש להשמעת קול. ולי נראה, דרב אושעיא לא מוקי לה כב"ש, אלא הש"ס הוא דקאמר הכי: הא מני? ב"ש היא אליבא דרב יוסף דמוקי לה משום שביתת כלים. אבל לרב אושעיא מצינן למימר דמוקי לה כב"ה ואית ליה השמעת קול כרבה. וכן פסק ר"ח, דטעמא דריחים משום השמעת קול ואתי כב"ה. ועוד דסוגיא דלקמן לא מיתוקמא אלא כרבה כדפי'. וקי"ל כרב אושעיא דמאן תנא שביתת כלים בית שמאי היא. ומותר להשאל כלים לנכרי, ואין לחוש במה שיעשה בו הנכרי מלאכה. אבל בהמתו אסור להשאל דשביתת בהמתו עליו דאורייתא.

Tosafot b. Šabb. 18a s.v. Vehashta

Rabbenu Tam rules that the law follows R. Yosef who attributes the baraita to Beit Shammai for R. Oshaya follows him. Therefore, use of a mill is permitted, for according to R. Yosef, Beit Hillel permits even if he performs an action, and he has no concern for making a noise.

However, it appears to me that R. Oshaya does not attribute the baraita to Beit Shammai. Rather, it is the anonymous voice who states: "who is this? It is Beit Shammai according to R. Yosef who says the problem is *shevitat keilim*."¹⁸ However, it is possible to say that R. Oshaya attributes it to Beit Hillel, and he holds [there is concern] of making a noise, as does Rabbah. This is also the ruling of R. Ḥananel: the reason for the [prohibition of the use of the] mill is because it makes a noise and this follows Beit Hillel.

Furthermore, the sugya later on (19a) can only be understood according to Rabbah, as I have explained previously.

We do rule like R. Oshaya that the Tanna who holds of *shevitat keilim* is Beit Shammai.

18 The language of the Tosafot raises the possibility that there is a variant reading in the sugya which explicitly asks "who is this." The passage as presented in the Tosafot HaRosh ad. loc. clarifies that author of the Tosafot is simply rephrasing the Talmudic argument in his own words.

It is permitted to lend vessels to a non-Jew, and there is no problem with what the non-Jew will do with them on Shabbat. But, one cannot lend an animal to a non-Jew because there is a Torah law requiring his animals to rest.

There are two voices in this passage, Rabbenu Tam and an anonymous colloquutor, likely R. Samson of Sens.¹⁹ Rabbenu Tam rules according to R. Yosef because R. Yosef is supported by R. Oshaya, making this a case of two Amoraim against Rabbah, who remains a lone voice. To Rabbenu Tam the line in the Talmud that states, “Now, however, that R. Oshaya said in the name of R. Asi: Which Tanna [holds that] the resting of vessels is a biblical commandment? It is Beit Shammai” is not only a general remark of R. Oshaya concerning the dispute between the Houses. R. Oshaya is claiming that the Toseftan baraita should be attributed to Beit Shammai. Since we do not rule like Beit Shammai, the water-mill prohibition is waived.

The anonymous author of the Tosafot disagrees with Rabbenu Tam's reading of the sugya. He provides two pieces of support for ruling according to Rabbah that the water-mill is prohibited because it makes noise. First, he engages in a bit of Talmudic criticism to show that the sugya takes R. Oshaya's words out of context. R. Oshaya originally stated only that Beit Shammai mandates *shevitat keilim* and not Beit Hillel. R. Oshaya was not referring to the Toseftan baraita. Rather, he was referring to the midrashic baraita quoted earlier, “*And in everything that I have said to you take heed*” this includes the resting of vessels.” This baraita should be ascribed to Beit Shammai and not Beit Hillel. While he does not state this explicitly, he may even have detected this from the phrase “from the Torah” which implies that R. Oshaya is referring to a source that reads *shevitat keilim* into the Torah—and that can only be the midrashic baraita. In contrast, the Toseftan baraita does not in any way imply that the prohibition is from the Torah. R. Oshaya clarifies that the midrashic baraita should be ascribed to Beit Shammai and not Beit Hillel. It is only the context of the sugya, where R. Oshaya's statement follows the debate between R. Yosef and Rabbah, that makes it seem as if R. Oshaya is siding with R. Yosef, who explains the prohibition as the result of *shevitat keilim* and not due to the problem of making noise. It is the editors who portray R. Oshaya as clarifying the Toseftan baraita, which he attributes only to Beit Shammai; they lead us to believe that Beit Hillel would allow putting wheat into the water-mill. This is an excellent example

19 The Tosafot on Shabbat found in our collection were compiled and edited by R. Eliezer (ben Solomon) of Touques based on the Tosafot of R. Samson of Sens. See Ephraim E. Urbach, *Ba'aley HaTosafot* (Jerusalem: Mossad Bialik, 1968), 470–474.

of the sensitivity of the Tosafot to separating the editorial layer from the words of the Amoraim themselves.²⁰ The anonymous Tosafist separates R. Oshaya's statement from its context in the sugya and arrives at his halakhic conclusion by focusing on the original intent of the Amoraic material.

The Tosafist further supports his halakhic ruling by arguing that another sugya accords with Rabbah. The sugya on 19a refers to m. Šabb. 1:9, "and both [houses] agree that one may lay olive press beams and wine rollers [on erev Shabbat]." The sugya explains that Beit Shammai concedes to Beit Hillel in this instance because even if one performed either of these activities on Shabbat itself one would not be liable for a *ḥatat*, a sin-offering, the punishment for a transgression of a biblical Shabbat prohibition. According to this sugya, Beit Shammai does not prohibit starting certain activities on erev Shabbat due to a general category of "resting of vessels." Rather, they prohibit beginning on erev Shabbat any activity which if done on Shabbat would cause one to be liable for a *ḥatat*. This understanding of Beit Shammai's position contradicts R. Yosef's explanation of their position, and thus implies that the explanation of the baraita on 18a should follow Rabbah and not R. Yosef.

An interesting modification to the interpretation of the sugya emerges in 13th-century France. Sefer HaTerumah and others append an explanation to the noise prohibition, one that we do not find prior to that point.²¹

ספר התרומה הלכות שבת סימן רכ
ואין נותנין חטין לתוך הרחים אלא כדי שיטחנו מבעוד יום.
אמר רבה: מפני שהיא משמעת קול ויאמרו, רחים של פלוני טוחנין בשבת ויסברו
דבשבת נתנו החטים.

Sefer HaTerumah, Hilkhot Shabbat No. 220

One may not place wheat in a water-mill unless it can be ground when it is still day.

Rabbah said: because it makes a noise and they will say, "So-and-so's mill is grinding on Shabbat," and they will think that he placed the wheat on Shabbat.²²

20 For more examples see Shamma Friedman, "Al Derekh Heker Hasugya," *Texts and Studies 1*, ed. H.Z. Dimitrovsky (New York: Jewish Theological Seminary, 1978), 288–296.

21 On R. Baruch b. Yitzhak, the author of Sefer HaTerumah, and his mistaken association with the city of Worms see Simha Emmanuel, "Biographical Data on R. Baruch b. Isaac," *Tarbiz* 69, no. 3 (2000): 423–440.

22 See also Semag no. 65.

Following the anonymous voice in the Tosafot, Sefer HaTerumah rules in accordance with Rabbah and against R. Yosef. Placing wheat in the water-mill is prohibited because it produces a noise. However, his explanation of the prohibition of making noise is quintessentially different from any other explanation we have yet encountered. Sefer HaTerumah explains that the concern of noise production is one of *mar'it ayin*, or perhaps we should say, *mar'it ozen*. Passersby will hear the grinding mill and assume that the owner has actively violated Shabbat by placing the wheat in the mill on Shabbat itself. This explanation differs dramatically from the original Amoraic material where the sound itself is the problem. A cacophonous sound such as that made by the water-mill will disrupt the intended Shabbat atmosphere.

We should note the similarity between the question posed to the Gaon and the ruling of Sefer HaTerumah. The questioner in the Geonic responsum is also concerned with what other people might think, and this is why he mentions that the water-mill is outside the Shabbat border. If it is inside the border, he assumes it would be prohibited lest people think that the Jew is using his water-mill on Shabbat, just as the Talmud is concerned lest people think a bathhouse leased to a Gentile is being operated by a Jew (b. 'Abod Zar. 21a). This is the Talmudic source for the fear that people will confuse something being operated on Shabbat without a violation (because the Gentile is operating it) with something being operated on Shabbat in violation of the law (because the Jew is operating it). Sefer HaTerumah takes this concern and applies it to hearing a water-mill grinding on Shabbat. Unlike the other cases in the first chapter of m. Šabb, where the work is being done silently (soaking of dyes, dyeing wool, setting traps), the water-mill is an audible process and will attract attention. This is why the noise causes it to be prohibited. Not because making noise on Shabbat is itself a problem.

What causes Sefer HaTerumah to change the interpretation of Rabbah's explanation? His explanation is not found in either Talmud. Nowhere in the Talmudim is it suggested that a permissible act, such as beginning a process on erev Shabbat, is prohibited because it makes a loud enough noise such that passersby may think that the Jew himself is working on Shabbat. It seems as if his innovative interpretation is a direct result of the Babylonian sages' limitation of the general prohibition against making loud noises on Shabbat.²³

The primary sugya on the prohibition of making a noise on Shabbat is found on b. 'Erub. 104a:²⁴

23 See Ethan Tucker, https://mechonhadar.s3.amazonaws.com/mh_torah_source_sheets/CJLVInstruments.pdf 27 n. 43.

24 We will limit our citation to the Amoraic discussion which opens the sugya. For a full

בבלי עירובין קד ע"א

עולא איקלע לבי רב מנשה, אתא ההוא גברא טרף אבבא. אמר: מאן האי? ליתחל גופיה דקא מחיל ליה לשבתא.
אמר ליה רבה: לא אסרו אלא קול של שיר.

b. 'Erub. 104a

Ulla was visiting R. Menashe's house. A man came by and knocked on the door. Ulla said: Who is that? May his body shudder (*leithal*) for having violated (*maheil*) Shabbat.

Rabbah said to him: They forbade only music.

Ulla, the Eretz Yisraeli Amora who would travel back and forth to Babylonia, is appalled by a knock he hears on the door while visiting Rav Menashe. Ulla reacts so viscerally because he believes, in line with the Eretz Yisraeli tradition, that producing a loud noise on Shabbat is strictly prohibited. Rabbah responds that the prohibition is limited to musical sounds. As the sugya continues, earlier rabbinic sources are brought which seem to contradict Rabbah's claim. The Stam succeeds in contextualizing each source in order to defend Rabbah's ruling. However, while the sugya does defend Rabbah against all difficulties, it ultimately offers no clear-cut statement of preference for Rabbah over Ulla. The lack of a clear ruling in the Talmud leads post-Talmudic authorities to debate whether loud noises or only music is prohibited on Shabbat.

Rabbenu Ḥananel argues that despite the resolutions to Rabbah's position, halakhah does not rely on strained resolutions and thus follows Ulla. He writes:

רבנו חננאל עירובין קד ע"א

ואע"ג דשני רבה כל הני תיובתא דמקשי עליה, אשינויי לא סמכינן ולא דחינן לשמועה דעולא.

Rabbenu Ḥananel b. 'Erub. 104a

Despite the fact that Rabbah deflected all the challenges brought against him, we do not rely on [strained] resolutions, and we do not reject Ulla's tradition.

This conclusion is consistent with his ruling in the case of the water-mill where he also prohibits the production of a loud non-musical noise. R. Yitzhak Alfasi

analysis see See Aviad Stollman, *Commentary of Chapter Ten, Eruvin*, 375–391 and Ethan Tucker, *ibid.*

(Rif), however, argues that the law accords with Rabbah's limitation of the noise-prohibition to music:

ר"ף עירובין לה ע"ב

ומסתברא לן דהלכתא כוותיה דרבא דאמר לא אמרו אלא בקול שיר בלבד ... וחזינן למקצת רבואתא דסבירא להו כעולא וסמכי אגמרא דבני מערבא ... ואנן לא סבירא לן הכי, דכיון דסוגיין דגמרא דילן להתירא לא איכפת לן במאי דאסרי בגמרא דבני מערבא, דעל גמרא דילן סמכינן דבתרא הוא. ואינהו הוי בקיאי בגמ' דבני מערבא טפי מינן, ואי לאו דקים להו דהאי מימרא דבני מערבא לאו דסמכא הוא.

R. Yitzḥak Alfasi b. 'Erub. 35b

It makes sense to say that the halakhah follows Rava [= Rabbah], who said that only music is prohibited ... We have seen that some of the masters [like R. Ḥananel] hold like Ulla and they rely on the Talmud Yerushalmi ... But we do not hold this way; since the sugya of our [= Babylonian] Talmud is permissive, we don't care if the Talmud Yerushalmi forbids, because we rely on our Talmud, for it is later, and [its editors] were experts in the Talmud Yerushalmi more than we are. They would not have permitted here unless they knew that the statement from the Land of Israel was unreliable.

According to the Rif, the Bavli follows Rabbah, probably because he senses that the Stammaitic deflection of all difficulties reveals the "Bavli's" position. Unlike R. Ḥananel, the Rif is not concerned with the forced nature of these deflections. He is aware of the Yerushalmi's ruling that making any type of loud noise is prohibited, but argues that the law accords with the Bavli because it is later and it would have had the opportunity to reject the Yerushalmi. The Rif's position accords with what seems to be his lenient ruling on the water-mill.²⁵ Thus, both the Rif and R. Ḥananel correlate their general position concerning noise on Shabbat with their particular position regarding the water-mill. To R. Ḥananel, all noise is prohibited, and thus the water-mill can be prohibited due to the noise. To the Rif, only music is prohibited, and the water-mill prohibition is ascribed to Beit Shammai, due to *shevitat keilim*.

Twice on b. Beṣah 30a (s.v. **אין מטפחין**, and s.v. **אין מטפחין**) the Tosafot imply that they accept Rabbah's limitation of the noise prohibition. First, they explain that one reason that clapping might be prohibited is that it is considered mak-

²⁵ See above n. 16.

ing music. Had it simply been noise, it would have been permitted. Later on the same page, cognizant of the fact that people in their community do not adhere to the Mishnaic prohibition of clapping, they justify their behavior:

תוספות ביצה לע"א ד"ה תנן
... מיהו לדידן שרי, דדוקא בימיהן שהיו בקיאין לעשות כלי שיר שייך למגזר.
אבל לדידן, אין אנו בקיאין לעשות כלי שיר ולא שייך למגזר.

Tosafot, b. Beṣah 30a, s.v. Tenan

However, for us, these activities are permitted; for it was only in their time, when people had the skill to make musical instruments, was it necessary to decree [against clapping lest someone make a musical instrument]. But for us, we are not such experts that we know how to make musical instruments, and therefore there is no need for the decree.

According to the Tosafot, based on the Stam on b. Beṣah 36a, the prohibition against clapping exists only in a situation where the people are skilled artisans who know how to fashion their own instruments. Absent this concern, clapping is permitted. Clearly, the Tosafot have no problem with the loud noise made by clapping itself, thus indicating that they rule according to Rabbah—only musical sounds are prohibited.²⁶

Sefer HaTerumah was written by R. Baruch b. R. Yitzḥak, a student of R. Yitzḥak the Elder, one of the greatest of the Tosafists. Thus, Sefer HaTerumah is the first halakhic authority to combine the Tosafot's restrictive ruling on using a water-mill with their lenient view of the concern of making noise in general on Shabbat. To resolve this albeit minor crisis, Sefer HaTerumah reinterpreted the problem of the noise produced by the water-mill—the noise itself is not prohibited, it is the potential misunderstanding that it might cause. Note that there is no other possible reason available for him to prohibit putting the wheat in the water-mill on erev Shabbat, for this is the only reason that can accord with Beit Hillel. And since the water-mill sound is not music, it should seem to be permitted. To resolve all of these issues, he interprets the prohibition in the sugya in an innovative fashion: The noise will make outsiders think that the Jew is operating his mill on Shabbat.²⁷

26 The Tur and Beit Yosef, oḥ 338 explain that Rabbenu Tam also holds like Rabbah because he permits drawing water with a wheel which would make a noise loud enough to forbid according to those who follow Ulla.

27 R. Asher b. Yeḥiel questions the very nature of the prohibition because he finds no prece-

The Chime Clock: A Test Case

The technological advancement of a verge escapement clock, which for the first time allowed a clock to ring hourly, brought 15th-century Ashkenazi halakhic authorities to revisit the case of a water-mill set in motion before Shabbat. These rabbis understood the two situations to be similar—both set in motion before Shabbat an instrument that will emit a noise on its own on Shabbat. And since Ashkenazim (with the exception of Rabbenu Tam) ruled that the water-mill was prohibited because it makes a noise (and not because of *shevitat keilim*), they needed to decide why such noise was prohibited, and whether it applied to the clock as well. In other words, their debate echoed the dispute between earlier Rishonim concerning the interpretation of Rabbah's statement, "because it makes a noise."

R. Jacob Weil cites what is certainly the original interpretation of Rabbah's statement concerning the water-mill, and thus prohibits using a chime clock.

שו"ת מוהר"י ווייל סימן קל

מה ששאלת על כלי העשוי למשקלות להשמיע קול לפי סדר השעות נרא' דאסור. דר"ח והאשירי פסקו כרבה פ"ק דשבת דאוקי ברייתא אין נותנים חיטים לתוך ריחיים אפי' כב"ה משום השמעת קול.

R. Jacob Weil Responsum No. 130

That which I was asked about a vessel made with weights to sound a chime on the hour, it seems that it is prohibited. For R. Ḥananel and R. Israel of Krems ruled according to Rabbah in the first chapter of Shabbat who explains that the baraita which prohibits placing wheat in the mill is even according to Beit Hillel because it makes noise.

R. Jacob Weil follows the ruling of R. Ḥananel and forbids performing any action that will make a regular noise on Shabbat because of the noise itself. This ruling remains consistent with the original meaning of the prohibition. A chime clock makes a loud noise much like the grinding of a water-mill that even Beit Hillel would prohibit.

R. Judah Landau, on the other hand, permits because he understands the noise prohibition in light of the interpretation innovated by Sefer HaTerumah.

dent for it. He describes it as "a poor reason ... an innovation which is not found anywhere." See Rosh on Šabb. 1:33.

ספר האגור הלכות הוצאת שבת סימן תקיט

נשאל מורי אבי מהרר"י לנדא על זוג המקשקש לשעות עשוי ע"י משקולות אם מותר להכינו ולהעריכו כדי שילך ויקשקש כל השבת כי שמא יש לדמות לנותן חטים לרחים. והשיב: נראה לי עיקר טעמא דאוושא מלתא. כמו שפירשו תוספות שנ"ץ וספר התרומה וסמ"ג שפירשו על אוושא מלתא שיאמרו רחים של פלוני טוחנים בשבת דסבירי בשבת נתן בהם חטין, וא"כ טעמא זה לא שייכא כלל גבי זוג המקשקש שהכל יודעים שרגלים לתקנן בכל יום על יום של אחריו ובאותו היום שהוא מקשקש אין מתקנין אותו כלל.

Sefer HaAgur, Hilkhot Hotsa'at Shabbat no. 519

My father and teacher R. Judah Landau was asked about a bell which rings hourly through the use of weights, is it permitted to prepare and set it up so that it will ring on Shabbat, for perhaps we should compare it to placing wheat in the mill? And he answered: It seems to me that the main reason [to prohibit] is because the matter will be noticeable as was explained by the Tosafot Shantz, Sefer HaTerumah and Sefer Mitzvot Hagadol, who explained that "the matter will be noticeable" [as follows]: People will say that so-and-so's mill is grinding on Shabbat because they will think that he placed the wheat in it on Shabbat. If so, the reason is not relevant with regard to the bell which rings because everyone knows that they are normally set up the previous day to work on the following day and on the day it rings it is not set up at all.

According to R. Judah Landau the loud noise produced by the chime is not a direct violation of Shabbat. The chime, like the grinding mill, is not considered music and therefore is permitted.²⁸ But unlike in the case of the mill, when it comes to the clock, the concern that passersby will think that a Jew violated Shabbat does not exist. Everyone knows that chime clocks are set up before Shabbat so there is no reason to forbid them on Shabbat. Note that R. Landau agrees with R. Jacob Weil that the law accords with Rabbah in that Beit Hillel would prohibit the use of the water-mill on Shabbat. Their disagreement over the halakhic ruling stems from their interpretation of that prohibition, i.e. if there is a problem with the noise itself or what people may think when they hear the noise.

28 Cf. Shulḥan Arukh HaRav who describes the chime as musical sounds.

Shulḥan Arukh

R. Yosef Karo and R. Moshe Isserles (Rema), in their combined product of the Shulḥan Arukh, reflect all of the different rulings that we have seen on this issue above:

שולחן ערוך אורח חיים סימן רנב:ה

- (1) ומותר לתת חטים לתוך רחיים של מים, סמוך לחשיכה. הגה: ולא חיישינן להשמעת קול, שיאמרו רחיים של פלוני טוחנות בשבת.
- (2) ויש אוסרים ברחיים ובכל מקום שיש לחוש להשמעת קול והכי נהוג לכתחלה, מיהו במקום פסידא יש להקל...
- (3) ומותר להעמיד כלי משקולת שקורין זייגע"ר מערב שבת, אף על פי שמשמיע קול להודיע השעות בשבת, כי הכל יודעים שדרכן להעמידו מאתמול.

Shulḥan Arukh, Oḥ 252:5

- (1) And one may put wheat into a water-meal before dark. *Note: and we are not concerned about making noise, that people will say so-and-so's mill is grinding on Shabbat.*
- (2) *And there are those who prohibit with a mill and in any situation where there is a concern of making noise. And this is the primary practice. However, in a case of loss one can be lenient ...*
- (3) *And it permitted to set up a vessel with weights called a clock, on erev Shabbat, even though it makes a noise to announce the time on Shabbat, because everyone knows that it is set up the previous day.*

R. Yosef Karo rules that one is permitted to place wheat into a water-mill on erev Shabbat. In the Beit Yosef, he explains that his ruling follows Rabbenu Tam, the Rif, and Rambam who all rule according to R. Yosef, who they read as attributing the baraita to Beit Shammai. Since halakhah follows Beit Hillel, the prohibition is waived.²⁹ In section one, R. Moshe Isserles opens by noting that if we rule according to R. Yosef, we must say that the noise that the water-mill makes is not a problem. The Rema then must explain why it is not a problem. His explanation as to why this is not a concern demonstrates that he understands the noise problem in the same way as Sefer HaTerumah and R. Judah Landau do. Isserles imagines that the reason to prohibit could

29 Neither the Rif nor the Rambam explicitly permit. He explains that the Rif follows the permissive opinion which he cites first and that Maimonides permits because he rules that there is no concern for the resting of vessels (Šabb. 6:16) and makes no mention of the case of the water-mill in the Mishneh Torah.

only be that others would suspect the owner of a Shabbat violation. R. Yosef, who rejects Rabbah, must therefore not have had such a concern. We should emphasize the radical transformation occurring here in the interpretation of R. Yosef. In the original sugya, and essentially through the Tosafot, there was no real explanation as to why R. Yosef rejected Rabbah. He strangely just says, “why not say [putting wheat in the water-mill] is prohibited because of *shevitat keilim*.” He does not add in any rejection of Rabbah. Indeed, this is one of the essential difficulties in the sugya. Paradoxically, what was originally offered by Sefer HaTerumah as an explanation for Rabbah in order to rule according to him despite the fact that making noise was considered permitted (and only song prohibited), here ultimately solves the conundrum as to why R. Yosef the Amora rejected Rabbah. R. Yosef rejected Rabbah because the former is simply not worried that the noise created by the water-mill will make people think that the mill was operated by a Jew on Shabbat. The earlier prohibition of making a noise was absolute; but its later understanding, connecting it with *mar’it ayin*, is subjective and can more easily be waived. This is an excellent example of the timelessness of classical Talmudic interpretation. An interpretation that arises in the thirteenth-century (Sefer HaTerumah) is seamlessly used to explain the statement of a fourth-century rabbi.

In section two, Isserles proceeds to rule against Karo and maintains that it is indeed prohibited to set up a water-mill before Shabbat or in any situation where a sound might lead one to think a violation of Shabbat is taking place. This too is, of course, a result of his following the reasoning of Sefer HaTerumah. Finally, in section three, Isserles again relates to the subjective nature of *mar’it ayin*. Despite the fact that the chime clock emits a noise (and a musical one at that), since there is no concern that a passerby may think there is a Shabbat violation, there is no reason to rule stringently. By this point, the Talmudic conversation has been thoroughly shifted into a question of *mar’it ayin*. The noise itself is never a problem, the only question is whether the noise will attract attention and lead people to think that a prohibited labor has been performed on Shabbat.

Modern Halakhic Rulings

Modern halakhic authorities have used the case of the water-mill as a reference point in discussing automated electronic devices set up ahead of Shabbat to operate on Shabbat. Despite the fact that modern Jews rarely encounter water-mills (except on trips to Neot Kedumim) modern devices can easily be set to emit noises on Shabbat. In our analysis below we address two prominent

examples: the microphone and the radio. We will see how, in light of R. Moshe Isserles, the focus of the contemporary halakhic authorities has shifted entirely from the problem of the noise itself to a debate over the applicability of *mar'it ayin*.

R. Moshe Feinstein (d. 1986) refers to the noise prohibition in his discussion of the use of a microphone set up before Shabbat:

אגרות משה אורה חיים חלק ג סימן נה

- (1) ... בחול אין הדרך להעמיד אותו בזמן הקודם הרבה להדבור, שלכן אסור בשבת אף כשהעמידו אותו והכינוהו לזמן שידברו ויתפללו ...
- (2) ומשמע מהא דהביא גם המחבר היתר דזוג המקשקש לשעות דמותר לערכו להכינו מבעו"י בסימן של"ח סעיף ג', שרק ברחים התיר לתת חטים סמוך לחשיכה משום דכל השומעין הטחינה יודעין שנשמע ממה שנתנו בע"ש שהרי נתן סמוך לטחינה, ורק בזה פליג ר' יוסף ארבה, שאף שיש שיחשבו בנתן הרבה חטים ונמשך טחינתם שעה כשישמע בסוף השעה שנתן עתה החטים אם לא היו בתחלת הטחינה שהותחל מבעו"י, שמטעם זה אסר רבה, מתיר ר' יוסף משום דכיון שהוא דרך הטחינה אין טעם להחשד,
- (3) אבל בהשמעת קול כה"ג דנשמע גם ההתחלה בשבת ואין הדרך כלל להעמיד בזמן קודם סובר המחבר שגם ר' יוסף מודה שאסור לכן הוצרך לכתוב שלהעמיד זוג המקשקש לשעות מותר שהוא מטעם האגור שהביא בב"י מחמת שהדרך לתקנו בכל יום על יום שלאחריו.

Iggrot Moshe Oḥ 3:55

- (1) It is not common on a weekday to set it [the microphone] up long before use and therefore it is prohibited [for use] on Shabbat even if it was set up and prepared before the time when they will speak and pray ...
- (2) And it seems from the fact that the author [of the Shulḥan Arukh] also cited the leniency to allow the use of a chime which rings hourly if it was set up before dark (338:3), that he permits placing wheat [into the mill] only close to dusk because anyone who hears the grinding knows that they are hearing what was placed before Shabbat for he put the wheat in place immediately before grinding. It is only in such a case that R. Yosef disagrees with Rabbah. For Rabbah prohibits in a case where one places a lot of wheat in the mill and it grinds for a long time if someone was not there when the grinding began before Shabbat because they will hear the grinding on Shabbat and think it was just placed there just now. R. Yosef permits since it is usual to place the wheat in the mill immediately beforehand there is no reason to be suspicious.

- (3) But making noise in this manner [with a microphone] which is heard for the first time on Shabbat and it is not customary to set it up beforehand; the author [of the Shulḥan Arukh] believes that even R. Yosef would concede that it is prohibited. That is why he needed to write that setting up a chime which rings hourly is permitted based on the reasoning of the Agur cited by the Beit Yosef, which is that it is set up daily for the subsequent day.

In section one, R. Feinstein forbids using a microphone on Shabbat, because of Rabbah's prohibition of the water-mill as explained by the Rema.³⁰ In section two, he addresses the two issues brought up in the Shulḥan Arukh, the water-mill and the chime clock, and interprets the dispute between Rabbah and R. Yosef as hinging on the difference between the two. Chime clocks, he argues, are always set up the day before, and therefore, no one will think that the process was set up on Shabbat. Rabbah and R. Yosef disagree only concerning the water-mill. R. Yosef thinks that people will know that it is common to set up such a process well in advance, and therefore they will not believe that forbidden labor was performed on Shabbat. Rabbah disagrees and is concerned that people will think that the process was set up on Shabbat. We should note how seamlessly R. Feinstein integrates the medieval interpretation of the prohibition into the Amoraic debate fashioned by the editors of the sugya. To him, the debate is simply a question of the applicability of *mar'it ayin*. As we have said before, issues of *mar'it ayin* are inherently subjective. They are also more flexible and each particular situation can be judged differently. This differs, as we have stated, from the original two rabbinic justifications—*shevitat keilim* and making a noise, which were less flexible and more principled. With this interpretation in mind, when it comes to the microphone, people do not normally set it up the day before. Therefore, when a passerby sees or hears the microphone in use they will assume it was set up on Shabbat.³¹ In such a case even R. Yosef would prohibit (assuming that he rules against the “*shevitat keilim*” baraita, which he attributes to Beit Shammai). This is a significant step for R. Feinstein, for while we have a dispute concerning the water-mill (between Amoraim and Rishonim) and even a dispute concerning the chime clock (among Aharonim) over the microphone he posits that no one would disagree. This ability to posit a uniform stringency on this situation is a direct result of the transformation wrought by Sefer HaTerumah. Once the dispute

30 In this responsum he provides four reasons to prohibit. We deal here only with one of those reasons.

31 Tzitz Eliezer 4:26 makes a similar argument.

becomes completely over *mar'it ayin*, a halakhic authority is essentially free to judge each situation as he or she sees fit, based on whether they believe *mar'it ayin* is potentially a problem.³² We should note that R. Feinstein's thinking is also reflected in another of his responsa (Oḥ 4:84) wherein he prohibits the use of a radio or television on Shabbat that was turned on before Shabbat.

In stark contrast to R. Feinstein's consistently stringent rulings on the use of electronic devices set up before Shabbat, R. Mordechai Yaakov Breish (d. 1973) offered a lengthy argument theoretically permitting setting up a radio before Shabbat to broadcast music or news on Shabbat for a person who is merely ill and not in mortal danger. The starting point for his ruling is found in R. Moshe Isserles' formulation of the prohibition: "And there are those who prohibit with a mill and in any situation where there is a concern of making noise. And this is the primary practice. **However, in a case of loss one can be lenient.**" According to R. Breish, the Rema's words "in a case of loss one can be lenient," indicates that according to the letter of the law the act is permitted.

חלקת יעקב אורח חיים סימן סג

... וא"כ בני"ד עיקר החשש שמשמעת קול, דהא כל המלאכות מותרין לעשותם מע"ש כב"ה, ורק הכא יש החשש דהשמעת קול וכהאי דרחיים, וכיון דבמקום פסידא מותר, כל שכן לחולה שאיב"ס ... א"כ כש"כ מער"ש דמותר אף במקום פסידא השמעת קול, כש"כ דמותר לחולה, דהא מלאכת הראדיו להדליק היא מע"ש ומותר ככל הדלקה, ועיקר החשש בזה שמשמיע קול, וזה מותר עבור חולה ... ועוד נלפע"ד להלכה ולא למעשה, דאף כל אדם שיעמיד הרדיו מע"ש לשמוע החדשות או קול הזמרה, אף שודאי אין זה משנת חסידים, אבל אין מזניחין אותו לעושה איסור, כיון דהרמ"א כ"ל בכ"מ להתיר לכבוד שבת כמו להפ"מ ... אפשר נוכל לדמות השמעת קול דראדיו להא ... דמותר להעמיד כלי משקלות שקורין זייגר אף על פי שמשמיע קול בשבת להשמיע השעות כי הכל יודעין שדרכן להעמידן מאתמול ... ואם כן ה"נ ודאי שהכל יודעים שנערך קודם השבת, כיון דבשבת ודאי אסור משום מבעיר זרם החשמל ... ובפרט דכל האיסור אף לרבה הוא רק לתא דרבנן משום זילותא אבל לעיקר דינא גם כן אין איסור כר"י, וא"כ בני"ד די"ל דאפשר הוא דומה למשקלות, ואיכא היתר דעונג שבת, המתיר אין מזניחין אותו, וכאמור לא למעשה, ואין לאומרו בפרהסי'.

Helkat Yaakov Oḥ no. 63

Therefore, in our case where the main concern is making a noise, because all labors are permitted to be set in motion before Shabbat according to Beit Hillel, and it is only here that there is a concern for making noise, as

32 See also Shlomo Zalman Auerbach, *Minḥat Shlomo* 1:9.

is true in the case of the water-mill, since it (making noise) is permitted in a case of loss, all the more so [it is permitted] in a case of a sick person who is not in mortal danger ... If this is correct, all the more so when it is permitted to set it up on erev Shabbat where making noise is permitted in the case of a loss and all the more so that it is permitted for a sick person. The use of a radio is prohibited because it is considered lighting a flame which is permitted if done before Shabbat like all other acts of burning, and the main concern is making a noise which is permitted for a sick person.³³

Furthermore, in my humble opinion, according to the law and not in practice, any person who sets up a radio to broadcast the news or music, although it certainly is not pious behavior, should not be disparaged as one who transgresses, since R. Moshe Isserles permitted in all cases of “honoring the Shabbat” as he does in the case of incurring a loss ...

We can compare the radio to the chime clock which is permitted because everyone knows that it was set up yesterday [before Shabbat] ... The same is true in our case, where everyone knows that it was set up before Shabbat because electricity is forbidden [on Shabbat] due to burning. This is especially true because the entire prohibition even according to Rabbah is only a rabbinic prohibition due to the debasement [of Shabbat] but according to the letter of the law there is no prohibition as Rav Yosef ruled. Therefore, in our case where one can say that it is similar to the chime clock, and there is the permissive ruling of the “enjoyment of Shabbat,” we do not disparage one who permits, and as was said, this is not meant to be a permissive ruling and it should not be stated in public ...

In brief, R. Breish posits that even according to the Rema, who expresses concern for making noise on Shabbat, one can set up a radio before Shabbat to operate on Shabbat. There is no question that this is true in the case of an ill person, for whom we can be lenient because the entire prohibition of making a noise is only rabbinic in origin, but it may even be theoretically permissible for everyone because the radio is analogous to the chime clock. Remarkably, in an observation we can assume was true for the community in which he lived, he argues that there is no concern for *mar'it ayin* because everyone knows that the

33 R. Breish understands there to be a total prohibition on actively using electricity on Shabbat because of the prohibited labor of burning. See Daniel Nevins, “The Use of Electrical and Electronic Devices on Shabbat,” <https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/electrical-electronic-devices-shabbat.pdf>, 22–26.

use of electricity is a violation of Shabbat and anyone who hears the radio on Shabbat will assume that it was set up before Shabbat. Note that this assumption which serves as the foundation of R. Breish's leniency is the exact opposite of R. Feinstein who argues that anyone who hears the microphone or radio in use on Shabbat will assume that it was set up on Shabbat.³⁴

R. Feinstein and R. Breish, both Ashkenazi authorities, engage with the ruling of the Rema in their responsa. R. Feinstein relies on the Rema's concern for *mar'it ayin* in order to rule stringently in all cases. R. Breish posits that the Rema's concern is not applicable in the case of a radio that was set up before Shabbat.

Using the prohibition of the water-mill as the basis to prohibit setting up microphones and radios was not available to Sephardi *poseqim*. The Shulḥan Arukh rules according to R. Yosef, who attributes the prohibition of using the water wheel to Beit Shammai and, by deduction, does not believe that setting up a process before Shabbat that will make a noise on Shabbat is prohibited at all. He simply does not seem to be worried about *mar'it ayin*. By extension, we could assume that setting up automated devices before Shabbat would also not seem to entail any problem of *mar'it ayin*. Thus, modern Sephardi authorities do not have available to them the precedent of the water-mill or the chime clock to prohibit the use of electronic devices on Shabbat that were set up before Shabbat. This issue is best articulated in the writings of R. Ovadiah Yosef (d. 2013) and his son R. Yitzḥak Yosef.

R. Yitzḥak Yosef was sent the following question after the publishing of the first edition of *Yalkut Yosef*, a digest of his father's halakhic rulings. The question concerns turning on a radio before Shabbat.

ילקוט יוסף שבת א הוספות—הערות סימן רנב

... לדעת מרן הבית יוסף שנקט כרב יוסף כנגד רבה, ואינו חושש משום זילותא דשבת, לכאורה מה האיסור לשמוע רדיו מתחנה שכולם הם גוים. ונכון, כי אין זה יפה לעשות כן כי אין לו לאדם להתעסק בש"ק כי אם בדברי קדושה, אבל מנא ליה לכתוב לדעת מרן הבית יוסף בלשון אסור ...

34 R. Breish wrote the above responsum in September of 1939. In responsum no. 124, dated August 1965, R. Breish explains that he regretted issuing his earlier ruling and had since reversed his position. He forbids the use of all electronic devices apart from "opening a refrigerator door when the motor is operating," out of fear that the unlearned would intuit that all use of electronic devices is permitted on Shabbat.

Yalkut Yosef Shabbat I Notes no. 252

According to the Beit Yosef who follows R. Yosef against Rabbah, and has no concern for the debasement of Shabbat, what prohibition can there be against listening to a radio [on Shabbat] from a station that is entirely [operated by] gentiles. Granted, it is not appropriate to do so because a person should only engage with holy matters on Shabbat but on what basis can you write that our master, the Beit Yosef, prohibits ...

In his response to the question, R. Yitzhak Yosef concedes the point and yet searches for language to prohibit:

אולם המעיין בילקוט יוסף הנ"ל, יראה שהקפדנו לכתוב בלשון "טוב ונכון להחמיר בזה" אבל לא כתבנו בלשון איסור, דאין הכי נמי איך נוכל לכתוב בלשון איסור בדבר שנראה שלדעת מרן ליכא איסורא, אחר דלא חושש לאיסור משום זילותא דשבת. אך מאידך היאך נוכל להתיר דבר כגון זה, שיפעילו טייפ בשבת על ידי שעון שבת, ושבת תהיה כחול ... נכון מאד להחמיר בזה, ולהתרחק מכל מכשירי חשמל הפועלים בשבת באופן כזה, אפילו אם הם פועלים מאליהם ... וגם כאן כתבנו שאין לעשות כן. אבל לא כתבנו בלשון איסור מוחלט.

One who examines the aforementioned passage in the *Yalkut Yosef* will see that we were careful to write "it is correct and appropriate to be stringent in this matter" but we did not write that it was prohibited. For indeed, how could we use the language of prohibition in a matter in which our master [R. Yosef Karo] did not prohibit because he is not concerned to prohibit this because it is debasement of Shabbat. On the other hand, how can we permit an action such as this, i.e. setting up a timer to play a cassette tape on Shabbat, thereby turning Shabbat into a weekday ... It is very appropriate to be stringent in this matter, and to distance oneself from electronic appliances that operate on Shabbat in this manner, even if they operate automatically ... and here too we wrote it is not appropriate to do so. But we did not use the language of absolute prohibition.

R. Yitzhak Yosef cannot ascribe to R. Yosef Karo an absolute prohibition in the case of setting up a radio or cassette player before Shabbat to operate on Shabbat. After all, R. Yosef Karo ruled that setting up the water-mill before Shabbat was permitted, thereby rejecting the applicability of the prohibition of making noise to a process set up before Shabbat. R. Yitzhak Yosef cannot issue an outright prohibition. Therefore, he relies on the broader and vaguer category of "not turning Shabbat into a weekday" in order to strongly discourage the action without using language that implies explicit prohibition. We should note that

R. Yitzḥak Yosef, of course, is well aware that according to his father, if the prohibition was biblical (if performed on Shabbat), even R. Yosef Karo would agree that setting up the process before Shabbat is prohibited (as we shall see below). Here he is directly addressing the concern of his questioner that R. Yosef Karo never explicitly prohibits setting up a process that will make noise on Shabbat.

R. Ovadiah Yosef, in his responsum on the use of a radio that was turned on before Shabbat, argues that even R. Yosef Karo would explicitly prohibit in such a case.

יביע אומר חלק א—אורח חיים סימן כ

יש עוד טעם לאסור משום דאושא מילתא והויא זילותא דשבת, וצריך לחוש למראית העין, שיחשדוהו השומעים שהדליק הרדיו בשבת, בפרט בזה"ז אשר בעוה"ר רבו המתפרצים, ואף על פי שאין לנו לגזור גזירות מדעתינו, מלבד שבמראית העין באיסור דאורייתא ... ואף למרן הש"ע שם שפסק להתיר, י"ל דשאני התם דאף אם נותן החטים בשבת לטוחנן אינו עובר אלא מדרבנן ... משא"כ הכא דהוי חשדא של איסור דאורייתא ... י"ל שכ"ה דעת מרן ... יודה שיש לאסור כאן.

Yabia Omer—OH 1:20

There is another reason to prohibit, which is that it makes noise and is a debasement of Shabbat, and one must be concerned because of *mar'it ayin*, that those who hear it will suspect that he turned on the radio on Shabbat, especially in our day wherein, due to our many transgressions there are a great number of violators of Shabbat [prohibitions], and although we may no longer make our own decrees, there is an exception with *mar'it ayin* of a Torah prohibition ... and even though our master the [author of] the Shulḥan Arukh ruled to permit (in the case of the water-mill), it should be said that such a case is different because even if he places the wheat in the mill to be ground on Shabbat he violates only a rabbinic prohibition ... which is not true here (in the case of the radio) where there is a suspicion of a Torah prohibition ... It should be stated that this is the position of our master [R. Yosef Karo] ... and he would agree to forbid in this case.

R. Ovadiah Yosef cannot easily prohibit the radio due to his strict adherence to the rulings of R. Yosef Karo who, in the Shulḥan Arukh, allows placing wheat in the water-mill and seems unconcerned about the intendant *mar'it ayin*.³⁵ How-

35 On R. Ovadiah Yosef's strict adherence to the rulings of R. Yosef Karo see Benjamin Lau, *From 'Maran' to 'Maran': The Halakhic Philosophy of Rav Ovadia Yosef* [in Hebrew] (Tel Aviv: Yedioth Ahronoth, 2005), 223–265.

ever, he still posits that even R. Yosef Karo would explicitly prohibit turning on a radio before Shabbat for use on Shabbat. He distinguishes between the case of the water-mill which he classifies as a rabbinic prohibition if performed on Shabbat and turning on the radio which involves a Torah prohibition due to the use of electricity. In such a case, even R. Yosef Karo would be concerned about *mar'it ayin*. R. Ovadiah Yosef's desire to explicitly prohibit such an action forces him to unhinge the issue of the use of the radio from its Talmudic precedent, the water-mill. All rabbis, R. Yosef, and Rabbah, and their corresponding successors, R. Yosef Karo and R. Moses Isserles, would agree that if the process set in motion before Shabbat performs an action which can be misconstrued as being a Torah violation of Shabbat, that process is prohibited.

Conclusion

Modern halakhic authorities have been deeply concerned over the use on Shabbat of electronic devices set up before Shabbat. While most have reluctantly allowed the use of Shabbat timers to turn off and on lights,³⁶ itself seemingly quite in line with the notion that Beit Hillel does not demand "*shevitat keilim*," when it comes to the use of microphones, radios, televisions, and other such devices, they invoke the prohibition of making noise, understood as being a result of the attention such devices attract, a problem of *mar'it ayin*. They are also clearly motivated by a general concern for the debasement of Shabbat. If all electronic devices are permitted for use on Shabbat as long as they were programmed beforehand, how would Shabbat be distinguishable from a weekday? Our Jubilee honoree, Rabbi Joel Roth, has articulated the force of this concern in his instructive article, "Melakhah U'Shevut: A Theoretical Framework." He writes:

While it is clear that the prohibition of excessively and unnecessarily exertive activities enhances the rest of Shabbat, it is also clear that their prohibition alone is insufficient to guarantee the restful spirit of Shabbat. There are so many things that one could do which would be neither *melakhah* nor overly exertive but would surely turn the unique Shabbat almost into a weekday. The other categories of *shevut*-prohibitions provide a reasonable response to the problem. They link the positive commandment that mandates rest with the negative commandment that

36 See for example Iggrot Moshe OḤ 4:60.

prohibits *melakhah*. *Shevut*-prohibitions of the resemblance, habit and conducive types link the prescriptive and the proscriptive elements of Shabbat. They provide further necessary safeguards against turning Shabbat into a weekday.³⁷

Shevut, the prohibition of performing any act on Shabbat which violates the “spirit of Shabbat,” is flexible in its application in much the same way that *mar’it ayin* is inherently flexible and subjective. Rabbi Roth is concerned that the “unique Shabbat” would be turned into “a weekday,” a concern that clearly lies behind the reasoning of those halakhic authorities who prohibited setting up automated devices before Shabbat. While no violation of *melakhah* takes place if the process is set up before Shabbat, halakhic authorities are clearly concerned not only with technicalities but with outcomes as well. Despite the fact that the category of *shevut* exists to prohibit such cases where there is no performance of *melakhah* but a violation of the “spirit of Shabbat,” contemporary *poseqim* preferred to prohibit setting up electronic devices before Shabbat on the grounds of *mar’it ayin*, a secondary concern. It seems that in their minds, if they were to invoke the category of *shevut* such for actions, although not *melakhot*, they would be considered a direct violation of Shabbat. Instead, they are prohibited because of a concern that others might think one is violating Shabbat. This choice of contemporary *poseqim* stems both from the language of the debate codified by the Rema and the larger concern of “not creating new decrees.”³⁸ The latter concern, referred to by R. Breish and many of the responsa on the use of electronic devices on Shabbat, prevents a contemporary *poseq* from adding new actions into the category of *shevut* prohibitions because they do not appear in classical rabbinic literature.

In response to the restrictive application of the *shevut* prohibition Rabbi Roth writes:

... it is ... absurd to refrain from promulgating *shevut* prohibitions for behaviors which might now be judged either to resemble or to be linked by habit, or to be linked by conduction to *melakhot* on the ground that earlier ages did not do so.³⁹

37 Joel Roth, “Melakhah U’Shevut: A Theoretical Framework,” *Conservative Judaism* 35, no. 3 (1982): 25–26.

38 See Shimon Levi, “Ein Gozrin Gzerot Hadašot Aħar Hatimat HaTalmud,” *Shmatin* 158 (2005): 65–83.

39 *Ibid.*, 27.

Thus, in contrast to more conservative *poseqim*, Rabbi Roth argues for the revival of the category of *shevut* as grounds for prohibiting actions on Shabbat which cannot strictly be considered *melakhah*. This case thus provides an interesting distinction between the halakhic mindset of a leading authority in the Conservative movement and his counterparts in the Orthodox world. The former is willing to be more innovative in his application of an ancient concept, *shevut*, that Orthodox rabbis refrained from invoking. He is also more “traditional,” in a sense, in that he does not invoke the category of *mar’it ayin*, a notion never connected in the Talmud to setting up a process that will begin before Shabbat and continue on Shabbat. Together, his invocation of *shevut* and his rejection of *mar’it ayin* (in these types of case) would provide Rabbi Roth, we can assume, with a possibility not open to many of his Orthodox counterparts. To allow setting up a microphone before Shabbat to operate in a synagogue on Shabbat, a move that will only enhance the Shabbat experience for synagogue attendees, but to prohibit turning on a radio or television before Shabbat and allowing it to operate all of Shabbat, a clear violation of the religious spirit of the day.

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Who Gets a Voice at the Table?: Eating and Blessing with Rav Naḥman

Marjorie Lehman

With gratitude I dedicate this analysis of Berakhot 51a–b to my teacher, Rabbi Joel Roth, who understands the need for women to be counted as rabbinic leaders and as scholars in the field of Talmud and Rabbinics. Because of him, women have an equal voice at JTS.

For the rabbis, study and learning was a communal phenomenon, not an isolated experience. The third-century rabbinic scholar from the Land of Israel, R. Yose b. Ḥanina discredits learning alone, equating those who fail to study in partnership as enemies of the rabbinic elite and its overarching project. Solitude functions like a sword, maiming those who study unaccompanied, he claims. Ideal study involves two who “sharpen” the minds of one another (b. Ta’an. 7a). This image recalls the intense and passionate study relationship of R. Yoḥanan and Reish Lakish, as R. Yoḥanan says; “When[ever] I would say something, he [Reish Lakish] would pose 24 difficulties, and I would give 24 solutions, and as a result the subject became clear (b. B. Meṣ. 84b).”¹ In building a male–male “fraternity” with Torah as its central value,² the rabbis offer numerous examples of male rabbi–rabbi interchanges, featuring many of the characteristics of strong relationships—introspective dialogues, passionate discussions, rabbis willing to travel long distances to see one another, rabbis

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- 1 The *Beit Midrash* (the House of Study) was the communal space where ideally these male–male (only) relationships were constructed and sustained. While there are numerous sources in rabbinic literature that refer to *Batei Midrash* (Houses of Study), scholars still have questions about their structure and scope. Catherine Hezser and Jeffrey Rubenstein argue that disciples gathered around a rabbinic master and learned traditions from him in his home or possibly in a private dwelling. See Catherine Hezser, *The Social Structure of the Rabbinic Movement in Roman Palestine* (Tübingen: Mohr Siebeck, 1997), 196–205; and Jeffrey Rubenstein, “Social and Institutional Settings of Rabbinic Literature,” in *The Cambridge Companion to Talmud and Rabbinic Literature*, ed. Charlotte Elisheva Fonrobert and Martin S. Jaffee (Cambridge: Cambridge University Press, 2007), 59–60.
 - 2 Daniel Boyarin, *Unheroic Conduct: The Rise of Heterosexuality and the Invention of the Jewish Man* (Berkeley: University of California Press, 1997), 154.

who dine together, not to mention relationships of respect and love. In fact, a rabbi's study partner is referred to as his *haver* (his friend).³ That said, in thinking about male rabbi–rabbi relationships it is important to recognize that the rabbis never shy away from exposing the downside of collegiality, including male competition, its power dynamics, the tensions between masters and their disciples, the struggles for authority, the desire to best the other at their own process of intellection, and most especially, the decision to be exclusivist in order to define the boundaries of their circle of companions. Such boundaries were constructed to close off entry to those who were not male, not rabbis, not Torah-knowledgeable, not heteronormative, not able-bodied, and not Jewish, thereby imposing social, religious, ideological and even physical exclusions on those with whom the rabbis lived their everyday lives.

For centuries many faced impenetrable boundaries and relied on rabbinic texts to support desired power structures. Indeed, a text, in and of itself, is not necessarily exclusionary unless someone grants it the power to be so. Feminist inquiry, in particular, pushes us to approach rabbinic texts from another vantage point, prompting a search for instances where the rabbis contest the very structures they construct.⁴ Indeed, the rabbis leave a record of their opposi-

3 See Mishnah Pirkei 'Avot 1:6 which states: “acquire for yourself a friend (*haver*)” and has traditionally been interpreted as stressing the need to find a study partner. The term, *haver*, however is also a technical term in Tannaitic literature, referring to a member of an elite group that is committed to maintaining strict standards of purity. In *Sifre Deut.* 305 (Finkelstein, *Sifre on Deuteronomy*, 323–324) and 'Avot Derabi Natan A 8:36 and B 18:40 to “acquire a friend” is defined as someone one eats with, drinks with, studies Scripture with, studies Oral Torah with, sleeps with, and to whom one reveals all his secrets of Torah and secrets of *derekh 'eretz*. In later rabbinic sources, it also connotes establishing friendship with someone who maintains piety, righteousness, purity, not to mention, one who studies Torah. See Jonathan Wyn Schofer, *The Making of a Sage: A Study in Rabbinic Ethics* (Madison: University of Wisconsin Press, 2005), 33. See also Catherine Hezser, “Rabbis and Other Friends,” in *The Talmud Yerushalmi and Graeco-Roman Culture*, ed. P. Schäfer and C. Hezser (Tübingen: Mohr Siebeck, 2000), 2:189–254, esp. 202.

4 See Charlotte Fonrobert, “Feminist Interpretation of Rabbinic Literature: Two Views,” *Nashim: A Journal of Jewish Women's Studies and Gender Issues* 4 (2001): 10. Following in the path of Fonrobert, I root myself in Daniel Boyarin's (now twenty-five-year old) approach exhorting us to pay attention to the ruptures and the discontinuities that highlight cracks in the rabbis' systems of power, ones that emerge when we pay attention to the very sources that comprise a rabbinic *sugya* (119). See Daniel Boyarin, “Rabbinic Resistance to Male Domination: A Case Study in Talmudic Cultural Poetics,” in *Interpreting Judaism in a Postmodern Age*, ed. Steven Kepnes (New York: New York University Press), 119; *Carnal Israel* (Berkeley: University of California Press, 1993), 227–228; “Reading Androcentrism against the Grain: Women, Sex, and Torah-Study,” *Poetics Today* 12, no. 1 (1991): 29–30. Also see Jana Sawicki, *Disciplining Foucault: Feminism, Power, and the Body (Thinking Gender)* (New York: Routledge, 1991), 14.

tion to the values they purport, that is, “a fissure” for us to creep into, if only we look for it.⁵ Significantly, we find that just as there are rabbinic sources about collegiality, passionate dialogues, students searching out teachers and teachers learning from students all in the name of Torah, there is also a thread that exposes the rabbis’ vulnerability as well as the pain and the loss that comes with asserting an authority wedded not only to what one knows, and who one knows, but also to the ways one acquires knowledge.⁶ Inasmuch as the rabbis go to great lengths while in conversation with other rabbis to establish their authority as legal experts, they also challenge the ways that authority is affirmed, highlighting problems that exist on the inside of power, that is, within their rabbi–rabbi sphere. At the same time, they also assert how that sphere affects others outside of it.

While rooted in a feminist methodology, the focus of this analysis is sociological, that is, on how relationships were defined and constrained by the social structures, including the learning aspirations, in place at the time.⁷ The emphasis will be on the structure of rabbinic society and how its weddedness not only to the acquisition of Torah knowledge, but also to halakhah and ritual observance, controlled interpersonal connections and choices. A shared value system as well as shared norms link the individuals who claim membership. Not surprisingly, rabbinic Jews are socialized into particular gender and power relationships that govern who leads and who is led, that is, who teaches and who is taught.⁸ But, they also recognize what is at stake in a system that connects Torah knowledge with interpersonal relationships as well as with status, authority, power and control.⁹ As such, the rabbis reflect and critique the

5 Boyarin, “Rabbinic Resistance to Male Domination,” 125–126.

6 See Schofer, *The Making of a Sage*, where he argues that the rabbis’ “elitism and sexism are entangled with their persuasive visions of community and fellowship,” 22.

7 Graham Allan, *Friendship: Developing a Sociological Perspective* (Boulder: Westview Press, 1989), 2, 8–9.

8 Elite Ben-Yosef, “Literacy and Power: The Shiyou as a Site of Subordination and Empowerment for Chabad Women,” *Journal of Feminist Studies in Religion* 27, no. 1 (2011): 58.

9 Present-day research is prevalent regarding the value of cooperative learning and teaching that centers, more specifically, on *havruta* study with respect to Talmud. See Jeff Kress and Marjorie Lehman, “The Babylonian Talmud in Cognitive Perspective: Reflections on the Nature of the *Bavli* and Its Pedagogical Implications,” *Journal of Jewish Education* 69, no. 2 (2003): 58–78; Elie Holzer and Orit Kent, *A Philosophy of Havruta: Understanding and Teaching the Art of Text Study in Pairs* (Boston: Academic Studies Press, 2014); and Elie Holzer, *Attuned Learning: Rabbinic Texts on Habits of the Heart in Learning Interactions* (Boston: Academic Studies Press, 2016). Additionally, in the field of general education, many have turned to the cognitive development psychologist, Lev Vygotsky, who emphasizes the significance of the social nature of learning, suggesting that students be engaged together in learning activ-

patriarchal framework that they so desire to construct. Their self-critique repositions us to think about the effects of power in our own relationships, whether they involve teaching and learning, or not.¹⁰

Rabbinic literature offers us many rabbi–rabbi interchanges, not to mention numerous stories of rabbis engaging with non-rabbis. For this reason, there are many entry points for examining the sociological framework that conditions the rabbis' interpersonal relationships. Rather than centering this analysis on the rabbinic term for a rabbi-study partner, *haver*, or on one rabbinic corpus, or on tracing a given rabbi–rabbi relationship throughout Talmudic literature, or on examining the way rabbis learn from and with one another, I have chosen to focus on one aggadic story found in Massekhet (tractate) Berakhot of the Babylonian Talmud as a paradigm for continued work on examining the social-emotional elements that connected one individual with another or, in some cases, drove them apart.¹¹ Rooted within the seventh chapter of tractate Berakhot with its focus on *Birkat Hamazon* (Grace after Meals) recited in a rabbi's home rather than in the *Beit Midrash*, the purpose is to think about the ways the rabbis present the interpersonal interactions taking place around a commonplace event mentioned frequently in rabbinic texts, of people eating together.¹² Within the context of discussing the laws and etiquette of reciting *Birkat Hamazon* together with others, there is a story that appears only in the Bavli (Ber. 51b). The story involves two rabbis and one woman and invites analysis regarding the relationship among them. It is just one example, among many,

ities to achieve the greatest outcomes. Vygotsky argued that the cognitive development of an individual cannot be understood outside the patterns of relationships and interactions in which such development takes place. Samuel J. Hausfather, "Vygotsky and Schooling: Creating a Social Context for Learning," *Action in Teacher Education* 18 (1996): 1–4; James A. Wertsch, *Vygotsky and the Social Formation of the Mind* (Cambridge: Harvard University Press, 1985), 59–76.

- 10 In some instances, scholars have used Talmudic material as case studies in the service of teacher development for today's Jewish educators, exploring master-disciple interactions; see Jane Kanarek and Marjorie Lehman, "Making a Case for Rabbinic Pedagogy," in *The International Handbook of Jewish Education*, ed. L. Grant and A. Pomson (New York: Springer, 2011), 581–596; and see Moshe Berger, "Towards the Development of Jewish Pedagogy: Rav Hiy'a's Vision of Torah Education," in *Judaism and Education: Essays in Honor of Walter I. Ackerman*, ed. Haim Marantz (Beer-sheva: Ben Gurion University of the Negev Press, 1998), 109–120; and the collection of essays in *Turn It and Turn It Again: Studies in the Teaching and Learning of Classical Jewish Texts*, ed. J.A. Levisohn and S.P. Fendrick (Brighton: Academic Studies Press, 2013).
- 11 See Schofer, *The Making of a Sage*, 4.
- 12 See Hezser, "Rabbis and Friends," 216–221. Although Hezser focuses primarily on sources found in the Jerusalem Talmud, she also contextualizes eating habits in Greco-Roman sources in an attempt to describe the realia of the time.

of how ritual practice, authority, gender, and knowledge as well as the emotions of respect, frustration, anger, and jealousy intersect to build and undermine relationships in rabbinic culture, ultimately with lessons for us today.

Unsurprisingly, the male–male homosocial structure of rabbinic culture generated many instances of male rabbis dining together, presumably discussing Torah as an extension of their learning partnerships in the *Beit Midrash*.¹³ These discussions about meals prevalent in the Talmuds, from the Passover seder to the daily meal, most especially in the seventh chapter of Massekhet Berakhot, suggest that rabbis dined with or around non-rabbis. At each meal space one might find servers, Cutim, non-Jews, women, children, slaves, and ‘*amei ha’aretz*’¹⁴ in close proximity to the rabbinic elite.¹⁵ While some of these individuals could join the introductory invitation to *Birkat Hamazon*, called *zimun*, to complete the cohort of three necessary for invoking this initial call to blessing, including a server, a non-Jew and a Cuti; others, including women, minors, and slaves could not join together.¹⁶ Therefore, looking at the structure of meal rituals, with blessings before meals and blessings afterward to sanctify God, offers a window into who had an actual “seat at the table.” Who counted as the hosts’ companions? And, what was the nature of that companionship? No doubt, a lot of ambiguity emerges in trying to determine whether women, when present at meals, are related to the host, or what the nature of the relationship was among rabbis dining together, especially when one rabbi was from the Land of Israel and one from Babylonia. Because we can never really know how people mentioned together in rabbinic sources came to know

13 Regarding the fact that women also gathered together to perform rituals in *havurot*, see Judith Hauptman, “From the Kitchen to the Dining Room: Women and Ritual Activities in Tractate *Pesahim*,” in *A Feminist Commentary on the Babylonian Talmud: Introduction and Studies*, ed. T. Ilan et al. (Tübingen: Mohr Siebeck, 2007), 122–124. See also b. Ber. 45b regarding the allowance for women to make their own *zimun*. Also see Charlotte Fonrobert’s larger discussion, “Gender Politics in the Rabbinic Neighborhood: Tractate *Eruvin*,” in *A Feminist Commentary on the Babylonian Talmud: Introduction and Studies*, ed. T. Ilan et al. (Tübingen: Mohr Siebeck, 2007), 51.

14 See for example, b. Ber. 47b where an ‘*am ha’aretz*’ is not included in *zimun*. An ‘*am ha’aretz*’ can generally refer to someone who is not Torah-knowledgeable, although here the baraitan (Tannaitic) material is more specific in defining an ‘*am ha’aretz*’ more broadly to include anyone who does not know the laws of tithing to someone who reads Torah and Mishnah, but not Gemara. Also see b. Sotah 22a.

15 See m. Ber. 7:1; b. Ber. 46b (dining together with less prominent people); 47b (with servers, cutim); 47b (with ‘*amei ha’aretz*’); 47b (with sons who are not Torah-knowledgeable); 47b (with those who have not tithed); 47b (with women, slaves and minors); and 47b (with Canaanite slaves).

16 Women were allowed to join together and perform *zimun*. However, women could not join with other men. They also could not join together with slaves or minors. See b. Ber. 45b.

one another, all that we can unearth are observations about the patterns of social integration among those who belong to a similar communal organizational structure, one that, indeed, shaped their ties to one another.¹⁷

Birkat Hamazon and the Ritual of the Cup of Blessing

Rabbinic literature discusses many holy moments that revolve around a cup of wine. Wine marks sanctified time. Weddings, circumcisions, holiday Kiddush, Shabbat Kiddush, and Havdalah are all accompanied by wine (b. Pesah. 105b–106a). According to tractate Berakhot, one also said *Birkat Hamazon* with a cup of wine, referred to as a “cup of blessing” (*kos shel berakhah*) in b. Ber. 51ab.¹⁸ The cup was passed to those who ate together, although it is not clear whether someone eating alone would also use a cup of wine when reciting *Birkat Hamazon*.¹⁹ On one level, the ritual seems somewhat odd. Why does the four-paragraph long recitation of *Birkat Hamazon* to thank God for one’s food in fulfillment of the Toraitic commandment (Deut 8:10) require a cup of wine? Does this wine rite convey a desire to extend more gratitude to God? Is it for the purposes of sanctification? Or maybe it is about praising God still further? Ber. 51a leaves us with the impression that the purpose of reciting *Birkat Hamazon* along with a “cup of blessing” is to request God’s blessing for physical land and/or spiritual space, building on the theme developed in the second blessing of *Birkat Hamazon*:

R. Yoḥanan said: Whoever recites *Birkat Hamazon* over a full cup is awarded an inheritance beyond boundaries, as it is said [by Moses before his death, “O Naftali, sated with favor, and full of the Lord’s blessing, you will], take possession on the west and south” (Deut 33:23). R. Yose b. Ḥanina says: He merits and inherits two worlds, this world and the world to come.²⁰

However, while not to confuse the recitation of *Birkat Hamazon* with *zimun* or *zimun* with the appearance of this additional ritual component, the “cup of blessing,” the following story suggests that it was customary in Babylonia to

17 Allan, *Friendship*, 18.

18 Also see b. Ber. 48a regarding King Yannai and R. Sheshet as well as the discussion below.

19 See Shulḥan Arukh, Oḥ 182 indicating that as late as the early 16th century this issue was still the subject of halakhic debate.

20 b. Ber. 51a

pass a cup of wine to those partaking of a meal together. Seen this way, the cup of blessing communicates that people eating together construct a moment of holiness by virtue of being with one another. The group created sanctifies this moment in time. Additionally, not only was it customary for guests who led *Birkat Hamazon* to bless their hosts (b. Ber. 46a), in passing the cup of blessing to each person, they expressed a desire that God would continue to bestow blessing on those with whom they dined, paralleling God's blessing of food. Therefore, the ritual of passing the cup of blessing to those around one's table works in tandem with acknowledging the value of interpersonal relationships.

Ber. 51b in the Babylonian Talmud includes a story about a meal that occurred at the home of the prominent Amoraic rabbi from Babylonia, Rav Naḥman bar Ya'akov (d. 320). Ulla, an equally eminent rabbi from the Land of Israel and of the same generation, is dining with him.²¹ One of the few named women in the Bavli, Yalta, is present as well. Ulla signifies the power of the Jewish community in the Land of Israel as a rabbinic center and its desire to assert control over Babylonia. Known as an itinerant rabbi, he has come to Babylonia to do just that.²² R. Naḥman stands for the authority of the Babylonian rabbinic while Yalta represents the non-rabbi, the rabbinic "other." Possibly she is R. Naḥman's wife or a member of his household. We cannot be sure.²³ But, at the very least, the appearance of a woman along with Ulla and Rav Naḥman is far from incidental.²⁴ Her inclusion problematizes the ways that relationships are cultivated among male rabbis so as to reveal the underside of rabbinic

21 Both R. Naḥman and Ulla were third-generation Amoraim.

22 For more examples of Ulla's travels from the Land of Israel to Babylonia see b. Šabb. 157b (where Ulla visits the Babylonian exilarch); and b. Ned. 22a (where Ulla returns to the Land of Israel).

23 See Tal Ilan's discussion of Yalta in *Mine and Yours Are Hers: Retrieving Women's History from Rabbinic Literature* (Leiden: Brill, 1997), 122 and n. 61. Also see Ilan's final comment about Yalta where she claims that the proximity between men and women in rabbinic literature, like R. Naḥman and Yalta, led many to presume that they were married when this might not have been the case (129). She also points out that Talmudic sources refer to Ḥoma as Abaye's wife (b. Ketub. 65a), Beruriah as R. Meir's wife (b. Ber. 10a; b. Pesah. 62b; and b. 'Abod. Zar. 18a) and Imma Shalom as R. Eliezer's wife (b. Šabb. 116a and b. B. Meš. 59b). While it is true that in five of the seven instances in the Bavli that mention Yalta, R. Naḥman appears as well, each of these instances leaves a degree of ambiguity as to how she is related to him and do not mention that she is his wife. b. Ber. 51ab mentions the word for wife, בִּיתְרוֹ, but does not do so immediately following Yalta's name in a way that would mark her clearly as the wife of R. Naḥman. Indeed, her relationship to R. Naḥman is ambiguous.

24 See Michael Satlow, "Fictional Women: A Study in Stereotypes," in *The Talmud Yerushalmi and Greco-Roman Culture*, ed., P. Schafer (Tübingen: Mohr Siebeck, 2002), 3:226, 233; and Fonrobert, "Gender Politics in the Rabbinic Neighborhood," 51.

patriarchal authority, that is, the way that it can cultivate a desire for one to outdo another with their Torah knowledge.²⁵ Instead of constructing social relations and reinforcing stable rabbinic cultural norms, as many narratives do in rabbinic literature, this story questions what the rabbis construct—does it always work? Indeed, what we find percolating beneath the interactions between the figures in this rabbinic story is a failed sense of the rabbi–rabbi relationship, not to mention a strained connection with others who are not rabbis. The story exposes the precarious grounds upon which the rabbis fashion their authority, even within a social group that held Torah and halakhah as central. The story begins as follows:

[And the following incident occurred]: Ulla visited the house of R. Naḥman.

He [Ulla] ate bread and recited *Birkat Hamazon*. He [then] passed the cup of blessing to R. Naḥman. R. Naḥman said to him [Ulla], “Let Master send the cup of blessing to Yalta.”

Amid the daily ritual of *Birkat Hamazon*, R. Naḥman requests that Ulla pass the “cup of blessing” to Yalta, in keeping with what appears to be a Babylonian custom of sharing the cup with the members of one’s household, including one’s wife. Ulla seems to have a different custom where the “cup of blessing” is only passed to the men at the table. To assert his rabbinic prowess, that is, to prove his deep knowledge of Torah and of course to support his point, Ulla not only refers to a verse from Deuteronomy, but also quotes the opinion of the second-generation Amora from the land of Israel, R. Yoḥanan (d. 290), a rabbinic colleague from the generation prior to his own. In addition, the redactor of the story includes the opinion of the Tanna, R. Natan, who is also from the Land of Israel. The presence of R. Natan’s opinion bolsters the authority of R. Yoḥanan’s argument, pointing to its origins in the Tannaitic era:

[Ulla said to R. Naḥman, that is not necessary] because R. Yoḥanan said: “The fruit of a woman’s belly [womb] is only blessed through the fruit of a man’s belly, as it is written [in Deut 7:13], ‘He [God] will bless the fruit of your [male (heb. singular)] belly.’ It does not say the fruit of *her* belly but [rather it says] the fruit of *your* [masculine] belly.”

It was similarly taught in a baraita: R. Natan said: “From where [do we derive from Scripture] that the fruits of a woman’s belly are only blessed

²⁵ See Schofer, *The Making of a Sage*, 7.

through the fruits of the husband's belly? For it is stated: 'And He [God] will bless the fruits of your [masculine] belly'; it does not say, the fruits of *her* belly."²⁶

Unquestionably, Ulla's decision not to pass the cup of blessing to Yalta is an insult to her as well as to his host. He wants to flex his masculine rabbinic muscle by claiming that his decision emerges from an interpretation of a verse in Deuteronomy—mentioning blessing. In so doing, he deems men as having sole procreative power. Claiming that the blessing of progeny comes only from male seed ("his belly"), rather than from the womb of women, he renders Yalta (and all women) completely irrelevant, not to mention undeserving of blessing.²⁷ Objectified, she has no voice, despite material elsewhere in the Bavli suggesting that she too is Torah-knowledgeable.²⁸

Ulla seems to care more about being right, more about imposing his own custom on R. Naḥman, and more about asserting hegemony over his Babylonian colleague. In this regard, teaching Torah is not a neutral act. It emerges from a desire to dominate another rabbi, solidifying his own power as if to represent that of the rabbis in the Land of Israel.²⁹ Ulla's knowledge of Torah and his familiarity with the teachings of his predecessors overrides the respect due to those at whose table he sits. Furthermore, any potential openness to another way of performing the "cup of blessing" rite is squelched by the commitment to, and knowledge of, a chain of legal transmission in the names of R. Natan and R. Yoḥanan. Ulla's knowledge is the knowledge of a past rabbinic scholar and repeating it gives him great authority. Ironically, the performance of this rite (whether it includes *zimun*, the four-paragraph long *Birkat Hamazon*, or the additional "cup of blessing" that has as its objective—blessing God and the

26 Deut 7:13 (larger context):

And if you obey these rules: God will favor and bless you and multiply you. He will bless the issue of your womb and the produce of your soil, your new grain and wine and oil, the calving of your herd and the lambing of your flock, in the land that he swore to your fathers—you shall be blessed above all other peoples—there shall be no sterile male or female among you or among your livestock—בְּרִוּךְ תִּהְיֶה מִכָּל־הָעַמִּים לֹא־יִהְיֶה בְּךָ עֲקָר—
:וְעֲקָרָה וּבְרִיחַ מִתֶּדָּ:

27 See b. Nid. 31b where the physiological differences between men and women are discussed in greater detail. Discussing ways that the male body differs from the female body can be found in many places in rabbinic literature.

28 See b. Ḥul. 109b and b. Nid. 20b. Also see Charlotte E. Fonrobert, *Menstrual Purity: Rabbinic and Christian Reconstructions of Biblical Gender* (Stanford: Stanford University Press, 2000), 118–127; and Ilan, *Mine and Yours Are Hers*, 122 and 127.

29 Madeleine Arnot, "Male Hegemony, Social Class, and Women's Education," *Journal of Education* 164, no. 1 (1982): 64–89.

others with whom one dines), reveals Ulla's self-centeredness in his attempt to isolate R. Naḥman in his own home, as well as Yalta. Failing to pass the cup to Yalta, that is, disrespecting R. Naḥman albeit through the lens of his knowledge of a midrashic support, highlights the complexities of membership in the rabbinic hierarchy—when *what* you know effects *who* you know and controls the way you engage in conversation.

Ulla's self-centeredness is not surprising given the rabbinic milieu into which he is born. Looking just at the etiquette surrounding the performance of *Birkat Hamazon*, as conveyed in the seventh chapter of tractate Berakhot, presents a glimpse into a world where, understandably, egos are built and shattered. The manner in which rabbis were to recite the *zimun* or *Birkat Hamazon* accentuated how much they were valued for their Torah scholarship. For example, in a narrative appearing earlier in this chapter and mentioning a "cup of blessing," the Jewish king Yannai, an enemy of the rabbis who—according to b. Qidd. 66a, had massacred them in his desire to consolidate power—discloses to his wife, the queen, that he could not recite *Birkat Hamazon* without a member of the rabbinic elite leading him. Therefore, he turns to Shimon b. Shetaḥ, the brother of the queen and a lone rabbi-survivor, to recite it (b. Ber. 48a).³⁰ The message: even kings need the rabbis to perform daily rituals in accordance with the rules that the rabbis invent, despite how much kings, such as Yannai, despise them. Additionally, halakhic sources in the very same chapter convey that reciting *zimun*, followed by *Birkat Hamazon*, falls to the person at the table with the greatest knowledge of Torah (b. Ber. 47a).³¹ And while it was also the custom that a guest led *Birkat Hamazon* in order to graciously bless his host (b. Ber. 46a), read contextually this text suggests that such a guest did so in accordance with his status as compared to others at the table. Additionally, two Torah scholars, each of whom had the ability to sharpen the intellect of the other in matters of halakhah, could join to form a *zimun* that, by law, required three individuals. This means that their (inanimate) Torah knowledge counted as the third person (b. Ber. 47b). Finally, rabbis who ate together and were of equal stature did not join in saying *Birkat Hamazon*, but recited it alone, to signify that each respected the knowledge of the other (b. Ber. 45b). Given how much the rabbis valued Torah knowledge and community, it seems counterintuitive to encourage colleagues of equal status to bless God individually, especially while they

30 See b. Qidd. 66a for the extensive narrative on King Yannai's destruction of the rabbis. See y. Ber. 7:2, 11b for another version of this story.

31 See Rashi b. Ber. 45b, s.v. *lo havu behu* ("and there was none among them") where Rashi argues that greatness was measured in accordance with both knowledge of Torah and age. Also see b. B. Bat. 120a.

happen to be together at the same table. Such etiquette seems to discourage the experience of rabbinic colleagues coming together at a meal, and subverts the overarching theme of the chapter, which is *zimun* and blessing God as a group. In fact, the larger the group, the greater the blessing.³² Admittedly, the rabbis use food ritual to instantiate a desired hierarchical social structure. And the way daily rituals are discussed here underscores how a rabbi's communal standing was structured around who knew the most Torah. Ulla's status is recognized when R. Naḥman allows Ulla to recite *Birkat Hamazon*.

For men status was achieved most readily through Torah knowledge and Torah granted them communal status; for women it was all about marriage and procreation. Interestingly, in this story it is not clear that Yalta is married to R. Naḥman, that she is pregnant, or has children. She also does not appear to be the housewife, the server, or the cook.³³ The details are simply not clear. The ambiguity generates a feeling that she is here to confuse categories, rather than to offer a clear-cut rabbinic characterization of a rabbi's wife.³⁴ She leaves open the possibility that some women did, in fact, converse with men because, at least as the story begins, she seems to have a seat at the table; R. Naḥman wants the "cup of blessing" passed to her.³⁵

32 See b. Ber. 49b–50a, especially the mishnah (m. Ber. 7:3) where it indicates that three people who have eaten together are to say, "Let us bless," ten people who eat together add to their *zimun* saying, "Let us bless our God," 100 people who eat together continue to add to *zimun* and say, "Let us bless God, who is our God," etc ... However, the gemara that comments on this mishnah indicates a desire to use the same language for *zimun* whether there are ten or more than ten.

33 There are many rabbinic sources that refer to women taking part in domestic tasks, although here Yalta is not mentioned in conjunction with them. In fact, there are several Talmudic anecdotes, for example, that speak of women who bring food to the head of household. See, for example, y. Šabb. 3:1, 5d; b. Šabb. 48a; b. Šabb. 51a. See Judith Hauptman's discussion in "A New View of Women and Torah Study in the Talmudic Period," *JSIJ* 9 (2010): 263, esp. note 40, <https://www.biu.ac.il/JS/JSIJ/9-2010/Hauptman.pdf>; and her article, "Hadavar masur lenashim: nashim betekasei daat beitim," *Sidra* (5770): 83–111.

34 See Satlow, "Fictional Women," 228–230 for a good overview of rabbinic stereotypes of women, specifically regarding domesticity. Also see Dina Stein, "A Maidservant and Her Master's Voice: Discourse, Identity, and Eros in Rabbinic Texts," *Journal of the History of Sexuality* 10, nos. 3–4 (2001): 377, where she discusses how the relationship between Rabbi Yehudah the Patriarch and his maidservant blur the expected hierarchy of social categories. See also Hauptman's Talmudic examples in her article, "A New View of Women and Torah Study in the Talmudic Period," where women voice their knowledge of matters of halakhah, indicating that in certain areas they were Torah knowledgeable; *JSIJ* 9 (2010), <https://www.biu.ac.il/JS/JSIJ/9-2010/Hauptman.pdf>, 249–292.

35 Galit Hasan-Rokem, *Tales of the Neighborhood: Jewish Narrative Dialogues in Late Antiquity* (Berkeley: University of California Press, 2003), prompts discussion on whether Yalta could be a neighbor and not R. Naḥman's wife. Unfortunately, as she points out, even

We also know from other sources, specifically b. Qidd. 70ab, that Yalta advised R. Nahman and offered halakhic advice to men in the areas of *niddah* and *kashrut* (b. Nid. 20b and b. Hul. 109b). She also helped to heal R. Amram who was tortured by the “house of the exilarch,” bathing him so that he would recover (b. Git. 67b). This suggests that the pattern of rabbinic relationships outside the *Beit Midrash*, that is, of men discussing Torah or eating together, may not always be gendered male. At the very least, given that the issue in b. Ber. 51b revolves around a “cup of blessing,” as compared to numerous examples in chapter 7 of tractate Berakhot that discuss *zimun* (from which Yalta would have been excluded at this meal), it seems that by including an interaction between two rabbis and a woman, a woman who may or may not be R. Nahman’s wife, there is a desire to test how far the exclusion of women should go.³⁶ Who is in and who is out? Who controls the decision and under what circumstances?

As it happens, Ulla’s teaching in the name of R. Yoḥanan, does not make sense; he seems to misread the verse. Not only does the context in Deuteronomy refer to blessing both men and women with progeny saying, “there shall be no sterile male or female among you (7:13),” but Deuteronomy also makes clear: women become pregnant and give birth to children and it is a blessing God bestows. The Talmud’s redactors, possibly recognizing the weakness of R. Yoḥanan’s interpretive comment, inform us that this teaching about male seed originated with the earlier Tannaitic rabbi, R. Natan, a Talmudic move that

though neighbors are the closest relationship in ancient culture beyond the family unit, the relationship is often overlooked. While in patriarchal cultures, neighbors may belong to the same family, aggadic stories in rabbinic literature that present dialogues between neighbors often include women as their protagonists who may not be family members. Due to their frequent presence at the homes of others, they can be considered members of the household (8 and 11). See also Hezser, “Rabbis and Other Friends,” 216, who discusses neighbors in the ancient world, noting that friends who were neighbors crossed the threshold into another’s home and became intimates of the family. If Yalta and R. Nahman are neighbors, this might introduce the potential for a relationship of symmetry and mutuality, more so than if she is his wife, serving him. Indeed, there are instances in rabbinic literature where women sought out rabbis to study with them, although, in the case of the wife who studied with R. Meir, she was berated by her husband and discouraged by her female neighbors from returning to study. See *Vayikra Rabbah* (Margoliot edition), 96:9; y. Sotah 1:4, 16d. Also see a summary of the sources referring to Beruriah in Marjorie Lehman, “Reading Beruriah through the Lens of Isaac Bashevis Singer’s *Yentl*,” *Nashim: A Journal of Jewish Women’s Studies and Gender Issues*, 31, no. 1 (2017): 123–145.

36 See Fonrobert, “Gender Politics in the Rabbinic Neighborhood,” 52–53, where she argues that the presence of women within a discussion about rituals (in her case, the *eruv*), serves a meta-halakhic purpose. Fonrobert reminds us of the importance of seeing the presence of women in rabbinic narratives as pointing to something the rabbis wish to express about themselves, their communal framework or about the laws they create.

surely supports Ulla. Additionally, while Ulla transmits the view of others, he adds nothing creative to the discussion. He sees women as the receptacles of male seed, yet he is nothing more than a vessel containing rabbinic wisdom to which he adds nothing.

In addition, the presence of Yalta conveys a degree of anxiousness on the part of the rabbis about the nature of male authority. Ulla's legal reasoning is faulty, and his ethics are questionable. He does not use his Torah knowledge to show respect for R. Naḥman or for Yalta by engaging them. He merely discredits their custom entirely, as if to say, "I am right and you are wrong." Ironically, Torah knowledge, which defines his relationship with R. Naḥman, distances him from his host and from Yalta. In addition, he invokes the authority of his predecessor in the Land of Israel, R. Yoḥanan when R. Yoḥanan is not at the table. Why does Ulla's respect for R. Yoḥanan supersede his respect for those of his own generation who happen to be alongside him? Why does he venerate his predecessors, and disparage his contemporary, R. Naḥman? Collegiality is missing; the opportunity for two rabbis to learn from one another is thwarted; connections between the Land of Israel and Babylonia are strained—all in the name of a desire to assert that, "what I know is better than what you know."

The response on the part of Yalta to Ulla is anger and frustration. She "rose passionately and went to the wine storehouse and broke 400 barrels of wine."³⁷ Her method of communication feels stereotypically female in that she acts emotionally rather than engaging Ulla in a more typical male–male / rabbi–rabbi verbal debate. It is also symbolic. Don't dismiss the vessel, she communicates to Ulla, because without the vessel, there is no wine; that is, without a woman's womb, there is no child. And with this Yalta challenges the control Ulla presumes he has. Arguably, the relationship between men and women, as Ulla understands it, is one of total power of men over women, even in creating progeny. A woman is blessed through a man; she has children because of him. But what Yalta reveals when she smashes 400 barrels of wine is that men, in fact, depend on the object of their power wholeheartedly.³⁸ Recognizably, they do need women. Ulla's midrashic words are empty, just like the barrels.

37 See also b. Ketub. 104a where the maidservant of Rabbi Yehudah Hanasi throws a jar off the roof to silence those praying for his mercy, competing with God who wanted him as well. Upon hearing the noise, the rabbis stop praying and R. Yehudah dies. See Stein "A Maidservant and Her Master's Voice," 391 and her discussion 392–393.

38 See Stein, "A Maidservant and Her Master's Voice," 377, who in quoting Hegel's understanding of the master–slave relationship argues that "total personal power becomes a form of total dependence on the object of that power"; see George Wilhelm Hegel, *Phenomenology of the Mind*, trans. J.B. Baillie (London: Sonnenschein, 1910), 228–240; and W. Fitzgerald, *Slavery in the Literary Imagination* (Cambridge: Cambridge University Press, 2000), 1–8.

Although Yalta's message comes through to R. Naḥman, he seems to back down in support of Ulla. When he says, "Let the Master send her another cup," R. Nahman appears to favor Yalta, but instead he fuels the fire. "Another cup," כּסא אחר־ינא, would not be the one over which *Birkat Hamazon* was already said; it would be an entirely new cup. It would be a cup of wine with no connection to the ritual that was just performed. There is no plan to repeat *Birkat Hamazon*. In so doing, R. Naḥman offers a compromise position, kowtowing to Ulla, but trying to pacify Yalta at the same time. Such a make-up strategy merely reinforces the rabbinic social status quo where men assert their power over women and the hierarchy is maintained.³⁹ Passing a second cup to Yalta signifies that she is, in fact, second to R. Naḥman and Ulla. She is pushed to the sidelines, positioned exactly where, in this socio-cultural world of the rabbis, women are to be. Her emotional outburst and physical spillage of such a valuable commodity reveals the ways in which she—and not Ulla—destabilizes the order and is firmly other.

Ulla seems to support R. Naḥman's plan regarding the additional cup, albeit using a stronger, more disparaging tone. Unlike R. Naḥman, who speaks to Ulla and not to Yalta, Ulla speaks directly to Yalta. In so doing, he infantilizes her and provokes her to lash out at him, not with words of Torah, but with insulting words:

He [Ulla] sent⁴⁰ it to her [saying the following]: "All the wine [from] this barrel can be [counted as] the wine of blessing."⁴¹

39 See Judith P. Goetz and Linda Grant, "Conceptual Approaches to Studying Gender in Education," *Anthropology and Education Quarterly* 19 (1988):182–196, as discussed in Ben-Yosef, "Literacy and Power," 59.

40 The word "sent" from the Hebrew root, שָׁדַר, is somewhat unclear as it makes this interchange between Ulla and Yalta seem as though they are not speaking directly to one another. However, a look at b. Qidd. 70a shows that the word "sending" can mean talking to a woman. Qidd. 70a is as follows: "[R. Nahman said]: Let the Master 'send' [greetings] of peace to Yalta." Read along with b. Ber. 51b and noting that Yalta responds to Ulla, suggests that Ulla must have said something to her that provoked her words of insult.

41 Note that while the manuscript traditions indicate that this story (b. Ber. 51ab) is relatively stable, both the Munich manuscript (97) and the Paris manuscript (671) do not include R. Naḥman's second request that Ulla send Yalta another cup. Instead, following Yalta's decision to break 400 barrels of wine, Ulla retorts, "All the wine [from] this barrel can be [counted as] the wine of blessing." Then Yalta responds with words of insult. Without the second request of R. Naḥman, the harshness of Ulla's retort is intensified. Yalta breaks the barrels, at which point Ulla implies that she has destroyed all blessing.

She sent him [a response]: “From itinerant [peddlers come idle] words and from old rags [come] lice.”

As Ulla tries to placate Yalta, he invents a way of deeming the second cup of wine to be considered “a cup of blessing” by claiming that the entire barrel from which the wine was originally taken was blessed. But, are there any barrels left? Has Yalta destroyed them all? Are Ulla and R. Naḥman trying to say—“Ha! you missed one?” Is there a pitcher of wine on the table from which the first cup of blessing was poured? Here these two rabbis emerge more as facetious men trying to convince Yalta that the cup can still be passed to her, than as legal experts with a viable solution. In the end, Yalta is not fooled. She is familiar with the ritual and knows she is being duped. Even if the barrel (or the pitcher from which wine was drawn for the first cup) is still intact, they cannot make up for Ulla’s refusal to include her initially with a second cup. Voicing her despair this time around, Yalta transposes a folk-saying found in the book of Ben Sira 42:13 that connects the notion of wickedness coming from women with insects coming from cloth.⁴² Instead, as Yalta utters, wickedness comes not from women, but from itinerant rabbis such as Ulla, who try to exercise authority over rabbis, like R. Naḥman, not to mention those who dismiss women when engaged in ritual tied to eating. Yalta’s anger intensifies.

There is no end to the story. The concluding remark is made by Yalta, which silences Ulla and R. Naḥman. Any evaluation as to whether she is right or wrong is absent. And finally, no one is reproved.⁴³ Talmudic literature is replete with material that discusses punishments for individuals who lodge insults, including rabbis. Punishments, such as 30-day bans (*nidui*) or harsher excommunications (*herem*), ensure a stable social order where social interactions operate according to a set of enforceable rules. So now the question that arises is why did the redactors of the Talmud preserve this story?⁴⁴ Why include a story that

42 See Sir 42:13, “From a garment comes moths and from a woman wickedness.” Also see Ilan, *Mine and Yours Are Hers*, 125 and note 66. Although it is not clear whether Yalta had any familiarity with the book of Ben Sira, the rabbis were certainly aware of it. See b. Sanh. 100b where the lines found prior to this verse are quoted.

43 See b. Mo’ed Qat. 14b–16b regarding punishments for lodging insults at someone else. See Jason Sion Mokhtarian, “Excommunication in Jewish Babylonia: Comparing Bavli Moed Qatan 14b–17b and the Aramaic Bowl Spells in a Sassanian Context,” *Harvard Theological Review* 108, no. 4 (2015): 553–554.

44 Others ask this question about sources mentioning women that appear to subvert mainstream rabbinic thinking, including Gail Labovitz who queries: What does the inclusion

underscores the challenges of rabbi-rabbi collegiality; accentuates the dangers of asserting rabbinic authority in developing interpersonal relations and exposes egocentrism; competition and exclusion in the acquisition and dissemination of Torah knowledge? Why intimate that what binds people together in rabbinic culture, meaning Torah and ritual, can drive a wedge between them and make companionship difficult? Ulla also does more than dismiss Yalta; he excludes her from blessing.

Following in the footsteps of Mieke Bal's feminist readings of biblical texts, it is important to note that rabbis establish and sustain a working culture that is patriarchal. However, they also indicate that companionship rooted in dominance and exclusion is not "unproblematically established."⁴⁵ When Ulla, R. Nahman and Yalta meet for the same meal, the patriarchy is visible, but so are its consequences.⁴⁶ Feminist scholars might be drawn to Yalta as the protagonist who stands for all that does not fit in rabbinic culture. Ulla, after all, does not think she, or any woman for that matter, deserves to be counted, even in birthing children, highlighting a male-centered view of continuity.⁴⁷ He denies Yalta's personhood making her the quintessential outsider in the name of power and authority. Women are mere receptacles for the seed of men, that is, ironically, in the wake of Ulla's decision to appear as a mere vessel of rabbinic teaching, quoting his predecessor, rather than as an inventive contributor. But, Yalta's presence also brings out the egocentrism, the jealousy, the insecurity, and the disrespect that can exist between male rabbis who, in this case, are dis-

of stories into rabbinic literature, like this one about Yalta, imply about the rabbis and rabbinic culture? See "Rabbis and 'Guerrilla Girls': A Bavli Motif of the Female (Counter) Voice in the Rabbinic Legal System," *Women in Judaism: A Multidisciplinary E-Journal* 10, no. 2 (2013), <https://wjudaism.library.utoronto.ca/index.php/wjudaism/article/view/20906/17081>.

45 Mieke Bal, *Lethal Love* (Bloomington: Indiana University Press, 1987), 3; and also see Hasan-Rokem, *Tales of the Neighborhood*, 61.

46 Bal, *Lethal Love*, 5.

47 See past scholarship on Yalta, including Rachel Adler, *Engendering Judaism: An Inclusive Theology and Ethics* (Philadelphia: Jewish Publication Society, 1998), 57; Charlotte Elisheva Fonrobert, *Menstrual Purity: Rabbinic and Christian Reconstructions of Biblical Gender* (Stanford: Stanford University Press, 2000), 120; and Gail Labovitz who builds upon their work in "Rabbis and 'Guerrilla Girls': A Bavli Motif of the Female (Counter) Voice in the Rabbinic Legal System." Indeed, Labovitz identifies other stories in the Bavli not only of female participation and agency, but also of barriers to female entry into legal settings. See Admiel Kosman, "A Cup of Affront and Anger: Yalta as an Early Feminist in the Talmud," *Journal of Textual Reasoning*, <https://jtr.shanti.virginia.edu/volume-6-number-2/a-cup-of-affront-and-anger-yalta-as-an-early-feminist-in-the-talmud/>. And see Ilan, *Mine and Yours Are Hers*, 121–130.

agreeing about who receives God's blessing and about how they receive it (via the original cup or the second one). Their failure to model an effective interpersonal rabbi–rabbi relationship, accentuated by the fact that the story does not end with any final words exchanged between them, means that the rabbis, in including this story, are willing to expose the fault lines in the patriarchal homosocial society they operate within and wish to sustain. The rabbis admit that patriarchies falter, a point that is often overlooked. While at times it is a woman who is disempowered, at others, it is a rabbi who disempowers another of equal status in the name of Torah, a rabbi who is supposed to be his *haver*. Furthermore, if the pattern of learning in rabbinic culture is entirely social, such that learning with and through another is highly valued and generative, occurring not only in *batei midrash*, but also at one's table, then relationships become the fodder upon which rabbinic society is built and sustained. Unfortunately, as this story reveals, human personalities can threaten the formation of needed interpersonal relationships. Ego impedes relationships. The need to be in control evokes anger in those who are excluded.⁴⁸ Disrespect drives people apart. Power that is tied to knowledge and/or to gender, can prevent or destroy rabbi–rabbi relationships (Ulla-R. Naḥman), male–female relationships (Ulla and Yalta/R. Naḥman and Yalta), and husband–wife relationships (if R. Naḥman and Yalta are husband and wife). Interpersonal relationships, formed within a patriarchal structure and governed by how much Torah one knows, run the danger of promoting worlds that lack dynamism and make limited room for even those who belong to the same social structure. The rabbis admit through the interchange between R. Naḥman, Ulla, and Yalta in Ber. 51b that patriarchal structures can frustrate relationships, even those among equals, inasmuch as they construct patterns of belonging that inspire connection.⁴⁹

48 Stein, "A Maidservant and Her Master's Voice," 379 and 384, suggests that there cannot be any relationship when you fall in love with yourself, like the Greek Narcissus who sees his reflection in a pool of water.

49 As Judith Hauptman argues, it is possible that the rabbis were not entirely comfortable with their patriarchal privilege and, therefore, sought ways to ameliorate the status of women. See *Rereading the Rabbis: A Woman's Voice* (Boulder: Westview Press, 1998), 4. Moreover, as Hauptman points out, not all Talmudic women abided by disempowering structures (Yalta) and not all men wanted to silence them (R. Naḥman). In her article, "A New View of Women and Torah Study in the Talmudic Period," 249–292, <https://www.biu.ac.il/JS/JSIJ/9-2010/Hauptman.pdf>, Hauptman is clear to point out that men relied on women in many categories of law in order to properly observe it. Women voice their knowledge.

This rabbinic story is about characters who, on the one hand, appear to be members of the same communal structure—who sit at tables together much like friends do—but, at the same time, stand in tense, ambivalent relationships to one another.⁵⁰ They are embedded in an organizational communal structure related to Torah and halakhah that dictates the boundaries of their relationships, that is, with how male rabbis relate to other male rabbis and with how male rabbis relate to women. But, what we observe is both the potential and the loss. Ulla is connected to R. Naḥman by virtue of them both being rabbis, even though they live miles apart. Potentially, they can bridge two centers of Torah learning. And yet, the competition between Babylonian Jewry and that of the Land of Israel, as represented in the R. Naḥman and Ulla disagreement over the ritual of the “cup of blessing,” reveals the obstacles that can work against companionship and strong interpersonal relationships needed for learning Torah. In the process, some, like Yalta, will find themselves completely sidelined and, therefore, suffer a greater sense of loss than others.

And so—looking at rabbinic texts brings to light the question as to whether exclusivity and exceptionalism, empowerment and disempowerment—all of which are characteristics of patriarchies—generate strong social fabrics. Indeed, when Robert Frost asked himself this question—“Why do [fences] make good neighbors,”—he responded that before he would build a wall he would ask to know, “what I was walling in or walling out, and to whom I was likely to give offense.”⁵¹ However, despite the recognizable downsides of a patriarchal social fabric, which the rabbis in b. Ber. 51b unabashedly critique, the patriarchy was continuously reinvoked and protected. More equitable social models never arose. The story of Ulla, R. Naḥman, and Yalta indicates that some rabbis were struggling with the model they had created, but not enough to propose another social structure. After all, Torah learning happened; intellectual productivity ensued for generations. As such, the message that emerges from this story is to look harder at the issues that constrain us today and determine the extent to which the nature of relationships is informed by past social structures. Indeed, the goal is to rejoice in what has changed, like the admission 34 years ago of women to rabbinical school because of rabbis and scholars like Rabbi Joel Roth who spoke out relying on halakhah to enable this to happen. But we also need to assess what remains to be changed to avoid the type of behavior that results in irreparable damage or in stories that are told and retold offering no good endings.⁵²

50 Bal, *Lethal Love*, 4–5.

51 Robert Frost, *The Poetry of Robert Frost*, ed. Edward Connery Lathem (1916, etc.).

52 Mary Beard, *Women and Power: A Manifesto* (New York: Liveright Publishing Corporation, 2017), 97.

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Contemporary Criteria for the Declaration of Death

Daniel S. Nevins

Sheilah

What is the precise moment of death according to halakhah?

Teshuvah¹

The Process of Dying

The time of death is perhaps the most mysterious of all human transitions. In halakhic literature, much attention has been focused on the treatment of the person up until the moment of death, and of his/her body and survivors after that point. But when, precisely, does a person die?

The prominent medical writer and surgeon Sherwin Nuland writes that “every one of death’s diverse appearances is as distinctive as that singular face we each show the world during the days of life.”² The Talmud in b. Ber. 8a cites a *beraita* claiming there to be 903 forms of death. The most painful separation of soul from body is described as croup; the gentlest is death by a kiss, likened

1 I am grateful for special assistance given to me on this project by my father and teacher, Michael A. Nevins, M.D., my friend David Bar-Shain, M.D., and by my congregants, Dr. Bruce Silverman, Dr. Alex Steinbock, Dr. Richard Trosch, who are neurologists, and Dr. Leonard Rosenthal and Dr. Ronald Sherman, who are pulmonologists. The bioethics subcommittee of the CJLS helped me research and sharpen this paper. I thank its chairman, Rabbi Aaron Mackler and Rabbis Kassel Abelson, Elliot Dorff, Avram Reisner, Joel Roth and Elie Kaplan Spitz for their guidance.

This responsum was approved by the CJLS on September 8, 2004 by a vote of twelve in favor, none opposed, with one abstention (12-0-1). The current version has been revised based on continued developments in the medical literature, but the halakhic conclusions remain unchanged. In June 2018 Rabbi Leonard Sharzer, M.D. organized a conference on brain-death at the Jewish Theological Seminary with a keynote address by Dr. Alan Shewmon. His remarks, as well as mine and those of the other presenters are available in video format at: <https://youtu.be/c8EgdCY6xTQ> (Part 1) and <https://youtu.be/dwsK1k21OhE> (Part 2).

2 Sherwin B. Nuland, *How We Die: Reflections on Life's Final Chapter* (New York: Alfred A. Knopf, 1994).

to the withdrawal of a hair from milk.³ Some deaths are sudden, but often the final passage is a gradual transition. Contemporary medical discussions of death describe a *process* in which the body shuts down its vital functions until the person is declared dead. Jewish mystical sources likewise discuss a transition, three days in duration, during which the soul gradually separates from the body.⁴

Therefore, it may not be accurate from a physiological or a spiritual perspective to speak of a single moment of death. Some bioethicists, such as Norman Fost, question both the accuracy and the purpose of identifying a uniform standard.⁵ Others, like Baruch Brody, argue that it is most useful to choose different definitions of death for different courses of action.⁶

Nevertheless, there is an halakhic need to identify a point of transition between life and death. One set of obligations—to heal or at least to comfort the dying person—is exchanged at the time of death for a new set of obligations to prepare the body for burial, to mourn the deceased, and to comfort the bereaved. The declaration of death may be necessary for terminating treatment, especially for patients who lack relatives to authorize such a change. Defining a moment of death is also necessary to establish the date of *yahrzeit*. Yet it is the issue of organ donation that has lent the greatest urgency to this question. Lives can be saved by harvesting vital organs from a person who has died. But it is impossible to remove vital organs such as the heart and liver without raising the prospect of murder unless clear and defensible criteria have been established for the declaration of death.

In ordinary circumstances, breathlessness (apnea) can be verified directly, and is accompanied by other signs of death such as cardiac arrest. In the extraordinary circumstance that a ventilator-dependent patient with heartbeat has been shown to have no upper or lower brain function, and is a candidate for organ donation, precise medical and halakhic criteria of death are required. The definition of these criteria is the focus of our study. We shall argue in this paper that Judaism has historically defined life and death primarily in terms

3 For an extended study of this concept, see Michael Fishbane, *The Kiss of God: Spiritual and Mystical Death in Judaism* (Seattle: University of Washington Press, 1994).

4 See Rabbi Yechiel Michal Toktzinski, *Gesher HaHaim* 2:27 (Jerusalem, 1960).

5 Norman Fost, "The Unimportance of Death," in *The Definition of Death: Contemporary Controversies*, ed. Stuart J. Younger, Robert M. Arnold, and Renie Schapiro (Baltimore: Johns Hopkins University Press, 1999), 161–178.

6 Baruch A. Brody, "How Much of the Brain Must Be Dead?," in *The Definition of Death*, 71–82. Derick T. Wade has suggested further expanding the continuum to include patients in a "minimally conscious state." See "The Dis-integration of Death," *The Lancet* 360 (August 10, 2002): 425–426.

of breathing.⁷ In our day, the absence of breathing is likewise the single most significant criterion in the determination of death.

The Evolution of Death

For much of Jewish and general history, the permanent cessation of breathing was the standard for determining death. By the nineteenth century (with the invention of the stethoscope), physicians began to emphasize lack of pulse rather than breathlessness in the declaration of death, though there remained difficulties in establishing either in some cases. Until the last few decades, physicians used the following methods to determine death: the observation of fixed, dilated pupils after some defined time had passed; auscultation (listening for presence of heartbeat and respiration); and eventually, *rigor mortis* and putrefaction.⁸

In the late 1960s, two technological developments inspired the search for an additional method for the diagnosis of death. The first was the improvement in and profusion of ventilators which could allow a patient, while incapable of spontaneous respiration, to remain alive. Many patients used such ventilators on a temporary basis, yet it had become evident by 1968 that a significant number of people being kept alive in this fashion had no prospects of recovery. Margaret Lock described the resultant “living cadaver” as a machine–human hybrid.⁹

The second development was the introduction of anti-rejection medications, such as cyclosporine, which allowed far greater success in the transplantation of whole organs. By 1968, an *ad hoc* committee of Harvard Medical School proposed a new definition of “brain-death” to allow for the removal of ventilators in certain cases, and for the harvesting of vital organs from brain-dead patients for transplantation to human recipients. This process became particularly important for the harvesting of the liver and heart, which lose viability rapidly upon traditional cardio-respiratory death.

The story of the Harvard Medical School committee and the subsequent 13 years of medical and legislative activity to clarify and standardize the brain-death diagnosis is beyond the scope of our study.¹⁰ One ambiguity that was

7 [2018 update: In the original paper I used the words *respiration* and *breathing* interchangeably, but they are not identical. *Respiration* refers also to the exchange of gases on the cellular level and continues even when a person is incapable of breathing.]

8 I thank my father, Michael A. Nevins, M.D., for this description.

9 Margaret Lock, *Twice Dead: Organ Transplants and the Reinvention of Death* (Berkeley: University of California Press, 2002), 40.

10 See Martin S. Pernick, “Brain Death in a Cultural Context: The Reconstruction of Death,

quickly clarified was the equation of brain-death with what came to be called “whole brain-death,” defined by the destruction of the cerebrum *and* the brain stem, rather than “higher brain-death” which describes the destruction of the cerebrum and results in the permanent loss of consciousness.

Today, “brain-death” refers to the complete loss of function of all areas of the brain. Still, the term “brain-death” remains confusing, since the issue is *human* death defined by neurological criteria. This term is also often misapplied in common parlance to refer to prolonged and apparently permanent cases of coma. For example, family members sometimes refer to a comatose patient as “brain-dead” even though they are breathing spontaneously.

Legally, brain-death is defined as “the irreversible cessation of all functions of the entire brain, including the brain stem.”¹¹ Patients in a persistent vegetative state may have lost *higher* brain functions, but they still respond to certain stimuli, may breathe without ventilators, and are not considered by rabbinical or medical authorities to be dead.

The notion of brain-death was first proposed in 1968 and gained currency and legal status starting in the 1970s. Nonetheless, the definition of death has grown more complicated and controversial.¹² In recent years, the medical literature has produced numerous critical evaluations of the brain-death diagnosis.¹³

There are recent detailed protocols available for the diagnosis of brain-death,¹⁴ yet such careful methods may not be consistently employed by physicians before calling in the transplant team. Protocols may vary from the emergency room to the critical care units, from hospital to hospital, and from doctor to doctor.¹⁵ Neurosurgeons Michael Wang and J. Peter Gruen and nurse Pamela

1967–1981,” in *The Definition of Death*, 31–33; and the chapters, “Locating the Moment of Death,” and “Making the New Death Uniform,” in Lock, *Twice Dead*, 78–126.

11 American Medical Association and American Bar Association, 1983.

12 For a harsh critique, see Gary Greenberg, “As Good As Dead: Is There Really Such a Thing As Brain Death?,” *New Yorker*, August 13, 2001, 36–41.

13 For example, see Ronald Cranford, “Even the Dead Are Not Terminally Ill Anymore,” *Neurology* 51 (1998): 1515–1516; D. Alan Shewmon, “Chronic ‘Brain Death,’” *Neurology* 51 (1998): 1538–1545; *The Hastings Center Report* of July–August 2001; and James Bernat, “Refinements in the Definition and Criteria for Death,” in *The Definition of Death*. See also the editorial by Michael Swash and Richard Beresford, “Brain Death: Still-Unresolved Issues Worldwide,” *Neurology* 58 (2002): 9–10. [2018 Update: Neurologist D. Alan Shewmon has continued to raise fundamental questions about the validity of the brain-death diagnosis. His concerns will be addressed below.]

14 See Eelco F.M. Wijdicks, “The Diagnosis of Brain Death,” *The New England Journal of Medicine* 344, no. 16 (April 19, 2001): 1215–1221.

15 Based on personal conversations with emergency, pulmonology and neurology special-

Wallace documented the variety of tests used in the diagnosis of brain-death in one California hospital, and called for greater uniformity in how this diagnosis is made.¹⁶ They concluded that “physicians are trusted to rigorously apply accepted standards and practices when making the diagnosis of brain-death. Failure to strictly adhere to the whole-brain guidelines jeopardizes the public’s trust in the clinical diagnosis of brain-death.”

Bioethicists initially raised concerns that the new definition of death was driven simply by the desire for donated organs, and some physicians pointed to the continuation of minimal brain function even in cases of “whole brain-death.”¹⁷ Nonetheless, Western societies quickly adapted to the new standard.

Yet in Japan, a society with comparable levels of education and medical resources, the new standard of death has not been accepted so readily. Despite concern for saving the lives of potential organ recipients, Japanese society has been slow to view the patient who appears alive—if not lively—to be a “living cadaver.” As a result, donor cards in Japan ask people to select either a traditional cardio-pulmonary definition of death or brain-death before authorizing removal of their organs.¹⁸

Even in America, where the acceptance of brain-death is presumed to be widespread, physicians are wary of the presence of relatives during the administration of clinical tests for brain-death.¹⁹ Brain-dead patients may continue to exhibit spinal reflexes including the “Lazarus sign” in which the body briefly sits up and raises its arms when the ventilator is shut off, making it appear as if the patient had been more “living” than “cadaver.”²⁰

ists. Transplant teams follow separate protocols for determining death before harvesting vital organs.

- 16 Michael Y. Wang, Pamela Wallace, and J. Peter Gruen, “Brain Death Documentation: Analysis and Issues,” *Neurosurgery*, September 2002, 731–736. A similar claim is made by Sam D. Shemie, Christopher Doig, and Philip Belitsky, “Advancing toward a Modern Death: The Path from Severe Brain Injury to Neurological Determination of Death,” *Journal of the Canadian Medical Association* 168, no. 8 (April 15, 2003): 993–995.
- 17 Specifically, “the continued hypothalamic secretion of antidiuretic hormone (ADH) sufficient to prevent diabetes insipidus” in patients declared brain dead according to accepted protocol. James Bernat, in *The Definition of Death*, 86. However, Bernat argues that ADH secretion should not be classified as a “clinical function” of the brain, and therefore is not an impediment to the diagnosis of brain-death.
- 18 See *Twice Dead*; and also Masahiro Morioka, “Reconsidering Brain Death: A Lesson from Japan’s Fifteen Years of Experience,” in *The Hastings Center Report*, July–August 2001. Also see R.D. Truog, “Is It Time to Abandon Brain Death?,” *The Hastings Center Report* 27, no. 1 (1997): 29–37.
- 19 See “Really, Most SINCERELY Dead: Policy and Procedure in the Diagnosis of Death by Neurologic Criteria—Views and Reviews,” *Neurology* 62 (May 25, 2004): 1683–1686.
- 20 See Fred Plum, “Clinical Standards and Technological Confirmatory Tests in Diagnosing

Nevertheless, a broad American consensus in support of accepting brain-death as a new standard has taken hold in the past three decades, driven no doubt by the prospect of saving lives through the harvesting of vital organs from people who “no longer need them” and avoiding futile treatment. The standard definition of death has been clarified by the Uniform Declaration of Death Act (1981), which “has been upheld by statute or judicial opinion in each of the 50 states and has been at least partially adopted in most of the world’s industrialized nations”.²¹

An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead.²²

Differences remain between states in the required form of diagnosis; New Jersey and New York are distinct for granting a religious exemption from the diagnosis of brain-death.²³ In a comprehensive survey of brain-death legislation across the world, Wijdicks found that 70 of 80 countries surveyed had guidelines or codes of practice governing the declaration of brain-death, although the standards for diagnosis varied widely.²⁴ The variety of diagnostic procedures among medical professionals lends greater urgency for clarity among practitioners of halakhah. Our purpose in this responsum is to review the current medical standards of brain-death diagnosis and to determine whether these can satisfy the requirements of Jewish law.

[2018 update: *The case of Jahi McMath has attracted significant attention.*²⁵ *She was diagnosed as brain-dead in 2013, but maintained ventilator-dependent heartbeat until 2018, during which time she experienced puberty and was able to survive outside of the hospital. Video files documented her family’s claims that Jahi responded to verbal commands with limb movement. Dr. Alan Shewmon examined her and confirmed these claims. He questions her brain-death diagnosis,*

Brain Death,” in *The Definition of Death*, 53. Such a case was described in *The New York Times*, October 8, 2002.

21 Plum, “Clinical Standards,” 39.

22 A more technically-precise statement which addressed the issue of confounding factors was published in *JAMA* 246 (1981): 2184–2186.

23 New Jersey provides the exemption in the original statute, New York in a separate regulation.

24 Eelco F.M. Wijdicks, “Brain Death Worldwide: Accepted Fact but No Global Consensus in Diagnostic Criteria,” *Neurology* 58 (January 2, 2002): 20–25.

25 See Rachel Aviv, “What Does it Mean to Die?” *New Yorker*, February 5, 2018, <https://www.newyorker.com/magazine/2018/02/05/what-does-it-mean-to-die>.

arguing that she was instead in a minimally conscious state. His explanation is that she had a different condition of global ischemic penumbra (GIP), which mimics brain-death.²⁶ Shewmon argues that the only way to verify brain-death, rather than GIP, would be to prove that there is absolutely zero blood flow to any part of the brain, which is not currently possible. He further argues that the apnea test may be a self-fulfilling prophecy, in some cases causing the condition of brain-death that it proposes to measure. His position would hold all declarations of brain-death in abeyance, preventing the donation of vital organs on this basis. Shewmon prefers using the non-heart-beating protocol for organ donation. This position has its own critics, since cardiac arrest in such cases may not be irreversible. We acknowledge Shewmon's concerns, but also that his position is an outlier in the neurological and bioethics discourse.²⁷ See update to final conclusions below.]

Within the halakhic community, the acceptance of brain-death remains unsettled.²⁸ As we shall see, Conservative rabbis have generally accepted the idea of whole brain-death, while Orthodox rabbis are divided on the subject. Yet many of the articles from the 1970s and 1980s employed now-obsolete criteria such as a flat electro-encephalogram (EEG); this is now considered an unreliable indicator of brain-death.²⁹

The development of neurological criteria for the declaration of death has challenged halakhic authorities either to adopt or to reject the new standards. While much has been written on both sides of the issue, the crucial question of *what specific diagnostic criteria are required for an halakhic declaration of death* has received relatively little attention. Although diagnostic procedures may be constantly evolving, it is incumbent upon the local *poseq* to become familiar with contemporary criteria of death to guide families faced with difficult deci-

26 D. Alan Shewmon, "Truly Reconciling the Case of Jahi McMath," *Neurocritical Care*, August 15, 2018.

27 Ariane Lewis, "Reconciling the Case of Jahi McMath," *Neurocritical Care*, June 19, 2018.

28 See Zev Farber, ed., *Halakhic Realities: Collected Essays on Brain Death* (Jerusalem: Maggid Books, 2015), for a sample of Modern Orthodox studies.

29 James L. Bernat, writes that EEG activity persists in some patients "unequivocally determined to be brain dead by accepted tests. This rudimentary EEG activity neither responds to sensory stimuli nor appears to represent coherent brain functioning. Rather, it represents isolated nests of neurons whose random and purposeless cellular electrical activity can be recorded technologically but whose functioning is utterly divorced from that of the organism as a whole." See "Refinements in the Definition and Criteria for Death," in *The Definition of Death*, 87. See Fred Plum, in the same volume, 42–43. False negatives are also possible with EEG. EEG is increasingly being supplanted by transcranial Doppler ultrasonography as a confirmatory test of brain-death (see below).

sions at the end of life. This paper aims to apply classical rabbinic sources to contemporary medical norms in order to establish a working halakhic definition of death for our time.

The Definition of Death in Classical Rabbinic Texts

Respiratory Death

The primary rabbinic text to define physical criteria of death is from Talmud Tractate Yoma. The relevant Mishnah, m. Yoma 8:7 (found in the Babylonian Talmud on 83a), states:

מי שנפלה עליו מפולת, ספק הוא שם ספק אינו שם, ספק חי ספק מת, ספק נכרי ספק ישראל—מפקחין עליו את הגל. מצאוהו חי—מפקחין, ואם מת—יניחוהו.

If a building collapsed [on Shabbat], and it is unknown if a person is [trapped] there or not, whether he is alive or dead, gentile or Jew, they should clear the rubble off him. If they find him alive, they should extricate him; if he is already dead, they should leave him [until after Shabbat].³⁰

The Gemara, b. Yoma 85a, seeks to clarify how the rescuers are to determine whether the victim is dead or alive:

תנו רבנן: עד היכן הוא בודק? עד חוטמו, ויש אומרים: עד לבו.

The Rabbis taught: How far [into the rubble] should they check [to determine if he is alive]? Until his nose. Some say: until his heart.

Rashi explains that this question applies when the victim is found absolutely still—like a corpse:

עד היכן הוא בודק—אם דומה למת שאינו מזיז איבריו, עד היכן הוא מפקח לדעת האמת?

“How far should they check?” If he appears dead, for he is not moving his limbs, how far should they excavate to learn the truth?

³⁰ All translations are my own unless otherwise noted.

In such a case, which criteria are necessary to verify that the victim is dead—cardiac or respiratory?³¹ Although it might be expected that clearing rubble off the chest would allow the victim to breathe, the halakhah assumes that respiration can be checked even if only the head is exposed. What, then, is the dispute about? After a short digression in the Gemara, Rav Papa explains that this dispute relates only to a case in which the victim is uncovered feet (and thus chest) first—some would accept evidence of asystole [cardiac standstill] as conclusive; others would insist on digging further until the head is uncovered to confirm the lack of breathing:

אמר רב פפא: מחלוקת ממטה למעלה, אבל ממעלה למטה, כיון דבדק ליה עד חוטמו—
שוב אינו צריך, דכתיב כל אשר נשמת רוח חיים באפיו.

Rav Papa says, the dispute is from the bottom [of the victim's body] upward; but if [he were found] top to bottom, once his nose had been checked [for signs of breathing], nothing further is required, for it is written, "all in whose nose is the breath of life" (Gen 7:22).

Therefore, the primary criterion of death is respiratory, although some would accept cardiac criteria as conclusive in cases where the person could not be checked for breathing. This latter view is rejected by the codes of halakhah.

Rashi explains Rav Papa's analysis with diagnostic precision:

דמר אמר: בלבו יש להבחין, אם יש בו חיות, שנשמתו דופקת שם, ומר אמר: עד חוטמו
דזימנן דאין חיות ניכר בלבו, וניכר בחוטמו.

One opinion is to inspect the heart—if it is alive—that his spirit is beating there; the other opinion is to continue to the nose, for at times life is not discernible at the heart, but it is discernible at the nose.

Rashi's gloss indicates that cardiac arrest is harder to discern than is the absence of breathing. Yet from the Gemara it is evident that breathlessness is not merely easier to verify than cardiac standstill; it also accords with the Biblical concept of the "breath of life." In other words, the Gemara indicates that respiratory failure bears more *significance* than does asystole.

³¹ y. Yoma 8:5 (45b) provides an interesting variant. In this version, the dispute concerns the best method of proving respiratory failure—at the nose or at the diaphragm. Cardiac criteria play no role at all. It is possible that even the Bavli's reference to checking "to his heart" refers to the rising and falling of the chest.

The Gemara's breath-based standard of death is codified in the medieval codes of Jewish law. Maimonides states that the absence of respiration discernible at the nose is sufficient evidence of death:³²

בדקו עד חטמו ולא מצאו בו נשמה מניחין אותו שם שכבר מת.

If they examined his nostrils and found no breath there, they leave him there, *for he is already dead*.

Rabbi Karo makes the same ruling in the *Shulḥan Arukh*:

אפי' מצאוהו מרוצץ, שאינו יכול לחיות אלא לפי שעה, מפקחין ובודקים עד חוטמו; אם לא הרגישו בחוטמו חיות, אז ודאי מת לא שנא פגעו בראשו תחלה לא שנא פגעו ברגליו תחלה.

Even if a person were discovered crushed, who cannot live for more than a moment, they should continue excavating and checking him until his nostrils; *if they detect no life [i.e. breathing] at his nostrils, then he is certainly dead*, and it matters not whether they first found his head or his legs.³³

The *Mishnah Berurah* explains the final phrase to mean that absence of heart-beat alone does not prove death, but absence of breathing alone *is* conclusive.³⁴ The Babylonian Talmud and codes of Jewish law view lack of breathing, not cardiac arrest, as the primary criterion for the declaration of death.³⁵

Although the Rabbis considered absence of breathing to be sufficient evidence of death, it is evident that they meant *permanent* apnea. Maimonides warns to wait for some time to verify permanent cessation of respiration in case the person had merely fainted.³⁶ Of course, people who faint continue to breathe, but it could be difficult to detect their respiration. Rambam's ruling is confirmed by Rabbi Karo in *Beit Yosef*.³⁷ Rabbi Isserles makes a similar statement regarding a woman in labor who has apparently died—a caesarean

32 Mishneh Torah, Hilkhot Shabbat 2:19.

33 Shulḥan Arukh, Oḥ 329:4.

34 Mishnah Berurah 329:11.

35 In section v, we shall scrutinize Rabbi J. David Bleich's surprising argument that Rashi establishes the primacy of a cardiac standard.

36 Mishneh Torah, Hilkhot Eivel 4:5.

37 *Beit Yosef*, YD 339:1. The Talmudic basis is found on Šabb. 151b.

section should not be attempted lest she is merely comatose and now would be killed by the surgery.³⁸

Such fears of premature declarations of death became greatly pronounced in both general and Jewish society in the late eighteenth and nineteenth centuries. In Germany, the fear of apparent death (*Scheintod*) leading to live burial became a sensation, prompting civil legislation in 1772 to mandate a three-day waiting period before burial. This law impinged upon the Jewish custom of burying, when possible, within a day of death. The Jewish community, led by Rabbi Jacob Emden and philosopher Moses Mendelssohn, successfully secured a Jewish exemption from this law. Yet many Jews, agitated by radical *maskilim* who dismissed rabbinic authority, were shaken in their confidence to diagnose death and proceed with burial within 24 hours.³⁹ Permanent lack of pulse and breath can be hard to verify, particularly in cases involving hypothermia and drowning.

In our day, the extraordinary adjustment being proposed is to view a patient who is apparently breathing (albeit via a ventilator) and maintaining a heartbeat as nevertheless dead. To be blunt, this means removing functioning vital organs from one person and giving them to another. Based on the texts reviewed above, such an adjustment would seem unthinkable. Indeed, one might expect a horrified reaction in our day similar to the *Scheintod* panic of earlier generations. Surprisingly, this has not been the case in Western societies, and it has also not typified the responses of many halakhic authorities. The measured Jewish response may be motivated by the prospect of saving lives, but it is also grounded in classical halakhic examples of an additional set of texts used for the diagnosis of death.

Alternative Evidence of Death: Fatal Neck and Back Injuries

So far, we have been dealing with the diagnosis of death in a person whose body appears completely inert and lifeless. The Rabbis also discussed cases in which death could be declared, despite continued convulsions of the body, based on the observation of mortal injury. Although the respiratory criteria dis-

38 *Rema* to OḤ 330:5. See *Magen Avraham* there, n. 11.

39 See John M. Efron, *Medicine and the German Jews: A History* (New Haven: Yale University Press, 2001), 95–104. Margaret Lock also discusses the eighteenth-century panic over premature burial in *Twice Dead*, 66–69. This uncertainty among Jews over proving a diagnosis of death was still a source of concern to Ḥatam Sofer (YD 338). Some contemporary Jews even recalled a *beraita* from Tractate Semaḥot (8:1) of a Jewish Rip Van Winkle, who was found alive twenty-five years after burial in a crypt—and who went on to marry and have children! Yet Rabbi Emden and then Ḥatam Sofer railed against viewing this story as a precedent.

cussed above have been the primary means for determining death in Jewish texts, there is an alternative criterion for death even in the classical literature: destruction or severance of the spinal cord. The Biblical story of the death by neck injury of the priest Eli after the Holy Ark had been captured in battle by the Philistines (1 Sam 4:18) is studied by the Rabbis in b. Ḥul. 21a to understand the significance of fatal neck injuries:

אמר רב יהודה אמר שמואל: נשברה מפרקת ורוב בשר עמה—מטמא באהל; וא"ת: אותו מעשה דעלי מפרקת בלא רוב בשר הוא! זקנה שאני, דכתיב: ויהי כהזכירו את ארון האלהים ויפול מעל הכסא אחורנית בעד יד השער ותשבר מפרקתו וימת כי זקן האיש וכבד וגו'.

Rav Yehudah said in the name of Shmuel: if a person's spine was broken and most of the surrounding neck severed, he defiles in a tent [i.e. he is considered dead and conveys ritual impurity]. But you may object—what about the case of Eli, whose spine was broken, but not most of his neck [and yet he was considered dead]? The elderly are different, for it is written, “When he [the messenger] mentioned [the capture of] God's ark, he [Eli] fell backwards off his chair by the side of the gate, breaking his spine, and he died, for he was an old man and also heavy.”

According to Rav Yehudah, citing Shmuel, the observation that a person's neck is broken and mostly severed is by itself sufficient evidence of death. Yet because Eli was elderly, he was considered dead even without his neck being severed.⁴⁰ That is, injuries do not occur in isolation from other causes of frailty or illness in a person.

The Ḥullin text continues to describe other types of spinal cord injuries that would leave a person legally dead, even should his body continue to convulse:

אמר ר' שמואל בר נחמני א"ר יוחנן: קרעו כדג—מטמא באהל. א"ר שמואל בר יצחק: ומגבו.

Rav Shmuel bar Naḥmani said in the name of Rabbi Yoḥanan, if he were torn like a fish, he defiles in a tent. Said Rav bar Yitzḥak, provided his back [were sundered].

⁴⁰ In his commentary to the Rosh, *Ma'adanei Yom Tov*, Rabbi Lipman HaLevi Heller makes a fine distinction between the description of Eli as *heavy*, which he believes caused the fall, and *elderly*, which caused him to die even without his neck being gashed. Folio 149a in the Vilna Shas.

Rashi explains that such a mortally wounded person “defiles in a tent” even if his body continues to convulse. The Shulḥan Arukh⁴¹ restates this Gemara, claiming that some people are so grievously wounded as to be considered dead even while displaying signs of life:

מי שנשברה מפרקתו א ורוב בשר עמה, וכן מי שנקרע ב מגבו כדג, אפילו עדיין הוא חי, חשיב כמת, ומטמא.

Someone whose spine is broken, and most of whose neck is severed, or one whose backbone is ripped out like a fish, even if he is still alive [i.e. moving], is *considered as if dead*, and renders [others present] ritually impure.

In addition to these sources that which detail spinal injuries, there are several rabbinic sources that equate the decapitation of animals with death, despite persistent signs of life. The most often cited source is m. 'Ohal. 1:6:

אדם אינו מטמא עד שתצא נפשו ואפי' מגוייד ואפי' גוסס זוקק ליבום ופותר מן היבום מאכיל בתרומה ופוסל בתרומה וכן בהמה וחיה אינן מטמאין עד שתצא נפשם הותזו ראשיהם אף על פי שמפרכסים טמאין כגון זנב של לטאה שהיא מפרכסת:

A person does not render others impure [i.e. die] until his soul departs. Even if he is severely lacerated or nearly dead, he is still considered alive to fulfill or seek exemption from leviratic marriage, to entitle [his mother or wife] to eat priestly tithes or to deprive her. So too cattle and beasts do not render unclean until their life departs. If their heads are severed, even if their bodies continue to convulse, they are already impure, just like the severed tail of a newt twitches [even after it has been cut off].

Maimonides explains פרכוס, the convulsions of a decapitated animal, saying:

והתנועה שמתנועעין האברים אחר המות קוראים אותה פרכוס.

The movement of the limbs *after death* is called “*pirkus*.”⁴²

41 YD 370.

42 *Peirush Mishnayot*, Yosef Kapach translation, Mosad HaRav Kook (5727), 3:150.

In *Hilkhot Tum'at Meit*, he codifies the distinction evident in the Mishnah between a terminally ill person, who is considered alive, and a mortally wounded person, who is considered dead despite the continued convulsions.⁴³

In *b. Git. 70b* Rav Yehudah in the name of Shmuel describes the case of שחט בו שנים או רוב שנים, a man whose esophagus and trachea have been severed, but who is nevertheless allowed to execute a bill of divorce for his wife. Jewish law requires the husband to be not only alive but lucid while the *get* is written, witnessed, and then delivered to his wife! If he can't breathe, why isn't he considered to be legally dead?

Perhaps some air could still get to the man's lungs through the severed windpipe, or maybe he was simply holding his final breath, and he had a very speedy scribe at his side. Surely a person with a severed trachea and esophagus could not remain conscious for more than a few brief moments. Later in the Gemara this case is challenged, since Rav Yehudah also said in the name of Shmuel that a man who had his trachea and esophagus slit *and ran away*—observers can testify that he has died. Indeed, Rambam cites this as halakhah in *Hilkhot Gerushin 13:17*. This may not mean that he was considered dead at the moment that he was last seen running, but his death is deemed by halakhah to be inevitable and imminent due to his inability to breathe.

These strange cases are comparable to an animal that has been ritually slaughtered—its trachea and esophagus are severed but it may retain consciousness for a few moments. Nevertheless, the animal's imminent death is considered inexorable.⁴⁴ It is noteworthy that שחיטה does not involve severing the carotid artery. Rabbi Yehudah does differ from this position (*b. Hul. 27a*), requiring severing the וורידין, but the Gemara on 28b clarifies that Rabbi Yehudah's opinion applies only to birds that will be roasted whole, and that his purpose is to expel the blood, not to qualify the slit of the artery as an integral part of שחיטה.⁴⁵ As Rashi says there, "life does not depend on the blood vessels, and they needn't be mentioned except in regard to [expelling] the blood."⁴⁶

43 רמב"ם הלכות טומאת מת פרק א. המת אינו מטמא עד שתצא נפשו מפילו מגוייד או גוסס, אפילו נשחטו בו שני הסימנים אינו מטמא עד שתצא נפשו שנאמר בנפש האדם אשר ימות, נשברה מפרקתו ורוב בשרה עמה, או שנקרע כדג מגבו או שהותז ראשו או שנחלק לשני חלקים בבטנו הרי זה מטמא אף על פי שעדיין הוא מרפרף באחד מאיבריו.

44 Because of the laws of *shehitah*, a Jew may eat the meat while it still quivers, but a non-Jew is forbidden the flesh based upon מן החי. See *b. Hul. 121b*, and *Tanḥuma* (Buber, 180) *VaYeishev 6*.

45 The Tur confirms this at *YD 22:1*.

46 רש"י מסכת חולין דף כח עמוד ב. מאחר שלא הזכרו וורידין—כלומר אין חיות תלויה בהן ואין צריך להזכירם אלא משום דם למה אתה מצריכו שחיטה.

This confirms that halakhah employs respiratory, not circulatory, criteria in the determination of death.

Another text that clarifies the legal consequences of decapitation comes from the laws of Shabbat. A significant halakhic concept is that if an action is generally permitted on Shabbat, but it has a forbidden and unavoidable consequence, then the first action is not allowed. This theory is known by the expression, פסיק רישיה ולא ימות, “If you cut off [a chicken’s] head, will it not die?”⁴⁷ In other words, decapitation leads inexorably to death, even if temporary signs of bodily life persist. The heart may be beating, and the limbs may be moving, but the chicken cannot breathe, and it therefore is considered dead.

Synthesis of the Classical Halakhic Sources

Despite the ambiguities that result from the Talmud’s diverse descriptions of death, an underlying principle may be deduced. The key to the halakhic understanding of death comes from the words עד שתצא נפשו, “until his life departs.” The word נפש is explicitly connected to breath by the Torah: ויפח באפיו נשמת ויפה חיה ויהי האדם לנפש חיה “[God] breathed the breath of life in his nostrils; and the man became a living creature” (Gen 2:7). Other words that describe the animating spirit that defines life, נשמה and רוח, likewise relate to respiration.

The מגוייד and the גוסס mentioned in our Mishnah are nearly dead, *but they are still breathing*, and are therefore considered alive. One who is decapitated, or whose trachea is slit *is no longer able to breathe* and is therefore considered dead within moments of the injury. The Yoma text describes a motionless person who is declared dead based on respiratory failure. The Hullin and Ohalot texts describe humans (and animals) who, *though still moving*, are declared dead due to catastrophic injury to the neck or chest. Such injuries prevent the victim from breathing. Movement of the body implies continued cardiac activity. But the victim’s inability to breathe means that death is imminent. Indeed, Rambam’s definition of פרכוס captures this state precisely—*the movements made after death*.

Similarly, the Gittin text allows that a person may remain alive for a few moments after his trachea is slit, but it still considers him to be dead with no further inspection after that. Severe neck and torso injuries make breathing impossible and death inevitable. The case of Eli, whose neck was broken but not severed, and yet who was considered dead without verifying lack of breathing, is presented as an exception to the general practice.

47 See, for example, b. Šabb. 103a, and many similar sources. We may even discern in the future tense of “he will die” that decapitation *leads to* death rather than constitutes death.

At the other end of life, the heart of a human embryo begins to pump fluid through blood vessels on day twenty of gestation.⁴⁸ Nevertheless, it is not deemed a נפש, a true life, until many months later, עד שתצא לאויר העולם, “when it exits [the womb] into the air of the world.”⁴⁹ The fetus has a special status as part of the mother’s body, but it is not considered an independent life until it is born and *begins to breathe*.

Thus, it is not movement or even pulse which ultimately defines life and death, but the ability to breathe. This interpretation harmonizes the Talmudic and later halakhic materials, yielding a consistent standard for the start and end of life.

While some have argued that the decapitation texts constitute an *alternative* to the breathlessness standard, there is no reason to assume that the ancient Rabbis or their gentile contemporaries ascribed particular significance to the functioning of the nervous system in determining death. The spinal cord is ignored in שחיטה, and all of the neck-injury cases except for that of Eli require that the neck be mostly severed in order for death to be declared without testing directly for breathing. Our synthesis of the disparate rabbinic sources integrates the legal and linguistic data into a coherent halakhic approach which will guide us as we explore the medical literature.

Current Medical Criteria for the Diagnosis of Death⁵⁰

In *The New England Journal of Medicine*, Dr. Eelco F.M. Wijdicks provides a protocol detailing a neurological examination used to declare brain-death.⁵¹ The first priority is to assess whether the patient’s condition is permanent, or is rather the temporary result of reversible factors. Before an examination for brain-death can proceed,

48 *The Merck Manual of Medical Information, Second Home Edition* (Whitehouse Station, NJ: Merck & Co., 2003), 1437.

49 Rashi on b. Sanh. 72b, s.v. *yatza rosho*. See Rabbi Susan Grossman, “Partial Birth Abortion and the Question of When ‘Life’ Begins,” 6. This responsum was approved by the CJLS, September 17, 2003. A different conclusion about the precise moment of birth was defined by Rabbi Avram Reisner in his responsum, “*Ein dohin nefesh mipnei nefesh*,” approved by the CJLS on December 19, 2001.

50 For an excellent online resource, see www.braindeath.org/clinical.htm. See also the book, *Brain Death*, ed. Eelco F.M. Wijdicks (Philadelphia: Lippincott Williams & Wilkins, 2001), esp. ch. 4.

51 *NEJM* 344, no. 16 (April 19, 2001): 1215–1221. See n. 14 above, and his book, *Brain Death* (2001).

the following prerequisites [must be] met: the ruling out of complicated medical conditions that may confound the clinical assessment, particularly severe electrolyte, acid-base, or endocrine disturbances; the absence of severe hypothermia, defined as a core temperature of 32°C or lower; hypotension; and the absence of evidence of drug intoxication, poisoning, or neuromuscular blocking agents.

Once these confounding factors have been ruled out, the clinical exam for brain-death commences. Wijdsicks describes in great detail a three-part clinical exam, which tests for the lack of spontaneous or responsive cranial nerve activity, the absence of brain-stem reflexes, and apnea. The latter is tested by turning off the ventilator for several minutes and measuring the rise of CO₂ in the bloodstream. These tests are typically repeated between six and 24 hours after the first exam.⁵² Dr. Plum's detailed protocol is presented below as an appendix.

The brain-death protocol for pediatric cases differs from the standards described for adults.⁵³ Because most pediatric cases of brain-death are caused by severe asphyxial injury (which may injure organ systems other than the brain), organ procurement from pediatric donors is rare.

The apnea test—which measures the presence or absence of effective breathing—is typically the final and conclusive clinical examination for brain-death. Dr. Plum writes,

The apneic test represents the ultimate physiological-clinical test to diagnose brain-death. I know of no personal observation of a responsibly conducted, positive apnea test that has been reversed by subsequent recovery. Conversely, instances of omission of the apnea test have led to potentially unfortunate errors or premature assumptions of brain-death.⁵⁴

52 Andrew Newberg, Abass Alavi, Salina van Rhijn, Adolfo Cotter, and Patrick Reilly, "Radiologic Diagnosis of Brain Death," in *JAMA* 288, no. 17 (Nov. 6, 2002): 2121. The six-hour wait is cited from the Quality Standards Subcommittee of the American Academy of Neurology, published in *Neurology* 45 (1995): 1012–1014. In Michigan, the standard waiting period is 24 hours, according to a personal communication with Dr. Bruce Silverman.

53 See Stephen Ashwal, "Clinical Diagnosis and Confirmatory Testing of Brain Death in Children," in *Brain Death*, ch. 5. He writes, "the neurologic examination is more difficult to perform and interpret because of the smaller size of the patient, immaturity of certain development reflexes being tested, and pathophysiological differences due to the presence of open sutures and fontanels in the neonate and infant."

54 "Clinical Standards and Technological Confirmatory Standards in Diagnosing Brain Death," in Younger, *The Definition of Death*, 40.

Thus, after confounding factors have been ruled out and the patient has demonstrated neither any response to painful stimuli to the higher brain nor to the examination of brain-stem reflexes, the apnea test confirms the brain-death diagnosis.

Although the patient might move during the test, the absence of any breathing efforts, confirmed by a rise of carbon dioxide levels in the blood, shows that the patient is not breathing spontaneously. This test is repeated and, if it confirms the total lack of respiration, death is declared. Bodily movements during the exam are understood as spinal cord and not brain stem reflexes. These spinal cord reflexes are consistent with the rabbinic literature's description of פרכוס, spasmodic motion *after* death.

In rare cases⁵⁵ when the apnea test cannot be administered due to confounding factors (such as the presence of barbiturates that cannot be cleared or initial CO₂ levels that are too high or too low) radionuclide brain perfusion and other imaging techniques are used to verify a diagnosis of brain-death. Such diagnosis depends upon measurement of "the complete absence of [blood] flow throughout the brain and the internal carotid arteries."⁵⁶ This exam is seldom used since it is much more complicated and is not as conclusive as the protocol described above.

A simpler option is transcranial doppler ultrasonography (TCD), "a noninvasive monitoring tool which allows imaging of blood flow velocities in intracranial blood vessels."⁵⁷ Such tests may play an important ancillary role in the diagnosis of brain-death, but they do not alone suffice for medical purposes. In a study of cerebral blood flow after brain-death, doctors W. Mel Flowers and Bharti R. Patel conclude that "visualization of arterial flow does not exclude brain-death, but the diagnosis should be confirmed by repeat studies and other means."⁵⁸ Wijdicks cautions that, "absent flow intracranially may be due to transmission difficulties and in itself is not a criterion for death."⁵⁹

If there is no blood flow in the brain, does this not prove the patient's inability to breathe, albeit less directly than the apnea test? In fact, intracranial blood

55 Neurologist Bruce Silverman, M.D., who regularly examines patients for brain-death, has not ordered the radionuclide test once in the past 15 years. Personal communication.

56 See n. 53, "Radiologic Diagnosis of Brain Death."

57 V. Singh, J.P. McCartney, and J.C. Hemphill, III, "Transcranial Doppler Ultrasonography in the Neurologic Intensive Care Unit," *Neurology* (India) (June 2001), Suppl. 1:S81-89.

58 W. Mel Flowers, Jr., and Bharti R. Patel, "Persistence of Cerebral Blood Flow After Brain Death," *Southern Medical Journal* 93, no. 4 (April 2000): 364-370; and in an earlier article, "Accuracy of Clinical Evaluation in the Determination of Brain Death," in *Southern Medical Journal* 93, no. 2 (February 2000): 203-206.

59 *Brain Death*, 82.

flow exams measure the carotid arteries, but the medulla, which directly controls the respiratory impulse, is supplied by the vertebral artery.⁶⁰ Thus it is possible that a patient could show no intracranial blood flow, but still be capable of spontaneous respiration.

From the perspective of halakhah, neither radionuclide brain perfusion imaging nor TCD measures respiration, and therefore these tests do not suffice to prove death. In contrast, the clinical neurological examination culminating in the apnea test has been proven effective over time as a verification of the complete absence of respiration and of brain-death. Should a future test of total respiratory failure be developed, it would apparently satisfy the halakhic definition of death. Meanwhile, apnea is the best halakhic measurement of death in a ventilator-dependent patient who has met all the other criteria of brain-death.

[2018 update. *This remains the medical consensus, but we note the objections raised by Alan Shewmon.*⁶¹ *He argues that the apnea test can demonstrate only the loss of brain function, not necrosis of the brain, and thus it does not prove death. Moreover, by cutting off the supply of oxygen to the brain during the apnea test, clinicians may cause cellular necrosis. These suggestions are alarming. Yet the halakhic texts are concerned not with cellular life, but with organic function. As we have shown, if a person is injured in a way that makes it impossible for them to breathe, that is evidence of death. We would add that if a person is incapable of spontaneous breathing, but does possess other evidence of brain function, perhaps their apnea could be caused not by brain-death but rather by an upper spinal cord injury or global ischemic penumbra. If so, evidence of even minimal consciousness could be declared “hayut” (vitality) and prevent an halakhic declaration of death, halting removal of vital organs.]*

Halakhic Responses to Brain-Death Criteria

Soon after the discussion of brain-death standards entered American legal discourse, halakhic authorities here and then in Israel began to review traditional texts such as those mentioned in Section 11 to determine the Jewish status of brain-death. Dozens of articles have been published to date, and it will not be

60 Neurologist Richard Trosch, M.D., personal communication.

61 See D. Alan Shewmon, “False-Positive Diagnosis of Brain Death Following the Pediatric Guidelines: Case Report and Discussion,” *Journal of Child Neurology* 32, no. 14 (2017): 1104–1117.

possible to review them here. We will rather focus on specific rationales and guidelines offered by the defenders and critics of using brain-death criteria to declare death.

Although פקוה נפש, saving a life, is one of the highest of all Jewish values, avoiding homicide supersedes even this commandment. As the Rabbis said, אין נפש מפני נפש, “one life cannot be disposed of in favor of another.”⁶² Nevertheless, halakhic authorities have been willing to examine new criteria of death to see if additional lives might be saved either by transplantation of vital organs, or by making scarce medical resources available to other patients. Concerns for not desecrating the body (ניוול המת), not delaying burial (הלנת המת), not profiting from the dead (אין הנאה מן המת) and maintaining the general dignity of the dead (כבוד המת) remain operative, but do not outweigh the requirement to save a life (פקוה נפש). The first task, of course, is to determine if the potential donor is truly dead.

In 1976, the journal *Conservative Judaism* published articles by Rabbi Daniel C. Goldfarb and Rabbi Seymour Siegel z”l, each of whom reviewed the relevant rabbinic sources and contemporary medical information and found grounds for “updating the criteria of death.”⁶³ Since that time, numerous Conservative rabbis have touched upon the subject, including Rabbi David Feldman,⁶⁴ Rabbi David Golinkin,⁶⁵ Rabbi Avram Reisner,⁶⁶ Rabbi Elliot Dorff,⁶⁷ Rabbi Joseph Prouser,⁶⁸ and Rabbi Aaron Mackler.⁶⁹ All of these authors accept the theory of brain-death, though only Golinkin and Reisner specify clinical tests necessary for this diagnosis to be halakhically accepted.

The Reform Movement’s Central Conference of American Rabbis has published a responsum on the harvesting and storage of organs for transplantation

62 b. Sanh. 72b.

63 Daniel C. Goldfarb, “The Definition of Death,” and Seymour Siegel, “Updating the Criteria of Death,” *Conservative Judaism* 30, n. 2 (Winter 1976): 10–39.

64 David M. Feldman, “Rabbinic Comment: Definition of Death and Dying,” *The Mount Sinai Journal of Medicine* 51, no. 1 (January-February 1984): 73–76.

65 Rabbi David Golinkin, “Responsum Regarding Organ Transplantation” [in Hebrew], *Responsa of the Law Committee of the Rabbinical Assembly in Israel*, vol. 5: 121–122.

66 Avram I. Reisner, “Care for the Terminally Ill: Halakhic Concepts and Values,” in *Life and Death Responsibilities in Jewish Biomedical Ethics*, ed. Aaron L. Mackler (New York: Jewish Theological Seminary, 2000): 278–281, n. 5.

67 Elliot N. Dorff, “End-Stage Medical Care: Practical Applications,” in *Life and Death Responsibilities*, 351.

68 Joseph H. Prouser, “Hesed or Hiyuv? The Obligation to Preserve Life and the Question of Postmortem Organ Donation,” in *Life and Death Responsibilities*, 455–456.

69 Aaron L. Mackler, “Respecting Bodies and Saving Lives: Jewish Perspectives on Organ Donation and Transplantation,” *Cambridge Quarterly of Healthcare Ethics* 10 (2001): 424f.

that approves the use of brain-death criteria accepted by the medical profession but does not stipulate its own standards.⁷⁰ Rabbi Moshe Zemer reviews the relevant literature and observes that “the halakhic test for death, the cessation of breathing, parallels the modern medical test for brain-death.” Although he does not endorse any specific diagnostic test, Rabbi Zemer accepts the finality of the brain-death diagnosis for organ donation and saving a life.⁷¹

A great deal has been published on this subject by Orthodox rabbis, with two distinct camps emerging. One side is led by Rabbi J. David Bleich, who has argued that unless the complete lysis (liquefaction) of the brain can be proven (which it can't without autopsy), the diagnosis of brain-death has no halakhic standing.⁷² Prominent Haredi *poseqim* have adopted this position as well. On the other side are Rabbi Moshe Tendler, Dr. Fred Rosner,⁷³ and the Israeli Chief Rabbinate,⁷⁴ who argue that brain-death is comparable to the descriptions of spinal cord destruction or decapitation made in early rabbinic sources.⁷⁵

A central drama of this debate has been determining the final opinion of Rabbi Moshe Feinstein, z”l, whose authority is accepted by all of these rabbis, but whose thoughts on brain-death evolved and remained finally subject to dispute.⁷⁶

Many of these articles focus on intracranial blood flow tests, with rabbis such as Shlomo Zalman Auerbach z”l warning that injecting substances for the radionuclide test into a dying patient may hasten his death and is therefore forbidden.⁷⁷ Nevertheless, these *poseqim* contemplate the significance of such tests done *after the fact*—do they prove death?

70 Central Conference of American Rabbis, *Contemporary American Reform Responsa*, #78. Available online at: www.ccarnet.org.

71 Moshe Zemer, “Determining Death in Jewish Law,” in *Death and Euthanasia in Jewish Law: Essays and Responsa*, ed. Walter Jacob and Moshe Zemer (Pittsburgh: Rodef Shalom Press, 1995), 108.

72 J. David Bleich, *Time of Death in Jewish Law* (New York: Berman, 1991). See also idem, “Neurological Criteria of Death and Time of Death Statutes,” in *Jewish Bioethics*, ed. Fred Rosner and J. David Bleich (Hoboken, NJ: Ktav, 1979, 2000), reprinted from *Tradition* 16, no. 4 (Summer, 1977).

73 Fred Rosner and Moshe David Tendler, “Definition of Death in Judaism,” *The Journal of Halacha and Contemporary Society* 17 (Spring 1989): 14–31.

74 “Brain Death and Heart Transplants: The Israeli Chief Rabbinate’s Directives,” trans. Yoel Jakobovits, *Tradition* 24, no. 4 (Summer 1989): 1–14.

75 For a review of Orthodox discourse, see Avraham Steinberg, *Encyclopedia of Jewish Medical Ethics* (1998 Hebrew original; 2003 English Feldheim edition, trans. Fred Rosner), 2:695–711.

76 See Yitzhok A. Breitowitz, “The Brain Death Controversy in Jewish Law,” available online at: www.jlaw.com/Articles/brain.html.

77 See Abraham S. Abraham, *Nishmat Avraham*, vol. 2 *Yoreh Deah: Medical Halacha for Doc-*

Dr. Fred Rosner uses the decapitation texts (particularly the *Shulhan Arukh*) to make the case that any injury which effectively severs communication between body and brain is tantamount to death, even if cardio-pulmonary signs of life persist.⁷⁸ Rabbi Bleich argues strenuously against the equation of brain-death with decapitation, claiming that only the complete lysis of the brain (and perhaps not even that) could be considered tantamount to physical decapitation.⁷⁹

In an extensive footnote contained within his CJLS-approved paper on end of life medical care, Rabbi Reisner cogently defends the position of Rabbi Tendler and Dr. Rosner against Rabbi Bleich's requirement of the complete destruction of the brain to declare death:

Decapitation does not signal total destruction of the tissue of the brain, but only its loss of contact with the organism. Destruction of the brain tissue will surely follow, but only at some unspecified later time. It is precisely the irreversible cessation of the integrated function of brain and body that is modeled by decapitation.⁸⁰

Based on this argument of integrated function, Reisner finds the Uniform Declaration of Death Act acceptable under halakhah, provided that the appropriate diagnostic tests have been completed. Despite continued opposition by prominent Israeli *poseqim* such as Rabbi Yosef Shalom Elyashiv, the Israeli Chief Rabbinate has issued a similar finding, which has been the basis of successful heart transplant programs in Israeli hospitals.

The Heart of the Matter

However, Rabbi Bleich's fundamental objection to brain-death rests not on any claims regarding the integrated functioning of the brain. The cornerstone of his argument is that *heartbeat* is the primary criterion of life.⁸¹ In order to make

tors, Nurses, Health-Care Personnel and Patients (New York: Mesorah Publications, 2003), 310.

78 Fred Rosner, *Bioethics* (Hoboken, NJ: Ktav Publishing House, 2001), ch. 22, "Definition of Death," 297.

79 *Time of Death*, 131–135, esp. n. 4.

80 "Care for the Terminally Ill," 280.

81 *Time of Death*, 148–154.

this argument, he must set aside the clear meaning of the standard texts found in Yoma, Ḥullin, Gittin, Ohalot as well as the codes of Maimonides and Rabbi Karo.

Rabbi Bleich bases his argument primarily on Rashi's comments on b. Yoma 85a.⁸² Bleich claims that the heart itself is to be considered an איבר—one of his limbs. Although the heart is indeed counted by the Rabbis among the 248 איברים (body parts), in this context such a reading is unpersuasive. Rashi's phrase, שאינו מזיז איבריו ("he doesn't move his limbs"), clearly refers to voluntary movement. If Rashi meant to include the heart in this phrase, then the Gemara's question would be rendered non-sensical. We would have to understand it: "If the person appears dead, for he is not moving his limbs, [*not even his heart*], then how far should we excavate—to his heart, or to his nose—to know the truth?"

Rabbi Bleich also cites Rashi's explanation of דמר אמר, the position in the Gemara that lack of heartbeat would suffice to declare death. Rashi explains this position with the words, שנשמתו דופקת שם, "for it is there that the soul beats" [his translation]. Bleich takes this as Rashi's own position, and neglects to mention that this gloss is simply Rashi's explanation of the opinion that was rejected by all codes of Jewish law. He acknowledges that Rashi's commentary is not viewed as an halakhic code but persists in using it to build an untenable position.

Rabbi Bleich also argues against the halakhic significance of spontaneous respiration. He notes that victims of polio epidemics in the last century often suffered respiratory paralysis, and yet were conscious and able to converse with the assistance of an iron lung. By the standard of spontaneous respiration, he asserts, they would absurdly have to be considered dead. He further cites the example from b. Git. 70b to prove that a man who cannot breathe is still considered alive enough to execute a writ of divorce.

Rabbi Bleich's examples are interesting, but are the cases indeed comparable? The polio victims exhibited חיות, other tangible indications of life, including the ability to talk. The Gittin case, which is frankly difficult to imagine possible, describes a man who is able via pantomime to execute a complicated document despite his slit trachea. The brain-dead individual, in contrast, is permanently unconscious, unresponsive to stimuli and unable to breathe. He or she is, to use Rashi's earlier phrase, דומה למת שאינו מזיז איבריו, "like dead, for he doesn't move his limbs." Bleich argues that the halakhah pays no heed to consciousness in the diagnosis of death. This may be true, but he himself argues

82 See above, 7.

that bodily movement has significance. From the case of Eli, discussed in b. *Hul.* 21a, we learn that the context of an observation is significant. Normally, the neck would need to be nearly severed, making respiration impossible, for the person to be declared dead without further examination. Because of Eli's advanced age, he was declared dead even without his neck being severed. Based on the Talmudic sources, we can say that a person who lies still, and appears dead, and is not breathing, as is the case with brain-death—is dead.

Even Bleich's prooftexts work against his argument for a cardiac, rather than a respiratory, standard. He cites a responsum of Ḥatam Sofer⁸³ out of context which purportedly proves that cardiac activity is more important than respiration. This responsum⁸⁴ is a polemic against those secular authorities and *maskilim* who wished to delay burial until the body began to decompose.⁸⁵ Ḥatam Sofer vigorously asserts the adequacy of respiratory arrest in proving death.

Referring to the story of Elijah's miraculous resuscitation of a boy who had stopped breathing (1Kgs 17:17), Rabbi Sofer mentions a condition called שיתוק or שלאג in which a pulse could be felt at the neck even though the person was apparently not breathing. Some would say therefore that Elijah merely restored breath to the boy, but Sofer sees the boy's respiratory arrest (even with continued heartbeat!) as a true death, and Elijah's act of resuscitation as a true resurrection of the dead.

In normal cases, Sofer continues (addressing the skeptical *maskilim*), when a body is still as a stone, and there is no heartbeat, and there is no breath, then the person is surely dead and can be buried without further delay. Bleich seizes upon this sentence as proof that Sofer requires stillness. Cardiac arrest *and* respiratory failure to certify death. Once again, a careful reading belies Bleich's claim. To skeptics who would require waiting until putrefaction before burial, Sofer cites every possible proof of death—*rigor mortis*, asystole, and apnea—to prove the finality of the diagnosis. But as far as the halakhah is concerned, *respiration is the sole criterion*. In a passage which Bleich does not quote, Ḥatam Sofer endorses the respiratory standard of death in the strongest possible terms:

כשפסקה נשמתו שוב אין מחללין שבת וע"כ כלל הוא לכל המתים שזהו שיעור המקובל בדינו מאז היתה עדת ה' לגוי קדוש וכל הרוחות שבעולם אם ימלאו חפניהם רוח לא זיזונו ממקום תורתנו הקדושה.

83 Rabbi Moses Sofer, 1762–1839.

84

שו"ת חתם סופר חלק ב (יורה דעה) סימן שלח.

85 See above, p. 7.

Once his breathing ceases, one should no longer violate Shabbat [to rescue him]. This is the general principle for all who die, and this has been the accepted criterion in our hands ever since God's congregation became a holy nation and should all the winds in the world fill their sails with wind they would not budge us from the place of our holy Torah!

Bleich has tried very hard, but the Ḥatam Sofer will not be budged from the traditional halakhic definition of death: permanent respiratory arrest. Indeed, Rabbi Shlomo Zalman Auerbach reaffirms the respiratory standard in his early responsum on the topic:⁸⁶

כי נלעג"ד שאמת הדבר דכל מי שפסקה נשימתו ולא הצלחנו להחזיר נשמה באפו ומת דשפיר חשיב כמת מאותו הרגע שהרוח חיים נסתלק מאפיו וחדלה נשימתו

For it seems, in my humble opinion, that the truth of the matter is that anyone who has ceased breathing, and in whose nose we have not succeeded in restoring breath is dead. He should be considered to have died from the very moment when the breath of life departed his nostrils and his breathing ceased.

Yet Rabbi Bleich remains convinced of the cardiac standard. He summons non-halakhic sources such as Rabbenu Bahya's homiletical comment about the need to love God "with all your heart," for that is the final organ to die. He also cites a responsum of Ḥakham Tzvi⁸⁷ regarding whether a chicken whose heart could not be located should be deemed *tereifah*.⁸⁸ Based on his understanding of anatomy and Kabbalistic beliefs,⁸⁹ Ḥakham Tzvi proclaims the heart to be essential to all life. This may or may not be the case—mechanical hearts are no longer theoretical—but it does not displace the clear halakhic definition of death: respiratory failure.

Another prominent halakhic authority, Rabbi Ahron Soloveichik, has advanced an even more restrictive definition of death.⁹⁰ He argues that the

86 Rabbi Shlomo Zalman Auerbach, *Minhat Shlomo* 2.86.5 (1 Adar 5728/ March 1, 1968). As we shall see, he eventually rejected brain-death based on concerns about blood flow studies hastening death.

87 Rabbi Tzvi Hirsh ben Jacob Ashkenazi, 1660–1718.

88 שו"ת חכם צבי סימן עז ד"ה אצב"ה סבור.

89 שו"ת חכם צבי סימן עז. והרב האלקי כמוהר"ר יצחק לוריא זצוק"ל אשר רוח אלקים דבר בו הסכים למה שהוא מפורסם לכל אנשי העולם שהלב הוא משכן לנפש החיונית והוא המת באחרונה אחרי מיתת כל האברים הרחוקים והקרובים אליו ופירש בזה דברי נביאי בית אל.

90 Rabbi Ahron Soloveichik, "Death According to the Halacha," *The Journal of Halacha and Contemporary Society* (Spring, 1989): 41–48.

halakhah requires *three* criteria for the declaration of death: respiratory, cardiac *and* neurological.

The process of death begins with cessation of respiration and it ends with the total termination of all the three vital functions in life—respiration, cardiac activity, and brain activity ... A person who becomes devoid of respiration but who still has cardiac activity is considered semi-alive and semi-dead. Consequently, if someone will kill him, he will be considered a murderer. Hence, it is absolutely forbidden (יהרג ואל יעבור) to cut out the heart of that person even though the removal of the heart of the donor is indispensable to the preservation of the life of the donee.

This argument is powerful, but on what is it based? None of the halakhic texts present these three criteria of death—respiratory, cardiac and neurological—as a unified set. The category of being “semi-alive” is apparently Rabbi Soloveichik’s own invention. He bases the cardiac criterion upon the same philosophical, homiletical and Kabbalistic texts about the heart cited by Rabbi Bleich from *Moreh Nevukhim*,⁹¹ Rabbenu Bahya, and the Ḥakham Tzvi’s citation of Rabbi Yitzhak Luria. These texts do not relate to the Talmudic criteria of death, nor are they presented as halakhic rulings. Soloveichik goes so far as to claim that brain waves registered on an EEG constitute bodily “movement” but even Bleich finds this difficult to accept.⁹² *As we have seen, the Talmud and codes of law focus on lack of respiration, not cardiac activity—and certainly not brain activity—for the diagnosis of death.*

Within the Haredi community, statements made by prominent *poseqim* against brain-death continue to carry great influence. Like Rabbi Feinstein, Rabbi Auerbach’s position seems to have vacillated based on continued medical updates (and lobbying). His writing assumes that the blood flow test is the final determination of brain-death, but even if that test is met, he considers the patient a *goses* until the heart has permanently stopped. Rabbi Auerbach ultimately rejects the brain-death standard, apparently without realizing that brain-death today establishes the complete and permanent cessation of respiration.⁹³

Nevertheless, within the Orthodox community, support for the donation of vital organs is growing, as evidenced by the advocacy organization H.O.D.S.

91 Section 1.39.

92 “Neurological Criteria of Death,” 333.

93 See *Nishmat Avraham*, 313f.

(Halachic Organ Donor Society).⁹⁴ Dr. Avraham Steinberg's recent article in *The Encyclopedia of Jewish Medical Ethics* reviews the primary halakhic approaches to brain-death, and concludes that permanent cessation of spontaneous respiration is the halakhically-significant criterion of death in these circumstances:

Based on the above-mentioned criteria, the establishment of the moment of death as being defined as the complete and irreversible cessation of spontaneous respiration is *not a change in the halakhah*. What has changed is the medical technology to establish that the cessation of respiration is absolute and irreversible.⁹⁵

Heart and liver donations are accepted by observant Jews; it is clear that they may also be donated by observant Jews so long as the appropriate criteria are met for the halakhic diagnosis of death. To accept organs donated by gentiles but to refuse to donate them would be a particularly galling example of חילול ה', the desecration of God's holy name.⁹⁶

Conclusion

Jewish law has consistently favored the respiratory standard for the determination of death. Although Rashi on b. Yoma 85a implies that the respiratory standard was adopted due to ease of diagnosis, the Gemara states that breath is נשמת חיים, the essence of life. The sources that we have cited from b. H̄ul. 21a, m. 'Ohal. 1:6 and b. Giṭ. 70b view severe neck injury, destruction of the spinal cord or decapitation as tantamount to death. We have concluded that these cases are distinguished by the inability of the victim to breathe. Because the protocol for ascertaining brain-death currently includes verification of the complete cessation of respiration, it suffices to prove halakhic death.

This understanding differs from that advanced by previous advocates of accepting brain-death such as Rosner, Tendler and Reisner, who view the neu-

94 See their web site, www.hods.org. They are neutral on the brain-death controversy, presenting both sides of the debate.

95 Avraham Steinberg, "Moment of Death," in *The Encyclopedia of Jewish Medical Ethics*, trans. Fred Rosner, 3 vols. (New York: Feldheim Publishers, 2003), 2:702. Emphasis in the original.

96 Rabbi Auerbach rules that one may accept organs from a brain-dead donor in the diaspora, where it can be assumed that the donor is non-Jewish, and that doctors will remove organs regardless of the halakha. In Israel, however, he forbids acceptance of such organs for fear of encouraging the hastening of death in a *goses*.

rological injury suffered to the brain stem as halakhically significant in and of itself. Our position focuses on the inability to breathe caused by brain-death as the halakhically-significant criterion.

A diagnosis of brain-death, according to its rigorous protocol, is required for halakhic purposes only when contemplating an action such as the harvesting of vital organs.⁹⁷ It may be possible one day to transplant the hearts and livers of non-heart beating donors, thereby avoiding this ambiguous situation.⁹⁸ Meanwhile, the brain-death protocol with its test of apnea satisfies the traditional definition of death established in b. Yoma 85a and the codes that follow it.

We must remain clear that the stringent criteria proposed by Wijdicks and Plum et al. to rule out any temporary or reversible factors, followed by careful clinical examination, are *prerequisites* to the diagnosis of death according to halakhah. The brain-reflex clinical examination should indicate whether the components of the brain stem—mid-brain, cerebellum, pons and medulla oblongata—have indeed ceased to function. These examinations are also *preliminary* to the halakhic diagnosis of death. They satisfy Rashi's explanation of b. Yoma 85a, that the patient is utterly unresponsive. These tests also can prevent medical staff from performing an apnea test which could be dangerous for a patient who *does* retain brain function, and whose death could be hastened by a premature apnea test.

What about the continued heartbeat? It seems counterintuitive to dismiss this rhythmic function as פרכוס, which is generally spasmodic movement after death. Yet the heart is a muscle which can continue to beat even outside of the body (as it often does during heart-transplant operations). We do not consider a heart transplant recipient to have died and been reborn. Asystole alone does not define death, and continued heartbeat may indeed qualify as פרכוס.

97 If the proposed course of action is to remove futile treatments that are deemed an impediment to death, then a diagnosis of irreversible coma will suffice for a shift to palliative care. Dr. Hayim Brodie notes that the brain-death diagnosis may also be used to justify withdrawal of life support for a patient who has no relative or guardian. Conservative movement authors are divided about the withdrawal of artificial nutrition and hydration, but this controversy obtains in cases of coma, rather than brain death. See Rabbi Dorff and Rabbi Reisner, in *Life and Death Responsibilities in Jewish Biomedical Ethics*.

98 A notable development in the field is the "Pittsburgh Protocol" which involves terminating artificial respiration allowing the patient to go into cardiac arrest in the operating room and, after a few moments of official death, proceeding with the harvesting of vital organs. This procedure, which does not establish irreversibility, raises numerous ethical and halakhic difficulties, and is to be the subject of a separate study by Rabbi Dorff.

Heartbeat alone does not constitute a נפש חיה, a living person, either in the womb or in the ICU. The brief persistence of cardiac activity in cases where there is no consciousness, no movement in response to any neurological examination, nor any spontaneous respiration as demonstrated by the apnea test, is consistent with a declaration of death in halakhah. The cardiac standard has clearly been rejected by the Gemara and codes in cases where the person is found to be דומה למת, “like dead.”

The apnea test confirms that the brain stem has ceased to function and also meets the traditional respiratory criterion of death. This is the halakhically-significant and final determination of death. Indeed, a patient who fails to breathe during the apnea test, showing no signs of spontaneous respiration after all the preliminary confounding factors and brain reflex exams have been accounted for, is dead by both classical Jewish and contemporary medical criteria. The moment that this test is completed can serve as the official moment of death according to halakhah.

[2018 update: As noted above, recent medical literature has drawn attention to conditions such as upper spinal cord injury and global ischemic penumbra which could mimic brain-death on the clinical exams and apnea test. We would not go so far as Dr. Alan Shewmon in declaring brain-death to be an unusable diagnosis absent currently impossible proof of complete cessation of blood flow to all parts of the brain. Rather, we would caution halakhic authorities to question medical practitioners about the possibility of other conditions that might mimic brain-death, and to verify that there are no indications of consciousness, before accepting the brain-death diagnosis and permitting organ transplantation.]

This paper has of necessity focused on the technical aspects of medical practice and halakhic precedent. This should not obscure the fact that each incidence of such a death is tragic for the patient and for his or her family. Indeed, the declaration of death based on neurological criteria despite continued heartbeat can be particularly troubling for relatives who are not fully convinced that their loved one has died. The medical literature is likewise concerned with this problem. Clergy who are properly sensitive to both the halakhic and the pastoral challenges of this moment can be an invaluable resource for the grieving family. They may explain the spiritual significance of the “breath of life” and its connection to familiar Hebrew terms such as *nefesh*, *neshama* and *ruach*. It would be appropriate to tear a garment (קריעה) at the time that death is declared, to recite Psalms, to ask forgiveness from the deceased and to follow all of the other sensitive customs taught by our holy Torah.

Conclusion

1. A ventilator-dependent patient with heartbeat but no apparent brain function may be declared dead based on the following criteria:
2. If, after the established waiting period, confirmatory tests and brain-reflex exams show there to be no brain function, [2018 update: and if there is no indication of confounding factors, including alternative injuries that might suppress responses to the clinical exam,] the patient shall be tested for apnea. Failure to breathe during this test (or any future procedure which verifies the absence of spontaneous respiration) proves that the patient is considered dead according to the traditional standard of Jewish law—the permanent cessation of respiration.
3. After the apnea test is concluded, ventilation shall be continued until the results are known, death is declared, and the family has had an opportunity to consider donation of vital organs to save another person's life. The donor's body should be treated with the utmost dignity and be prepared for Jewish burial at the earliest possible opportunity.

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Big Data Meets the *Shulḥan Arukh*

Michael Pitkowsky

Earlier Discussions of the Sources Used in the *Shulḥan Arukh*¹

Soon after its publication, commentators began to pore over almost every statement in Yosef Karo's *Shulḥan Arukh*. Some commentators wanted to simply elucidate Karo's sometimes laconic language, desiring to help readers understand statements whose meaning or intention weren't clear. Others felt the need to further expand upon Karo's text, adding layer upon layer of interpretation. This multi-layered approach of the commentaries on the *Shulḥan Arukh* was even cited by Abraham Zevi Hirsch Eisenstadt in his *Pitḥei Teshuvah* in order to justify the reliance on the *Shulḥan Arukh* for halakhic decision-making. In response to the criticism of those who used the *Shulḥan Arukh* as the sole source for halakhic decision-making voiced by the *Maharsha*, Samuel Edels,² Eisenstadt wrote that

It is possible that [Maharsha adopted his position because] in Maharsha's time no glosses had yet been written to the *Shulḥan Arukh*. Nowadays, however, since *Taz*, *Shakh*, *Magen Avraham*, and other later commentaries have been written and the reason for each law is explained alongside it [i.e. alongside the law itself], reliance on the *Shulḥan Arukh* and the later commentaries is appropriate.³

Thus we see that the commentaries that were written on the *Shulḥan Arukh* became almost inseparable from the text itself.

I would like to return to the very text of the *Shulḥan Arukh* that has at times been almost superseded by the many commentaries that have been written on

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- 1 I would like to thank this volume's honoree, Rabbi Joel Roth, for all that he has taught me about halakhah and halakhic literature. Through his many public talks and lectures, writings, and personal conversations Rabbi Roth has helped shape my understanding of what it means to be a Jew who tries to live their life according to the halakhah.
 - 2 See Maharsha, *Hiddushei Aggadot*, Soṭah 22a, s.v. Yere et ha-shem beni. Cited in Menachem Elon, *Jewish Law: History, Sources, Principles*, trans. B. Auerbach and M. Sykes (Philadelphia: Jewish Publication Society, 1994), 1422.
 - 3 *Pitḥei Teshuvah*, *Shulḥan Arukh*, YD par. 242, subpar. 8. Cited in Elon, *ibid*.

it.⁴ Specifically, I would like to examine the sources that Karo used in compiling the *Shulḥan Arukh* by utilizing tools of data analysis that are based upon examining collections of data, asking specific questions about this data, quantifying the answers to those questions, and using these answers as the foundation for further analysis of the material.

Previous scholars, both academic and traditional, have already asked similar questions about the sources that Karo used in composing the *Shulḥan Arukh* and any possible modifications or editing that Karo may have applied to these texts. Alyssa Gray, in her insightful article that included a literary analysis of the laws of charity in the *Shulḥan Arukh*, showed both Karo's reliance on Jacob b. Asher's *Tur* and also the freedom that he sometimes took with the sources from the *Tur*.⁵

SA's literary dependency on *Tur* has been long-known, as well as its tendency to make changes to *Tur*. By thinking about SA as not simply a "law code," "restatement," or "collection of rulings," but as a work of legal and literary interpretation in which a gifted scholar systematized his interpretations of and additions to his received legal heritage, the door is opened to searching out the "latent structures of thought" in the work—in this case pertaining to poverty, the poor, and the Jewish communities of which they are a part. Moreover, by noting the differences between the laws of poverty and charity that SA inherited and what it bequeathed, this study is able to show aspects of SA's distinctive contribution to that body of law, including its reintroduction of topics (as James Boyd White and J.M. Balkin understand the term) that would thenceforth be part of the canon of poverty and charity topics for study and application. To paraphrase James Boyd White, SA may be understood as "attempting to establish a conversation of a certain kind," and as "establishing a set of topics, a set of terms in which those topics can be discussed, and some general directions as to the process of thought and argument" by which its laws are to be applied.⁶

Gray understood how an examination of Karo's literary sources and any editing that these sources may have undergone are essential to helping us understand the nature and goals of the *Shulḥan Arukh*.

4 For a bibliography of scholarly literature on the *Shulḥan Arukh* see Alyssa Gray, "Poverty and Community in R. Joseph Karo's *Shulḥan Arukh*: 'Law and Literature' and Halakhic History," *Diné Israel* 29 (2013): 57*–89*, esp. at nn. 1–5.

5 Gray, "Poverty and Community."

6 Gray, "Poverty and Community," 88*.

Among traditional scholars, in the seventeenth century Ḥayyim Benvenisti recognized Karo's reliance on the Rambam's *Mishneh Torah*, writing

That which R. Yosef Karo decided in his "short work" [i.e. the *Shulḥan Arukh*], is not decisive enough for us to rely upon it, since it is known that this book is entirely based upon the reasoning of the Rambam.⁷

More recently Yitzhak Yosef has formulated a good summary of Karo's reliance on previous literary sources.⁸

And that which we have found regarding a number of contradictions in the words of *Maran* [i.e. Karo] in the *Shulḥan Arukh*, the essence of the matter is that since the method of *Maran* the *Shulḥan Arukh* is to rely upon the language of the *poseqim* [halakhic decisors], and he doesn't use his own words, sometimes he copies the language of the Rambam, and he doesn't intend to [i.e. agree with] all of the words, and sometimes he copies the language of the *Rosh* (Rabbeinu Asher) or the *Tur*, every case must be examined individually.⁹

We have seen that both critical and traditional scholars have both exhibited an awareness of the literary dimensions of the *Shulḥan Arukh* and have offered numerous observations regarding the sources that Karo used when composing the *Shulḥan Arukh*. The two dominant sources used by Karo that scholars have identified were the Rambam's *Mishneh Torah* and Yaakov ben Asher's *Tur*.

A Data-Based Analysis of the Sources Found in the *Shulḥan Arukh*

I will now present the preliminary results of an analysis of the first 25 *simanim* (chapters) of the *Orah Ḥayyim* (OH) section of the *Shulḥan Arukh* that includes both an attempt to identify the sources that Karo used in composing the *Shulḥan Arukh* and also a discussion of some of the editorial activity undertaken

7 Ḥayyim Benvenisti, *Shayarei Knesset ha-Gedolah*, OH 495:5. For other sources that stated something similar see Yitzhak Ze'ev Kahana, *Mehkarim be-Sifrut ha-Teshuvot* (Jerusalem: Mossad Harav Kook, 1973), 69–70.

8 Yosef was addressing the phenomenon of contradictions that are found between different statements in the *Shulḥan Arukh*. This question has also been treated by Eliav Shochetman, "Al Ha-Setivot be-Shulḥan Arukh ve-Al Mahuto Shel Ha-Ḥibbur U-Maṭarotav," *Asufot: Sefer Shanah le-Mada'ei ha-Yahadut* 3 (1989–1990): 323–329.

9 Yitzhak Yosef, *Ein Yitzhak* (Jerusalem: Ei'sh Pituhim, 2009), 3:62.

TABLE 9.1 Major sources of citations in the Shulhan Arukh sections under review

Source	Number of times
Beit Yosef	125
Tur	87
Rambam	22
Rosh on the Talmud	25
Karo's own words	25
Rashi on the Talmud	18
Babylonian Talmud	16
Nimukei Yosef	13
Tosafot	12
Orhot Hayyim	11
Yitzhak Abuhav	11
Zohar	10

by Karo in his writing of the *Shulhan Arukh*. These results are very preliminary, based upon only the first 25 *simanim* of the *Shulhan Arukh*, and it is very possible that they will have to be modified after further research.

In the first 25 *simanim* of the *Shulhan Arukh* there are 170 *se'ifim* (paragraphs).¹⁰ The topics covered in these *simanim* are: *hanhagat adam ba-boker* (morning behavior by a person); *levishat begadim* (wearing clothing); *hanhagat beit ha-kisei* (bathroom behavior); *netilat yadayim* (washing one's hands); *kavvanat ha-berakhot* (proper intention for blessings); *birkat asher yatzar ve'elohai neshama* (the blessings of *asher yatzar* and *elohai neshama*); *Tzitzit* (ritual fringes); *Talit* (four cornered garments); *Tefillin* (phylacteries).¹¹ I will begin by presenting some data points regarding the sources that Karo brought and then illustrate some of these with examples from the *Shulhan Arukh* itself.

In these 25 *simanim* Karo quoted from 47 different sources, this is in addition to the instances in which Karo formulated a statement entirely of his own words. A breakdown of the most frequently cited sources can be found in table 9.1.

10 Some of the *se'ifim* include more than one halakhah but my total count is of *simanim* and *se'ifim* and not *halakhot* [laws].

11 There are more *halakhot* related to *Tefillin* in subsequent *simanim* that I have not included. I have also not listed all of the sub-categories of the laws of *Tzitzit*.

The sources cited fewer than ten times can be found in table 9.2.

I will now analyze in more detail the data found in the above tables. First, it should be pointed out that in these 25 chapters Karo used material from over three-dozen different sources.¹² I would first like to go into further detail regarding the sources from the *Tur* and the Rambam. Table 9.3 shows the number of sources from the Rambam quoted in the *Shulḥan Arukh*, how many were quoted verbatim, and how many of these were also quoted in the *Tur*.¹³

From table 9.3 it is possible to see that of the 22 sources brought from the Rambam in these *simanim* of the *Shulḥan Arukh*, six of those were brought verbatim without any changes. Of these 22, seven were also brought in the *Tur*. We can therefore say that in the *simanim* examined, the majority of the sources brought from the Rambam underwent some type of editing and a little less than a third of the sources brought from the Rambam were also quoted by the *Tur*.

Regarding the sources quoted from the *Tur*, of these 87 sources 16 were quoted verbatim, meaning that in the *simanim* that I examined of the sources that Karo brought from the *Tur*, 18% of them were quoted verbatim while he edited 82% of them. Below we will go into further detail and bring examples of the types of editing done to sources from both the Rambam and the *Tur*.

By far the largest number of sources found in these *simanim* of the *Shulḥan Arukh* come from Karo's commentary on the *Tur*, the *Beit Yosef*. Of the 125 instances in which a source from the *Beit Yosef* is brought in the *Shulḥan Arukh*, 25 of them are either verbatim or near verbatim statements that Karo himself wrote in the *Beit Yosef*, while the other 100 sources are almost without exception from other *Rishonim* (medieval rabbinic authorities) who are listed in Tables 9.1 and 9.2. It should be noted that, with very few exceptions, sources from the Rambam that are found in the *Shulḥan Arukh* were either first brought in the *Tur* or the *Beit Yosef*.

12 In a preliminary examination of the first 100 chapters (*simanim*) of the *Shulḥan Arukh* I have identified material from approximately 75 different sources. For a discussion of the books that Karo had at his disposal see Yehudah Lavi, "Otzar ha-Sefarim shel ha-Beit Yosef," *Ha-Ma'ayan* 34, no. 2 (Tevet, 5744): 21–42; Tirza Kelman, "Ketuvot be-Ot Barzel ve-Oferet bi-Defus: Mahapeikhat ha-Defus ve-Yetzirat ha-Ḥibbur Beit Yosef," *Pe'Amim* 148 (2016): 9–26.

13 I would like to thank Tirza Kelman for stressing to me the importance of distinguishing between material that Karo has brought in the *Shulḥan Arukh* from the *Mishneh Torah* but was not also brought by Yaakov ben Asher in the *Tur* and material from the *Mishneh Torah* that was also brought in the *Tur*.

TABLE 9.2 Minor sources of citations cited in the Shulhan Arukh sections under review

Source	Number of times
Agur	9
Responsa of the Rashba	8
Hagahot Maimoniyot	8
Abudaraham	7
Mordechai	7
Semag	6
Semak	5
Ittur	5
Kol Bo	5
Rabbeinu Yonah	4
Rabbeinu Yeruham	4
Terumat ha-Deshen	4
Responsa of the Maharik	3
Responsa of the Rosh	3
Responsa attributed to Ramban	2
Rokeaḥ	2
Responsa of the Maharil	2
Kaftor va-Feraḥ	2
Ran	2
Responsa of the Ribash	2
Yaakov ibn Ḥabib	1
Sefer ha-Batim	1
Menachem Recanati	1
Midrash Tanḥuma	1
Responsa R"i Migash	1
Tashbetz	1
Shibbolei ha-Leket	1
Ra"ah (Aharon ha-Levi)	1
Maggid Mishneh	1
Tosefta	1
Jerusalem Talmud	1
Sheiltot	1

TABLE 9.3 Citations of Maimonides in the Shulhan Arukh sections under review

Sources from the Rambam	22
Sources from the Rambam quoted verbatim	6 (27%)
Sources from the Rambam also in the Tur	7 (31%)

The above figures show that the sources for the *simanim* in the *Shulḥan Arukh* that I examined come from the following sources: the *Tur*; the Rambam; sources in the *Beit Yosef*, whether they are from the Talmud, the Rambam, other *Rishonim*, or the words of Karo himself.

Verbatim Quotations in the *Shulḥan Arukh* from the *Tur* and the Rambam¹⁴

I would now like to bring some specific examples of the types of sources that are found in the *Shulḥan Arukh* and some characteristics of the editing that they sometimes underwent.¹⁵ The first type of sources that I want to bring are verbatim quotations from either the *Tur* or the *Mishneh Torah* that were then brought in the *Shulḥan Arukh*.

רמב"ם הלכות בית הבחירה ז:ז	שלחן ערוך אורח חיים ג:ז
המטיל מים מן הצופים ולפנים ישב ופניו כלפי הקדש או יסלק הקדש לצדדין.	המטיל מים מן הצופים ולפנים ישב ופניו כלפי הקודש או יסלק הקודש לצדדין.

14 The texts of the *Mishneh Torah* are from the Rambam Meduyak (Maaleh Adumim, 2008), and translations from https://www.chabad.org/library/article_cdo/aid/682956/jewish/Mishneh-Torah.htm.

Texts from the *Tur* and the *Shulḥan Arukh* are from *Tur ha-Shalem Shirat Devorah ve-Shulḥan Arukh ha-Bahir* (Jerusalem, 2016). Early printed editions of the *Shulḥan Arukh* have also been used. Translations from the *Tur* and the *Shulḥan Arukh* are my own.

15 Menachem Elon examined numerous examples of the literary relationship between sources from the Rambam, *Tur*, and *Shulḥan Arukh* in his *Jewish Law*, 1327–1341.

טור אורח חיים סימן יג	שלחן ערוך אורח חיים יג:א
<p>ארבע ציציות מעכבות זו את זו שכל זמן שאין בה כל הארבע אינה מצוייצת כהלכתה והיוצא בה לרשות הרבים בשבת חייב חטאת.</p>	<p>ארבע ציציות מעכבין זה את זה שכל זמן שאין בה כל הארבע אינה מצוייצת כהלכתה והיוצא בה לרשות הרבים בשבת חייב חטאת.</p>
<i>Shulḥan Arukh, OH 3:7</i>	<i>Mishneh Torah, Hilkhot Beit ha-Behirah 7:9</i>
<p>Whoever urinates from Mt. Scopus inward to the city should sit facing the Temple or have the Temple at his side.</p>	<p>Whoever urinates from Mt. Scopus inward to the city should sit facing the Temple or have the Temple at his side.</p>
<i>Shulḥan Arukh, OH 13:1</i>	<i>Tur, OH 13</i>
<p>The four <i>tzitzit</i> (ritual fringes) can disqualify one another so that as long as all of the four corners do not have <i>tzitzit</i> attached according to the halakhah if one goes out into the public domain on Shabbat they are obligated to bring a sin offering.</p>	<p>The four <i>tzitzit</i> (ritual fringes) can disqualify one another so that as long as all of the four corners do not have <i>tzitzit</i> attached according to the halakhah if one goes out into the public domain on Shabbat they are obligated to bring a sin offering.</p>

As can be seen from these sources, there are instances when Karo simply quotes verbatim in the *Shulḥan Arukh* a source from either the *Mishneh Torah* or the *Tur*.

Modification of Source in the *Shulḥan Arukh*

Already in the very first *se'if* of the *Shulḥan Arukh* we see an example of how Karo edited a source from the *Tur* before it was brought in the *Shulḥan Arukh*.

טור אורח חיים סימן א	שלחן ערוך אורח חיים א:א
<p>לכן צריך האדם להתגבר כארי לעמוד בבקר לעבודת בוראו</p> <p>ואף אם ישיאנו יצרו בחורף לאמר איך תעמוד בבקר כי הקור גדול או ישיאנו בקיץ לאמר איך תעמוד ממטתך ועדיין לא שבעת משנתך התגבר עליו לקום, שתהא אתה מעורר השחר ולא יהא הוא מעירך כמו שאמר דוד עליו השלום עורה כבודי עורה הנבל וכנור אעירה שחר אני מעיר השחר ואין השחר מעיר אותי.</p>	<p>יתגבר כארי לעמוד בבקר לעבודת בוראו שיהא הוא מעורר השחר.</p>

Shulḥan Arukh, OḤ 1:1

One should gather strength in the morning to arise and worship his creator that he should wake the dawn.

Tur, OḤ 1

Therefore a person needs to gather strength in the morning to arise and worship his creator that he should wake the dawn.

And even if in the winter his urge should entice him and say “how can you get up in this great cold,” or in the summer it will entice him and “how can you get up from your bed while you still haven’t satisfied your sleep?”

Overcome it and get up, that you should wake the dawn and not he wake you as David may he rest in peace said “Awake

(cont.)

*Shulḥan Arukh, OḤ 1:1**Tur, OḤ 1*

up, my glory; awake, psaltery and harp: I myself will awake early." (Psalms 57:8)
I wake up the dawn, and the dawn does not wake me.

In this example Karo selectively chose portions from a larger text that was in the *Tur*. Other times the editing was as simple as adding a word or a slight modification in order to make a statement easier to understand.

טור אורח חיים סימן א

שלחן ערוך אורח חיים א:ד

טוב מעט תחנונים בכוונה מהרבות בלא כונה. כי טוב מעט בכוונה מהרבות בהם שלא בכוונה.

*Shulḥan Arukh, OḤ 1:4**Tur, OḤ 1*

It is better a few supplications with proper intention than many without intention.

For it is better a few with intention than many without intention.

טור אורח חיים סימן ד

שלחן ערוך אורח חיים ד:כב

ואם אין לו מים יקנח ידיו בצרור או בכל מידי דמנקי ויברך על נקיות ידיים. אם אין לו מים יקנח ידיו בצרור או בעפר או בכל מידי דמנקי ויברך על נקיות ידיים.

*Shulḥan Arukh, OḤ 4:22**Tur, OḤ 4*

If one does not have water he should clean his hands with a stone or dirt or

If one does not have water he should clean his hands with a stone or with any-

(cont.)

*Shulḥan Arukh, OḤ 4:22**Tur, OḤ 4*with anything else that cleans and bless
“on the cleanliness of hands.”thing else that cleans and bless “on the
cleanliness of hands.”

In another place Karo made a change that on the surface reflects a different opinion regarding how to write God’s name, but on a deeper level may possibly be a different understanding of God based upon the Zohar.¹⁶

טור אורח חיים סימן ח

שלחן ערוך אורח חיים ח:ח

ויכוין בהתעטפו שציוונו המקום להתעטף כדי
שנזכור כל מצותיו לעשותם.יכוין בהתעטפו שציוונו הב"ה [הברוך הוא]
להתעטף בו כדי שנזכור כל מצוותיו לעשותם.*Shulḥan Arukh, OḤ 8:8**Tur, OḤ 8*One should intend in their wrapping [of
the *tallit*] that the Blessed be He com-
manded us to wrap ourselves in order
that we remember all of his command-
ments and to perform them.One should intend in their wrapping [of
the *tallit*] that the Place commanded us
to wrap ourselves in it in order that we
remember all of his commandments and
to perform them.

Other times there is both a slight change in language along with the editing out of a clause.

16 The use of הב"ה in the Venice 1567 edition is most likely an abbreviation for הקב"ה, the Holy One Blessed be He, which is either הקדוש ברוך הוא or הקודשא בריך הוא, and it was subsequently changed to הקב"ה in later editions. The influence of the Zohar on Karo will be discussed below. On the different ways in which God’s name was written see Yaakov Spiegel, *Amudim be-Toldot ha-Sefer ha-Ivri: Ketivah ve-Ha'atakah* (Ramat Gan: Bar-Ilan University Press, 2005), 565–632, esp. 592–594. See also Ephraim E. Urbach, *The Sages*, trans. I. Abrahams (Cambridge: Harvard University Press, 1987), 66–79.

טור אורח חיים סימן ג	שלחן ערוך אורח חיים ג:ג
ולא ישתין מעומד שלא יתזו נצוצות על רגליו ויראה ככרות שפכה ונמצא מוציא לעז על בניו אם לא שיעמוד במקום גבוה או שישתין לתוך עפר תיחוח.	לא ישתין מעומד מפני נצוצות הניתזין על רגליו אם לא שיעמוד במקום גבוה או שישתין לתוך עפר תיחוח.

Shulḥan Arukh, OH 3:13

Tur, OH 3

A person should not urinate standing up because of the droplets that are sprayed on his legs, unless he stands in a high place or urinates into soft dirt.

And a person should not urinate standing up in order that droplets should not spray on his legs and it should not seem as if he is a castrated person and thus causing his sons to be slandered, unless he stands in a high place or urinates into soft dirt.

There are other times when Karo added an interpretation to an otherwise almost verbatim quotation from the Tur.

טור אורח חיים יא	שלחן ערוך אורח חיים יא:ה
המשתחוה לבהמה צמרה פסול לציצית אבל המשתחוה לפשתן נטוע כשר לציצית.	המשתחוה לבהמה צמרה פסול לציצית המשתחוה לפשתן נטוע כשר לציצית שהרי נשתנה.

Shulḥan Arukh, OH 11:8

Tur, OH 11

One who bows down to an animal [in order to worship it], its wool is disqualified for *tzitzit*. One who bows down to planted flax, it is fit for *tzitzit* since it has changed.

One who bows down to an animal [in order to worship it], its wool is disqualified for *tzitzit*, but one who bows down to planted flax, it is fit for *tzitzit*.

In this last example Karo added a reason to a law from the *Tur* that previously did not include one. From the above examples we see that while there were instances in which Karo quoted sources from either the *Tur* or the Rambam verbatim, there were also examples in which he made changes, some slight and others not so slight, to earlier sources.

The Centrality of the *Beit Yosef* in the Writing of the *Shulḥan Arukh*

In this section I will bring examples of different ways in which the *Beit Yosef* served as a vehicle and a source for later formulations found in the *Shulḥan Arukh*. The first example that I will bring in order to show the important role that the *Beit Yosef* played in the writing of the *Shulḥan Arukh* will be from the *se'if* that was brought at the end of the last section, *OḤ* 11:8. Above I emphasized how the formulation of this *se'if* differed in the *Shulḥan Arukh* from the *Tur* on which it is based and now I will show the role of the *Beit Yosef* in this modification.

טור אורח חיים יא	שלחן ערוך אורח חיים יא:ה
המשתחוה לבהמה צמרה פסול לציצית אבל המשתחוה לפשתן נטוע כשר לציצית.	המשתחוה לבהמה צמרה פסול לציצית המשתחוה לפשתן נטוע כשר לציצית שהרי נשתנה.

Shulḥan Arukh, *OḤ* 11:8

One who bows down to an animal [in order to worship it], its wool is disqualified for *tzitzit*. One who bows down to planted flax, it is fit for *tzitzit* since it has changed.

Tur, *OḤ* 11

One who bows down to an animal [in order to worship it], its wool is disqualified for *tzitzit*, but one who bows down to planted flax, it is fit for *tzitzit*.

As seen in the above quoted *se'if*, there is a slight change between the *Shulḥan Arukh* and the *Tur*. In the *Beit Yosef* Karo directly references the Rambam who included a reason for this specific halakhah and this explanation was then included in the *Shulḥan Arukh* even though it was not found in the *Tur*.

רמב"ם הלכות עיצית א:יא	בית יוסף אורח חיים סימן יא	שלחן ערוך אורח חיים יא:ח
... המשתחוה לבהמה צמרה פסול לעיצית אבל המשתחוה לפשתן הנטוע הרי זה כשר שהרי נשתנה.	"אבל המשתחוה לפשתן נטוע כשר לעיצית"—כן כתב הרמב"ם בפרק א ונתן טעם מפני שהרי נשתנה.	המשתחוה לבהמה צמרה פסול לעיצית. המשתחוה לפשתן נטוע כשר לעיצית שהרי נשתנה.

<i>Shulhan Arukh</i> , OH 11:8	<i>Beit Yosef</i> , OH 11	<i>Rambam, Hilkhot Tzitzit</i> 1:11
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One who bows down to an animal [in order to worship it], its wool is disqualified for <i>tzitzit</i> . One who bows down to planted flax, it is fit for <i>tzitzit</i> since it has changed.	"But one who bows down to planted flax, it is fit for <i>tzitzit</i> ": So wrote the Rambam in chapter one [of the laws of <i>tzitzit</i>] and gave a reason, since it has changed.	If, however, one bows down to flax which is planted, it is acceptable, since it has changed.
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Isadore Twersky has previously written about the instances when Karo seemed to have gone out of his way and *removed* a reason found in the Rambam for a commandment, yet here we see a case in which Karo went out of his way to *include* a reason for a commandment that was included by the Rambam but excluded from the *Tur*.¹⁷ Another example of when Karo added a reason for a commandment or practice that was not found in the *Tur* but was brought in the *Beit Yosef* can be seen in the following source.

In OH 3:11 Karo brings numerous instructions regarding how to clean oneself after defecating.¹⁸

17 See Twersky, "Ha-Rav R' Yosef Karo Ba'al ha-Sh"Ar," *Asufot: Sefer Shanah le-Mada'ei ha-Yahadut* 3 (1989–1990): 257. As Twersky has shown, Karo's use of sources found in the Rambam was multi-faceted and not uniform.

18 See Julius Press, *Biblical and Talmudic Medicine*, trans. F. Rosner (New York: Sanhedrin Press, 1978), 550. Also see this comment by Philippe Charlier et al., "Toilet Hygiene in the Classical Era," *British Medical Journal* 2012; 345:e8287: "The abrasive characteristics of ceramic suggest that long term use of pessoi [i.e. pebbles, MP] could have resulted in local irritation, skin or mucosal damage, or complications of external haemorrhoids."

בית יוסף אורח חיים סימן ג	טור אורח חיים סימן ג	שלחן ערוך אורח חיים ג:יא
<p>“ולא יקנח בחרס משום כשפים” — בסוף פרק המוציא (שבת פב ע”א) ובפרק (חולין קה ע”ב)</p> <p>“ולא בעשבים יבשים” — גם זה בסוף פרק המוציא (שבת פב ע”א) וטעמא משום דהמקנח בדבר שהאור שולט בו שיניו התחתונות נושרות ...</p> <p>“ולא בצרור שקנח בו חבירו” — בסוף פרק הרואה (ברכות נה ע”א) עשרה דברים מביאים את האדם לידי תחתוניות ואחד מהן המקנח בצרור שקינח בו חבירו.</p>	<p>ולא יקנח בחרס משום כשפים ולא בעשבים יבשים ולא בצרור שקינח בו חברו.</p>	<p>לא יקנח בחרס משום כשפים ולא בעשבים יבשים שהמקנח בדבר שהאור שולט בו שיניו התחתונות נושרות. ולא בצרור שקינח בו חבירו מפני שמביא את האדם לידי תחתוניות.</p>

<i>Shulḥan Arukh</i> , OḤ 3:11	<i>Tur</i> , OḤ 3	<i>Beit Yosef</i> , OḤ 3
<p>A person should not wipe themselves with a pottery shard because of witchcraft nor with dried grass, since one who wipes themselves with something that is affected by light his bottom teeth fall out. Nor with a rock that his friend used to wipe himself since it causes a person to develop hemorrhoids.</p>	<p>A person should not wipe themselves with a pottery shard because of witchcraft nor with dried grass nor with a rock that his friend used to wipe himself.</p>	<p>“A person should not wipe themselves with a pottery shard because of witchcraft”—At the end of chapter “<i>ha-motzi</i>” (b. Šabb. 82a) and in chapter “<i>kol ha-basar</i>” (b. Ḥul. 105b). “Nor with dried grass”—This is also at the end of chapter “<i>ha-motzi</i>” (b. Šabb. 82a). And the reason is that since one who wipes themselves with something that is affected by light his bottom teeth fall out. “Nor with a rock that his friend used to wipe himself”—At the end of</p>

(cont.)

Shulḥan Arukh, Oḥ 3:11*Tur*, Oḥ 3*Beit Yosef*, Oḥ 3

the chapter “*ha-ro'eh*” (b. Ber. 55a): “ten things cause a person to develop hemorrhoids and one of them is wiping with a rock that his friend used.”

In this *se'if* we see how in the *Shulḥan Arukh* Karo quoted the *Tur* verbatim yet also felt the need to add comments that explained the halakhah. Unlike the case cited above where Karo added an explanation that was found in the Rambam,¹⁹ here Karo added two explanations that were based on the Talmud and were brought in the *Beit Yosef*.

In some instances Karo codified a halakhah in the *Shulḥan Arukh* that is not found in the *Tur*. Oḥ 13 discusses which types of four-cornered garments are obligated to have *tzitzit* on them, specifically the difficult cases when the garments are not entirely open at the sides, but rather only partially open. How much does the garment have to be open at the sides in order for it to be required to have *tzitzit*? The *Tur* addressed a number of related issues, but there was enough missing that Karo brought a large amount of supplementary material in his *Beit Yosef*, and some of this was later incorporated into the *Shulḥan Arukh*.

בית יוסף אורח חיים סימן י

שלחן ערוך אורח חיים יז

ובספר כפתור ופרח פרק ס' כתוב כלשון הזה
כתב ר"מ מרוטנבורק שהבגדים שפתוחים מעט
מלמטה בארבע כנפות שאין חייבים בציצית
דבטר גופא אזלינן עד כאן לשוננו. משמע שכל
שאין רובו סתום בגד ארבע כנפות מיקרי וחייב
בציצית ולא פטר הר"מ אלא כשרובו סתום ...
וכן כתב מהר"ק בשורש קמ"ט דלא פטר רבינו
שמחה אלא דווקא בשרובה סתום אבל אם רובה
פתוח חייבת ...

מלבושים שהם פתוחים מן הצדדין למטה ויש
להם ד' כנפות לצד מטה ולמעלה הם סתומים אם
רובו סתום פטור ואם רובו פתוח חייב. ואם חציו
סתום וחציו פתוח מטילין אותו לחומרא וחייב
בציצית ואין יוצאין בו בשבת.

19 That Rambam does not codify any of the *halakhot* found in this *se'if* in his *Mishneh Torah*. For related material see chapters four and five of *Hilkhot De'ot*.

(cont.)

בית יוסף אורח חיים סימן י

שלחן ערוך אורח חיים יז:

ובהכי הרשב"א ורבינו שמחה מסכימים לדעת
אחת ואם חצי הבגד סתום וחציו פתוח נראה לי
דמטילין אותו לחומרא וחייב בציצית ואין יוצאין
בו בשבת ...

*Shulḥan Arukh, OḤ 10:7**Beit Yosef, OḤ 10*

Articles of clothing that are open on the sides at the bottom and they have four corners at the bottom and at the top they are closed, if the majority of it is closed it is exempt [from *tzitzit*] and if the most of it is open it is obligated. If half of it is closed and half is open one attaches [*tzitzit*] in order to be strict and it is obligated to have *tzitzit* and one does not go out with it [into the public domain] on Shabbat.

In the book *Kaftor va-Ferah* chapter 60 it is written in the following language: Rabbi Meir of Rothenberg wrote that articles of clothing that are open a little bit at the bottom of the four corners are not obligated to have *tzitzit* since we follow the body [of the garment]. It seems that anything that is mostly open is considered a four-cornered garment and is obligated in *tzitzit*. Rabbi Meir only exempted [a garment] which was mostly open ... so too wrote the Maharik in section 149, that Rabbeinu Simchah did not exempt a garment except one that was mostly closed but if most of it was open it was obligated [to have *tzitzit*] ... And in this case the Rashba and Rabbeinu Simchah agreed. and if half of the garment is closed and half is open, it seems to me that we attach *tzitzit* in order to be strict and it is obligated in *tzitzit* and one does not go out with it [into the public domain] on Shabbat.

In the *Beit Yosef* on *OH* 13, Karo brought many medieval sources that addressed these partially opened four-cornered garments. These sources included responsa collections such as the responsa of the Rashba²⁰ and the Maharik²¹ in addition to codes such as *Kaftor va-Ferah*.

In the *Beit Yosef* Karo quoted some of these sources verbatim while others he paraphrased. Similarly, in the *Shulḥan Arukh* Karo quoted some of his statements from the *Beit Yosef* verbatim while he also paraphrased and reformulated other material. This *se'if* in the *Shulḥan Arukh* shows how sometimes the *Beit Yosef* was used as a supplementary commentary on the *Tur*, addressing material and issues that were not directly addressed in the *Tur*. This material was then subsequently brought in the *Shulḥan Arukh*, sometimes verbatim while at other time paraphrased and modified.

The *Beit Yosef* and the Influence of the *Zohar* on the *Shulḥan Arukh*

I would now like to address a specific phenomenon found in the relationship between the *Beit Yosef* and the *Shulḥan Arukh*. *OH* 4 discusses the laws surrounding *netilat yadayim*, washing one's hands in the morning and before prayer. When one compares the amount of material found in this *siman* in the *Tur* and the *Shulḥan Arukh* it isn't hard to see that the *Shulḥan Arukh* contains much more material on this subject than does the *Tur*. The material in the *Tur* amounts to just a few lines.²²

Tur, *OH* 4

טור, אורח חיים סימן ד

One should wash their hands hygienically and bless "Blessed are You Lord our God who has commanded us on washing hands."

One should be meticulous to pour over them three times since an evil spirit dwells on the hands until they are washed and is not removed until one pours water on them three times. There-

וירחץ בנקיון כפיו ויברך ברוך אתה יי אלהינו מלך העולם אשר קידשנו במצוותיו וציוונו על נטילת ידים.

וידקדק לערות עליהם שלושה פעמים מפני שרוח רעה שורה על הידים קודם נטילה ואינה סרה עד שיערה עליהם שלוש פעמים ועל כן צריך למנוע מהגיע בידו קודם נטילה לפה ולחוטם ולאוזניים ולעיניים מפני שרוח רעה שורה עליהם.

20 R. Shlomo ben Aderet.

21 R. Yosef Colon.

22 On the concept of רעה רוח see 1 Sam 16:14, 23; m. Šabb. 2:5; b. Pesah. 112a.

(cont.)

Tur, OH 4

טור, אורה חיים סימן ד

fore one needs to refrain from touching his mouth, nostrils, ears, and eyes, with his hands before washing because an evil spirit is dwelling on them.

And if one does not have water he should clean his hands with a rock or anything else that cleans and bless “on the cleanliness of hands.”

ואם אין לו מים יקנה ידיו בצרור או בכל מיני דמנקי ויברך על נקיות ידיים.”

The subjects addressed in this *siman* are the following: 1. The blessing recited when washing one’s hands in the morning; 2. How many times water is poured over the hands and how; 3. What happens when a person does not have water.

Unlike this relatively small amount of material in the *Tur*, the *Shulḥan Arukh* contains a total of 23 *se’ifim* on this topic. A closer examination of the differences between them shows how in the *Shulḥan Arukh* Karo added a large amount of material to what is found in the *Tur*. Primarily, although not exclusively, this material came from the Zohar.

The first example will be regarding the possible relationship between washing one’s hands in the morning and washing one’s hands before eating a meal. In *siman* 4 of the *Tur* there is no mention at all of washing one’s hands before eating a meal while in the *Shulḥan Arukh* the relationship is explicitly addressed. The *Shulḥan Arukh* contains the following in 4:7.

It is good to be meticulous about washing one’s hands in the morning regarding anything that disqualifies washing one’s hands for a meal.

טוב להקפיד בנטילת ידיים שחרית בכל הדברים המעכבים בנטילת ידיים לסעודה.

An examination of the *Beit Yosef* on this *siman* shows Karo’s sources for making the connection between washing one’s hands in the morning and washing one’s hands before eating a meal.

And it seems from the words of the Rosh that we do not need a vessel for washing hands in the morning as one requires for washing hands for a meal. And so it is written in *Hagahot Mordechai* chapter “*Eilu Devarim*,” and so wrote the Ran in the beginning of chapter “*Kol ha-Basar*.” It seems that so too is the law regarding other things that disqualify washing hands for a meal that they are not required for washing hands in the morning since this washing is only for the purpose of cleanliness.

ומשמע מדברי הרא"ש דלא בעינן כלי לנטילת שחרית כי היכי דבעינן לנטילת ידים לסעודה. וכן כתוב בהגהת מרדכי פרק אלו דברים וכן כתב הר"ן בריש פרק כל הפשר ומשמע דהוא הדין לשאר דברים המעכבים בנטילת ידים לסעודה שאינם צריכים לנטילת ידים דשחרית דנטילה זו אינה אלא משום נקיות בעלמא.

The sources quoted here by Karo in the *Beit Yosef* seem to imply that there isn't any connection between the laws of washing one's hands in the morning and those of washing one's hands before eating a meal, so why then did he write in the *Shulḥan Arukh* that it is “טוב להקפיד בנטילת ידיים שחרית בכל הדברים המעכבים,” “that it is preferable or good to be meticulous in matters relating to washing one's hands in the morning just as one would regarding washing one's hands before a meal”?

If one wants to focus on the narrow literary source for Karo's formulation in 4:7, the source seems to be based upon a statement in the *Beit Yosef*, specifically a responsum of the Rashba.²³

בית יוסף אורח חיים סימן ד	שלחן ערוך אורח חיים ד:ז
ומשמע דהוא הדין לשאר דברים המעכבים בנטילת ידים לסעודה שאינם צריכים לנטילת ידים דשחרית דנטילה זו אינה אלא משום נקיות בעלמא.	טוב להקפיד בנטילת ידיים שחרית בכל הדברים המעכבים בנטילת ידיים לסעודה
אבל בתשובת הרשב"א כתוב שנשאל למה תקנו ברכת על נטילת ידים בשחרית והשיב איברא כך	

23 See Responsa of the Rashba 1:191.

(cont.)

בית יוסף אורח חיים סימן ד

שלחן ערוך אורח חיים ד:ז

נהגו בכל מקום לברך בשחרית על נטילת ידים
ומקפידין בכל תנאי נטילה כבשעת סעודה ואני
לא מצאתי בשום מקום דבר ברור שיצטרך אדם
ליטול ידיו שחרית ...

*Shulḥan Arukh, OH 4:7**Beit Yosef, OH 4*

It is good for one to be meticulous in washing one's hands in the morning regarding all things that disqualify washing one's hands for a meal.

And we learn that the same laws that apply to the other things that disqualify washing one's hands for a meal do not apply to washing one's hands in the morning since this hand washing is only because of cleanliness.

But in a responsum of the Rashba it is written that he was asked why the blessing "on washing hands" was established for [washing hands] in the morning and he responded: It is clear that this is the practice everywhere, to bless in the morning "on washing hands," and they are meticulous about all of the conditions that apply to the washing just as like with a meal.

And I didn't find any clear source that would require a person to wash their hands in the morning.

It still needs to be explained why Karo moved from his first statement where he said that it seemed there was no necessary correlation between the laws of washing one's hands in the morning and those of washing one's hands before eating a meal to the recommendation that one should be meticulous in matters relating to washing one's hands in the morning just as one would regarding washing one's hands before a meal.

After bringing a number of halakhic authorities, some of whom supported such a correlation and some who opposed, Karo proceeded to bring a number of sources from the Zohar, “וכן כתוב בספר הזוהר”. In this instance the sources from the Zohar played the role of tilting the scales in favor of one school of halakhic thought over another.

This decision by Karo to attribute to the Zohar a central role in the discussion of this topic can be seen in most of the *se'ifim* in this *siman*. See for example the following.²⁴

בית יוסף אורח חיים סימן ד	שלחן ערוך אורח חיים ד:י
<p>ואפשר שיש חילוק בין נטילת ידים דשחרית לנטילת ידים דאכילה דבנטילת ידים דשחרית כיוון שהם טמאות מסטרא מסאבא דשרייא עלייהו, אי הוה נטיל בקדמיתא שמאלא בימינא היה נראה כאלו סטרא דימינא משמש לסטרא אחרא ולפיכך בעי לנטולי בקדמיתא ימינא משמאלא כמו שכתוב בפרשת וישב.</p>	<p>נוטל כלי של מים ביד ימינו ונותנו ליד שמאלו כדי שיריק מים על ימינו תחילה.</p>
<p>אבל בנטילת ידים לאכילה שידיהם הם טהורות ואינו נוטל אלא לתוספת קדושה, צריך ליטול תחילה יד שמאל מיד ימין מהטעם שכתב בפרשת תרומה.</p>	
<p>ויש לפרש שלעולם תחילה נוטל יד ימין מיד שמאל, בין בנטילת ידים דשחרית בין בנטילת ידים דאכילה, כמו שכתוב בפרשת וישב. ומה שכתוב בפרשת תרומה מאן דנטיל מיא בידיה וכו' היינו לומר שנוטל כלי של מים ביד ימינו ונותנו ליד שמאלו כדי שיריק מים על יד ימינו</p>	

24 In order to understand this *se'if* it is important to note that according to the Zohar the left side, *sitra de-smola*, is considered evil. See Joseph Dan, *Kabbalah: A Very Short Introduction* (Oxford: Oxford University Press, 2006), 52–53: “In the Zohar the realm of evil is called *sitra ahra*, an Aramaic phrase meaning ‘the other side.’ ‘Other’ is the unmentionable left side, which is also the name of God’s archenemy, Samael.”

Shulḥan Arukh, OḤ 4:10

One takes a vessel of water in his right hand and passes it to his left [hand] in order that he pour out the water on his right hand first.

Beit Yosef, OḤ 4

And it is possible that there is a difference between washing hands in the morning and washing hands for eating since in the case of washing hands in the morning, because [the hands] are impure on account of the impure side that is resting on them, if he would first have water poured from right hand onto his left hand it would seem that the right power (“*sitra de-yemina*”) is working for the other side (“*sitra ahra*”), therefore one needs to first pour on his right hand from his left hand as it is written in *Parashat Vayeshev* [in the Zohar].

But in the case of washing hands for a meal when one’s hands are pure and washing is only done in order to add holiness, one needs to first pour from the right hand on the left hand as is written in *Parashat Terumah* [in the Zohar].

One should interpret that first the right hand is always washed from the left hand, whether it is for washing in the morning or for a meal, as it is written in *Parashat Vayeshev* [in the Zohar]. And that which is written in *Parashat Terumah* [in the Zohar], “whoever pours water on his hand,” that means to say that one takes a vessel of water in his right hand and passes it to his left [hand] in order that he pour out the water on his right hand first.

In this case Karo addresses the question of in which hand a person first holds the vessel for washing one's hands, the right or the left. When confronted with two possibly conflicting sources from the Zohar, Karo decided that one begins by holding the vessel in the right hand, then passes it to the left hand, and while it is in the left hand, water is then poured over the right hand.

The role of these Zoharic sources in Karo's decision-making process in this *siman* was directly addressed by Jacob Katz.

Karo, working systematically on the basis of a comprehensive survey of the sources, absorbed Zoharic prescription and granted them higher status than had any halakhist before him. In Chapter 4 of the *Beyt Yosef* which deals with "hand-washing in the morning," Karo quotes a long passage from the Zohar as supporting evidence before announcing his decision between two conflicting schools of thought. Was the Talmudically prescribed hand-washing in the morning a mere hygienic provision or was it, rather, a ritual one requiring the observance of all minutiae connected with the washing of hands before a proper meal. Karo adopted the second position for which he found support in the Zoharic passage he quoted.²⁵

Katz continued and discussed the relationship between Karo's discussion of this topic in the *Beit Yosef* and his later formulation in the *Shulḥan Arukh*.

While in the *Beyt Yosef* these prescriptions were wrapped in Zoharic symbolism which they were intended to reflect, in the *Shulḥan Arukh* they were reduced to a few laconic statements.²⁶

Katz then added an important observation that helps us understand Karo's thoughts about the role of Zoharic material in the halakhic process in a clearer fashion.

In the first of these concerning the ritual minutiae of hand-washing, where the Zohar had merely supported one of two halakhic opinions

25 Jacob Katz, *Divine Law in Human Hands: Case Studies in Halakhic Flexibility* (Jerusalem: Magnes Press, 1998), 53. For a discussion on the role of the Kabbalah in Karo's halakhic decision-making process see Moshe Hallamish, *Ha-Kabbalah bi-Tefillah, be-Halakhah, uve-Minhag* (Ramat Gan: Bar-Ilan University Press, 2000), 161–179.

26 *Ibid.*, 54.

Karo's decision was presented as a recommendation only. ('It is commendable to take care.'²⁷) The others, based exclusively on the Zohar's authority and uncontested by any known halakhist, were formulated authoritatively ... For Karo ... the Zoharic view would be binding as long as it was not explicitly repudiated in the Talmud.²⁸

This *siman* illustrates another aspect of the *Shulḥan Arukh* in relation to earlier sources and that is the importance of Zoharic sources for Karo in his formulation of halakhic practice. In this case Karo first discussed these sources and opinions in the *Beit Yosef* and it is possible to see how they then migrated to the *Shulḥan Arukh*.

OH 17 As an Example of Different Editorial Actions by Yosef Karo within the Same *Siman*

If we look at OH 17, we can see how within one relatively short chapter Karo quoted and added to the foundation that he found in the *Tur* with material from the *Beit Yosef*, chose to edit a larger selection from the *Tur* while at the same time adding new material, and then chose to quote from the *Tur* verbatim without adding anything. The first *se'if* is an example of Karo quoting from the *Tur* but adding additional material to this quotation.

שלהן ערוך אורח חיים יז:א	טור אורח חיים סימן יז	בית יוסף אורח חיים סימן יז
אף על גב דכתיב וראיתם אותו סומא חייב בציעית מפני שנתרבה מאשר תכסה בה וקרא דוראיתם אותו איצטרך למעט כסות לילה.	סומא חייב בציעית.	דתניא וראיתם אותו פרט לכסות לילה אתה אומר פרט לכסות לילה או אינו אלא פרט לכסות סומא כשהוא אומר אשר תכסה בה הרי כסות סומא אמור.

²⁷ טוב להקפיד, In 4:7.

²⁸ Ibid.

<i>Shulḥan Arukh</i> , OH 17:1	<i>Tur</i> , OH 17	<i>Beit Yosef</i> , OH 17
Even though it is written “and you shall see it” (Num 15:39) a blind person is obligated in <i>tzitzit</i> because it was included in the interpretation of “which you shall cover with” (Deut 22:12), and the verse “and you shall see it” is needed in order to exclude [from the commandment] nighttime garments.	A blind person is obligated in <i>tzitzit</i> .	It is taught in a baraita: “and you shall see it” (Num 15:39)—excluding nighttime garments. You say that it excludes nighttime garments, but maybe it excludes the garments of a blind person? When he says “which you shall cover with” (Deut 22:12) it is speaking about the garments of a blind person.

Karo's comments in the *Beit Yosef* on this *siman* seem to be the source for the contextualization of the quotation from the *Tur*. Here Karo does not quote his own words from the *Beit Yosef* verbatim, he rather summarizes the conclusions of the *baraita* that he brought in the *Beit Yosef* and in the *Shulḥan Arukh* wrote his own reformulation of that source.²⁹

In the next *se'if* we see another example of when Karo copies certain parts from the *Tur* but at the same time adds to the material from the *Tur*.

טור אורח חיים סימן יז	שלחן ערוך אורח חיים יז:ב
ונשים ועבדים פטורים. וטומטום ואנדרוגיניוס חייבין מספק. וכתב הרמב"ם ז"ל יתעטפו בלא ברכה והוא הולך לשיטתו שפירש שנשים אין יכולות לברך בדבר שהן פטורות. אבל רבינו תם כתב שיכולות לברך אף על פי שהן פטורות ויותר טוב שלא יברכו.	נשים ועבדים פטורים מפני שהיא מצות עשה שהזמן גרמא טומטום ואדרוגיניוס חייבין מספק ויתעטפו בלא ברכה.

²⁹ The *baraita* is found on b. Menah. 43a.

Shulḥan Arukh, OḤ 17:2

Women and slaves are exempt [from *tzitzit*] since it is a positive time-bound commandment. A *tumtum* and *androgynos* are obligated because of a doubt [whether they are obligated or not] and they should wrap themselves [in a four-cornered garment with *tzitzit*] without reciting a blessing.

Tur, OḤ 17

And women and slaves are exempt [from *tzitzit*] and a *tumtum* and *androgynos* are obligated because of a doubt [whether they are obligated or not]. And the Rabbam wrote: they should wrap themselves [in a four-cornered garment with *tzitzit*] without reciting a blessing. He follows his own approach since he interpreted that women are unable to make a blessing on something from which they are exempt, but Rabbeinu Tam wrote that they are able to make a blessing even if they are exempt. It's best if they don't bless.

The additional material found in this *se'if* again seems to be from a *baraita* that is brought in the *Beit Yosef*.

Beit Yosef, OḤ 17

בית יוסף אורח חיים סימן יז

In the chapter “*techeilet*” (*b. Menah. 43a*) our rabbis taught: Everyone is obligated in *tzitzit*, Priests, Levites, Israelites, converts, women, and slaves. R. Shimon exempts women since it is a positive time-bound commandment and women are exempt from all positive time-bound commandments.

בפרק התכלת תנו רבנן הכל חייבים בציצית,
כהנים לזים וישראלים גרים נשים ועבדים רבי
שמעון פוטר בנשים מפני שמצות עשה שהזמן
גרמא היא וכל מצות עשה שהזמן גרמא נשים
פטורות.

In this case it was the *Tur* who did not see fit to include any explanation why women and slaves are exempt from the *mitzvah* of *tzitzit*, even though this reason is found in the Talmud. Karo then chose to return the explanation to his discussion of the exemption, adding it between two different quotations from the *Tur*.

The last *se'if* in this *siman* is an example of a verbatim quote from the *Tur* that explains that relationship of a minor to the mitzvah of *tzitzit*.

טור אורח חיים סימן יז	שלחן ערוך אורח חיים יז:ג
קטן היודע להתעטף אביו צריך ליקח לו ציצית לחנכו.	קטן היודע להתעטף אביו צריך ליקח לו ציצית לחנכו.
<i>Shulhan Arukh</i> , OH 17:3	<i>Tur</i> , OH 17
A minor who knows how to wrap himself in a four-cornered garment with <i>tzitzit</i> , his father needs to take for him <i>tzitzit</i> in order to educate him.	A minor who knows how to wrap himself in a four-cornered garment with <i>tzitzit</i> , his father needs to take for him <i>tzitzit</i> in order to educate him.

It should also be emphasized that the order of the *halakhot* in this *siman* are identical to those found in the *Tur*.

1. Obligation of a blind person with regard to the *mitzvah* of *tzitzit*.
2. Obligation of women and slaves with regard to the *mitzvah* of *tzitzit*.
3. Obligation of *tumtum* and *androgenus* with regard to the *mitzvah* of *tzitzit* and whether they recite a blessing.
4. Performance of the *mitzvah* of *tzitzit* by a minor.

From the examination of this single *siman* that includes only three *se'ifim* we can see how Karo chose a different approach to the formulation of every *se'if* and *se'if*, even within the same *siman*, while at the same time relying upon the overall structure of the *siman* found in the *Tur*.

Conclusion

Menachem Elon summarized the literary methodology of the *Shulhan Arukh* in the following words.

The method of the *Shulhan Arukh* is distinct from that of the other codes. The *Shulhan Arukh* states the substance of the law briefly, sometimes adopting the formulation of the *Turim* for this purpose. However, when

clarity is particularly needed, the *Shulḥan Arukh* frequently prefers Maimonides' text; and in these instances, the *Shulḥan Arukh* is more expansive than the *Turim*. The *Shulḥan Arukh* presents only the normative rule; in contrast to Maimonides and the *Turim*, it includes neither rationales for the law nor any philosophic considerations. Laws are generally stated without attribution of source and with no reference to contrary opinions.³⁰

There is much in common with my conclusions after examining the first 25 *simanim* of the *Shulḥan Arukh* and those of Elon. The literary foundations of the *Shulḥan Arukh* can be found in the Rambam, the *Tur*, and the *Beit Yosef*. When Karo chose to deviate from a verbatim quotation from either the Rambam or the *Tur* the reasons varied, sometimes it was in order to clarify a difficult to understand statement, while other times it reflected legal or theological considerations. In addition, Karo's *Beit Yosef* served as a conduit for sources that he felt were needed to supplement what was found in the Rambam and the *Tur*.

Far from being a mere collection of sources, Karo's *Shulḥan Arukh* represents a new literary creation, one that while standing on the shoulders of both his own work and that of others, is also a new and creative restatement of Jewish law.

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³⁰ Elon, 1339.

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The Joint Bet Din of the Conservative Movement

Mayer E. Rabinowitz

There is hardly a part of our Movement that has not been impacted and enhanced by the knowledge, expertise, dedication, and service that Rabbi Joel Roth has devoted to the programs and projects of Jewish life and learning in the Conservative Movement world-wide. Since our days as students together in Rabbinical School, over 55 years ago, I have learned from him, been inspired by his example, and have been honored to call him my good friend. One of the many projects on which we have worked together is the Joint Bet Din of the Conservative Movement, on which we have served together since its establishment in 1989. We have attempted to apply an understanding of rabbinic literature and the ongoing development of halakhah to issues related to the problems of iggun in the Jewish Community. Rabbi Roth's presence and participation have enhanced the work and reputation of the Joint Bet Din, and have made a significant difference in the lives of the individuals who have turned to us, and the integrity of the Jewish Community in general.

Background

Among the most difficult Jewish legal issues with which rabbinic leaders have dealt is the issue of the *agunah*, a [civilly] divorced woman whose husband has not given her a *get*. Traditionally, where no *get* was given to the woman, the couple was still considered married and she was prohibited from remarrying. According to *halakhah*, not only could she not remarry, but any children who might result from a later union would be *mamzerim*.

This problem was so serious both for the woman involved and for the Jewish community in general, that in many cases even the strictest of rabbis are known to have relied on leniencies within *halakhah* to find a solution. For centuries, in places where local Jewish communities had a measure of autonomy and self-regulation, the rabbis were often in a position to force the husband to give a *get*. But as Jewish communities lost their autonomy and were governed by the laws and requirements of the countries in which they resided, they lost their civil powers to enforce the laws of marriage and divorce. One of the results of this change was that the rabbis had less power, or (even) no power at all,

to force a recalcitrant husband to give a *get*, even after the civil court had declared the couple divorced.

In the United States, over the years, various communities grappled with these issues of personal status in a variety of ways. Within the Conservative Movement, rabbis and *mesadrei gittin* worked to implement halakhically justifiable ways to alleviate the plight of the *agunah* and to minimize the damaging effects of *mamzerut*. In the middle of the 20th Century, a course was given at The Jewish Theological Seminary to train *mesadrei gittin*; and in 1969 the Rabbinical Assembly through its Committee on Jewish Law and Standards (CJLS) authorized *hafka'at kiddushin* by a *bet din* (annulment of a marriage by a rabbinic court) in carefully-reviewed cases, where it was clear that the husband would never agree to give a *get*.

These developments, while necessary and welcome, still meant that independent *mesadrei gittin* handled individual cases on their own. There was no standardized and centralized mechanism for setting standards for *mesadrei gittin* or for training and certifying new *mesadrei gittin*; nor was there a central database of information and documentation concerning all *gittin* that were granted within our Movement.

There was also little recourse for dealing with individuals who remembered getting or giving a *get*, but were unable to identify anyone reliable who could verify their information. There were many cases where the *Mesader Gittin*, or the rabbi with whom the couple worked, was either unknown to them or was no longer available.

In 1988, the Rabbinical Assembly, together with the Jewish Theological Seminary and the United Synagogue of America (now the United Synagogue of Conservative Judaism), decided to establish the Joint Bet Din of the Conservative Movement, to centralize the training and certification of *mesadrei gittin*, to establish a comprehensive database of previously married individuals and their status according to Jewish Law, and to familiarize rabbis and congregants with the importance of and the availability of halakhically-acceptable solutions related to the dissolution of marriages.

I was asked to chair the Joint Bet Din, and on February 9, 1989, the first meeting of the Joint Bet Din took place. The Joint Bet Din consisted of nine rabbis who were appointed by the Rabbinical Assembly, the Jewish Theological Seminary, and the United Synagogue of America. At its formation, the members were: Rabbis Ben Zion Bergman a"h, Morton Leifman a"h, Yehezkel Musleah a"h, Lionel Moses, Mayer Rabinowitz, Joel Roth, Steven Saltzman a"h, Morris Shapiro a"h, and Israel Silverman a"h.

To help achieve the goal of standardization and centralization, the Joint Bet Din asked all members of the Rabbinical Assembly who had been writing *git-*

tin to submit the necessary documentation in order to be certified by the Joint Bet Din. In 1990, The Rabbinical Assembly asked all of its members to use only *mesadrei gittin* who had been certified by the Joint Bet Din, and to make use of the *Get* Registry Database of the Joint Bet Din for the protection of men and women who are issued *gittin* through our Movement as well as for the protection of their future children. It further asked all regional *batei din* of the Rabbinical Assembly and *mesadrei gittin* certified by the Joint Bet Din to submit all cases of a recalcitrant husband who refused to give a *get* to the Joint Bet Din.

Since that time, the Joint Bet Din has trained and certified many *mesadrei gittin* who serve communities all over the United States as well as Canada, Central and South America, Europe, and Israel. On the Rabbinical Assembly website, the Joint Bet Din makes a list of *mesadrei gittin* available to the public, so that interested parties can contact them directly. The Joint Bet Din has established an extensive database that enables rabbis to check information about previously married individuals to ascertain whether they are eligible to remarry according to the halakhic requirements of the Conservative Movement. Those requirements state that no Rabbinical Assembly member shall perform a wedding of a woman who has not received a *get*, nor of a man who has not given a *get*.

In carrying out its mission and its agenda, the Joint Bet Din has sought to minimize the number of *agunot* in the community. It has worked diligently to allow a maximum number of Jewish men and women whose marriages have been dissolved to “move on with their lives” within the framework of Jewish Law. Current members of the Joint Bet Din are: Rabbis Stanley Asekoff, Pamela Barmash, Elliot Dorff, Karen Reiss Medwed, Lionel Moses, Chaim Weiner, Avraham Reisner, Scott Rosenberg, and Joel Roth.

The Joint Bet Din utilizes various methods and mechanisms to achieve its goals.

Measures Taken to Minimize the Problem of *Iggun*

Our *halakhic* solutions to the problem of *iggun* can be divided into two categories: **preventative measures** and **curative measures**. Preventative measures can be taken before a wedding to ensure that if the marriage were to end with a civil divorce, the wife would not become an *agunah*. Curative measures are used when preventative measures have not been taken and there is a civil divorce, but a *get* has not been granted. In this situation, the divorced woman is still an *agunah*, unable to remarry or consider herself free according to Jewish Law.

Preventative Measures

The Lieberman Clause

In 1953, the Rabbinical Assembly and the Jewish Theological Seminary accepted an additional clause in the *ketubah* proposed by Professor Saul Lieberman a"h. The purpose of the Lieberman *takanah* was to help solve the problem of *agunot*. By including this clause, the bride and groom were agreeing to recognize the authority of the *Bet Din* of the Rabbinical Assembly and the Jewish Theological Seminary to summon either the husband or the wife at the request of the other in order to dissolve the marriage, thus enabling both husband and wife to go on with their respective lives, and to remarry in accordance with Jewish Law. The clause reads as follows:

וצביאו מר _____ בר _____ חתן דגן ומרת _____ בת _____ דא דאן
 יסיק אדעתא חחד מינהון לנתוקי נישואיהון או אן איתנתוק נישואיהון בערכאות
 דמדינתא דיכול דין או דא לזמנא לחבריה לבי דינא דכנישתא דרבנן ודבית מדרשא
 דרבנן דארעתא דקיימא או מאן דאתי מן חילה וליצותו תרוייהו לפסקא דדיניה בדיל
 דיכלו תרוייהו למיחי בדיני דאורייתא

_____, the groom, and _____, the bride, further agreed that should either contemplate dissolution of the marriage, or following the dissolution of their marriage in the civil courts, each may summon the other to the Bet Din of the Rabbinical Assembly and the Jewish Theological Seminary, or its representative, and that each will abide by its instructions so that throughout life each will be able to live according to the laws of the Torah.

Including this clause means that the couple has agreed that if a *get* had not been given following the civil divorce, the couple would appear before the Bet Din of the Jewish Theological Seminary and the Rabbinical Assembly, and they would obey the dictates of the Bet Din. If the Bet Din decides that the husband must give a *get*, and the wife must accept the *get*, then both must abide by the ruling of the Bet Din, thereby enabling both parties to remarry according to *halakhah*, and hopefully live a full Jewish life thereafter.

This was an innovative attempt to try to limit cases of *agunot*. This novel approach found favor with many rabbis and halakhic authorities, both inside of the Conservative Movement as well as outside of it. In fact, when Professor Lieberman suggested adding this clause to the *ketubah*, the respective heads of The Rabbinical Council of America (Orthodox) and the Rabbinical Assembly (Conservative) met to discuss the inclusion of the clause. Among those participating in these discussions were Rabbi Joseph Soloveitchik and Professor

Saul Lieberman. At the time, all agreed that from a *halakhic* point of view, the clause could be added to the *ketubah*, and could be used in the marriage ceremony. However, for whatever reasons, the Lieberman clause appears today only in what are referred to as “Conservative *ketubot*.”

The Lieberman Clause was, for many years, the only standardized preventative measure, and still appears in many versions of “Conservative *Ketubot*.” But there are a number of problems with the use of this clause if the husband refuses to appear before the Joint Bet Din or follow its decision.

In order to force the recalcitrant partner to appear and follow the directives of the Joint Bet Din, one must get an American court to enforce the clause. Our experience has been that in the United States, the highest courts in many states will not involve themselves in the *ketubah* at all, because they feel that doing so would violate the principle of separation of church and state. This leaves the civilly-divorced wife with no legal recourse.

Even when a civil court is willing to hear the case, there are no guarantees that the recalcitrant husband will live up to the decision of the court and give a *get*. As with cases where husbands have been ordered to pay alimony or child support, and have found ways to avoid it (disappearing, serving time in prison, etc.) so too, recalcitrant husbands can avoid giving a *get*, leaving the civilly-divorced wife an *agunah*.

Letter of Intent

In 1991, based on these problems, the Joint Bet Din created a “letter of intent” to be used together with a *ketubah* that includes The Lieberman Clause. This Letter was to be signed by the husband and wife, and is, indeed, a *separate* document. It is carefully worded in order to ensure its viability in American courts. It reads as follows:

Each of us has met with Rabbi _____, who has provided us with a copy of the *ketubah* (a copy of which is attached) and explained to each of us the provisions contained in the *ketubah* concerning the dissolution of marriage.

Each of us acknowledges and confirms our understanding that this *ketubah* is a legal contract and shall be binding under both Jewish and civil law concerning the formation and dissolution of our marriage.

In particular, each of us acknowledges that according to this *ketubah*, should our marriage be dissolved in the civil courts, each of us is bound to appear before the Joint Bet Din of the Conservative Movement, or such Bet Din as shall be designated by the Joint Bet Din, if so requested by the other, and to abide by its instruction and decision with respect to the

dissolution of our marriage under Jewish law. Each of us intends that the undertaking to appear before and to be bound by the directions of the Bet Din may be enforced by the civil court of law. Each of us acknowledges our agreement to the *ketubah* and our willingness to be bound by its terms.

Dated _____

Signature of Bride _____

Signature of Groom _____

Explained and signed under the supervision of Rabbi _____

Signature of Rabbi _____

By signing this letter of intent, the husband and wife agree to uphold the terms of the Lieberman Clause, and accept the fact that this letter of intent is a civilly-binding document that can be upheld by a civil court.

However, a general objection to the use of the Lieberman clause even with the letter of intent is that, in cases of recalcitrant husbands, we must resort to using civil courts to enforce *halakhah*! If, in fact, our halakhic system is a full-fledged legal system with integrity of its own, we should not need to rely on the civil courts to solve our halakhic problems.

T'nai B'kiddushin—Ante-Nuptial Agreement

In 1969, the Conservative Movement's Committee on Jewish Law and Standards created an "ante-nuptial agreement" in which the couple agrees that if they divorce in civil court and the husband authorizes the issuing of a *get* within six months, then their marriage was valid. But if a *get* is not issued within six months of the civil divorce decree, then their marriage (retroactively) was not a valid marriage from the moment it was performed and celebrated. The text of the ante-nuptial agreement reads as follows:

On the ___ day of _____, ___, corresponding to the ___ day of _____ [in the Jewish calendar], in _____ [City and State], the groom, _____, and the bride, _____, of their own free will and accord, entered into the following agreement with respect to their intended marriage.

The groom made the following declaration to the bride:

"I will betroth you and marry you according to the laws of Moses and the

People Israel, subject to the following conditions: If our marriage should be terminated by decree of the civil courts and if by expiration of

six months after such a decree, I give you a divorce according to the laws of Moses and the People Israel (*a get*), then our betrothal (*kiddushin*) and marriage (*nissuin*) will have remained valid and binding. But if our marriage should be terminated by decree of the civil courts and if by expiration of six months after such a decree I do not give you a divorce according to the laws of Moses and the People Israel (*a get*), then our betrothal (*kiddushin*) and our marriage (*nissuin*) will have been null and void.”

The bride said to the groom: “I consent to the conditions that you have made.”

Signature of the groom: _____

Signature of the bride: _____

We, the undersigned, acting as a Beth Din [court], witnessed the oral statements and signatures of the groom and bride.

_____ (rabbi)

_____ (witness)

_____ (witness)

This is a separate document which is *not* part of the *ketubah*. The *T'nai B'kiddushin*, as the term implies, serves to make the marriage a “conditional marriage” dependent upon the fulfilment of the terms in it.

When using the *T'nai B'kiddushin*, the groom must read the document in the presence of a *bet din* of three, and the bride must reply that she consents to these conditions. The bride and groom must sign the document, and the members of the Bet Din must sign it as well. Under the *huppah*, before the groom betroths the bride, the rabbi must ask them if they agree to be married in accordance with the laws of Moses and Israel and the conditions to which they agreed beforehand. If they each answer “yes,” then the wedding ceremony continues with the betrothal formula.

Eventually, if the couple gets a civil divorce, and the husband refuses to give a *get*, the wife can petition the Joint Bet Din for an annulment of the marriage, based on the fact that the husband did not abide by the *T'nai B'kiddushin*. If, in reviewing the case, the Joint Bet Din verifies that the condition was agreed upon but not fulfilled, the Joint Bet Din annuls the marriage and issues a *p'tor* to the woman, so that she is free to remarry.

Our use of *T'nai B'kiddushin* is based upon solid precedents in halakic literature and the issue of conditional marriages has been studied by various authorities. Two important books on the subject are: A. Freimann's *Seder Kiddushin ve'Nissuin* (Jerusalem, 1945); and Eliezer Berkowitz's *T'nai be'Nissuin uv'Get* (*Mossad Harav Kook*, 1966).

Two notable examples of the use of *T'nai B'kiddushin* in the early 1900's are from the French Rabbinate (1907) and the Turkish Rabbinate (1924). With growing numbers of civil divorces in their communities, and the inability of the Jewish rabbinic courts to pressure husbands to give a *get*, the French and Turkish rabbinates introduced a *takanah*, allowing the *T'nai B'kiddushin* (conditional marriage) to be used as an halakhically valid method. This would ensure that women would not remain *agunot* and would not enter into second marriages that would have been prohibited by Jewish Law.

Today, although there is sometimes discomfort about raising the issue of divorce to a couple that is about to be married, we have embarked on a campaign to convince couples and the rabbis officiating at their weddings to use the *T'nai B'kiddushin*. In a society where so many marriages end in divorce, the protection that the *T'nai B'kiddushin* offers the wife and, by extension, the integrity of the Jewish community in matters of personal status, are of utmost importance. To that end, we recommend that rabbis raise the issue in their pre-marital meetings with couples, an appropriate time to talk about the *T'nai B'kiddushin*, and to point out its positive and protective elements.

Curative Measures

In cases where preventative measures were not taken, the following curative solutions have been used by the Joint Bet Din.

Hafka'at Kiddushin (Annulment)

This juridical principle states that all betrothals are done with the approbation and approval of the rabbis, and the rabbis who offered their approval at one time could subsequently rescind their approval. Discussing a particular case, the Talmud states:

כל דמקדש אדעתא דרבנן מקדש ואפקעיניהו רבנן לקידושין מיניה (גיטין לג, א)

When a man betroths a woman, he does so under the conditions laid down by the rabbis, and in this case, the rabbis annul his betrothal.

b. Git. 33a

From this instance and from others, we see that the rabbis had the power and prerogative to rescind their approval of a marriage and thereby annul it. The only question confronting us is whether we are restricted in using the principle only for those cases and situations mentioned in the Talmud, or whether we can we extend the use of the principle to other cases where we deem it necessary to do so today? Because of the high rate of divorce, and the implications of

having many *agunot* in the Jewish community, we feel compelled to extend the use of the principle to solve the problems of today, rather than only applying the principle to cases mentioned in the Talmud. The precedent we rely on is the *method* that was used in the past, and not the specifics of earlier cases. We see those cases as *examples* and not as limiting instances. We share the attitude of the rabbis of the Talmud, about whom we read:

משום עיגונא אקילו בה רבנן (גיטין ג, א)

In matters of *iggun*, the rabbis utilized lenient approaches.

b. Git. 3a

Clearly, the rabbis were deeply committed to limiting the number of *agunot* in the community, even if doing so required them to take lenient positions. Since the rabbis are the ones who grant approval of a marriage, *they* have the right to rescind that approval, thereby annulling the marriage. Though the marriage was annulled, the children of the annulled marriage are not tainted according to Jewish law, even though they were born out of wedlock.

Our experience has been that in some cases, when the husband is told that the only alternative to his giving a *get* is for us to annul the marriage, the husband agrees to give a *get* because of his discomfort at the thought of the marriage being annulled.

Our procedure in an annulment is as follows:

A file is presented to the Joint Bet Din by one of our *mesadrei gittin*. It is then reviewed to make sure that it contains documents and testimonies corroborating the woman's claims. The Joint Bet Din then tries to employ a variety of approaches to get the husband to authorize the giving of a *get*. When the members of the Joint Bet Din are convinced that the husband will not give a *get*, the Bet Din votes on whether to annul the marriage.

Among the reasons for which the Joint Bet Din has annulled marriages are:

- Blackmail on the part of the husband, usually to try to overturn the property settlement.
- Disappearance of a husband fleeing from the authorities or from debts, when all efforts to locate him are to no avail.
- Physical abuse by the husband, even after the civil divorce.
- Inability to locate a former husband after many years of divorce, but with no indication that he has died.
- Recalcitrance on the part of the husband, after the civil divorce, for no reason other than spite.

Get Al Yedai Zikkui—A Bet Din Accepts a *Get* on the Wife's Behalf
We read in the Tamud:

זכין לאדם שלא בפניו (קידושין כג, א)

One may obtain a privilege for a person in his absence.

b. Qidd. 23a

There are cases where a husband is prepared to authorize a *get*, but the wife is unable or unwilling to accept the *get* at that time. This situation can arise because the wife is recalcitrant, inaccessible, or mentally incompetent. In each of these cases, the wife herself will not accept the *get*, even though it is to her advantage. In order to properly terminate the marriage according to Jewish law, a bet din can accept the *get* on her behalf. This procedure is based on the principle that one may act for the benefit of an individual, even if that individual is not present.

Once the Joint Bet Din approves of utilizing *Get Al Yedei Zikkui* for a particular case, the *Mesader Gittin* arranges for the *get* to be accepted by a bet din on her behalf, and a record of the procedure is entered into the database of the Joint Bet Din. The husband is issued a *p'tor*, which enables him to remarry. If the woman ever wants to remarry, she can request a *p'tor* from the *Mesader Gittin* who had accepted the *get* on her behalf.

Heter Meah Rabbanim (Permission by 100 Rabbis)

Rabbeinu Gershom of Mainz had issued a decree around 1000 CE, banning polygamy. But in certain limited cases, the ban permits the man to take a second wife, after receiving the permission of 100 rabbis from three different countries or jurisdictions.

In the past, the use of *heter meah rabbanim* was limited because of the difficulties of communication between and among different Jewish communities. Today, the procedure is much easier because of the ease of communicating with Jewish communities around the world. However, even though communicating with 100 rabbis representing three countries or jurisdictions is so easy today, the Joint Bet Din has used this procedure only once. The case involved a man whose wife was in an irreversible coma and a civil divorce had been granted. But the husband did not want to give her a *get* lest that be understood to signify that he would no longer continue to care for her and provide for her needs after he remarried. A form was sent to over 100 rabbis in different states within the United States, as well as in Europe and Israel. Over 100 positive responses were collected, and on the basis of those responses,

the Joint Bet Din instructed the *Mesader Gittin* to issue a *p'tor* to the husband, enabling him to remarry.

Examples of Cases That Have Come to the Bet Din

Case I

Shortly after Mrs. G. was married, her husband insisted that he did not want her socializing with her friends and prohibited her from seeing them. He also prohibited her from pursuing a career and insisted that he wanted to have children immediately. None of these demands had been suggested before the wedding, and the woman was totally shocked by these developments. When physical abuse began, she realized that she had to sever the relationship. The man and woman were separated for several years and she finally sued for a civil divorce, which was granted. Her ex-husband now lives with a non-Jewish woman and has a son. When the *Mesader Gittin* for Mrs. G contacted the ex-husband to try to have him authorize a *get*, the ex-husband refused, and threatened the *Mesader Gittin* if he tried to contact him again. We annulled the marriage, and she received a *p'tor* from the *Mesader Gittin*, which would allow her to remarry in the future.

Case II

A woman from a very Orthodox community in Monsey, New York turned to us to help her free herself from her recalcitrant husband. Even though she had turned to multiple *batei din* in her community, all of whom ordered her husband to give her a *get*, the husband refused to abide by their decisions and did not give her a *get*. We explained to her that our Joint Bet Din was part of the Conservative Movement and that our annulment would not be recognized in her community. She responded by telling us that she was aware of who we were, and that she understood that if she remained in her community, she would not be able to remarry. Nevertheless, she wanted closure to this chapter of her life, and needed an affirmation that she was a free woman, according to *halakhah!* We annulled the marriage.

Case III

Mrs. T turned to us when her husband refused to consider giving her a *get*, though the civil divorce had been decreed long ago. We sent him a "registered, return receipt requested" letter explaining that giving her a *get* would allow her to move on with her life, and that without his giving her a *get*, neither he nor she could be married by a Conservative rabbi. The letter was returned to us marked "refused delivery." He had obviously seen the return address and wanted no contact with us. We tried to contact him a few months later and he did respond

to our letter, saying that he did not want to give a *get* because he wanted to reconcile with Mrs. T. However, a few weeks later we received proof that he was about to marry another woman. When we contacted him about this, he did not deny that he was getting married to another woman, but still refused to give her a *get*. It became clear that his refusal to give his first wife a *get* was based on spite, and he had no intention of ever authorizing the preparation of a *get*. We annulled the marriage.

Case IV

An Iranian woman who had been married in her teens and had suffered years of mental and physical abuse, turned to us to help her pressure her husband to give her a *get*. The civil divorce had been decreed, but all the terms of custody and finances had not yet been settled. We were able to reach the husband only by cell phone, and he indicated that he was in the midst of a civil suit concerning financial matters and child custody issues. He claimed that once those were resolved to his satisfaction, he would grant her a *get*. At his court case, when he claimed that he had no income and no permanent domicile, the judge asked him how he expected to gain custody of the children and support them. It became clear to the court and to us that he had intended to take the children and disappear. He lost the civil suit and refused to give a *get*. We annulled the marriage.

Case v

A woman came to the Joint Bet Din seeking some solution, after having been divorced for some time but unable to convince her ex-husband to give her a *get*. When we contacted the husband, he claimed that he was still trying to reconcile with his ex-wife, and that was the reason he hadn't wanted to give her a *get*. It came to our attention that the husband was already scheduled to marry a Catholic woman soon, and was planning to convert to Catholicism. We contacted the Archbishop responsible for the parish where the marriage was to take place, explained the situation the woman was facing, and asked him to refuse to allow the marriage to take place in the church, until the gentleman gave his first wife a *get*. The prelate agreed, and within a few hours the husband authorized the preparation of a *get*. There was no need to annul the first marriage.

Closing

The Conservative Movement, and specifically the Joint Bet Din, are committed to helping minimize the number of *agunot* in the Jewish community, and to enabling women and men who have been divorced civilly to dissolve their marriage according to *halakhah*. We see our work as essential in helping divorced individuals live within the framework of Jewish law, in protecting any children who may result from subsequent marriages, and in helping maintain the integrity of the Jewish community in matters of personal status.

As our predecessors found solutions to the halakhic problems of their times, we try to follow in their footsteps and continue to work to find halakhic solutions to the problems in our own day. עוֹד נִמְשַׁכֶּת הַשְּׁלִשְׁלֵת (the unbroken chain continues). May we be granted the *zkhut* to serve as links in this precious chain.

Rabbinic Authority and Personal Freedom in the Modern Age

Avram Israel Reisner and Murray Singerman

שלש מדות בתלמידי חכמים אבן גזית. אבן פינה. אבן פסיפס.
(אבות דרבי נתן נוסחא א פרק כח)¹

רבינו יעקב רוט—תלמיד חכם, אבן פסיפס
מלא וגדוש הלכות ומדרש תוספתות וכל הש"ס
מגיד שיעור ופוסק הלכה
גמיר וסביר ומרביץ תורה
יראת ד' ואמונה רבה ללבו תפש
בפי חבריו ותלמידיו שמו מקולס.

We honor Joel Roth, a decorous sage,
Studied in Jewish law and the Talmud page,
An instructor, a teacher, a master of halakhah,
Learned and wise, always spreading Torah.
His fervor and faith have grown with age.
Students and colleagues speak his praise.



1 רבי אלעזר בן שמוע אומר: שלש מדות בתלמידי חכמים אבן גזית, אבן פינה, אבן פסיפס. אבן גזית כיצד: זה תלמיד ששנה מדרש בזמן שתלמיד חכם נכנס אצלו שואלו במדרש אומר לו. זהו אבן גזית שאין לה אלא פה אחת. אבן פינה כיצד: זה תלמיד ששונה מדרש והלכות בזמן שתלמיד חכם נכנס אצלו שואלו במדרש אומר לו בהלכות אומר לו. זהו אבן פינה שאין לה אלא שתי פיות בלבד. אבן פסיפס כיצד: זה תלמיד ששונה מדרש והלכות ואגדות ותוספתות. כשתלמיד חכם נכנס אצלו שאלו במדרש אומר לו בהלכות אומר לו בתוספתות אומר לו באגדות אומר לו. וזו היא אבן פסיפס שיש לה ארבע פיות מארבע רוחותיה.

Rabbi Elazar ben Shamua says: There are three types of sages. A hewn stone, a cornerstone and a decorative stone. A hewn stone is a student who, having studied midrash, when he encounters a sage asks questions [to master midrash]. That is a hewn stone. It has only one facet. A cornerstone is a student who, having studied both midrash and halakhah, encounters a sage and asks about both. That is a cornerstone which has just two facets. A decorative stone is a student who, having studied midrash and halakhah, tosefta and aggadah asks of all these. This is a decorative stone, with facets at every side. (Avot of Rabbi Nathan A, 28).

For the Jew who integrates halakhah into his or her life, emotionally charged situations bring fundamental intellectual challenges to the forefront, demanding a resolution. Consider, for example, a pregnant woman informed by her doctors that the fetus she carries suffers from anencephaly. Her baby will be born without the frontal lobe and the thinking and coordinating parts of his brain. With no known treatment, this baby will die shortly after birth.

Faced with this problem in a different time and place, observant Jews would turn to their rabbi and seek a ruling on what to do. May—or should—the mother abort, or must she go through pregnancy and labor to give birth to a child who will soon perish, then sit in mourning should the child survive thirty days? To answer this heartrending query, the rabbi would wrestle with the tomes of Jewish tradition and law without involving the parents. Although the rabbi might consider their feelings and ability to bear this tragedy as factors in reaching a decision, the rabbi would not bring the parents into the legal process to weigh and choose between differing legal opinions. The parents' fate as to how to proceed would be dictated by the ruling received from their rabbi, which the parents would willingly obey.

In the democratic West, however, in a society that elevates individuality, initiative and autonomy over willful obedience, tragedies like anencephaly, and even other less trying situations,² raise front and center the conundrum as to what role we as individual Jews play in Jewish decision making. If, as will be argued below, there is no substantive halakhic basis for today's rabbis to exercise their authority through compulsion, what role then, if any, do the feelings, intellect, and autonomy of the Jew play in reaching halakhic decisions? Must we be mute in the face of the determinations of rabbis who interpret and apply halakhah, or can we, and should we, play a role in the legal process and assert our individual inclinations in reaching a P'saq? To answer these weighty questions, this article examines how our Sages—who view themselves as caretakers of our Torah—understood the reach and limits of their ability to compel obedience with their dictates.

2 Among many examples: whether to honor a relative's request to donate his or her body to science; whether to take a business dispute to secular court or only to a bet din; whether to eat in vegan restaurants that lack formal kashrut supervision; whether to permit *kitniyot* on Pesach given the constriction of various dietary restrictions of members of the family; or simply whether to say "barukh hashem l'olam" at Maariv as do most Ashkenazim in the Diaspora, or not to recite that prayer, as per the GR"A and as has become normative in Israel.

A Covenant of Consent

At the outset, we note that the nature of the relationship between God and the Jewish people originated in a *brit*, a covenant of consenting parties. The Torah's description of Sinai in Exodus 24:7³ reflects that enthusiastic consent—*ויקח ספר הברית ויקרא באזני העם ויאמרו כל אשר דבר ד' נעשה ונשמע* ([Moses] took the record of the covenant and read it before the people, and they said: All that which God has said we shall perform and obey).⁴ Pursuant to that *brit*, the Jewish people agreed at Sinai and later in the flats of Moab⁵ to be bound.

Laws can be the authoritarian decree of a monarch, as indeed the laws given at Sinai by God might have been viewed. God, however, seeks, throughout the Torah, to gain acceptance as Israel's God (*Elohim*),⁶ and predicates His calls to obedience upon it. Acceptance requires volition: a *brit*, a pact or covenant, as is clear from the language of *brit* used to describe the events both at Sinai and again in the plains of Moab.⁷ Describing the receipt of the Torah as effectuated in a *brit* entails certain complications. If the Torah is conceived as a contract, a *brit*, what will bind future generations? This question must be addressed by any system which posits that law rests on the consent of the governed. John Locke argued that it is only by individual consent that a person may subject himself to the laws of a society in which he chooses to live. How then are those societies perpetuated over time? "Locke's most obvious solution to this problem is

3 All citations of verses from the Bible and of rabbinic passages appear here in our own translation. The Hebrew original of rabbinic passages will be found in the notes.

4 That this was the intent of this verse in the Torah itself seems clear, and rabbinic comments highlighting Israel's merit in willingly accepting God's commands are common. See, for instance, the midrashim of R. Hizkiyah and of R. Simlai on the latter half of b. Šabb. 88a, the comment by R. Joshua that God was pleased by Israel's response in Masekhet Derekh Eretz, Perek haShalom 3, or the well-known midrash from Mekhilta d'R. Ishmael, Yitro, Masekhta D'baḥodesh, Parashah 5, that the Torah was offered each of the gentile peoples, but they rejected it, whereas Israel received it with open arms, and many more.

As is often the case in midrash, an alternative view is expressed in b. Šabb. 88a by R. Avdimi bar Ḥama (on b. 'Abod. Zar. 2b, Dimi) that God threatened Israel with destruction if they did not accept the Torah. R. Aḥa bar Jacob, however, rejects this, arguing that coercion would undercut the binding claim of the Torah upon Israel (מכאן מודעא רבה לאורייתא). Be this as it may, the *p'shat* of the Torah's narrative stands on its own.

5 The alluvial plain east of the Jordan River opposite Jericho, which reaches to the foothills of the mountains of Moab.

6 See, for instance, Exod 6:7, Lev 22:32–33, Num 15:41, Deut 29:9–12.

7 See, for instance, Exod 24:7–8; 34:27–28; Deut 5:2–3; and the verses that are a focus here, Deut 29:9–14.

his doctrine of tacit consent.”⁸ Individuals functioning within a society without registering objection to its ways implicitly grant tacit consent to those norms.

Moses, in his final speeches in Deuteronomy, proposes more than Locke’s implicit consent. He describes a timelessness to Torah which transcends generations. Speaking to the children of the original recipients of the covenant, Moses asserts that, even though many of them had not yet born, they themselves had enacted the covenant at Sinai.

ד’ א-להינו כרת עמנו ברית בחרב. לא את אבותינו כרת ד’ את הברית הזאת, כי אתנו, אנחנו אלה פה היום כלנו חיים. פנים בפנים דבר ד’ עמכם בהר מתוך האש. אנכי עמד בין ד’ וביניכם בעת ההוא להגיד לכם את דבר ד’.

Adonai our God established a covenant [*brit*] with us at Horeb. It is not with our ancestors [alone] that Adonai established this covenant, but with us, we who are here today, all of us alive today. Adonai spoke to you face to face on the mountain from the midst of the fire while I stood between Adonai and you at that time to convey to you Adonai’s word. (Deut 5:2–5)

As is appropriate for a timeless God—the God of creation and of eternity—His *brit* (covenant) stands across all time, confirmed by explicit consent, even by future unborn generations.

He explains further when speaking to the people of Israel in Moab at the time of the renewal of the covenant:

אתם נצבים היום כלכם לפני ד’ א-להיכם ... כל איש ישראל ... לעברך בברית ד’ א-להיך ובאלתו אשר ד’ א-להיך כרת עמך היום. למען הקים אתך היום לו לעם והוא יהיה לך לא-להים כאשר דבר לך ... ולא אתכם לבדכם אנכי כרת את הברית הזאת ואת האלה הזאת, כי את אשר ישנו פה עמנו עמד היום לפני ד’ א-להינו ואת אשר איננו פה עמנו היום.

You stand here today, all of you, before the Lord your God ... every member of Israel, to enter the Lord your God’s covenant [*brit*], and His oath, which the Lord your God establishes with you today in order to constitute you, today, as His people and so that He shall be your God, as He said to you ... It is not with you alone that I establish this covenant and this

⁸ *Stanford Encyclopedia of Philosophy*, accessed online at <https://plato.stanford.edu/entries/locke-political/#ConPolOblEndGov> on 11/21/17.

oath, but [both] with the one who is here standing with us today before the Lord your God, and with the one who is not here with us today. (Deut 29:9–14)

The Sages made clear that the *brit* applies not just to the second generation under Moses, but is a commitment true for all generations of future members of the Jewish people.

“[Both] with the one who is here standing”—This refers only to those standing at Mount Sinai. Whence do I know [that it includes] future generations and converts who are destined to convert in the future? Scripture teaches: “and with the one who is not [here].”⁹ (b. Šebu. 39a)

This midrash is tied to the verses surrounding the second covenant in the plains of Moab, but makes clear that it is speaking about standing at Sinai.¹⁰ Thus Judaism has always understood that the relationship between God and the Jewish people was one of explicit consent by all generations, a covenant both binding and eternal.¹¹

A National Court with the Authority to Compel

Our Sages saw as well that Moses formulated an approach to addressing another problem of the law—how it should resolve issues that arise after the giving of the covenant, situations that are not spoken of clearly in the covenant’s text.

9 כי את אשר ישנו פה—אין לי אלא אותן העומדין על הר סיני, דורות הבאים וגרים העתידין להתגייר מנין? ת”ל: ואת אשר איננו [פה].

10 See also b. Šabb. 146a. Indeed, the Mishnah’s ruling that one cannot make a vow about a clear Toraitic commandment because one is “in a continuing state of commitment ever since Mount Sinai” (מושבֵע ועומד מהר סיני), which appears many times in the Talmud, owes its formulation to the idea that all Jewish souls, even those not yet born, even those destined to enter Israel through conversion, had stood together at Mount Sinai.

11 In a blog for the Times of Israel published on February 2, 2018, entitled “The bond of loyalty and love,” seeking to describe the difference between a contract and a covenant, Rabbi Jonathan Sacks writes: “In a contract, two or more people come together, each pursuing their self-interest, to make a mutually advantageous exchange. In a covenant, two or more people, each respecting the dignity and integrity of the other, come together in a bond of loyalty and trust to do together what neither can achieve alone. It isn’t an exchange; it’s a moral commitment ... Contracts benefit; covenants transform. Contracts are about “Me” and “You”; covenants are about “Us” ... On Mount Sinai ... the people made with God, not a contract but a covenant.”

In Deuteronomy 17:8–13, Moses foresees the foundation of a national court able to interpret and extend the law, and grants that court the authority to compel.¹² This power appears to stand in contrast to the consent implied by *brit*, but Locke, too, understands consent to imply acceptance of obeying the government even in its function as lawgiver and punisher.¹³

Moses describes an authoritative national court associated with God's chosen place, ultimately determined to be the Temple Mount in Jerusalem.

כי יפלא ממך דבר למשפט ... וקמת ועלית אל המקום אשר יבחר ד'—אלהיך בו ובאת אל הכהנים הלויים ואל השפט אשר יהיה בימים ההם ודרשת והגידו לך את דבר המשפט. ועשית על פי הדבר אשר יגידו לך מן המקום ההוא אשר יבחר ד' ... על פי התורה אשר יורוך ועל המשפט אשר יאמרו לך תעשה. לא תסור מן הדבר אשר יגידו לך ימין ושמאל.

When a matter of judgment escapes you ... you shall go up to that place which Adonai your God has chosen and approach the Levitical priests or the judge who shall exist in those days and seek [counsel in that matter], and they shall tell you [the proper] judgment [in the matter]. And you shall act in accordance with that which they have told you [which emanates] from that place which Adonai has chosen ... You shall act in accordance with the instruction that they teach you and the judgment that they have spoken to you. Do not veer from that which they tell you neither right nor left.

Next, Moses describes the ability of the Court to enforce its decisions through compulsion:

והאיש אשר יעשה בזדון לבלתי שמע אל הכהן העמד לשרת שם את יהוה אלהיך או אל השפט ומת האיש ההוא, ובערת הרע מישראל. וכל העם ישמעו ויראו ולא יזידון עוד.

12 This description assumes that Moses intended a national court that would exercise legislative functions, expressed by the phrase *כי יפלא ממך דבר למשפט* ("When a matter of judgment escapes you"). That is certainly the assumption of later rabbinic sources. A cogent argument, however, can be made that in the Torah's *p'shat* the next words (that we left here in ellipsis because they are not relevant to this discussion), *בין דם לדם, בין דברי ריבות בשעריך* ("whether a matter of homicide, civil law or torts, matters of dispute in your gates") are intended to define the type of judgment under consideration, which is exclusively judicial and not legislative. In that event the authority even of the *Bet Din haGadol* would derive from later considerations. Be this as it may, it is clear that the Sages understood the warrant of the High Court in legislative matters to flow from here.

13 See above, n. 8.

And the man who willfully refuses to heed the Kohen who serves before Adonai your God or to [heed] the judge, this person shall be put to death, and you shall wipe out the evil from your midst. And all the people will hear and see, and they will no longer go astray.

The High Court's location is described in m. Sanh. 11.2,¹⁴ which details the process to be followed in the case of a sage who holds a contrary opinion and acts upon it, referred to as a *ממרא זקן ממרא* (*zaken mamre* / rebellious sage) [presented here with an explanatory note by the commentator Ovadiah of Bertinoro]:

[Regarding] a sage who is rebellious against the word of the court, as it says, "When a matter of judgment escapes you": There were three courts there. One sat at the entrance to the Temple Mount, one sat at the entrance to the Temple Court, and one sat in the Chamber of Hewn Stone.

[(Bertinoro): If a certain sage taught in his town and the court in his town differed with his teaching, he and the court of his town] travel to the court that sat at the entrance to the Temple Mount, and he [the sage] says: 'Thus did I expound and thus did my colleagues expound. Thus did I rule and thus did my colleagues rule.' If they [the court that sat at the entrance to the Temple Mount] had a tradition, they would tell them. If they did not, all of them go to the court that sat at the entrance to the Temple Court. He says: 'Thus did I expound and thus did my colleagues expound. Thus did I teach and thus did my colleagues teach.' If they had a tradition, they would tell them. If they did not, all of them go to the High Court that sat in the Chamber of Hewn Stone, from whom the Torah flows to all Israel, as it says, "from that place which Adonai has chosen."

If he returned to his town and studied and taught as he was wont to teach,¹⁵ he is not liable. But if he ruled that one should act [in contravention of the ruling of the High Court] he is liable.

14 זקן ממרא על פי בית דין שנאמר (דברים י"ז) כי יפלא ממך דבר למשפט וגו'. שלשה בתי דינים היו שם אחד יושב על פתח הר הבית ואחד יושב על פתח העזרה ואחד יושב בלשכת הגזית. [ברטינורה: זקן זה שהורה בעירו, ונחלקו בית דין שבעירו עליו]. באים [ברטינורה: הוא ובית דין שבעירו] לזה שעל פתח הר הבית ואומר כך דרשתי וכך דרשו חברי וכך לימדתי וכך לימדו חברי אם שמעו אומרים להם ואם לאו באין להם לאותן שעל פתח העזרה ואומר כך דרשתי וכך דרשו חברי כך לימדתי וכך לימדו חברי אם שמעו אומרים להם ואם לאו אלו ואלו באים לבית דין הגדול שבלשכת הגזית שממנו יוצאת תורה לכל ישראל שנאמר (דברים י"ז) מן המקום ההוא אשר יבחר ה' חזר לעיר ושנה ולימד כדרך שהיה למד פטור ואם הורה לעשות חייב.

See Sifre to Deut 17:8.

15 The Mishnah functions under the assumption that the High Court ruled against him, for otherwise how would he have become a rebellious sage.

Reinforcing the biblical idea of the centrality of the High Court and its power, *b. Sanh. 89a* establishes that the rebellious sage must be put to death in the most public of areas and at the most visible of times—before the High Court in Jerusalem during the Festivals, when Jews crowded in to worship in the Temple—underscoring the enormity of the High Court’s ability to compel Jews to follow the Sages’ interpretations of the Torah.

The storied departure of the Sanhedrin from the Temple Mount to Yavneh in the days before the destruction of the second Temple raised the question as to whether the authority to compel given to the High Court ceases to exist once the Court no longer sits in the Temple. At the heart of this question lies the Torah’s repetitive emphasis on the term המקום (*hamakom*), translated as “the place.” The term appears first in Deuteronomy 17:8, instructing the petitioner to go up to *hamakom*, “the place, which Adonai your God has chosen.” One sentence later, God commands us to act in accordance with the High Court’s decision, “from the place which Adonai has chosen.” The repetition of *hamakom* is unnecessary because we already know where the decision emanates from, having been told to go up to and seek clarification in that place. We also know that God chose that place. Does the redundant use of the term “*hamakom*,” thereby emphasizing the singular place God has chosen, limit rabbinic authority and the power to compel to the Temple Mount?¹⁶

Legal Authority After the Destruction of the Temple

Exercising midrashic artistry, the Sages extended their legal authority even though the location to which it was tied systemically lay in ruins. The High Court’s power would continue elsewhere, albeit in a limited manner.

To extend their authority to another place, the Sages limited their judicial power. They determined that the insistence on “the place” in verses 8 and 10, which recognized only the court seated at the Chamber of Hewn Stone as authoritative, applied only to matters of capital punishment,¹⁷ allowing the High Court to exercise its general authority in a place other than the Temple Mount.

16 In the language of the Bavli (Soṭah 45a; Sanh. 14b, 87a; ‘Abod. Zar. 8b), מלמד שהמקום גורם, that is, that the emphasis in the biblical dispensation on “the place” teaches that the place has an essential bearing.

17 Thus in the instant case the rebellious sage could only be put to death if he were rebellious

With the scope of their authority truncated, the Sages, as recorded in the Sifre, expanded the locus of their judicial seat to include Yavneh, the legendary site of the Sanhedrin from the eve of the destruction of the second Temple until the Bar Kokhba rebellion in 132 CE. On verse 8 Sifre states what seems to be the intent of the verse, identifying the Temple Mount, the place chosen by Adonai, as the source from which Torah would emanate. Sifre says of the Chamber of the Hewn Stone that “from there Torah flows to Israel.” Yet, in the next verse, Sifre expands the location of judicial authority to include Yavneh by declaring the words, “and you shall approach,” to be extraneous and the basis of their midrashic expansion.

ובאת—לרבות בית דין שביבנה

“and [you shall] approach”—this comes to include the [High] Court in Yavneh. (Sifre Deut, Šoftim, #153)

The midrashic transfer of the High Court’s authority from Jerusalem to Yavneh raises significant questions. If *hamakom* (“the place”) of the Temple Mount is no longer required to exercise judicial authority, does the requirement of the High Court fall by the wayside as well? What did the Sages intend by extending the authority of the High Court to Yavneh? Was Yavneh the only place other than the Temple Mount from which the High Court could exercise its authority, or was Yavneh simply the successor of Jerusalem and current seat of the High Court? Could other places become the new seat of judicial authority? Was their intent, perhaps, to extend authority beyond the High Court to any court?

Maimonides’ Construct

In his *Mishneh Torah*, Maimonides (known as Rambam) appears to claim that the authority of the High Court cannot be exercised in a location other than the Temple Mount. In the chapter concerning those who are rebellious (*Hilkhot Mamrim*) Rambam opens by specifying that:

against the High Court sitting in the Chamber of Hewn Stone (b. Soṭah 45a; b. Sanh. 14b and y. Hor. 11 [45d]), and that was the case with regard to all capital punishment (Sifre Šoftim #154, Midrash Lekah Tov to Deut 17:10). Indeed, it is reported that when they were unwilling to rule in capital cases, the Sanhedrin left the Chamber of Hewn Stone so as not to be called upon to do so (b. ‘Abod. Zar. 8b).

The High Court in Jerusalem are (sic) the basis of the Oral Torah (בית דין). The High Court (הגדול שבירושלים הם עיקר תורה שבעל פה). They are the pillars of instruction from whom law and judgment flow to all Israel, and it is upon them that the Torah relied, saying “in accordance with the instruction that they teach you”—this is a positive commandment. Whoever believes in Moses our teacher and his Torah is required to base religious activities upon them and rely on them.¹⁸

This statement of law identifies the High Court as sitting in Jerusalem. However, in his *Minyan haMitzvot* at the beginning of Mishneh Torah, Mitzvat Aseh # 174, Maimonides identifies the mitzvah as “to heed any High Court that shall arise in Israel (לשמוע מכל בית דין הגדול שיעמדו להם לישראל שנ' ועל המשפט אשר יאמרו לך) (תעשה),” restricting this exclusively to a High Court, but without restricting its locus to Jerusalem (or only to Jerusalem and Yavneh). Fleshing this out, Rambam writes in *Sefer haMitzvot*:

The 174th mitzvah is that [God] commanded us to heed the High Court and do whatever they command in matters of that which is forbidden and that which is permitted. And there is no difference in this regard between a thing ... that they agree is a hidden element of the Torah or an issue that they believe to be proper and a bolstering of the Torah. In every case we are required to heed and do it and to maintain their position and not cease to do it. That is the meaning of His saying, “in accordance with the instruction that they teach you.” As the Sifre says: “You shall act in accordance with ... the judgment that they have spoken to you”—this is a positive commandment.¹⁹

In the sixth chapter of Mishnat Ya'avetz, section 4, Jacob Emden (18th c. Germany) notes the apparent contradiction between Maimonides' statements in

18 בית דין הגדול שבירושלים הם עיקר תורה שבעל פה, והם עמודי ההוראה ומהם חק ומשפט יוצא לכל ישראל, ועליהן הבטיחה תורה שנאמר על פי התורה אשר יורוך זו מצות עשה, וכל המאמין במשה רבינו ובתורתו חייב לסמוך מעשה הדת עליהן ולישען עליהן.

Compare Sifre Shoftim #152–154 of which this appears to be a loose, somewhat expanded reflection.

19 והמצוה הקע"ד היא שצונו לשמוע לבית דין הגדול ולעשות כל מה שיצוו בו מאיסור והיתר. ואין הבדל בזה בין הדבר ... שיסכימו עליו שהוא סוד התורה או לפי ענין מן הענינים שיהיה דעתם שהוא ישר ושבו חזוק לתורה. הכל אנו חייבים לשמוע אותו ולעשותו ולעמוד על פיהם לא נעבור ממנו. והוא אמרו יתעלה (ר"פ שופטי') על פי התורה אשר יורוך. ולשון ספרי ועל המשפט אשר יאמרו לך תעשה. זו מצות עשה.

Both citations are from Deut 17:11. The Sifre referenced is Sifre Shoftim #154.

Mishne Torah and *Sefer HaMitzvot*, and points to what he sees as an intentional midrashic expansion of the law in Sifre #153 (cited above) as Rambam's source.²⁰ Emden, following the Sifre, reconciles Rambam's two statements as allowing the transfer of legal authority beyond the Temple Court. Despite the destruction of the Temple, Jewish religious sovereignty continued, but was limited to the court at Yavneh and its successors—to a High Court, or Sanhedrin, and not to any court. Rambam apparently believed that only such a national court fits the context of this Torah passage and deserves this level of regard.²¹

We should note that the Talmud itself considers whether rabbinic authority has biblical basis. In b. Šabb. 23a (also b. Sukkah 46a), the Babylonian Talmud asks how one could say the blessing “who has sanctified us with His commandments” regarding religious obligations enacted by the Sages such as the lighting of Ḥanukkah candles. The act does not arise from God's command, since Ḥanukkah was enacted long after the days of Moses. The Talmud records:

Said Rabbi Ḥiyya son of Ashi in the name of Rav: One who lights Ḥanukkah candles must recite a blessing ... What blessing does he recite? He recites: “who has sanctified us with His commandments by commanding

20 ונראה מקור לדברי הרמב"ם במנין המצוות, דתניא בספרי פרשת שופטים ובאת לרבות ב"ד שביבנה ... וכדבריו מפורש בירושלמי סנה' פי"א ה"ג ובאת לרבות ב"ד שביבנה. א"ר זעירא לשאילה ... כשיש ספק או מחלוקת בדין יש מצוה לבא ולשאול את ב"ד שביבנה ... ולכן כתב הרמב"ם במנין המצוות לשמוע מכל ב"ד הגדול שיעמדו להם לשראל ...

21 Ramban (Naḥmanides) rejects this understanding in his comments to Rambam's Mitzvah # 153, claiming that the authority of the Sanhedrin lapsed when it left its seat in the Chamber of Hewn Stone, and there was no High Court functioning as such in the period thereafter. Emden reconstructs his thinking to match that of *Sefer haḤinnukh*, that the authority that previously resided in the High Court devolved at that point into the more generalized authority claimed by the Ḥinnukh to be granted to the greatest sage of every generation, but nowhere in his writings that we have been able to find does Ramban address this question of the authority of individual sages absent a national court. More on the thinking of the Ḥinnukh follows.

Ramban's claim that there was no functioning High Court at Yavneh and thereafter appears gainsaid by the tradition reported on b. Roš Haš. 31a that the Sanhedrin was exiled “from the Chamber of Hewn Stone to Ḥanut, and from Ḥanut to Jerusalem, and from Jerusalem to Yavneh, and from Yavneh to Usha, etc.,” and by the edicts that are associated with the courts at Yavneh and Usha that have the earmarks of an authoritative national assembly. The old Jewish Encyclopedia entry concerning ‘Jabneh’ states, “After the destruction of Jerusalem the Great Sanhedrin removed to Jabneh, where it was presided over by Johanan b. Zakkai (R.H. 31a) ... Jabneh took the place of Jerusalem; it became the religious and national center of the Jews; and the most important functions of the Sanhedrin ... were observed there.” The newer *Encyclopedia Judaica* entry on “Sanhedrin” concludes, “After the destruction of the Temple the religious Sanhedrin was reconvened in Jabneh ... When Judea was destroyed ... the Sanhedrin moved to Galilee.”

us to light the Ḥanukah light.” And where did [God] command us? Rav Ivya said: “Do not veer (Deut 17:11).” Rav Neḥemiah (other versions: Rav Naḥman bar Isaac) says: “Ask your father and he will tell you; your elders and they will speak to you” (Deut 32:7).²²

Rav Ivya (in the fourth generation) seems to read Moses’ provision for the future, “do not veer,” as the source by which to understand the authority of later enactments. His interlocutor avoids that verse, perhaps because he limited its authority to interpretation and not to new enactments. Be this as it may, Emden points out that Maimonides rules expressly in accordance with Rav Ivya in *Mishneh Torah*, *Hilkhot Berakhot* 11:3:

All mitzvot that derive from the words of the Sages ... such as reading Megillah and lighting a candle for Shabbat and Ḥanukkah ..., eruv and handwashing, for each of them, before performing them, one blesses: “who has sanctified us with His commandments by commanding us” to do [the mitzvah]. And where has this been commanded in the Torah? For it is written there: “You shall act in accordance with that ... [which] they have spoken to you”. (Deut. 17:11) Thus the meaning of the words, that which they set forth, is: who has sanctified us with His commandments, in which He commanded that we listen to those who have commanded us to light a Ḥanukkah candle or read the Megillah.²³

22 אמר רב חייא בר אשי אמר רב: המדליק נר של חנוכה צריך לברך ... מאי מברך? מברך אשר קדשנו במצותיו וצונו להדליק נר של חנוכה. והיכן צונו? רב אויא אמר: מלא תסור. רב נחמיה אמר: שאל אביך ויגידך וקניך ויאמרו לך.

23 כל המצות שהן מדברי סופרים ... כגון מקרא מגילה והדלקת נר בשבת והדלקת נר חנוכה ... עירוב ונטילת ידים, מברך על הכל קודם לעשייתן אשר קדשנו במצותיו וצונו לעשות. והיכן צונו בתורה? שכתוב בה: “אשר יאמרו לך תעשה”, נמצא ענין הדברים והצען כך הוא אשר קדשנו במצותיו שציוה בהן לשמוע מאלו שצונו להדליק נר של חנוכה או לקרות את המגילה. *Kesef Mishneh* ad locum explains that this is according to the position of Rav Ivya, just citing a different clause from the same verse in order to set out positive language, rather than choosing the negative formulation of *lo tasur*.

The stance of Rav Neḥemiah, here, is unclear. Was he simply proposing a different verse by which to support the use of “who has sanctified us with His commandments by commanding us” (as seems to be the simple reading of the text) or was he objecting to the use of that phrase by arguing that the authority that derives from “do not veer” does not apply to rabbinic decrees, but only the lesser exhortation to heed the sages that might derive from the context of Moses’ speech at the end of his life.

A middle ground might be that he was agreeing that a blessing is appropriate, but imagined a more appropriate blessing, see *y. Sukkah* 3:4 [53d] which considers a berakhah of “*al mitzvat zekenim*” (on a commandment of the elders) as a possible blessing in such cases.

These rabbinic mitzvot, though we do not have a clear history in every case, were clearly arrived at before the time of the Mishnah, a time when the High Court still functioned.²⁴

What about legislative authority after the cessation of the High Court?

In several *sugyot*, the amoraim of the Babylonian Talmud express the notion that the biblical authority granted to the High Court would not apply, but some lesser rabbinic authority would remain.

A *sugya* in b. Ber. 19b rejects the notion that rabbinic rules have biblical authority. The *sugya* begins by stating that a person's honor cannot override a biblical command because "there is neither wisdom, understanding, nor counsel against the Lord" (Prov 21:30). It then notes two cases where concern for a person's honor seems to allow overriding a biblical prohibition. In each case the Talmud concludes that the infraction that was permitted was not of a biblical rule but of a rabbinic one. Apparently contradicting that conclusion, a *baraita* is then cited that specifies: "גדול כבוד הבריות שדוחה לא תעשה שבתורה"—"A person's honor is so great that it overrides a prohibition of the Torah." This *baraita*, too, is neutralized by Rav bar Shaba (fifth generation), who explains that k'vod habriot overrides only one biblical prohibition, the prohibition of "do not veer." He argues that "do not veer," although it is a biblical prohibition, relates only to the rabbinic proscriptions which follow from it and may be overridden for a person's honor, as in the previous cases. Anonymous students seek to insist that the biblical prohibition of "do not veer" is no less weighty than any other biblical command, but they are shot down by Rav Kahana (also fifth generation), who argues that "they associated all matters of the sages with the prohibition of 'do not veer'" (כל מילי דרבנן אסמכינהו על לאו דלא תסור), though their prohibition remains on the level of a prohibition of the Sages.²⁵

24 See Megillah reading—m. Meg. 1:1; Shabbat candle—m. Šabb. 2:1; Hanukkah candle—Baraita found in b. Šabb. 21b which includes the schools of Shammai and Hillel, Eruv—m. 'Eruv. 1:1; Handwashing—m. Yad. 1:1.

25 אמר רב יהודה אמר רב: המוצא כלאים בבגדו פושטן אפילו בשוק, מאי טעמא—אין חכמה ואין תבונה ואין עצה לנגד ד' ... תא שמע: גדול כבוד הבריות שדוחה [את] לא תעשה שבתורה. ואמאי? לימא: אין חכמה ואין תבונה ואין עצה לנגד ד'!—תרגמה רב בר שבא קמיה דרב כהנא בלאו דלא תסור. אחיכו עליה: לאו דלא תסור דאורייתא היא! אמר רב כהנא: גברא רבה אמר מילתא לא תחיכו עליה, כל מילי דרבנן אסמכינהו על לאו דלא תסור, ומשום כבודו שרו רבנן. Ramban points to the verb "associated with" (אסמכינהו) in the language of Rav Kahana as indicating that this was not a true derivation, but simply an exegetical association carrying no legal ramifications. [Comments to Maimonides' Sefer Mitzvot, Shoresh 1]. Be this as it may, the *sugya* itself indicates that this was his intent, for it is made up of things that appear to be *d'oraita* and are found to be *d'rabbanan*, with Rav Kahana's dictum playing the role of downgrading an apparent *d'oraita* to "just" a *d'rabbanan*.

Elsewhere, in b. *Hul.* 106a, Abaye (fourth generation) justifies reciting a blessing over hand-washing outside the context of Temple purity because “it is a mitzvah to heed the words of the Sages” (מצוה לשמוע דברי חכמים). On its face this appears to give biblical status (mitzvah) to heeding the Sages, but elsewhere Abaye uses the phrase to specifically distinguish a mitzvah of rabbinic provenance from one having biblical status. In b. *Yebam.* 20a and b. *Sanh.* 53b he identifies the “shniyot,” secondary prohibited relationships, as rabbinically restricted, not biblically restricted, and associates the term “mitzvah” with that status.

The term “mitzvah” also has a softer, non-technical meaning of “appropriate, best practice,” as in the dicta in *Berakhot*, “even if one has recited Sh’ma in the synagogue, it is a mitzvah to read it at bedtime” (אף על פי שקרא אדם קריאת שמע) (בבית הכנסת, מצוה לקרותו על מטתו) (b. *Ber.* 4b) and “it is a mitzvah to pray as the light wanes” (מצוה להתפלל עם דמדומי חמה) (b. *Ber.* 29b). The other sage opines that “it is a mitzvah to listen to the words of Elazar ben Arakh” (מצוה לשמוע דברי) (ר”א בן ערד) where the matter of rabbinic or biblical command is not apropos, clearly using the term “mitzvah” to indicate preferable practice. The phrase, “it is a mitzvah to heed the words of the sages,” appears again, used in this softer sense, in b. *B. Bat.* 48a and b. *Qidd.* 50a, concerning the coercion of a man into giving a *Get*. In b. *Hor.* 2b fidelity to the “mitzvah to heed the words of the sages” is even judged an error!

In all these cases the biblical injunction is not imputed to the work of the Sages. Indeed, the later anonymous layer of the Talmud uses the phrase “it is a mitzvah to heed the words of the Sages” exclusively in its softer sense, suggesting that, whatever was the case with early rabbinic enactments, to heed the words of the sages was merely considered highly desirable behavior.

Maimonides: Was There a National Court in the Talmudic Period?

In the Introduction to *Mishneh Torah*, Maimonides sets forth the devolution of halakhic authority across the ages. In it he expands on the well-known chain of tradition from Sinai to the *Mishnah*, naming forty links from Sinai through the *Mishnah* to the completion of the *Gemara* in the days of Rav Ashi. He stresses that the *Gemara* includes “things that were newly established by each court, generation after generation, from the time of our Holy Rebbe until the composition of the *Gemara*,”²⁶ and he says of these that “it is forbidden to veer from

them, as it says: 'Do not veer from that which they tell you neither right nor left.'²⁷ Were the courts throughout the period of the Talmud to be considered High Courts, so as to be granted that authority? Apparently, Maimonides felt that that was the case, for Maimonides writes, "The High Court of Seventy-One became defunct a few years before the composition of the Gemara."²⁸ He explicates that which, in his view, is the virtue of a national court that allows it to continue in place of the High Court in Jerusalem:

Ravina and Rav Ashi and their colleagues are the end of the great sages in Israel who transmitted the Oral Torah; who decreed decrees, enacted enactments and promulgated customs whose edicts, enactments and customs spread to all Israel wherever they were domiciled. After the court of Rav Ashi, who composed the Gemara (finishing it in the days of his son), Israel was dispersed in all lands, an exceeding dispersal ... All those courts that arose after the days of the Gemara in each and every place, who decreed or enacted or promulgated custom for their own constituents, or even for those of many nations—their actions did not spread to all of Israel ... and one does not instruct one court to decree a decree that was decreed by another court in its place ...

But all those things that are in the Babylonian Talmud, all Israel are responsible to follow those ... since all of those things were accepted by all of Israel.²⁹

Without granting that the court of Rav Ashi and Ravina was in fact an extension of the High Court of antiquity, one can concede Maimonides' reasoning that a national court, being similar to the High Court in Jerusalem or Yavneh, is empowered by the Torah to interpret the law for all Israel. Such a national

27 אסור לסור מהם שנאמר לא תסור מן הדבר אשר יגידו לך ימין ושמאל.
28 ובית דין הגדול של שבעים ואחד בטל מכמה שנים קודם חיבור הגמרא This could be read to mean 'many' or 'several' but the context is one of explaining why the provisions of the Gemara are valid and authoritative upon all Israel, and that seems to suggest that the formal court continued to exist, in the understanding of Rambam, until "a few years before the composition of the Talmud," or even "just a few years."

29 רבינא ורב אשי וחבריהם סוף גדולי חכמי ישראל המעתיקים תורה שבעל פה. ושגורו גזירות והתקינו התקנות והנהיגו מנהגות ופשטה גזירתם ותקנתם ומנהגותם בכל ישראל בכל מקומות מושבותם. ואחר בית דין של רב אשי שחבר הגמרא וגמרו בימי בנו נתפזרו ישראל בכל הארצות פיזור יתר ... וכל בית דין שעמד אחר הגמרא בכל מדינה ומדינה וגזר או התקין או הנהיג לבני מדינתו או לבני מדינות רבות לא פשטו מעשיו בכל ישראל ... ואין אומרים לבית דין זה לגזור גזירה שגורה בית דין אחר במדינתו ... אבל כל הדברים שבגמרא הבבלי חייבין כל ישראל ללכת בהם ... הואיל וכל אותם הדברים שבגמרא הסכימו עליהם כל ישראל.

court no longer exists “after the days of the Gemara.” According to Rambam, contemporaneous with the redaction of the Talmud, judicial authority and the right to compel as a biblical command ceased.

Sefer haḤinnukh: “The Greatest Sage” Replaces the National Court

Standing alone among traditional commentaries, the Medieval classic of Jewish thought about the mitzvot known as Sefer haḤinnukh³⁰ sets forth the broadest biblical basis for rabbinic authority. Ḥinnukh recognizes the authority of the High Court, yet, even in the absence of that court, he grants biblically commanded authority to the greatest sage in each generation, relying upon a different verse than the verse “do not veer.” Addressing this question in Mitzvah #495, he begins with distinctly Maimonidean language:

To heed the High Court and do whatever they command us with regard to the ways of Torah, that which is forbidden and that which is permitted ...

Having stated the basic mitzvah, he continues to reflect upon it:

What those of blessed memory said, that when the High Court is in Jerusalem, every dispute ... they ask it of the High Court and do as they instruct. Now, when due to our sins there is no High Court there, every dispute that should arise between sages in our generation, if the disputants are equally wise and we are unable to decide among them and do not know how the law should go, if it is a matter of Torah, follow the stringent one; and if a matter of rabbinic law, follow the lenient one ...³¹

Included in this mitzvah is also to heed and act in every age as the judge instructs, that is, the greatest sage who is among us in our time, as those

30 Dating to the middle or late thirteenth century, the author of Sefer haḤinnukh remains a matter of speculation. He identifies himself as a Levi from Barcelona, which led to the erroneous attribution to R. Aaron haLevi of Barcelona, who was active at that time, but the author's halakhic positions differ from those of R. Aaron's published texts. It has been argued that, by that measure, he should be seen as a disciple of Rashba (Shimon ben Avraham Aderet, Spain, 1235–1310). In an article in 1980, however, Israel Ta-Shma identifies the author as R. Pinḥas, older brother of R. Aaron (“*Meḥab'ro haAmiti shel Sefer haḤinnukh*,” *Kiryat Sefer* 55, no. 4 (Elul 5740/ September 1980): 787–790). That is the opinion, as well, of Charles Wengrov, editor of an edition of Sefer haḤinnukh in 1984.

31 This refers to a Talmudic principle enunciated in b. 'Abod. Zar. 7a.

of blessed memory expounded “the judge who shall exist in those days, Jephthah (Yiftah) in his generation is like Samuel in his generation.”³²

Whoever transgresses this and does not heed the greatest in the wisdom of Torah of that generation in all that they instruct, nullifies this positive commandment, and his punishment is very great, for this is the strong pillar upon which the Torah rests.³³

According to his presentation, this Torah passage, which dictates and directs how the Torah shall be propagated in future generations, addresses the absence of a High Court. Even though the Sifre limited its extension to the national High Court at Yavneh, and not to any court or sage, the Ḥinnukh chose to read it as extending the authority broadly to the greatest sage of every generation.

But as creative as the presentation of Sefer haḤinnukh is, his Talmudic source in b. Roš Haš. 25a–b does not support his interpretation. To begin, the citation “Jephthah (Yiftah) in his generation is like Samuel in his generation” is not associated with an exposition of the verses in Deuteronomy 17, rather, it is part of a complex of interpretations of Exodus 24:1 asking why the seventy elders of Israel referred to in that verse are not named. The conclusion is that their names are omitted in order to signal that any judge, even a lesser one, should be accepted by litigants, without demanding a judge as eminent as Moses, Aaron or Samuel. This primary teaching is then supported by two additional verses—Deuteronomy 17:8 and Ecclesiastes 7:10. A litigant must accept the ruling of the judge whom he encounters (שופט and not השופט, a judge and not the judge) even if the judge involved is not, as Sefer haḤinnukh claims, “the greatest sage who is among us in our time.” The discussion neither requires a litigant to seek the “the greatest sage” of the day to interpret religious law nor does it empower each generation’s rabbis with the authority and power of the High Court.

32 A conflated reference to a teaching found on b. Roš Haš. 25a–b. See the discussion that follows.

33 ... לשמוע בקול בית דין הגדול ולעשות כל מה שיצו אותנו בדרכי התורה באסור ומותר ומה שאמרו זכרונם לברכה [סנהדרין פ"ח ע"ב] שבזמן שבית דין הגדול בירושלם, כל מחלוקת ... שואלין אותו לבית דין הגדול ועושיין על פיהם. ועכשיו בעוונותינו שאין שם בית דין כל מחלוקת שיבוא בין חכמינו שבדורנו והחולקין יהיו שוים בחכמה, אם אין אנו ראויין להכריע ביניהן ולא נדע להיכן הדין נוטה, בשל תורה יש לנו לילך אחר המחמיר ובשל סופרים אחר המיקל ... ובכלל המצוה גם כן לשמוע ולעשות בכל זמן וזמן כמצות השופט, כלומר החכם הגדול אשר יהיה בינינו בזמננו, וכמו שדרשו זכרונם לברכה [ראש השנה כ"ה ע"ב] ואל השופט אשר יהיה בימים ההם, יפתח בדורו כשמואל בדורו, כלומר שמצוה עלינו לשמוע בקול יפתח בדורו כמו לשמואל בדורו. ועובר על זה ואינו שומע לעצת הגדולים שבדור בחכמת התורה בכל אשר יורו מבטל עשה זה. וענשו גדול מאד שזהו העמוד החזק שהתורה נשענת בו.

The author of *Sefer haḤinnukh* clearly felt the apparent vacuum of rabbinic authority after the close of the Talmud, but his attempted solution fails, and we could find no other rishonim addressing the question.

The Status of Halakhic Rulings in Our Day

With the cessation of judicial authority, is there any basis apart from voluntary consent that provides the power of compulsion for rabbis when rendering a decision? After the demise of the Sanhedrin, or after the consensus achieved by the reception of the Talmud, is all judicial authority consensual, requiring the questioner to first obligate himself or herself to the rabbi's authority and then seek his or her teaching, much as participants do in a secular arbitration? And if the questioner desires, may he or she, the one who will live with the outcome of the *P'saq*, make the final decision based upon the rabbi's guidance and explication of the legal positions and precedent, even if ultimately not following the rabbi's ruling?

Rabbi Tzvi Hirsh Chajes, a nineteenth century Galician Talmudist,³⁴ wrote two essays which considered this question: *Ma'amar Lo Tasur*, the third chapter of the third monograph in his book *Torat Nevi'im*, and the longer work *Mishpat haHora'ah*. He concludes that there is no continuing biblical authority vested in the rabbis of our day. The appearance of halakhic rules preferring the opinion of one sage over another, he says, indeed the very preference for the opinion of the majority over the minority, are, in our day, purely consensual, for all rulings are subject to the arguments even of an individual sage. What is necessary for a binding ruling, and is absent in our day, is an assembly representing the sages of the nation, what we have characterized as a national court, wherein the full spectrum of views is presented for all to consider. In particular he rests on the view expressed by R. Solomon ben Abraham (Rashba) Aderet that "one does not rely on a majority unless that majority arose ... from a give and take of them all."³⁵

Chajes writes:

34 The only classic commentator on the Babylonian Talmud to have earned a PhD in Liberal Arts and Philosophy, as required by the government of Austria of rabbinical candidates in 1846.

35 אין הולכים אחר הרוב אלא כשרבו ... מתוך משא ומתן של כלם
Rashba, Toldot Adam 104 cited in Beit Yosef, Ḥoshen Mishpat 13:9.

Every sage who in his time and place rules for his people ... according to his reasoning ..., he does not know that another sage has developed through his reasoning ... the opposite of what he has taught, therefore those rules are not obligatory upon us under the biblical command of “do not veer,” since the sages differ amongst themselves and we ourselves do not know which one of them should be given priority so that we should listen to him.³⁶

Once Chajes clarifies that in the historical period that arose after the sealing of the Talmud (continuing until today) there exists no biblical commandment or later Talmudic ruling to make rabbinic rulings authoritative and compulsory, the final decision how to behave must fall somewhere. If, as we assume, all Jews are מצווים, commanded by God to observe His commandments, then we must find a way to determine how to fulfill those commandments. If there is no rabbinic compulsory authority, then there is no escaping the conclusion that we as individuals, alone, hold the ultimate authority over our own behavior and the final decision (הלכה למעשה). Subtly, though, Chajes betrays he is still looking for authority (“which one should be given priority”), rather than staking out a more radical position such as that held by R. Solomon Luria in the introduction to Yam Shel Shlomo (printed at the front of the second volume).

In introducing Yam Shel Shlomo, composed in Poland in the sixteenth century, Luria notes that Joseph Karo (16th century Spain/Israel), in his introduction to Beit Yosef, explained that he ruled based on the majority opinion of the three primary “pillars of instruction,” Rif, Rambam and Rosh.³⁷ Luria, however, rejects any appeal to authority after the Talmud, writing:

36 וכל חכם שבזמנו ובמדינתו מורה לעדתו ... לפי סברתו ... ולא ידע כלל כי חכם אחר הוציא מסברתו ... היפך ממה שלמד הוא, לכן הדיני' הללו אינם לחוב עלינו במצוי' לא תסור, כיון שהחכמים בעצמם חולקים זה עם זה ולא נדע בעצמינו למי משפט הבכורה שנאזין אליו. [Torat Nevi'im, Zolkiew edition, 1836, third monograph, p. 12b].

37 Rif = R. Isaac Alfasi, 11th century Algeria; Rambam = R. Moses Maimonides, 12th century Egypt; Rosh = R. Asher ben Yehiel, late 13th / early 14th century Germany and Spain. Realizing that there would be occasions when opinions of all three are not to be discovered, Karo set himself as a tie-breaker a similar preponderance of the opinions of five lesser sages—Ramban, Rashba, Ran, Mordechai and Semag. (Ramban = R. Moses ben Nahman, 13th century Spain; Rashba = R. Solomon ben Avraham Aderet, 13th c. Spain; Ran = R. Nissim ben Reuben Gerondi, 14th century Spain; Mordechai = Mordechai ben Hillel haKohen, 13th century Germany; Semag = Sefer Mitzvot Gadol, a work by Moses ben Jacob of Coucy, 13th century France.) Note that in each case the Sephardic influence outweighs the Ashkenazic. Moses Isserles (16th century Poland) took note of this, and in his introduction to *Darkhei Moshe* proposed that the source of authority should not be a Sephard-heavy panel, but the greatest and most recent local sage, relying on the principal that the law is best

Since the days of Ravina and Rav Ashi there is no tradition to rule like one of the geonim or one of the aḥaronim, rather [we rule according to] whoever's words are deemed appropriate, based on an unambiguous proof according to the Talmud ...

Indeed, Luria continues to excoriate what he saw as the tendency to rule on the basis of people, *gedolim*, and not on the basis of argumentation.

Even though the generation that came before us, at this moment, in their weakness cannot fathom that any individual great sage (*gadol*) among the codifiers might err in his understanding, so they imagine that anything written in an ancient text should not be questioned ... Whatever comes from a man's mouth, even though ... his mouth [generally] produces pearls, still we say "a man is a man." Do we not also have, like him, a learned tongue and a reputation in [the study of] Talmud? ... Therefore, I will not believe in any one codifier over another, though there may be a great difference in their stature ... Rather, the Talmud determines. Clear proofs should be dispositive and [be allowed to] give their testimony.³⁸

Luria's language is strong, and does not easily apply to those of us who cannot hope to approach his "reputation in [the study of] Talmud," but it does expose the fact, as Chajes did, that substance should prevail. Without the High Court, public acceptance and a great sage's stature alone are not enough to demand compliance, requiring instead substantive proof.

determined by the latest authoritative opinion, that it should be assumed took all the material that preceded it into account (*hilkheta k'vatraei*). Of course, it is the failure of that global awareness which motivates the critique of Rambam and of Chajes.

38 מימות רבינא ורב אשי אין קבלה לפסוק כאחד מן הגאונים, או מן האחרונים. אלא מי שיכשרו דבריו להיותן מיוסדים במופת חותך על פי התלמוד ... אף שהדור שלפנינו לעת ההיא, מרוב חולשת ורפיון ידם, אין יכולת בשכלם להשיג, שגדול אחד מן המחברים יטעה בדמיונו, וסוברים מה שכתב בכתב ישן אין להרהר אחריו ... וכל מה שיוצא מפי אדם, אפילו ... פיו מפיק מרגליות. אפילו הכי אומרים מה גברא מגוברין. הלא יש גם לנו לשון למודים, ויד ושם בתלמוד כמותו ... ולכן לא אאמין לשום אחד מן המחברים יותר מחבירו. אף שיש הכרע גדול בין מעלותם ... מכל מקום התלמוד הוא המכריע, וראיות ברורות יצדקו ויתנו עדיהן.

Solomon Luria, Introduction to *Yam Shel Shlomo*, vol. II.

Judicial Discretion

Luria's point is seconded by Dr. Joel Roth in the fourth chapter of *Halakhic Process: A Systemic Analysis*, titled, "On Judicial Discretion and Precedent." He lifts up a Talmudic dictum, *ein lo la-dayyan ella mah she-einav ro'ot* (אין לו לדיין אלא) (מה שעניו רואות)—a judge has only that which he sees—as an essential element of post Talmudic halakhic jurisprudence. According to this dictum, no precedent is authoritative, but only serves as guidance for the determination of the current *poseq* or decisor. Obviously, this strong judicial discretion cannot have been operative when there was a High Court rendering authoritative decisions, but Roth is clear that it was operative in later generations, noting that "only the systemic principle '*ein lo la-dayyan ella mah she-einav ro'ot* stands as the ultimate judicial guide".³⁹

Menahem Elon reflects a similar understanding:

In the early period, a final ruling given by the national High Court ... served as authoritative precedent ... [However,] differences of opinion in [matters of] halakhah grew and, over time ... became not just a legitimate phenomenon, but a desirable phenomenon ... The measure which determines and discriminates between opinions in halakhah is the appropriateness of each opinion according to the Talmud that was edited by Rav Ashi and Ravina, based on "an unambiguous proof according to the Talmud ..." That is why Jewish law accepted the principle that 'the law is according to the latter [sages]' ... which comes to assure the freedom of decision to later [decisors].⁴⁰

Chajes, Luria, Roth, and Elon converge on one point: the radical freedom of the current *poseq*, the current decisor, to judge in the matter before him or her, but none addresses the question of what grants the *poseq* the authority to decide for an individual.

39 Joel Roth, *The Halakhic Process: A Systemic Analysis* (New York: Jewish Theological Seminary, 1986), 113.

40 בתקופה הקדומה, פסק דין סופי שניתן על ידי בית הדין הגדול של האומה ... שימש כתקדים המחייב ... נתרבו חילוקי הדעות בהלכה, ובמשך זמן, היו ... לא לתופעה לגיטימית בלבד, אלא אף לתופעה רצויה ... קנה המידה הקובע והמכריע לגבי חילוקי הדעות בהלכה היא נכונותה של כל דעה ודעה כפי שהיא בש"ס שסידר רב אשי ורבינא, כשהיא מיוסדת "במופת חותך על פי התלמוד" ... משום כך נתקבל בהלכה העברית העקרון של "הלכתא כבתראי" ... הבא להבטיח חופש הכרעה לאחרונים.

Menahem Elon, *HaMishpat haIvri* II, p. 802, with the internal citation from the Luria passage cited above.

Rabbi Dikhovsky: Consent Grants Authority

Rabbi Shlomo Dikhovsky, a member of the Supreme Rabbinical Court of Jerusalem, considered this problem regarding the source of the authority of modern *poseqim* in an article in the journal *K'vodah shel Torah* in 1995.⁴¹ He, too, notes Rambam's inability to extend the chain of authority beyond Ravina and Rav Ashi, and records Chajes' conclusion that indeed there is no such authority in our day; but he is unwilling to concede that conclusion.⁴²

Dikhovsky argues that the authority of any court always rested not just on the sage's credentials but on the acceptance by the public of his authority. He argues that what made a national court, the High Court of antiquity, authoritative was public acceptance, and that is what confirmed the authority of the Talmud. He brings as proof the following Talmudic colloquy from b. Sanh. 14a. When the Talmud reports that R. Judah ben Bava ordained R. Meir, the Talmud asks: "Did R. Judah ben Bava [really] ordain R. Meir? Didn't Rabbah bar Ḥannah say in the name of R. Yoḥanan: Whoever says that R. Meir was not ordained by R. Akiva is mistaken?! R. Akiva ordained him but they [the public] did not accept it. R. Judah ben Bava [subsequently] ordained him and they did accept it."⁴³ Public approbation was required for an ordination to be recognized. Dikhovsky argues, therefore, that even though there is no national court after the Talmud and no possibility of rulings for the whole of Israel, local courts continue to exist and to have local authority, because they have the approbation of the local community, even according to Maimonides. Thus, while the specific structure of the Court at the Chamber of Hewn Stone which the Torah foresaw no longer exists, we can extrapolate authority into our own day.⁴⁴

Rabbi Dikhovsky even extends this to the individual, recommending that every person should have a single rabbi whose authority he or she accepts. In this regard he cites a dictum of *Avot of Rabbi Nathan*:

41 Rabbi Shlomo Dikhovsky, "Ḥiyyuv haTziyyut L'Ḥakhmei haTorah b'Yameinu," *K'vodah shel Torah* (1995), no. 6, pp. 60–76.

42 חידוש זה הוא מאוד תמוה, כי לדבריו אין מצוה לשמוע דברי חכמים מאז נתבטל ב"ד הגדול. (p. 65).

43 ורבי מאיר, רבי יהודה בן בבא סמכיה? והא אמר רבה בר בר חנה אמר רבי יוחנן: כל האומר רבי מאיר לא סמכו רבי עקיבא אינו אלא טועה!—סמכיה רבי עקיבא ולא קיבלו, סמכיה רבי יהודה בן בבא—וקיבלו.

44 הסמכות המקומית לבני המקום או למי שקבלוה כוחה יפה ככוח ב"ד הגדול ... כוונת הרמב"ם שהסמכות הזאת ניתנה למוסד מוסכם אחד—ב"ד הגדול—ולא לכל חכם וחכם באופן אישי. וכיון שישנה הסכמת החכמים והעם לבי"ד או לחכם מקומי—להם נתונה סמכות ב"ד הגדול בזה. (Dikhovsky, 65).

Take a master for yourself— ... Rabbi Meir would say: One who learns Torah from one teacher (*rav*), to what is he likened? To one who had one field and planted part wheat and part barley, part olive and part [other fruit] trees. That person is replete with goodness and blessing. But when he learns from two or three, he is like one who has many fields, one wheat, one barley, one olives and one trees. That person is scattered among the lands, without goodness or blessing.⁴⁵

Dikhovsky's reliance on *Avot of Rabbi Nathan* may offer homiletic, but not normative, legal authority. Even more significant is that Rabbi Dikhovsky, seeking a solution with respect to authority, admits there is no textual authority. Everything, even perhaps the very authority of the classic sages after Talmudic times, rests on the consent of the governed. Perhaps this should come as no surprise. The very notion of covenant—of God not wanting to be an autocratic sovereign, but rather wishing to be our God by our assent—suggests that the very structures set up by the Torah to maintain the law should continue to function by our consent. Dikhovsky's argument fails, also, because it is not clear, reading the story as does Rabbi Dikhovsky, that R. Meir received the public's consent for the rabbinic authority of a *posek*, or simply the approval to be their teacher (*hora'ah*).

Answering Halakhic Questions Today

Citing Deuteronomy 14:1, while giving it a midrashic meaning generally understood to be far from its *p'shat*, b. Yebam. 13b establishes that communities should not foster internal divisions (לֹא תִתְגַּדְדוּ). Communal harmony, more than anything else, is the justification for the existence of a *poseq* or a *mara d'atra* (a local authority). When many autonomous people live together, they must have a procedure of decision for the commons in order to attain unanimity in communal practice.

If, however, we recognize each individual as the locus of autonomy, decisions of individual behavior are not subject to authority. Luria was right, of course, that he had a “reputation in Talmud” and the requisite skill and intellect

45 Avot of Rabbi Nathan A, ch. 8.

עשה לך רב ... היה רבי מאיר אומר הלומד תורה מרב אחד למה הוא דומה לאחד שהיה לו שדה אחת וזרע מקצתה חטים ומקצתה שעורים [ונוטע] מקצתה זיתים ומקצתה אילנות ונמצא האדם ההוא מלא טובה וברכה. ובזמן שלומד מב' ג' דומה למי שיש לו שדות הרבה אחד זרע חטין ואחד זרע שעורים ונטע אחד זיתים ואחד אילנות ונמצא אדם ההוא מפוזר בין הארצות בלא טוב וברכה.

to weigh the options and precedents before him to make an halakhic decision in the matters he faced. He did not need to turn to any other authority except as guideposts. This is not the case for any of us.

For us, *poshute yiddin*, common Jews, humility recommends we seek our betters in knowledge of Torah to lay out the halakhic debate in order to fully understand what precedent establishes and what options it allows. Setting out that survey should be the role of the rabbi. Then, to the extent that the individual understands the issues and wishes to resolve them within the range of halakhic debate, though not as proposed by a particular rabbinic authority, the individual should possess the prerogative to choose, for it is his or her own religious commitment and articulation in action of which we speak. If we value the religious commitment and intelligence of our laity and recognize their autonomous right of decision, this suggests that rabbis today adopt this new model of dispensing halakhic advice.⁴⁶ As souls who stood with our ancestors at Sinai and freely pledged to observe God's law, we can, each of us, choose to be active partners in the covenant with our God. Just as God chose to offer His covenant to each soul at Sinai,⁴⁷ that offer remains alive for each and every one of us at each and every moment in every act that we undertake.

46 The Committee on Jewish Law and Standards of the Conservative Movement [the Law Committee]'s self-understanding that it is purely an advisory committee within the Rabbinical Assembly, and not a High Court, thus fits well in this model.

47 A well-known midrash asserts that the Revelation at Sinai was tailored to each recipient. It's earliest (and shortest) form appears in Mekhilta d'R. Ishmael, Yitro, Masekhta D'baḥodesh, Parashah 9:

וכל העם רואין [את הקולות] ... וכמה קולות היו ... אלא שהיו משמיעים את האדם לפי כחו, שנ' קול ד' בכח (תה' כט, ד).

"All the people saw the voices ..."—How many sounds were there? Rather, [the voices] would teach each person according to his ability [*koḥo*], as it says (Ps 29:4): God's voice is powerful [*bakoah*].

A much longer and more explicit version is found at the end of Pesikta d'Rav Kahana 12:24:

הקב"ה כשהיה מדבר כל אחד ואחד מישראל היה אומ' עמי הדיבר מדבר ... א"ר יוסי בר' חנינא: ולפי כוחן של כל אחד ואחד היה הדיבר מדבר עמו. ואל תתמה על הדבר הזה, שהיה המן יורד לישראל, כל אחד ואחד היה טועמו לפי כוחו ... ומה אם המן כל אחד ואחד לפי כוחן היה טועם לפיו, בדיבר כל אחד ואחד שומע לפי כוחן. אמ' דוד: קול ד' בכח—קול ד' בכוחו אין כתי', אלא קול ד' בכח, של כל אחד ואחד.

When the Holy One was speaking, each and every person in Israel said: The commandment is spoken to me ... Said R. Yose son of R. Ḥanina: The commandment would speak to each one according to his ability. Do not be astonished by this, for the manna would fall for Israel, each one according to his taste ... If with regard to the manna, each tasted according to his palate, so with regard to the commandment, each heard according to his ability. Said David: "God's voice is powerful"—it does not say, God's voice exhibits its own quality, rather God's voice exhibits a quality—that of each and every one.

When congregants seek out a rabbi for personal halakhic guidance, for example the young couple described in the opening of this article, the rabbi should help the parents understand the fundamental halakhah and the sides of debate, then leave it to them to determine their final behavior, rather than present the rabbi's own judicial discretion as the ruling of an authority to whom they are bound. For in the time after the Gemara, when a Jewish High Court no longer exists, all Jews should strive to fulfill the Torah in line with modern notions of autonomy as independent actors serving God as we best understand based upon halakhic options. With the direction and advice of our authorities, every Jew should have the option to take a more active role in fulfilling his or her responsibilities, more engaged in the process of Torah, struggling, if he or she so desires, to reach the right, legal, ethical, and God-affirming decision. God is indeed our God, and we are continually standing at Sinai, and, through our engagement in our own halakhic behavior, we continually show our consent to the Covenant of our Creator.

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The Death of Rabbi Eliezer: Bavli Sanhedrin 68a

Jeffrey L. Rubenstein

It is most fitting that a volume in honor of Rabbi Joel Roth includes the study of a story about masters and disciples. Rabbi Roth has been the consummate teacher and rabbinic master at the Jewish Theological Seminary for decades. He taught me Talmud during my first year of study at JTS, and it is from Rabbi Roth that I learned many of the skills necessary for scholarship of rabbinic literature. To be counted among his disciples is a great honor.

The story of the death of R. Eliezer b. Hyrcanos in b. Sanh. 68a provides an instructive case of the literary artistry, cultural world, and compositional techniques of the late Bavli storytellers. The content addresses a tension between the merit of Torah and the punishment due to dissidents, and also grapples with issues of master-disciple relationships and the transmission of tradition through the generations. Comparison with an earlier version of the account in y. Šabb. 2:5, 5b provides a fascinating example of the methods of the Bavli's reworking of earlier sources to create new narratives. The story has received considerable scholarly attention: apart from the older biographical-historical oriented scholarship, there are detailed literary analyses by Alon Goshen-Gottstein¹ and Devora Steinmetz,² and studies by Yonah Fraenkel, Daniel Boyarin, Ruth Calderon, Shamma Friedman, Joshua Levinson, and others.³ Jacob

1 Alon Goshen-Gottstein, "A Lonely Sage on His Death-Bed: The Story of Rabbi Eli'ezer (Sanhedrin 68a), an Ideological Analysis" [in Hebrew], in *Mehkarim batalmud uvamidrash: Sefer zikkaron letirzah lifshitz*, ed. Moshe Bar-Asher, Joshua Levinson, and Berachyahu Lifshitz (Jerusalem: Bialik, 2005), 79–112.

2 Devora Steinmetz, "'Like Torah Scrolls That Are Rolled Up': The Story of the Death of Rabbi Eliezer in *Sanhedrin* 68a," in *Tiferet Leyisrael: Jubilee Volume in Honor of Israel Francus*, ed. J. Roth, M. Schmelzer, and Y. Francus (New York: Jewish Theological Seminary, 2010), 153–179.

3 Yonah Fraenkel, "Time and Its Shaping in Aggadic Narratives" [in Hebrew], in *Studies in Aggadah, Targum and Jewish Liturgy in Memory of Joseph Heinemann*, ed. J.J. Petuchowski and E. Fleischer (Jerusalem: Magnes, 1981), 147–152; Daniel Boyarin, *Border Lines: The Partition of Judaeo-Christianity* (Philadelphia: University of Pennsylvania Press, 2004), 171–180; idem, *Dying for God* (Stanford: Stanford University Press, 1999), 36–41; Ruth Calderon, "Literary Tropes in the Aggadic Narratives of the Babylonian Talmud" [in Hebrew] (Ph.D. diss., Hebrew University, 2006), 135–149; Joshua Levinson, "Enchanting Rabbis: Contest Narratives between Rabbis and Magicians in Late Antiquity," *JQR* 100 (2010): 54–94; Shamma Friedman,

Neusner's biographical work and Yitshaq Gilat's comprehensive study of R. Eliezer's halakhah are also helpful, especially regarding the halakhic elements of the story.⁴ All of this work has informed this study, although I make no attempt at comprehensive engagement with every scholarly study. My reading differs from these previous studies both in its general emphasis and on various interpretive points, and I also devote particular attention to the reworking of sources, dating, and Talmudic context. I begin with the literary analysis of the Bavli story and then proceed to a comparison with the Yerushalmi account in order to identify and assess the nature and sources of the Bavli's reworking. The last section considers the redactional context in Tractate Sanhedrin. The text and translation are based on MS Munich 95 with variants noted in the appendix.

[1א] כשחלה ר' אלע' נכנסו חכ' אצלו והו' יושב בקינוף שלו והן יושבין בטרקלין שלו
 [2א] אותו היום ע"ש היה ונכנס הורקנו' בנו לחלוץ תפילין גער [בו] ויצ' בנוזיפ'
 [3א] א' להן חביריו של אב' כמדומ' אני שדע' של אב' נטרפ' א"ל דעתו ודע' אמו
 נטרפ' היאך מניחין איסור סקיל' ועוסקין באיסו' שב[ו]ת

[בו] כיון שראו חכמ' שדעתו מיושב' עליו נכנסו וישבו לפניו ברחו' ד' אמו'
 [בוא] א' להן למה באת' אמרו ללמוד תור' באנו
 [בוב] עד עכשו למ' לא באתם אמרו לו לא היה לנו פנאי
 [בוג] א' להן תמה אני אם ימותו מית' עצמן א"ל ר' עקי' שלי מהו א"ל שלך קש'
 משלהם

[ב2א] נטל שני זרועותיו [והניחם על לבו ואמ' אוי לכם שני זרועותי] שאתם כשני
 ספרי תור' שנגללין הרב' תור' למדתי הרב' תור' לימד' הרב' תור' למדתי ולא
 חסרתי מרבותי אפי' ככלב המלקק מן הים הרב' תור' לימדתי ולא חסרוני תלמידי
 אפי' כמכחול בשפופר'
 [ב2ב] ולא עוד אל' שאני שוני' שלש מאו' הלכו' בבהר' עזה ולא היה אד' ששאלני בהן
 דבר מעול'
 [ב2ג] ולא עו' אל' ששוני' אני שלש מאו' הלכות ואמרי לה שלש' [אלפים] הלכו'
 בנטיע' קישואין ולא היה אד' ששאלני בהן דב' מעול' חוץ מעקיב' בן יוסף פע' אח'

"Now You See it, Now You Don't: Can Source-Criticism Perform Magic on Talmudic Passages about Sorcery?," in *Rabbinic Traditions between Palestine and Babylonia*, ed. R. Nikolsky and T. Ilan (Leiden: Brill, 2014), 43–61. For additional studies, see Inbar Raveh, *Me'at meharbeh* (Or Yehudah: Devir, 2008), 160–166; Azaria Baitner, *Yavneh Stories* [in Hebrew] (Ramat Gan; Bar-Ilan University Press, 2011), 56–100.

4 Jacob Neusner, *Eliezer ben Hyrcanus: The Tradition and the Man*, 2 vols. (Leiden: Brill, 1973), 1:408–415; 2:222–223; Y. Gilat, *R. Eliezer ben Hyrcanus: A Scholar Outcast*, trans. E.J. Frank (Ramat Gan: Bar-Ilan University Press, 1984).

אני והו' מהלכ' בדרך א' ל' ר' למדני דב' אח' מנטיע' קישואין אמרתי דב' אחד
 נתמל' כל השד' כול' קישואין א' ל' ר' לימדתני נטיעתן למדני עקירתן אמרתי דב'
 אח' נתקבצו כולן למקו' אחד

[א3] אמרו לו ר' הכדור והאמון והקמיע וצרור המרגלי' ומשקל' קטנ' מהו א' להן הן
 טמ' וטהרתן במה שהן
 [ב3ב] מנעל שעל גבי האימוס מהו א' להו טהור ויצת' נשמתו בטהר'
 [ב3ג] עמ' ר' יהוש' על רגליו וא' הותר נדר הותר הנד'

[ג] למוצאי שב' פגע בו ר' עקי' בין קסרי ללוד היה מכ' בבשרו עד שה' דמו שותת
 לארץ פתח עליו בשור' אבי רכב ישר' ופרשיו הרב' מעו' יש לי ואין לי שולחני
 להרצותן

[A1] When R. Eliezer became sick, the Sages entered his [abode]. He was sitting on his canopied bed, and they were sitting in his receiving room.

[A2] That day was the eve of the Sabbath, and Hyrcanos, his son, entered to remove his tefillin. He [R. Eliezer] rebuked him [Hyrcanos] and he left in disgrace.

[A3] He [Hyrcanos] said to them, "Colleagues of my father. It seems that my father's mind is confused." He [R. Eliezer] said to him, "Your⁵ mind and your mother's mind are confused. How can one neglect a prohibition [punishable by] stoning, and busy oneself with a prohibition [that is merely a matter] of Sabbath rest [*shevut*]"

[B1] When the Sages saw that his mind was lucid, they entered and sat before him at a distance of four cubits.

- (a) He said to them, "Why have you come?" They said, "We have come to learn Torah."
- (b) [He said to them,] "Why have you not come until now?" They said to him, "We had no free time."
- (c) He said to them, "I will be amazed if you all⁶ die natural deaths." R. Akiba said to him, "What about my [death]?" He said to him, "Yours will be more severe than theirs."

5 Literally, "His mind and his mother's mind," using the third person for the second. Cf. the manuscript variants in the appendix.

6 Literally, "if they die," using the third person for the second.

[B2]

- (a) He took his two arms and placed them on his chest. He said, “Woe to you, my two arms, which are like two rolled Torah scrolls. I have learned a great amount of Torah and I have taught a great amount of Torah. I have learned a great amount of Torah—and I did not take away from my masters even as much as a dog laps up from the sea. I have taught a great amount of Torah—yet my students have not taken away from me even as much as a painting stick [takes out] of its tube.
- (b) “Not only that, but I recite 300 laws about the bright spot⁷ and no one ever asked me a question about them.
- (c) “Not only that, but I recite 300 laws—and some say 3000 laws—about the planting of cucumbers, and no one ever asked me a question about them, except for Akiba b. Yosef: Once he and I were walking on our way, and he said to me, ‘My master. Teach me one thing about the planting of cucumbers.’ I said one thing, and the whole field filled up with cucumbers. He said to me, ‘My master: You taught me about their planting. Teach me about their uprooting.’ I said one thing and they all gathered in one place.”

[B3]

- (a) They [the Sages] said to him: “Master: A ball, a shoemaker’s last, an amulet, a bag for pearls and a small weight—what is the law?” He said to them, “They are susceptible to impurity, and they are made pure [by immersion] as they are.”⁸
- (b) [They said to him,] “A shoe on the last—what is the law?” He said to them, “It is pure.”⁹
- (c) And his soul departed with “Pure.”¹⁰ R. Yehoshua stood on his feet and said, “The vow is annulled. The vow is annulled.”

7 A potential sign of leprosy (*nega'im*). See Lev 13:4–56; m. Neg. 11.

8 That is, they may be immersed in their present state, without removing the inside filling; see n. 47.

9 I.e., it is not susceptible to impurity, as it is not yet complete, hence it does not have the status of a vessel (*keli*).

10 Or “his soul departed in purity.” I prefer to take this as a reference to R. Eliezer’s last word; see the analysis below. The phrasing probably derives from the end of Mishnah Kelim (m. Kelim 30:4): “Happy are you *Kelim*, that you entered in impurity and departed in purity.” In the parallel use of this phrase in b. B. Meṣ. 86a, it is clear that the reference is to the last words of Rabbah bar Naḥmani.

[C] After the Sabbath, R. Akiba encountered him [= R. Eliezer's funeral procession]¹¹ between Caeserea and Lod. He [Akiba]¹² was striking his flesh until his blood gushed upon the earth. In the row [of mourners] he [Akiba] opened [his eulogy, and said]: "*My father! My father! Israel's chariot and horsemen* (2 Kgs 2:12).¹³ I have many coins and no moneychanger to sort them."

Literary Analysis

The story can be divided into three parts.¹⁴ In the first part, R. Eliezer's son Hyrcanos approaches his father when close to death. From their interchange, the Sages learn that R. Eliezer is in command of his faculties and therefore can be engaged in serious discussion. The second part narrates that discussion, which culminates in the annulment of the ban. In the third part R. Akiba expresses his grief and pronounces a eulogy.

The second and longest part, the heart of the story, itself exhibits a tripartite structure (B₁, B₂, B₃), each third of which can be further subdivided into three sections. In the first third R. Eliezer interrogates the Sages with two questions (B_{1a}, B_{1b}) and then makes a pronouncement relating to their deaths (B_{1c}). In the second third R. Eliezer makes three laments (B_{2a}, B_{2b}, B_{2c}). In the final third the Sages interrogate Eliezer with two questions (B_{3a}, B_{3b}), and then R. Yehoshua makes a pronouncement related to his death (B_{3c}). Thus the first and third sections of this part reverse the direction of the questioning while corresponding almost perfectly in their pattern, two questions and a pronouncement.¹⁵

11 The identities of the subject and object of this line are difficult to determine. One could interpret that R. Akiba encountered R. Yehoshua between Caeserea and Lod, and that R. Yehoshua was striking his flesh and then pronounced the eulogy. In the PT R. Yehoshua indeed articulates the eulogy, but since R. Akiba appears nowhere in the PT, it is questionable whether that version should influence our understanding of the Bavli (see below). In light of R. Akiba's prominent role in the narrative, I take him to be the subject here.

12 See the previous note.

13 This phrase also appears in 2 Kgs 13:14.

14 Cf. the five part chiasmic structure in Goshen-Gottstein, "Lonely Sage," 81–82. In fact our structures are quite similar, as he considers my B₁, B₂ and B₃ as independent units, resulting in the same five divisions (A, B₁, B₂, B₃, C).

15 I say "almost" because section B_{1c} actually contains two statements of R. Eliezer, while B_{3c} contains the narrated datum that his soul departed prior to R. Yehoshua's statement. So the structure is not perfectly symmetrical, but close enough, in my opinion, to facilitate memorization and highlight the relationship between the parts, which I believe are the

Shifts in time, the changing location of the Sages, and changes in the status of R. Eliezer contribute to the tripartite structure. The first part takes place at “the eve of the Sabbath,” at dusk. The third part takes place “after the Sabbath.” It is not stated exactly when the second part takes place. Since it comes after the first part, it is reasonable to assume that it takes place once the Sabbath has begun, i.e., on the Sabbath. In the first part the Sages wait in R. Eliezer’s receiving room. In the second part they enter his bedroom. In the third part they—or at least R. Akiba—come upon R. Eliezer’s funeral procession between Caeserea and Lod.¹⁶ In the first part R. Eliezer is sick, but alive. The second part narrates his death. The third part takes place after his death. Thus the story exhibits a finely crafted tripartite structure, as is characteristic of many other Bavli stories.

This story may be designated a “deathbed scene” a loose narrative type attested several other times in the Bavli (with more examples in other rabbinic documents), in which the dying sage bids his final farewell to his disciples. In an attempt to emulate similar studies of such scenes in Christian Scriptures and to define a narrative form, Anthony Saldarini collected these sources and listed “ten identifiable elements.”¹⁷ But no story has all the elements, and some are missing so many that hypothesizing such a form yields an analytical tool of limited utility. Nevertheless, we do gain a sense of the variety of deathbed scenes by which to compare and contrast our story. The Bavli, in fact, preserves a more typical deathbed story of R. Eliezer himself in b. Ber. 28b:

When R. Eliezer became sick, his disciples entered to visit him. They said to him: “Our Master. Teach us the path of life that we may merit thereby life in the next world.” He said to them: “Be careful about the honor of your colleagues, and keep your sons from meditation, and seat them in between the knees of scholars, and when you pray, know before whom you stand. And thus you will merit life in the next world.”¹⁸

main functions of such structures. It should also be noted that both B1c and B3c mention death (the first, that of the Sages, the second, that of R. Eliezer).

- 16 In addition, R. Akiba *sits* before R. Eliezer (at a distance of four cubits) in B1, *walks* with R. Eliezer in the flashback in B2c, and mourns the *prone* corpse of R. Eliezer in C.
- 17 Anthony J. Saldarini, “Last Words and Deathbed Scenes in Rabbinic Literature,” *JQR* 68 (1977): 28–45. The elements are: “1. Introductory phrase; 2. the disciples enter (to visit); 3. a dramatic action or question which provokes a reaction from the disciples and then a response from the master; 4. a request for teaching; 5. a saying or teaching; 6. instructions (especially burial instructions); 7. exhortation; 8. prediction; 9. appointment of a successor; 10. blessing.” Calderon, *Literary Tropes*, 168, assembles a more coherent corpus.
- 18 A different account of R. Eliezer’s death appears in y. ‘Abod. Zar. 3:1, 42c: “When R. Yoḥanan b. Zakkai was dying he said: Clear out the house on account of impurity and prepare a

Other such stories are told of R. Yoḥanan b. Zakkai, R. Yehuda HaNasi, R. Ishmael and R. Yose b. Kisma.¹⁹ But while our story also takes place on R. Eliezer's deathbed and begins with the common introduction, "When R. So-and-so became sick ...,"²⁰ the second part inverts the more typical deathbed scene to a certain extent. For the Sages question Eliezer *not* in order to learn precious new traditions but rather to ascertain whether Eliezer's rulings now conform to their own, while R. Eliezer laments his disciples' *lack* of interest in his wisdom. In this case the "form" of the deathbed scene has been pressed into service for another purpose, namely the drama of the annulment of the ban placed upon R. Eliezer, which is the true interest of the storytellers. The use of the deathbed scene rather than another type of story for an account in which R. Eliezer bemoans his isolation and his failure to transmit traditions creates a powerful irony in light of the expected content of such stories. The initial dissonance between form and content, between the audience's expectations and the dying words of R. Eliezer, contributes to the narrative tension concerning the ultimate fate of the banned sage.

An unusual characteristic of the story is its dependence on another talmudic story, namely the banning of R. Eliezer after the controversy of the legal status of the "Oven of Akhnai."²¹ In general rabbinic stories are self-contained, fictional compositions that should be interpreted on their own terms—the deathbed scene at b. Ber. 28b, for example, is a separate tradition which should not be reconciled with our story.²² Nevertheless, all stories assume a certain amount of knowledge, and the banning of R. Eliezer was apparently so widespread a tradition that the storytellers assumed their audience would know this element. That the Sages sit at a distance of four cubits (B₁) is clearly due to his banned status, and R. Yehoshua's declaration "The vow

throne for Hezekiah King of Judah. When R. Eliezer, his disciple, was dying he said: Clear out the house on account of impurity and prepare a throne for R. Yoḥanan b. Zakkai." In b. Sanh. 101a R. Eliezer falls ill and various sages, including R. Akiba, visit him.

19 b. Ber. 28b; b. Ketub. 103a–b; b. Šabb. 15a; b. 'Abod. Zar. 18a.

20 Of the stories Saldarini collects, those that begin with the introductory word/phrase "When R. So-and so became sick ..." or "When he was dying, R. So-and-so said ..." are the closest to what might be designated a form. On this phrase as a literary trope see Ruth Calderon, *Literary Tropes*, 169–173.

21 Steinmetz, "Like Torah Scrolls," 156. On Bavli stories and aggadic traditions that presuppose or show awareness of other Bavli stories, see Jeffrey L. Rubenstein, *Talmudic Stories: Narrative Art, Composition, and Culture* (Baltimore, MD: Johns Hopkins University Press, 1999), 254–255; idem, *Stories of the Babylonian Talmud* (Baltimore, MD: Johns Hopkins University Press, 2010), 86.

22 Yonah Fraenkel, "Hermeneutical Questions in the Study of the Aggadic Narrative" [in Hebrew], *Tarbiz* 47 (1978): 157–161.

is annulled" (B3c) refers directly to the ban (= vow), although it was not mentioned previously in the story. Beyond the general awareness of the tradition of R. Eliezer's banning, there are specific literary allusions to the Bavli's account of the ban as narrated in b. B. Meṣ. 59b. The portrayal of R. Yehoshua's posture—he "stood on his feet and said, 'The vow is annulled'"—alludes to the description of the same R. Yehoshua who "stood on his feet and said, 'It is not in heaven' (b. B. Meṣ. 59b)."²³ Moreover, as we shall see below, the halakhic questions that the Sages ask R. Eliezer link to that account, and were evidently chosen deliberately to create a mental connection. These strong intertextual signs may have implications for the dating of the story, and will be considered presently.

The opening of the story is suffused with liminality.²⁴ R. Eliezer lies sick on his deathbed, poised between life and death.²⁵ The time is the eve of the Sabbath, on the threshold between day and night, between profane and sacred time. R. Eliezer has been banned, confined to the margins of the community of Sages, neither insider nor outsider. And the Sages initially station themselves in R. Eliezer's "receiving room" (*traklin*), on the threshold between the outside world and his inner domain.²⁶ The term *traklin* (tricladium), moreover, may evoke the famous maxim of m. 'Abot 4:16: "R. Yaakov stated: This world is similar to a passageway (*prozdor*) to the next world. Prepare yourself in the passageway so that you can enter into the receiving room (*traklin*)."²⁷ Of course there is something inherently liminal about a deathbed scene, the boundary between life and death. But here the additional liminal markers—liminal location, liminal time, liminal social status—are appropriate for the prime narrative tension, which centers on the question of the ban: will R. Eliezer die while under the ban, and therefore forever be judged an outcast: m. 'Ed. 5:6 directs that "they stone the coffin of anyone who dies under the ban"? Or will he be absolved and reintegrated into the rabbinic fold? His imminent death makes the resolution

23 See Goshen-Gottstein, "Lonely Sage," 91 n. 37. Likewise, the description of the Sages sitting at a distance of four cubits uses the same language as describes R. Akiba sitting distant from R. Eliezer in the "Oven of Akhnai" story.

24 See Calderon, *Literary Tropes*, 132–133.

25 This is clear from the opening term, *kesheḥalah*, which introduces several of these rabbinic deathbed scenes. See Calderon, *ibid.*

26 See Marcus Jastrow, *A Dictionary of the Targumim, the Talmud Babli and Yerushalmi and the Midrashic Literature* (New York, 1893; repr. New York: Judaica Press, 1989), 554; Jacob Levy, *Wörterbuch über die Talmudim und Midraschim*, 4 vols. (Berlin: B. Harz, 1924), 2:191. Several sources mention the *traklin* abutting a bedroom, as seems to be the arrangement here. See y. Roš Haš. 4:2, 59b: "Even [if they moved] from the receiving room (*traklin*) to the bedroom (*qiton*);" b. Yoma 15b: "small rooms (*qitoniot*) that open to a receiving room (*traklin*)."

27 Or "enter the banqueting room."

of this question a matter of urgency, as he can no longer remain in the liminal state of a *menudeh*. The rabbis must decide whether it is to be inside or outside.

R. Eliezer is first approached by his son Hyrcanos who wishes to remove his father's tefillin. This is ostensibly because tefillin should not be worn on the Sabbath, as clarified by the ensuing explanation: Hyrcanos should first be concerned with lighting the Sabbath lamps, for should he delay until after the Sabbath begins and then light them, he would transgress a primary category of Sabbath labor and incur a severe punishment. If he delays removing the tefillin until after the Sabbath begins, on the other hand, it is merely a matter of "Sabbath rest" (*shevut*), a rabbinic stringency.²⁸ Tefillin, however, are also not to be worn after death, so it may be the imminent death, not the imminent Sabbath, that calls for their removal.²⁹ This perspective, though apparently not shared by the characters within the story, creates an interesting irony for the audience, and contributes to the sense of urgency. At any rate, R. Eliezer's rebuke of his son suggests that the old sage is just as irascible as ever. That his rebuke makes excellent halakhic sense indicates to the Sages that his intellect is intact even as his body withers. Seeing that "his mind was lucid" the Sages approach R. Eliezer. Their purpose, as will become clear in due course, is to find a way to annul the ban.³⁰

That the Sages enter in place of the son is a prelude to the reincorporation of R. Eliezer into the rabbinic group. Well known are the rabbinic sources that compare the relationship between master and disciple to that of father and son, and that give precedence to a disciple's obligations to his master over his father.³¹ To this point the banned R. Eliezer has been isolated from the community of Sages, as evident from the ensuing dialogue (Bib; "why have you not come until now?"). Though no longer a rabbinic master of the study house or academy, he has of course remained a father in his household and an authority for his sons. With the ensuing annulment of the ban his identity returns to that of a rabbinic master with bonds to disciples surpassing those to his sons.

28 Rashi, s.v. *lahalots*, explains the concern is that a man might leave his house and enter the public domain while wearing his tefillin, and thus violate the prohibition against carrying from public to private domains. Hence the Sages forbid wearing them altogether on the Sabbath.

29 b. Ber. 18a forbids wearing tefillin in a cemetery, and the ensuing discussion limits the rule to within four cubits of a corpse. And see Fraenkel, "Time and Its Shaping," 149.

30 Boyarin, *Border Lines*, 318–319 n. 114, suggests that "clarity of mind is a cipher for 'orthodoxy,' as it very frequently is in the discourse of the period (in Greek and Latin, at least)." I cannot find any other example of such a usage in rabbinic literature. The phrase always means simply that one is in possession of his mental faculties.

31 See m. B. Meṣ. 2.1. And see Boyarin, *Carnal Israel*, 211 n. 22 and the sources listed there.

Adumbrating that movement, Hyrcanos is rebuked, baffled, and displaced by the Sages. At the conclusion of the story Akiba laments “My father, my father,” explicitly embracing R. Eliezer as his spiritual father.³²

Although (or because) R. Eliezer’s mind is lucid, he appears none too pleased at the visit of the Sages, no doubt noticing that they sit “at a distance of four cubits” as mandated by the ban (B₁). Their answer, that they have come “to learn Torah,” is half-true at best. While they do intend to learn Torah, their real interest is whether R. Eliezer has renounced his views so that they may annul the ban. One might say that they have come “to learn [if the] Torah” they will hear from him now conforms to the majority view. In any case, the real reason that they have not come previously is on account of the ban.³³ R. Eliezer immediately calls them on their dissembling (lucid!): had they truly come “to learn Torah,” they surely had ample time to approach him previously, and need not have waited until his deathbed. He responds to their feeble excuse—“we had no free time”—with predictions of their martyrdom, by which the storytellers presumably allude to the traditions of persecutions of the Sages following the Bar Kokhba rebellion. This harsh and hostile prognostication (assuming it is not meant to be an expression of R. Eliezer’s hopes or prayers—that would probably be too vicious for even the most bitter of Sages³⁴) continues the characterization of R. Eliezer as quick-tempered and antagonistic that was evident in the rebuke of his son, and hints that there will be no easy reconciliation, despite the best intentions of the rabbis.³⁵

This initial dialogue between R. Eliezer and the Sages also introduces R. Akiba, who will reappear twice more (B_{2c}, C), and whose presence in the story is partly responsible for the redactional context (see below).³⁶ Akiba thus constitutes a type of hinge that links the parts of the narrative together. That

32 Cf. Steinmetz, “Like Torah Scrolls,” 163.

33 See Joseph Hayyim b. Elijah al-Hakham, *Sefer Ben Yehoyada*, 7 vols., ed. Yeshua b. David Salim (Jerusalem, 1998), ad loc. (4:55): “It seems that just as it is permitted to lie (*leshanot*) on account of [preserving peace], so it is permitted to lie to [preserve] honor, since it was not polite to tell him that they had not come because they had banned him.”

34 Rashi, s.v. *shelakh*, explains that R. Akiba had the greatest potential, and could have learned more from R. Eliezer than the other Sages. According to Rashi, then, the harsh deaths seem to be seen by R. Eliezer as punishment. Neusner, *Eliezer ben Hyrcanus*, 1:41, suggests that R. Eliezer curses the Sages.

35 Goshen-Gottstein, “Lonely Sage,” 84, suggests that the predictions of death are a function of the quasi-prophetic ability that Sages sometimes display on their deathbeds, and reflects no animosity or ill-will on his part. To me, this interpretation attempts to white-wash the hostility entailed in the “prophecy;” see the previous note.

36 Printings begin with “R. Akiba and his colleagues entered” in place of “Sages” but this reading is wanting in the mss.

his death will be “more severe” than those of his colleagues is particularly ironic in light of R. Eliezer’s own observation that Akiba was the only sage who asked him questions (B2c) and who also mourns Eliezer in a deep and poignant manner (C). The alienation of R. Eliezer from even his most devoted colleagues is profound.

The second part of the story consists of R. Eliezer’s parting words, but in place of transmitting traditions he laments the lack of transmission of his store of knowledge. This conception of Torah entails stasis and decline. The corpus of Torah is static insofar as he describes a fixed body of tradition, apparently revealed on Sinai and, ideally, passed down from master to disciple in its entirety. Yet Eliezer seems to concede that such ideal, complete transmission rarely occurs, as not even he himself succeeded in receiving from his teachers but a fraction of their body of knowledge, and so too his disciples from him. The inevitable result is a precipitous reduction in the body of Torah within a mere generation or two.³⁷ This pessimistic model of stasis and decline contrasts sharply with the conception of Torah portrayed in other late Bavli narratives. When Resh Laqish dies, for example, R. Yoḥanan laments, “When I made a statement, the son of Laqish would object with twenty-four objections, and I would solve them with twenty-four solutions, and thus our traditions expanded” (b. B. Meṣ. 84a). Here dialectical argumentation opens up new interpretive possibilities which render Torah a fertile and productive enterprise. It is perhaps not accidental that R. Yoḥanan laments the death of the study-partner with whom he engaged in debate, whereas R. Eliezer laments his own death. For R. Eliezer, the unasked questions were not the “questions and answers, objections and solutions” of argumentation, but straightforward inquiries of law. Failure to ask therefore leads to an irremediable loss of knowledge, not the loss of possibilities of productive interchange, as in the case of R. Yoḥanan and Resh Laqish. When Joshua forgot 1700 traditions after the death of Moses, according to another Bavli tradition, Othniel ben Kenaz “restored them by means of his dialectical acumen” (*pilpulo*; b. Tem. 16a). When R. Eliezer dies, on the other hand, his traditions would seem to go to the grave with him, with no hope for restoration.³⁸

37 So Goshen-Gottstein, “Lonely Sage,” 87. Cf. Menachem Fisch, *Rational Rabbis: Science and Talmudic Culture* (Indiana: Indiana University Press, 1997), 64.

38 Fisch, *Rational Rabbis*, discusses these different models at length (which he calls “traditionalists” and “antitraditionalists”; R. Eliezer is actually an arch-traditionalist, the most extreme of various traditionalist views.) Cf. Goshen-Gottstein, “Lonely Sage,” 100–106, who emphasizes the contrast between R. Eliezer, characterized in m. ’Abot 2:8 as a “limed cistern that never loses a drop,” representing the model of conservative and faithful transmission of tradition, and R. Eleazar b. Arakh as an “overflowing fountain,” who represents the

In this respect the comparison of his arms to Torah scrolls is most appropriate. R. Eliezer's conception of the oral Torah he embodies resembles that of the written Torah—a finite and limited corpus of traditions, which in principle could be quantified and recorded. It is not the dynamic, growing, fertile mass of discussions, as pictured in other Talmudic sources.³⁹ In theory, perhaps, it can be transmitted in complete and identical form such that succeeding generations possess the very same corpus of oral Torah just as they possess the same scrolls of written Torah. In practice, even in the best of cases, with the most attentive disciples such as R. Eliezer himself, a tragic decline ensues. The striking images of a dog lapping at the sea, removing but an infinitesimal amount of water relative to the whole, and an applicator stick withdrawing a trace of paint from the tube (used for making up the face), points to rapid deterioration. In less than optimal circumstances, when disciples are lazy or wanting, how much the more so! Of R. Eliezer's 300 laws of the "bright spot," not one was transmitted to a colleague or disciple, and of his 300 (maybe 3000) laws of (magic and) cucumbers, only two. Here too we sense his isolation and alienation, presumably a consequence of the same ban responsible for the Sages having kept their distance, as indicated by the first part (B1). So *despite* R. Eliezer learning and teaching "a great amount of Torah," he cannot prevent its loss.

Why the narrative focuses on the bright spot and "magical" manipulation of cucumbers as the traditions mastered by R. Eliezer but never transmitted to his disciples (except for two to R. Akiba) deserves some thought. From a literary perspective these examples perhaps illustrate the power and comprehensiveness of R. Eliezer's knowledge, which magnifies the tragic loss of Torah at his death. To know 300 traditions about a "bright spot," a minor element of the field of leprous impurities, demonstrates consummate expertise, as does mastery of 300 (or 3000!) laws of the magic manipulation of cucumbers, clearly an esoteric field.⁴⁰ The prominent place given to magic should give us pause

"Akiban" model of creative, generative Torah study that constantly produces novel teachings. It is not clear to me, however, that R. Eleazar b. Arakh was so identified with R. Akiba or the Akiban model of Torah study in the worldview of the Bavli, nor even that R. Akiba himself represented such a model, as most of the sources Goshen-Gottstein cites derive from elsewhere. While the Bavli storytellers went out of their way to include R. Akiba, who does not appear at all in the PT (see below), they do not employ him to thematize the contrast between these models of Torah study. Other Bavli intertexts of an alternative model of Torah study based on a different function of the master-disciple relationship therefore seem more apposite to me.

39 See e.g. b. Hag. 3b: "Just as a plant reproduces and multiplies, so words of Torah reproduce and multiply."

40 A quick check of the concordance reveals that the term "bright spot" (*baheret*) appears only about 44 times in the Bavli, on 16 different folios, and "cucumbers" about 13 times.

here, for the storytellers mean knowledge of magical performance, of how to do magic, as the two “laws” of magic that R. Akiba learns from R. Eliezer are quite clearly magical acts. They do *not* restrict this magical “law” to, say, traditions regarding magicians and magic performed by others, such as what type of punishment a magician receives. One possibility is that R. Eliezer’s performance of the magical harvesting again underscores his uniqueness and non-conformity, which perhaps hints that R. Eliezer has not changed his ways despite the ban, anticipating the similar lack of change of his halakhic positions to be revealed shortly (B3c).⁴¹ R. Eliezer always has and always will stand apart from the majority of the sages, both in his problematic halakhic rulings and the problematic subjects of knowledge. Such a reading assumes that magic, or at least such magical acts, would have been considered problematic or even forbidden, by the storytellers and their audience.⁴² However, recent scholarship has argued that the rabbis’ attitudes to magic were ambivalent and conflicted, and numerous Talmudic traditions report rabbis doing magic of various sorts.⁴³ Indeed, there appears to be a shift from the Tannaitic to Amoraic sources, with the Tannaim prohibiting magical acts, as does m. Sanh. 7:11, the mishnah with which the story is juxtaposed, and the Amoraim routinely engaging in magic. In this respect the story represents R. Eliezer in the manner of some Amoraim, who display mastery of both Torah and magical praxis.⁴⁴

41 In this respect I disagree with Boyarin’s interpretation: “We can read this shift within the narrative at the moment when Rabbi Eli’ezer turns from magic planting and harvesting of cucumbers to answering the Rabbis’ purity question. He moves, as it were, from one episteme to another, accepting the terms of the new regime. Thus the story becomes a mini-historical allegory of the shift in the social status of ongoing dialectic from the second- and third-century to the fifth- and sixth-century context” (*Border Lines*, 179). I do not see a shift here. R. Eliezer had just mentioned laws of the bright spot, a matter of purity law, before the laws of planting cucumbers. That the Sages ask about purity law, and that R. Eliezer answers, is unexceptional, and need not indicate an epistemic shift. See below on the reasons for these specific questions about purity law. And from his answers to the Sages’ purity questions it is clear that R. Eliezer has not “accepted the terms of the new regime.”

42 The anonymous Talmud raises this problem in its discussion of the story. See below, “Redactional Context.”

43 Gideon Bohak, *Ancient Jewish Magic: A History* (Cambridge: Cambridge University Press, 2008), 351–425, and the references there; Kimberley Stratton, “Imagining Power: Magic, Miracle, and the Social Context of Rabbinic Self-Representation,” *JAAR* 73 (2005): 361–393, and eadem, *Naming the Witch: Magic, Ideology, and Stereotype in the Ancient World* (New York: Columbia University Press, 2007), 143–176.

44 This point only confirms that the narrative, though introduced by the technical term “Was it not taught” (*vehatanya*), is a pseudo-baraita, as is common with late stories. See Rubenstein, *Talmudic Stories*, 261–262, and *Stories of the Babylonian Talmud*, 214–215.

Another possibility emerges from Joshua Levinson's observation that the Bavli tends to conceptualize magic differently than the Yerushalmi. For the Yerushalmi magic is an autonomous realm, a discrete cultural practice, though one which rabbis may engage in, with varying degrees of success. The Bavli, by contrast, treats magic as a component of Torah, such that we witness "an actual transformation of magic into law, into a type of legal tradition that must be studied and transmitted."⁴⁵ Levinson also suggests that the 300 laws of the bright spot is chosen as "a topic specifically tied to the priesthood. The discourse of Torah in the *Bavli* is appropriating all possible sources of competing knowledge and authority."⁴⁶ If so, the choice of these two legal topics emphasizes the breadth of R. Eliezer's Torah, which included everything, from priestly knowledge to magical tradition, from A to Z as it were. In both breadth and depth (300 laws) his knowledge of Torah was unparalleled, which enhances the tension and urgency of the Sages' task upon his death, as well as the tragedy of his marginalization throughout his life.

At this point the Sages ask R. Eliezer specific halakhic queries, a poignant and ironic narrative transition in light of his lament at the lack of questions for much of his life (B3). Their questioning can be interpreted as a sympathetic gesture, as a compassionate, if belated, response to his desire for inquiries so as to offer some consolation before his death. Yet the audience soon learns from R. Yehoshua's declaration that these questions are the true purpose of their visit, an attempt to rehabilitate R. Eliezer by ascertaining whether he has recanted his views or not. They come not to console R. Eliezer, but to interrogate him. The first question concerns the susceptibility to impurity and the processes of purification of five objects that were the subject of disputes between R. Eliezer and the Sages, as we know from sources found in the Mishnah and Tosefta. These are objects covered with leather, and the disputes turn on whether, from a legal point of view, they are considered receptacles (since the covering is closed or sealed, and not meant to be opened or removed), and second, the manner of purification in the event the covering tears open.⁴⁷

45 Joshua Levinson, "Enchanting Rabbis: Contest Narratives between Rabbis and Magicians in Late Antiquity," *JQR* 100 (2010): 54–94; cf. the Hebrew version, "Boundaries and Witches: Stories of Conflicts between Rabbis and Magicians in Rabbinic Literature" [in Hebrew], *Tarbiz* 75 (2006): 295–328. See, however, Shamma Friedman, "Now You See It."

46 "Enchanting Rabbis," 73. Cf. Boyarin, *Border Lines*, 180.

47 Rashi, ad loc., s.v. *mahu*. Other commentators explain the laws at issue here in slightly different ways. The objects are: (1) a leather ball, filled with stuffing; (2) a shoemaker's last, made of leather and stuffed, (3) an amulet with a leather covering, (4) a leather bag holding pearls (or leather covering a pearl worn as a necklace), (5) a weight, probably made of lead and covered with leather. If the leather covering tears open then the Sages con-

One of these objects is a shoemaker's last, which is mentioned in the Sages' second question, whether a shoe which has yet to be removed from the last (but the manufacturing process of which is otherwise finished) is considered complete, hence susceptible to impurity, or not fully complete, hence not susceptible to impurity.⁴⁸ The "shoe on the last" in turn recalls the cause of the ban of R. Eliezer.⁴⁹ For this issue is the third of the four objects listed in t. 'Ed 2:1 as the subjects of debates between R. Eliezer and the Sages, the last of which is the Oven of Akhnai, the subject of the dispute that caused the banning of R. Eliezer.⁵⁰

cede that the objects are susceptible to impurity and rule that the inside stuffing must be removed before the objects can be immersed for purification, i.e., that the stuffing is deemed a "separation" (*hatsitsa*). R. Eliezer rules that they may be immersed "as they are," i.e., without removing the stuffing. These five objects do not appear in any single Tannaitic source. The first three appear together in m. Kelim 23:1 (which only transmits the Sages' opinion) and t. Kelim B. Bat. 2:6, which adds R. Eliezer's disagreeing opinion (some texts of t. Kelim B. Bat. 2:6 read "R. Eleazar b. Azariah" in place of R. Eliezer; see Gilat, *R. Eliezer*, 391 n. 168, on this issue). The Sages and R. Eliezer disagree over the bag for pearls in t. Kelim B. Bat. 4:3. I cannot find a disagreement over a "small weight" in Tannaitic sources, though the purity of a weight is discussed in m. Kelim 12:8 and 26:6, and t. Kelim B. Bat. 7:12. See Tosafot, ad loc., s.v. *utaharatan*. It appears that the storytellers had some other traditions concerning R. Eliezer's purity rulings that are not attested in our sources, though the overall positions of R. Eliezer and the Sages are consistent. On this issue see Gilat, *R. Eliezer*, 389–391, and the footnotes there; *Hesdai David* to t. Kelim B. Bat. 2:6. Alon, "Lonely Sage," 92–93, argues that the questions cannot be a test, given the lack of explicit disputes over these exact objects in the Tannaitic sources, and considers them an effort to study Torah, to act as the disciples R. Eliezer never had. These understandings are not necessarily mutually exclusive. It seems too much a coincidence to see these questions about purity, so close to the issue that led to the ban in b. B. Meṣ. 59b, as randomly selected. And see below concerning the "shoe on the last" in t. 'Ed. 2:1.

48 Steinmetz, "Like Torah Scrolls," 166–167, argues at length that the objects should be seen as metaphors for R. Eliezer, as they have some sort of filling, but are closed up, and R. Eliezer's lament over his arms like rolled up Torah scrolls means that he "sees himself as a container of Torah, Torah that is being rolled up and that never will be able to be accessed by others—he is a receptacle filled with Torah that will forever be sealed inside." I think this suggestion is a little speculative, as the metaphors are not straightforward, and the motivation for including this source can be explained more simply, but is perhaps worth considering. (However, Steinmetz's efforts to include tefillin with this list of objects, as it is sometimes included in some of the Tannaitic sources, are not convincing to me. This reading requires that the audience know the relevant Tannaitic sources in Mishnah and Tosefta, realize that some of those sources mention tefillin whereas the Sages' question in the story does not, reflect upon that absence, and make a connection to the earlier scene. This asks too much of the audience.) See too Goshen-Gottstein's interpretation of the shoe on the last as "unfinished" in the same way as R. Eliezer himself is "unfinished" insofar as the Sages never came to learn his Torah ("Lonely Sage," 94).

49 See Steinmetz, "Like Torah Scrolls," 166; Goshen-Gottstein, "Lonely Sage," 93–94.

50 b. B. Meṣ. 59a; y. Mo'ed Qat. 3:1, 81c–d.

Four things R. Eliezer rules pure and the Sages rule susceptible to impurity ... (3) The shoe on the last: R. Eliezer declares pure and the Sages rule susceptible to impurity.⁵¹ (4) If one cut it [an oven] into segments and placed sand between the segments, R. Eliezer rules it pure and the Sages rule that it is susceptible to impurity. And it was called the Oven of Akhnai, for disputes about it multiplied in Israel.

Thus the story's first question recalls the general issue that led to the ban (disputes over purity/impurity) and mentions the "shoe on the last" specifically. It is the perfect segue to the second question, whether a "shoe on the last" is susceptible to impurity, which in turn triggers the audience to think of the Oven of Akhnai and the ban, although the Oven of Akhnai itself is elided. Together with the intertextual signs mentioned above, the storytellers have placed a significant allusion to the account of R. Eliezer's banning in the mouth of the Sages, with brilliant effect. From the audience's perspective, the Sages ask: "After all these years of the ban that devolved from R. Eliezer's refusal to adhere to the majority ruling about the oven cut into segments, will he now accept their ruling regarding the shoe on the last, which appears in that same list of disagreements?"

R. Eliezer, alas, remains true to his former position, as attested in those same sources in the Mishnah and Tosefta. His recalcitrance puts the Sages in a bind. They cannot remove the ban because R. Eliezer has not retracted his opinion. But time is running out, as R. Eliezer's death is imminent. The temporal setting helps communicate this sense of urgency. In the first part the imminent commencement of the Sabbath makes it urgent to act, so urgent that Hyrcanos is instructed to attend to the Sabbath lamps before removing the tefillin. Action must be taken now to remove the ban, as R. Eliezer's death approaches, and perhaps—although not explicitly stated—we are to imagine that the Sabbath is drawing to a close as well. That R. Eliezer also mentions in the first scene that violation of the imminent Sabbath entails death by stoning reinforces the link between the Sabbath and death. The sacred life of R. Eliezer is expiring as the sacred time of the Sabbath inexorably ticks away toward its close. Here the narrative tension builds to a climax. He wants to teach his Torah before his death.

51 The issue here concerns at what point the shoe is complete, as utensils are only susceptible to impurity when their manufacture is complete. R. Eliezer rules that the shoe is not finished until removed from the last, hence the shoe is "pure," i.e. not susceptible to impurity. The Sages rule that the shoe has been completed and is susceptible to impurity. The debate between R. Eliezer and the Sages also appears in m. Kelim 16:4. See Gilat, *R. Eliezer*, 52, and notes.

The Sages want to lift the ban before his death. But the Torah he teaches, his refusal to retract his former rulings, affords no justification to do so.

No legal justification, that is. So R. Yehoshua turns to a supernatural justification. He interprets the fact that R. Eliezer's last word was "pure" as a divine sign, a revelation of the divine will, indicating that the Sages should make Eliezer "pure" and rehabilitate him.⁵² His declaration "the vow (= ban) is annulled" is appropriately non-legal, i.e. not following standard legal protocol.⁵³ And of course R. Eliezer's death makes the whole question non-legal almost by definition, though there are the posthumous consequences noted above, including the stoning of his coffin. Nevertheless, in light of the ensuing profound expressions of grief, the rescinding of the ban should not be judged either gratuitous or moot, but as the long sought resolution to a disturbing estrangement. The allusion that the storytellers contrived to the story of R. Eliezer's banning contributes to this sense of closure. Where once "R. Yehoshua stood on his feet and said, 'It is not in heaven'" (b. B. Meṣ. 59b),⁵⁴ here the same R. Yehoshua (who was not mentioned previously in our narrative) makes the same gesture for quite the opposite purpose. Having formerly rejected an explicit heavenly voice, which led to the banning of R. Eliezer, he now heeds a heavenly sign and overturns the ban.

In Part [C], R. Eliezer has died, and the funeral is under way. There is a slight incongruity in that R. Akiba appears to have been among the Sages present at R. Eliezer's death, presumably in the same room, but now encounters the funeral procession "between Caeserea and Lod," which seems to imply he was not present to grieve at the death, unless we are to imagine the Sages all dispersed after the death and then returned to the scene of the funeral.⁵⁵ The

52 Note that the storytellers chose for the Sages' final question to R. Eliezer one to which he would answer "pure." The story would not work if they chose an issue that R. Eliezer ruled "impure." See too the reading of MS HaRav Herzog in the appendix where a heavenly voice pronounces R. Eliezer "pure," making this point abundantly clear.

53 Though it must be conceded that narratives often do not follow halakhic protocol.

54 See Joseph Chaim, *Sefer Ben Yehoyada*, ad loc., who suggests that R. Yehoshua, "intended to act in annulling the vow in the same manner he acted on the day of the vow, where he stood on his feet and said, 'It is not in heaven.'" Of course we would attribute the intention to the storyteller, not the character.

55 Shraga Bar-On (oral communication) has suggested to me that R. Akiba's question (and R. Eliezer's vicious answer) in b1(c) is a later addition, and not part of the original story. Removing that line would obviate this problem of R. Akiba encountering the procession elsewhere, and has much to recommend it in my opinion, though there is no textual evidence to support the conjecture. (It would also make for a more precise structure, as b1(c) in my structure in fact contains two questions.) Cf. the discussion of the PT parallel below, where R. Akiba does not appear at all.

comparison to the Yerushalmi version below will provide some help in resolving this question. In any case, R. Akiba's violent grieving, "striking his flesh until the blood gushed upon the earth," is consistent with the violent tenor of Bavli stories.⁵⁶ Yet it is unprecedented among other such stories of rabbinic deathbed scenes, where disciples typically cry or lament, but do not cause self-inflicted wounds. That injuring one's body risks running afoul of a biblical prohibition, an issue that puzzled the commentators, underscores how unusual this reaction is.⁵⁷ Here it continues the motif of violence that surfaced in R. Eliezer's cruel predictions of the Sages' death (B1), as well as his rebuke to his son (A3; an example of verbal, not physical violence). It can also be understood as a sign of the emotional trauma that resulted from the whole affair. The banning of a great sage, the suffering that the Sages knew they had caused by the ostracism and isolation, and then this difficult and ambiguous final encounter culminating in R. Eliezer's death causes R. Akiba, and perhaps his colleagues, a harrowing experience of grief, remorse, frustration, regret, guilt, and anxiety.

And loss: R. Akiba cites Elisha's words upon seeing his master Elijah carried away by the whirlwind (2Kgs 2:12), hardly the verse one would expect at the death of a Sage who had been ostracized for so many years.⁵⁸ It expresses the deep loss that R. Akiba, and presumably other Sages too, experiences at the death of a great master and at the years of lost opportunity to learn his Torah—the loss of traditions that R. Eliezer lamented earlier. R. Akiba's reference to R. Eliezer as his "father," which returns to the theme of spiritual sons/disciples and biological sons raised in the first part (A1–A3), contributes to the enormity of their loss. For R. Eliezer was not just a venerable sage, but the master/spiritual father of the Sages, and they his true (spiritual) sons.⁵⁹ Indeed, rabbinic sources elsewhere adduce this verse as a proof-text for the common topos that disciples are as sons and masters as fathers, as Elisha and Elijah serve as a

56 *The Culture of the Babylonian Talmud* (Baltimore, MD: Johns Hopkins University Press, 2003), 54–66. This type of (real) violence, however, is not exactly the same phenomenon as the verbal violence of the academy. But that verbal violence sometimes is represented as physical and spills over into other arenas.

57 See Tosafot, ad loc., s.v. *hayah*.

58 The same words are pronounced by King Yoash on the deathbed of Elisha (2Kgs 13:14), a biblical deathbed scene.

59 This point is hinted at by editor of Tractate Semahot 9:2–3. He claims that, at the death of R. Eliezer, R. Akiba bared both of his arms, while at the death of his father he did not bare his arms. Dov Zlotnick, *The Tractate "Mourning"* (New Haven: Yale University Press, 1966), 145, notes: "'R. Akiba bared both arms,' etc.—although he refrained from doing so in the case of his father."

paradigmatic example of the master-disciple relationship.⁶⁰ Thus R. Akiba confesses that he has “many coins,” i.e. many traditions and questions, and “no money changer to sort them.” He has no master to explain the reasoning behind the traditions and to provide answers for the questions in the same way as a moneychanger identifies the qualities of the coins and assesses their relative values.⁶¹ From this eulogy too we see that R. Eliezer’s accusation that the Sages had not learned his myriad traditions was not the deluded ravings of a bitter, dying sage, but the truth. Those hundreds of traditions about leprous spots and cucumbers and many other subjects were lost with R. Eliezer, together with a great many other matters concerning which the Sages lack knowledge. And that, for the Sages, is tragic.

In the end R. Eliezer receives the appropriate, honorary funeral for a rabbinic master—with a ritual procession, rows of mourners, and a eulogy from a prominent sage. Unlike Akavia b. Meahalalel, his coffin is not stoned; unlike Elisha b. Abuyah, there is no fire burning upon his grave.⁶² In death, R. Eliezer has been successfully reincorporated into the rabbinic fold, though the lost years cannot be redressed.

Ultimately the story should be seen in terms of several tensions of the rabbinic worldview, primarily the tension between rabbinic commitments to masters of Torah and to the integrity of the legal system. For the storytellers, the

60 See Sipre to Deuteronomy #34 (ed. L. Finkelstein [New York: Jewish Theological Seminary, 1983], 61): “*Your sons* (Deut 6:7). These are your disciples, as it says ... And just as disciples are called sons, so the master (*rav*) is called a father, as it says, *Elisha saw it, and he cried out, ‘My father, My father! Israel’s chariots and horsemen’* (2 Kgs 2:12).” According to Sipre to Deuteronomy #305 (p. 327), Joshua eulogized Moses, “My father, my father! My master, my master.” b. Meg. 26a cites this verse as a proof-text for the law that one tears his clothes in mourning for both parents and masters. On the meaning of the expression in its biblical context, see M.A. Beek, “The Meaning of the Expression ‘The Chariots and the Horsemen of Israel’ (2 Kings ii 12),” in *The Witness of Tradition: Papers Read at the Joint British-Dutch Old Testament Conference Held at Woudschoten, 1970*, ed. M.A. Beek (Leiden: Brill, 1972), 1–10.

61 See Shlomo Naeh, “On Structures of Memory (and the Forms of Text) in Rabbinic Literature” [in Hebrew], in *Mehqerei Talmud* 3, ed. Y. Sussman and D. Rosenthal (Jerusalem: Magnes, 1990), 545–546 and n. 16, who shows that metaphors of money and moneychangers are strongly associated with memorization of Torah, each and every tradition in the correct place like money in the moneychanger’s storage box. The metaphor is thus particularly apt for the type of Torah R. Eliezer embodies. Among the sources Naeh collects, see especially Sipre to Deuteronomy #13 (p. 22): “What is the difference between a sage (*hakham*) and a wise man (*navon*)? The sage is similar to a wealthy moneychanger ...” and Sipre to Deuteronomy #48 (pp. 107–108).

62 m. ‘Ed. 5:6; b. Ḥag. 15b; y Ḥag. 21, 77b–c.

incredible merit that ought to accrue to a sage like R. Eliezer on account of his prodigious knowledge of Torah stands in tension with the account of his banning, even if they recognize the need to marginalize individual sages who oppose the decisions of the majority. How can a sage with such a mastery of Torah be treated as a pariah? How can they allow his vast knowledge of tradition to be lost? Should they sacrifice the potential answers to many halakhic problems for the sake of the good of the system? And how can the merit of R. Eliezer's Torah fail to be salvific, as it would appear to be should he die under the ban?

The tension recalls that posed by the story of Elisha b. Abuyah, where the storytellers contemplate whether Torah and sin can coexist, whether a master of Torah also can be and die a sinner, with the concomitant posthumous consequences.⁶³ Just as that story explores these questions through the relationship between Elisha b. Abuyah and his disciple R. Meir, so our story explores them through the relationship between R. Eliezer and his disciple R. Akiba. Transmission of Torah, including problematic Torah, is a function of the master-disciple relationship, and is inevitably scrutinized through that prism. The story of Elisha b. Abuyah posits a posthumous rehabilitation where Torah ultimately prevails over heresy and sin such that Elisha enters the next world. This resolution is analogous to R. Eliezer's quasi-posthumous rehabilitation. Here we might say that R. Eliezer's Torah prevailed over his "heresy" of violating of rabbinic protocols and allowed him to be buried and mourned as a beloved sage rather than a reviled *menudeh*. Our story focuses more on the psychological-emotional dimension of the tension, the story of Elisha b. Abuyah on the theological dimension.⁶⁴ In both cases the inherent merit of Torah proves to be inviolable.

The PT Version and the BT Reworking

A version of the account of R. Eliezer's death appears in y. Šabb. 2:5, 5b. (There is also a version in 'Abot R. Nat. A 25 which I will not discuss due to the notorious difficulties in determining the dating and provenance of this text.⁶⁵)

63 See Rubenstein, *Talmudic Stories*, 64–104.

64 Several non-narrative comments within the Elisha b. Abuyah narrative pose the theological question almost explicitly; see Rubenstein, *Talmudic Stories*, 79–80.

65 On this version see Goshen-Gottstein, "Lonely Sage," 79–80. There are also parallels to parts of the story in Song Rab. 1:3; see Goshen-Gottstein, "Lonely Sage," 106–107.

y. Šabb. 2:5, 5b

b. Sanh. 68a

(1) It happened that when R. Eliezer was dying (*goses*)

When R. Eliezer became sick, the Sages entered his [abode].

He was sitting on his canopied bed, and they were sitting in his receiving room.

At the eve of the Sabbath, at dusk

[A2] That day was the eve of the Sabbath,

Hyrkanos, his son, entered to remove his tefillin. He said to him, "My son. You neglect the commandment of the Sabbath-lamp, which is [a matter of] Sabbath-rest (*shevut*), and is punishable by excision, and you come to remove tefillin, which is merely discretionary (*reshut*) and merely a *mitzvah*."

and Hyrcanos, his son, entered to remove his tefillin. He [R. Eliezer] rebuked him [Hyrkanos] and he left in disgrace.

He went out screaming and saying, "Woe is me, for my father's mind is confused." He [Eliezer] said to him, "Your mind is confused. My mind is not confused."

[A3] He [Hyrkanos] said to them, "Colleagues of my father. It seems that my father's mind is confused." He [R. Eliezer] said to him, "Your mind and Your mother's mind are confused. How can one neglect a prohibition [punishable by] stoning, and busy oneself with a prohibition [that is merely a matter] of Sabbath rest [*shevut*]?"

(11) When his disciples saw that he [R. Eliezer] had answered him [Hyrkanos] intelligently, they entered before him.

[B1] When the Sages saw that his mind was lucid, they entered and sat before him at a distance of four cubits

(a) He said to them, "Why have you come?" They said, "We have come to learn Torah."

(b) [He said to them,] "Why have you not come until now?" They said to him, "We had no free time."

*(cont.)***y. Šabb. 2:5, 5b****b. Sanh. 68a**

(c) He said to them, "I will be amazed if you all die natural deaths." R. Akiba said to him, "What about my [death]?" He said to him, "Yours will be more severe than theirs."

[B2] (a) He took his two arms and placed them on his chest. He said, "Woe to you, my two arms, which are like two rolled Torah scrolls. I have learned a great amount of Torah and I have taught a great amount of Torah. I have learned a great amount of Torah—and I did not take away from my masters even as much as a dog laps up from the sea. I have taught a great amount of Torah—yet my students have not taken away from me even as much as a painting stick [takes out] of its tube.

(b) "Not only that, but I recite 300 laws about the bright spot and no one ever asked me a question about them.

(c) "Not only that, but I recite 300 laws—some say 3000 laws—about the planting of cucumbers, and no one ever asked me a question about them, except for Akiba b. Yosef: Once he and I were walking on our way, and he said to me, 'My master. Teach me one thing about the planting of cucumbers.' I said one thing, and the whole field filled up with cucumbers. He said to me, 'My master: You taught me about their planting. Teach me about their uprooting.' I said one thing and they all gathered in one place."

*(cont.)***y. Šabb. 2:5, 5b**

They were asking him [questions] and he was answering them. About that which was impure he answered “impure” and about the pure he answered, “pure.”

In the end he said “Pure.”

And his soul departed. They said, “It is clear that our master is pure.”

R. Mana said, “Even before this it was clear.”⁶⁶

(111) R. Yehoshua entered and removed his tefillin. He was hugging him, and kissing him, and crying, and saying, “My master! My master! The vow is annulled.

My Master! *Israel's chariot and horsemen* (2 Kgs 2:12).”

b. Sanh. 68a

[B3] (a) They [the Sages] said to him: “Master: A ball, a shoemaker’s last, an amulet, a bag for pearls and a small weight—what is the law?” He said to them, “They are susceptible to impurity, and they are made pure [by immersion] as they are.”

(b) [They said to him] “A shoe on the last—what is the law?”

He said to them, “It is pure.”

(c) And his soul departed with “Pure.”

R. Yehoshua stood on his feet and said, “The vow is annulled. The vow is annulled.”

[C] After the Sabbath, R. Akiba encountered him [R. Eliezer’s funeral procession] between Caeserea and Lod. He [Akiba] was striking his flesh until the blood gushed upon the earth.

In the row [of mourners] he [Akiba] began [his eulogy, and said]: “*My father! My father! Israel's chariot and horsemen*” (2 Kgs 2:12).

66 This can also be translated: “Was it not clear before now?”

(cont.)

y. Šabb. 2:5, 5b

b. Sanh. 68a

I have many coins and no moneychanger
to sort them.”

The PT version is briefer and less developed than that of the BT, as is typical. From the shared elements it is clear that the PT story (or an extremely similar version) was the source of the BT story. Thus the first scene of the PT is extremely close to that of the BT: the dying R. Eliezer is approached first by his son, who tries to remove the tefillin, but is rebuffed with a complex halakhic argument that he fails to understand.⁶⁷ At this point he is approached by a group of rabbis (in this version, “his disciples,” as opposed to BT’s “Sages”), who have perceived from R. Eliezer’s words that he is lucid. In the second scene, as in the BT, the disciples/Sages ask R. Eliezer halakhic questions. His last word is “Pure,” and, in the third scene, R. Yehoshua declares that the “vow”/ban is annulled. The eulogy features the same verse from 2 Kings 2:12.

Yet it is just as clear, from the differences, that the BT storytellers have reworked the story in significant ways:

(1) A major transformation is the addition of R. Eliezer’s long soliloquy (B2), lamenting the loss of Torah and the lack of questions, despite his prodigious knowledge of 300/3000 laws of the bright spot and 300 of (magical) planting of cucumbers. All this has no trace in the PT, in which the theme of the decline and loss of Torah, so crucial to the BT, is absent. Consequently, the PT also lacks the second part of R. Akiba’s eulogy, the figure of the moneychanger, which mourns the loss of a teacher who could answer questions. The PT story is about the death of a sage and master, but not about the tragic loss of Torah because he has failed to transmit it during his life.

(2) R. Akiba appears thrice in the BT (B1c, B2c, C) but nowhere in the PT. The BT storytellers have added the special (only R. Akiba asked questions of, and walked with, R. Eliezer) yet strained (R. Akiba’s death will be the most painful) relationship between R. Akiba and R. Eliezer.⁶⁸ Thus the theme of the master/disciple relationship is specific to the BT.

67 On R. Eliezer’s argument and the use of this halakhic terminology, see Gilat, *R. Eliezer*, 161–163, 190; Fraenkel, “Time and Its Shaping,” 150–151, and his references to comments by Lieberman and Epstein in nn. 44, 47.

68 R. Eliezer’s claim that R. Akiba alone asked him questions points to some special relationship, as does R. Akiba’s painful eulogy. See Goshen-Gottstein, “Lonely Sage,” 83, 95–97.

(3) The hostile tenor of the story is new in the BT, including R. Eliezer's prophecies of the untimely death of the Sages and the cruel death of Akiba (B1c), Akiba's violent mourning (C), and even R. Eliezer's "rebuke" of Hyrcanos who leaves "in disgrace" (A2; in the PT R. Eliezer simply explains to Hyrcanos why the tefillin should not be removed.) The palpable sense of the resentment expressed by R. Eliezer that pervades the BT story appears nowhere in the PT, which is told of his "disciples," not "the Sages." Indeed, the PT has R. Yehoshua hugging and kissing R. Eliezer after the death, where the BT has Akiba "striking his flesh until blood gushed." This shift from gestures of love and intimacy to pain and self-mortification is emblematic of the difference in tenor in the two stories.

(4) The BT substantively transforms the questioning of R. Eliezer. The PT simply relates that the Sages questioned R. Eliezer but does not detail the exact issues they asked. The BT, in contrast, reports the specific questions which, as we have seen, directly recall the ban. More significantly, in the PT R. Eliezer's answers reveal that he no longer disputes with the majority: "about that which was impure he answered 'impure' and about the pure he answered, 'pure.'" He therefore deserves to be released from the ban, and we can understand why R. Yehoshua states that the vow/ban is released. In the BT, by contrast, R. Eliezer's answers reveal that he has not changed his mind, hence there are no legal grounds for removing the ban.

(5) In this respect the BT has made the issue of annulling the ban the central tension of the story. As noted, the purpose of the Sages' visit is to accomplish this task, and their questions are to ascertain whether R. Eliezer has retracted. While the ban is explicitly mentioned in the PT, it is not clear that the rabbis visit him on that account, nor how central it is to the storytellers' message. There is no mention of the rabbis sitting four cubits distant from R. Eliezer, nor of their not having "come until now" (B1; apparently on account of the ban), nor of all the Torah that has been lost (B2), again due—at least in part—to the Sages having kept apart from R. Eliezer. Now it is possible to read the PT along the same lines as the BT: the rabbis (= his disciples) ask questions to see whether R. Eliezer still rejects the majority view and find that he has indeed retracted. While they are now justified in removing the ban, he dies before they can do so. But since he has died saying "Pure," the rabbis consider this as evidence that the ban is lifted and state, "Our master is pure," and the "Vow is annulled." With this reading there remains the significant difference in that R. Eliezer has retracted in the PT, whereas in the BT he has not. In the PT the last word "Pure" confirms that the ban should be lifted, whereas in the BT it provides the mechanism, a type of legal fiction that effects the removal of the ban. In the PT, in other words, the word "Pure" testifies to R. Eliezer's "orthodoxy"; in the BT

it functions as a sign that *despite* his nonconformist answers God has released the ban, as it were.

However, I think another reading is plausible, namely that the removal of the ban is not the purpose of the visit or the questions, and is mentioned almost as an afterthought following his death. R. Eliezer's own disciples, not "the Sages," visit him in the PT, and there is no evidence they have been keeping apart from him (whatever the other Sages have been doing.) They presumably visit him to be present at his death, as in other rabbinic "deathbed" scenes, and as in the alternative deathbed scene of R. Eliezer himself in b. Ber. 28b mentioned above. The questions they ask are the typical discussions of Torah that students have with their masters, and the narrator affirms that R. Eliezer answers correctly to emphasize that his mind was lucid to the end, and to have his dying word be "Pure." This functions simply to indicate how holy and pure R. Eliezer was at his death. The comment by R. Mana emphasizes that they knew all along that R. Eliezer was pure, even before this dying word. Note that in the PT R. Yehoshua does not say that the vow is annulled immediately after R. Eliezer's final word, but only after entering and removing the tefillin, in the third, not the second, scene. The dying word "Pure," in other words, does not function either as expression of conformity or as supernatural sign that the vow is annulled, but a sign of holiness. In b. B. Meṣ. 86a Rabbah bar Naḥmani also dies with the word "Pure" on his mouth, and there is no issue of a ban.⁶⁹ Our awareness of the BT makes it hard to judge whether this alternative reading is persuasive. In any case, whatever the force of the annulment of the ban in the PT, in the BT it takes center stage.

(6) The eulogy of the PT has been greatly expanded in the BT into a discreet scene that takes place in a different location, with the violent gestures noted above replacing the irenic hugging and kissing. The verse (2 Kgs 2:12) is quoted verbatim in the Bavli ("My father, my father") rather than paraphrased ("My master!"). Most significantly, the mourner/eulogizer has shifted from R. Yehoshua in the PT to R. Akiba in the BT.⁷⁰ The relentless use of pronouns renders it ambiguous as to whom R. Akiba encountered such that it is possible to read that R. Akiba met R. Yehoshua while the latter struck his flesh and pronounced the eulogy. This reading, however, is less plausible, given the focus on R. Akiba and his relationship with R. Eliezer earlier in the story, and because it would entail that R. Yehoshua switch from object to subject: "R. Akiba encountered him [R. Yehoshua] between Caesera and Lod. He [R. Yehoshua] was strik-

69 Cf. b. 'Abod. Zar. 27b where R. Ishmael says of Ben Dama, "Your soul departed in purity."

70 See Goshen-Gottstein, "Lonely Sage," 95.

ing his flesh”; I have not found any commentators or translators who read the last scene this way. This switch to R. Akiba as subject—even with the ambiguity—is a striking example of the transformation that occurs in the process of reworking rabbinic sources, and the type of wholesale invention of biographical anecdotes about sages that can occur in this process.⁷¹

The BT reworking of the scene helps account for the incongruity noted above that R. Akiba is among the Sages present at the death of R. Eliezer, but then strikes his flesh upon encountering the bier, apparently that night or the next day, as if he had not witnessed the death itself. The BT has reworked the PT narrative, which reads smoothly: the disciples/Sages are present at the death and the eulogy is immediately pronounced. The BT displaces the eulogy to a later time and a different place, for reasons that are not completely clear,⁷² which produces the problem locating R. Akiba.

(7) There are a number of other minor differences less central to the meaning of the narrative, though interesting from a compositional perspective, including the halakhic argument of R. Eliezer,⁷³ the configuration of R. Eliezer’s house,⁷⁴ and the removal of his tefillin after his death.⁷⁵

71 See e.g. Shamma Friedman, “*La’aggada hahistorit batalmud habavli*,” in *Saul Lieberman Memorial Volume*, ed. Shamma Friedman (New York: Jewish Theological Seminary, 1993), 128, 134. Also Cf. Hippolyte Delehaye, *The Legends of the Saints: An Introduction to Hagiography*, trans. V.M. Crawford (London: Longmans, Green and Co., 1907), 78 ff.

72 Perhaps the displacement of the eulogy and dramatic funeral emphasize that R. Eliezer received an honored burial despite his years of being banned. R. Eliezer is associated with Lod in various sources, e.g. b. Sanh. 32b; t. Sukkah 21. Cf. y. Ketub. 2:5, 26c.

73 See n. 67. The difficult phrasing of the PT perhaps motivated the substitution of a more straightforward explanation in the BT.

74 This change is particularly instructive. The action depicted in the first scene of the PT is relatively straightforward. No setting is given, and we should understand that the entire scene takes place in the same room, evidently R. Eliezer’s bedroom or another room of his abode where his deathbed has been placed. Hyrcanos approaches his father to remove the tefillin, but Eliezer refuses and offers the complicated halakhic explanation. Hyrcanos does not understand the argument; lamenting that his father has lost his senses, he begins to weep. R. Eliezer responds that his own faculties are intact and his son (perhaps because of the distress at seeing his father dying) is confused. Having witnessed this interchange but understood R. Eliezer’s halakhic demonstration, the disciples then approach R. Eliezer’s bed, and the story proceeds with their questions. Yet there is a subtle ambiguity in this account in that the storyteller uses the language “entered” (*nikhnas*) and “went out” (*yatsa*) to describe Hyrcanos’s movements, and likewise “entered” to describe that of the disciples. In this context these terms simply mean “approach” and “move away.” We are to imagine that the disciples are within the same room, but in the background, at some distance from the bed, while Hyrcanos stands right next to his father’s bed, and then walks away from it toward the disciples. The BT storytellers seem to have taken the admittedly ambiguous words more literally in the sense of “entered his room from another” and “went

These transformations encompass the major themes of the Bavli story which emerged from the literary analysis, including the centrality of the ban of R. Eliezer, resulting in his ostracism and the loss of his Torah, as lamented in the lack of disciples and the failure of R. Akiba to learn all that he should have. The Bavli storytellers have thoroughly reworked their source into a completely different story.

The Sources of the Bavli Reworking and the Dating of the Composition

The questions then become: can we determine the sources of these BT reworkings? And if so, does this help date the composition of the BT story?

(1) R. Eliezer's lament recalling what R. Akiba learned (B2c), lacking in the PT, draws on t. Sanh. 11:5:

out of the room." The more clearly set scene of the BT story accordingly places R. Eliezer in his "canopied bed," presumably in his bedroom, and the Sages in the "receiving room" such that Hyrcanos can really "enter" the bedroom from the receiving room and "leave in disgrace" back to the receiving room, after which the Sages "enter" the bedroom. It is also possible, of course, that the BT storytellers altered the scene to conform to their notions of the realia of the domicile of a leading sage. At all events, the change produces a difficulty with the sequence of the BT account. Because Hyrcanos has left the bedroom to speak with the Sages, R. Eliezer should not respond to him, "Your mind and your mother's mind are confused," as he is no longer in the room. (This forced one commentator to explain that R. Eliezer had an extremely keen sense of hearing such that he could in fact hear from the other room; see Joseph Chaim, *Sefer Ben Yehoyada*, ad loc., s.v. *nikhnesu*). Moreover, R. Eliezer does not specify which severe commandment Hyrcanos has neglected; the statement is almost incomprehensible without the Yerushalmi's more detailed explanation. On the other hand, the Bavli simplifies the narrative flow to a certain extent, as we have (1) R. Eliezer's rebuke, (2) Hyrcanos not understanding *why* he is rebuked and concluding his father is confused, and (3) R. Eliezer explaining the halakhic logic. In the PT, by contrast, we have R. Eliezer explaining the logic first, then Hyrcanos thinking his father is confused, and then R. Eliezer asserting he is not in fact confused. For this reason we must explain that Hyrcanos did not *understand* his father's explanation, though he heard it. (And perhaps this too bothered the BT storytellers, who felt that if R. Eliezer explained the halakhic logic, Hyrcanos should have understood it, and therefore deferred the explanation until after the exit.) We have here a nice example of how the BT storytellers' reworking of an earlier tradition produces slight but telling incongruities.

75 Mention of the tefillin returns full circle to the opening scene, Hyrcanos's attempt to remove them, which has a certain aesthetic appeal. It also enhances the theme of sons and disciples: the son could not serve his father appropriately where the disciple successfully performs this service.

R. Akiba said: R. Eliezer derived 300 interpretations from [the verse], *You shall not tolerate a sorceress* (Exod 22:17), yet I only learned two things from him: Of two collecting cucumbers [by magical methods]—one collecting is culpable, and the other collecting is exempt. The one who performs a [magical] act is culpable; the one who creates an illusion is exempt.⁷⁶

Here then we have (a) R. Akiba learning from R. Eliezer; (b) 300 laws (*halakhot*) about magic; (c) R. Akiba only learned two of the 300; (d) the two were about cucumbers. To be sure, the BT has transformed this source significantly, such that: (a) in the BT R. Eliezer reports that R. Akiba learned from him as a flashback, whereas in the Tosefta R. Akiba reports what he himself learned from R. Eliezer; (b) the 300 traditions are all about (magical manipulation of) cucumbers, not magic in general. These laws are expounded (*doresh*) by R. Eliezer, i.e., interpretations of the verse, whereas in the BT they are “taught” (*shoneh*), apparently in Mishnah-form, not as exegesis, hence the verse is not quoted. The possibility that there were 3000 is added; (c) R. Akiba explicitly asks R. Eliezer to teach him about the cucumbers; (d) R. Eliezer performs a magical act on the cucumbers, rather than teaching a law about those who perform magic, as noted above. The BT storytellers have liberally reworked the Toseftan source in much the same way they reworked the PT story.

Most importantly, this source helps account for two of the three major BT transformations: (1) the interest in R. Akiba as a disciple of R. Eliezer and the relationship between the two; (2) the loss of Torah, or the failure of R. Eliezer to transmit his Torah. It seems to me that the storytellers extrapolated from the fact that R. Akiba reports of the 300 traditions, “I only learned two things from him” (ולא למדתי הימנו אלא שני דברים) that the other hundreds of traditions were lost, and that the same was true of other dimensions of R. Eliezer’s knowledge. Perhaps, too, if the greatest of sages, R. Akiba, only learned two traditions from R. Eliezer, the other Sages learned nothing.⁷⁷ I am not sure if this tradition completely accounts for the image of R. Eliezer in the story and the theme of the loss of his Torah, which seems to be a larger BT construct, but it provides a partial explanation. I know of no other source (other than the parallels in ‘Abot R. Nat. and later midrashim, which derive from the Bavli) that portrays R. Eliezer and his Torah in this way.

⁷⁶ Cf. m. Sanh. 7:11, cited below.

⁷⁷ However, see below, “Redactional Context,” on the relationship between the story and Mishnah.

Various Bavli sources mention 300 laws, including Doeg and Aḥitofel teaching 300 laws about a “tower flying in the air” (b. Sanh. 106b = b. Ḥag. 15b), the 300 laws that Joshua forgot after the death of Moses (b. Tem. 16a), and the 300 responses of Yonatan b. Harkinos (b. Yebam. 16a; which also appears in y. Yebam. 1:6, 3a), although I find no other tradition of 300 laws about the bright spot specifically.⁷⁸

(2) The story of the “Oven of Akhnai” as formulated at b. B. Meṣ. 59a–b played a significant role in the BT’s reworking.⁷⁹ This account probably shares responsibility for the prominent role of R. Akiba, as he volunteers to inform R. Eliezer of the ban, which perhaps points to some sort of special relationship between the two sages.⁸⁰ R. Akiba sits at a distance of four cubits, as do the Sages in our story. As noted, the description of R. Yehoshua “standing on his feet” and proclaiming the annulment of the ban seems to quote the description of R. Yehoshua in b. B. Meṣ. 59b. Also as noted, the reference to the “shoe on the last” was apparently chosen to evoke t. ‘Ed. 2:1, the Toseftan passage that mentions the Oven of Akhnai.

Moreover, the BT’s reversal of the PT plot whereby R. Eliezer does not retract may be again a product of incorporating aspects of the Bavli’s version of the account of the ban. The PT version of the “Oven of Akhnai” in fact concludes with R. Eliezer observing that eventually the Sages will “bring him near,” i.e. annul the ban. The BT version has no such optimistic ending. Rather, R. Eliezer essentially causes the death of Rabban Gamaliel, and the alienation between R. Eliezer and the Sages endures to the end, suggesting that there will be no retraction of his opinion.

(3) That R. Eliezer predicts R. Akiba’s death probably devolves from b. Pesah. 69a, where R. Eliezer declares to R. Akiba: “You responded to me with [the law of] slaughtering; by slaughtering you will die.” The phrase “yours will be more severe than theirs” may draw on an exegetical tradition attributed to R. Sheila in b. Sanh. 44a, in which God says these same words to Joshua. The BT account may also draw on the well-known traditions of the martyrdom of R. Akiba (b. Ber. 61b; y. Ber. 9:5, 14b), and of other sages in the Roman persecutions following the second revolt.⁸¹

78 See too the parallel PT *sugya* to m. Sanh. 7:11, which claims that R. Eliezer actually taught 900 teachings (*parshiot*), three sets of 300, about Exod 22:18.

79 Cf. Steinmetz, “Like Torah Scrolls,” 156, 176.

80 R. Akiba also informs R. Eliezer in the parallel at y. Mo’ed Qat. 3:1, 81c–d.

81 See e.g. b. Giṭ. 57a; y. Ta’an. 4:8, 68d (the death of R. Eleazar of Modiin); y. Sot. 5:7, 20c (martyrdom of R. Ishmael and R. Shimon). Rabbinic sources generally refer to the “age of persecution,” which scholars associate with the aftermath of the Bar Kokhba revolts.

In b. 'Erub. 63a (= Sipra, Shmini 1:33 [ed. Weiss, p. 45b]), R. Eliezer predicts the imminent death of a student who "teaches the law before his master," and the student dies within a week. Perhaps the predictions of death in our story draw on a more widespread motif of R. Eliezer predicting the death of sages who commit offences.⁸²

(4) The image of R. Eliezer's two arms as rolled up Torah scrolls does not really have a parallel elsewhere (B2a). Neusner has suggested that the figure draws on t. Soṭah 15:3: "When R. Eliezer died, the scroll of Torah⁸³ was annulled (*batel*) ... When R. Akiba died the arms (or 'strength'; *zero'ei*) of Torah was annulled (*batel*)."⁸⁴ I.e., when R. Eliezer died a great deal of tradition was lost, as if a Torah scroll is now inaccessible. Thus Rashi, in his comment to the Talmudic citation of this source at b. Soṭah 49a (which reads "hidden away" [*nignaz*] for "annulled"), relates it to our story: "He knew a great many laws from tradition, and they were set in order in his mouth as if written in a scroll, as is said in [Tractate] Sanhedrin, 'I have learned a great amount of Torah from my teachers.'"⁸⁵ The disciples actually call R. Eliezer "the Scroll of Torah" in b. Sanh. 101a, employing this same phrase from t. Soṭah 15:3. In this account R. Eliezer becomes sick and his disciples, including R. Akiba, visit him. R. Akiba laughs and the disciples weep, explaining: "Is it possible that Scroll of Torah lies in pain and we not weep"? Perhaps too the description of R. Akiba as the "arms" of Torah in t. Soṭah 15:3 relates to the description of R. Eliezer comparing his arms to Torah scrolls. So it is possible we are dealing with a kind of narrativization of these images, though this explanation does not fully satisfy me.

Let me note in passing that this account (b. Sanh. 101a) and the immediately following source also feature R. Akiba and other sages visiting the sick R. Eliezer, and have R. Akiba stand out from among the other sages in that he recites a surprising teaching that occasions a question from R. Eliezer. These accounts too may suggest a special relationship between the two sages.

The similes of the dog lapping from the sea and the painting stick from the tube for a minimal amount of Torah, to the best of my knowledge, are unique here.⁸⁶

82 Cf. b. Ḥag. 3b where R. Eliezer, offended by what R. Yose b. Dormasqit reports to him has transpired in the house of study, orders the sage to mutilate himself by removing his eye.

83 MS Vienna of t. Soṭah 15:3 reads "the honor of the Torah."

84 Cf. t. Soṭah 15:3.

85 Rashi, s.v. *nignaz*.

86 The figure of the dog lapping at the sea is only found here. That of the painting stick and the tube appears in halakhic contexts related to the consummation of sexual intercourse among both animals and humans. See e.g. b. Mak. 7a; b. B. Meṣ. 91a. Goshen-Gottstein,

The general image of R. Eliezer as a sage who served his masters devotedly, repeating that which he heard but not creatively innovating or deriving new inferences, draws on various rabbinic sources, though the Bavli here pushes that image to an extreme.⁸⁷

(5) The violence and hostility of the account is characteristic of Bavli descriptions of hostile interactions between sages, and of its hyperbolic rhetoric in general.⁸⁸

(6) The expanded eulogy (C), as far as I can determine, does not draw directly on other traditions.

(7) Finally, many phrases and brief expressions in the story have parallels in other Bavli narratives, such as “That day was the eve of the Sabbath,”⁸⁹ “He rebuked him and he left (or “dismissed him”) in disgrace,”⁹⁰ “He said to them, ‘Why have you come?’ They said, ‘We have come to learn Torah,’”⁹¹ “We had no free time,”⁹² “His blood gushed.”⁹³ But most of these appear to be stock expressions that do not necessarily point to the storytellers here adapting material from the parallels, as is sometimes found in late Bavli stories.

Elsewhere I have tried to formulate criteria by which to distinguish stories of Amoraic provenance from those that emerge from the Stammaim and betray evidence of Stammaitic reworking.⁹⁴ The reworking in this case appears to be on the borderline. Thematically, there are none of the classic themes of late Stammaitic narratives, such as the highly populated and hierarchically structured academy, dialectics, and academic warfare. From a compositional perspective, the BT storytellers did not transfer other Bavli passages wholesale, using the same words with minor adaptations to fit the new context. While they clearly drew on, and were influenced by, other traditions, for the most part they do not seem to have had access to the redacted *sugyot* that appear in our BT.⁹⁵

“Lonely Sage,” 87 and n. 27, attempts to relate these sexual connotations to aspects of the story.

87 See b. Sukkah 28a, where R. Eliezer declares, “I never spoke a word that I did not receive from my masters”; b. Ḥag. 3a–b; b. Yoma 66b; t. Yebam. 3:1; m. ’Abot 2:8; Gilat, *R. Eliezer*, 1.

88 See n. 56.

89 b. Šabb. 31a, b. Šabb. 88a, b. Yoma 35b; y. Kil. 9:3, 32c. Palestinian sources typically use the phrase “the eve of the Sabbath, at dusk” (*erev shabbat im ḥasheikhah*), as in the PT parallel here. Cf. m. Šabb. 2:7, m. B. Bat. 5:8.

90 b. Šabb. 31a; *Sipre* to Deuteronomy #305 (p. 326).

91 b. Ber. 63a.

92 b. Mo’ed Qat. 17b (“they did not have time,” in an halakhic, not narrative context); b. Šabb. 88a (“he did not have time”).

93 m. ’Ohal. 3:5; b. Sanh. 107a.

94 *Stories of the Babylonian Talmud*, 217–228.

95 For the stages in the process of redaction of the Bavli, see David Weiss Halivni, *Meqorot*

Many of the traditions they employ appear in Tannaitic sources, not exclusively in the BT, and would have been available to Amoraim—considerations that suggest an Amoraic provenance. On the other hand, the dependence on the story on the Bavli's version of "the Oven of Akhnai," which is of Stammaitic provenance,⁹⁶ and perhaps on the tradition of R. Eliezer predicting Akiba's death, as well as a few of the other parallels, point to Stammaitic composition. So too does the high degree of narrative artistry and the extensive reworking of t. Sanh. 11:5.⁹⁷ This suggests that the composition took place in the early Stammaitic period, during the time when the Stammaim were first creating *sugyot* out of Amoraic traditions, but prior to the period when those early *sugyot* were fixed in their current locations and later redactors transferred and adapted material directly from one *sugya* to another.⁹⁸ The Stammaitic period was a lengthy era that included many stages, from the initial composition of *sugyot*, to the transposition of materials between proto-*sugyot*, to their redaction in specific contexts in the proto-Talmud, to later editing and transpositions.⁹⁹ The incorporation of so much unparalleled material points to the earlier stages of this era.

Redactional Context

The story appears in b. Sanh. 68a, the Talmudic commentary to m. Sanh. 7:11, which I juxtapose with t. Sanh. 11:5 and the relevant passage of our story.

umesorot: Bava batra (Jerusalem: Magnes, 2007), 126–127; Jay Rovner, "Pseudepigraphic Invention and Diachronic Stratification in the Stammaitic Component of the Bavli: The Case of Sukka 28," *HUCA* 68 (1997): 53–61. This is therefore *not* a case such as that which Shamma Friedman describes wherein the Bavli's expansions of Palestinian aggadot are paralleled in another location in the Bavli "as if that chapter and that *sugya* lay open before the composer of the *gemara*" (*La'aggada hahistorit*," 139 n. 106).

96 Rubenstein, *Talmudic Stories*, 53–62; Jay Rovner, "Structure and Ideology in the Aher Narrative," *JSIJ* 10 (2012): 216 and n. 48.

97 See Jay Rovner, "Rav Assi Had This Old Mother," in *Creation and Composition: The Contribution of the Bavli Redactors (Stammaim) to the Aggadah*, ed. J.L. Rubenstein (Tübingen: Mohr Siebeck, 2005), 113–114; and idem, "Structure and Ideology in the Aher Narrative," 224–225.

98 See David Weiss Halivni, *The Formation of the Babylonian Talmud*, trans. Jeffrey L. Rubenstein (New York: Oxford University Press, 2013), xxviii, 156–164.

99 See Halivni, *Meqorot umesorot*, 9–10; idem, *The Formation of the Babylonian Talmud*, xxvii–xxx.

m. Sanh. 7:11 ¹⁰⁰	t. Sanh. 11:5	b. Sanh. 68a (story)
R. Akiba said in the name of R. Yehoshua:	R. Akiba said: R. Eliezer derived 300 laws from [the verse] <i>You shall not tolerate a sorceress</i> (Exod 22:17), yet I only learned two things from him:	[R. Eliezer said ...] “Not only that, but I recite 300 laws—some say 3000 laws—about the planting of cucumbers, and no one ever asked me a question about it, except for Akiba b. Yosef:
Of two collecting cucumbers [by magical methods]—one collecting is exempt, and the other collecting is culpable. The one who performs a [magical] act is culpable; the one who creates an illusion is exempt.	Of two collecting cucumbers [by magical methods]—one collecting is culpable, and the other collecting is exempt. The one who performs a [magical] act is culpable; the one who creates an illusion is exempt.	Once we were walking on our way, and he said to me, ‘My master. Teach me one thing about the planting of cucumbers.’ I taught him one thing, and the whole field filled up with cucumbers. He said to me, ‘My master: You taught me about their planting. Teach me about their uprooting.’ I said one thing and they all gathered in one place.”

After citing the Mishnah, the Talmud queries: “Did R. Akiba learn this from R. Yehoshua? But did we not learn ...,” continues with our story, and then comments, “therefore he learned this from R. Eliezer.” Thus this anonymous BT *sugya* is concerned with a contradiction: the Mishnah reports that R. Yehoshua taught R. Akiba traditions about the magical harvesting of cucumbers, whereas the story relates that R. Eliezer taught R. Akiba those magical traditions. Now this contradiction ultimately devolves from the contradiction between m. Sanh. 7:11 and t. Sanh. 11:5 (which is even more blatant than the contradiction between m. Sanh. 7:11 and the story, since in the Tosefta R. Akiba attributes to R. Eliezer the verbatim laws *about* magic found in the Mishnah, whereas in the

¹⁰⁰ This tradition also appears in Sipre to Deuteronomy #171 (p. 219).

story Akiba learns magical *acts*, though the Bavli evidently did not make this distinction.) Because the storytellers included a reworked version of t. Sanh. 11:5 into their story about R. Eliezer, the same contradiction resulted.

The BT resolves the contradiction by claiming that “he learned (*gamra*) from R. Eliezer, but did not understand it (*savra*); then he learned from R. Yehoshua, who explained it (*asberah*) to him.” This solution employs a common Bavli distinction between learning, in the sensing of memorizing, a tradition or law (*gmr*) and understanding the justification or reasoning behind it (*svr*). Hence the story is prior to the Mishnah: because R. Akiba did not understand R. Eliezer’s pedagogy he ultimately learned these same laws from R. Yehoshua.

On one level, this resolution of the contradiction is extremely ironic in that it eliminates the two traditions R. Eliezer believed he had transmitted. Where R. Eliezer lamented how few sages asked him questions, and how many of his hundreds of traditions would die with him, the Bavli now denies him even the minor solace he took in in the two traditions he communicated to R. Akiba—in fact he was not successful!¹⁰¹ Yet from a second point of view the resolution is true to the narrative insofar as it claims that R. Eliezer lacked disciples and interlocutors. The BT commentary simply embellishes the degree of his isolation and the extent that he failed to pass on his traditions.

In this way the contextualization enhances a prominent theme of the story. Yet there is a reciprocal impact of the story on the redactional context.

The lengthy *sugya* that precedes the story contains traditions about the nature of magic, including different categories of magic, almost a rudimentary taxonomy, and claims about how different kinds of magic work.¹⁰² There are also stories of sages performing magic of various sorts and of magical duels between Amoraim and sorcerers/witches. As noted above, descriptions of Amoraim engaging in magic are routine in both Talmuds. R. Eliezer teaching R. Akiba two magical acts in the story is therefore of one piece with the preceding *sugya*. Yet both the *sugya* and the story ostensibly contradict the Mishnah, which expresses the Tannaitic prohibition against engaging in magic. This very problem is raised by the anonymous *sugya* that follows the story, and follows immediately after the resolution of the contradiction about whom R. Akiba learned from: “How could he [R. Eliezer] do this [magic on the cucumbers]? Did we not learn (in m. Sanh. 71a), “The one who performs a [magical] act is culpable?” The Talmud’s solution is to distinguish learning for the sake of

101 See Devora Steinmetz, “Agada Unbound: Inter-Agadic Characterization of Sages in the Bavli and Implications for Reading Agada,” in *Creation and Composition*, 332, n. 85. And see Steinmetz, “Like Torah Scrolls,” 170–171 and n. 51.

102 See Levinson, “Enchanting Rabbis,” 69–75, for analysis of this *sugya*.

understanding and teaching, which is permitted, from learning in order to practice magic for its own sake, which is forbidden. And with that the *sugya* concludes. In this respect the story functions as a coda of sorts to the entire *sugya*. The question, “How could he do this?,” could be said equally of the other Amoraim featuring in the *sugya*, such as R. Hanina and R. Oshaya, who created a calf *ex nihilo* and ate it, and R. Yannai, who turned spilled water into snakes. Rashi in fact was so scandalized by R. Yannai’s performance that he rejected the reading he received, “*Rabbi Yannai*,” in favor of “*Yannai*,” since “he was not an upright man, as he engaged in magic.”¹⁰³ The actions of these and other Amoraim can be justified on the same grounds, that they learned these techniques to teach and understand and not to perform them for their own sake, as did R. Eliezer (and R. Akiba!). In addition, the story provides a genealogy for magical praxis, a precedent for the Amoraic “magicians” described throughout the Talmudic *sugya* in the great Tannaim of the story. These and other Amoraim (and later sages studying the *sugya*, the intended audience) need feel no compunctions about engaging in magic as the tradition of rabbinic magic goes back at least as far as R. Eliezer and R. Akiba, in whose steps they follow.

It is even possible that the redactors attempted to create a segue to the story, to link it more closely to the preceding material. The final tradition of the *sugya*, which appears immediately before the story is this:

And the frog came up and covered the whole land of Egypt (Exod 8:2). R. Eleazar said: It was one frog and it filled the entire Land of Egypt. This is the matter of a dispute among Tannaim: R. Akiba said: It was one frog and it filled the entire Land of Egypt. R. Eleazar b. Azariah said to him: Akiba! What business do you have with aggadah? Cease your words and go engage in Leprosy (negaim) and Tent-Impurity (ohalot). It was one frog; it croaked for others and they came.

The content of this tradition has little to do with the *sugya*. It does not focus on magic, nor really with anything that comes beforehand. There is a weak, formal connection to a tradition somewhat earlier in the *sugya* that quotes Exodus 8:15, *Then the magicians said to Pharaoh: ‘This is the finger of God,’* about the plague of lice, on the basis of which R. Eleazar claims that magicians cannot create creatures less than the size of a barley corn. Here then is another tradi-

¹⁰³ The same sensibility seems to have led the scribes of the Munich, Florence and Rav Herzog manuscripts to omit “R.,” but it is present in the geniza fragment Cambridge T-S F2(1) 169.

tion of R. Eleazar (b. Pedat) about the plagues, albeit unrelated to magic, and the Talmud then coordinates it with a Tannaitic dispute. Nevertheless, the tradition seems to be tacked on gratuitously to a coherent and well-focused *sugya* otherwise devoid of digressions.

I would suggest, with all due caution, that what motivated the redactors to include this tradition was less that it features the same R. Eleazar (b. Pedat) than the associated Tannaitic dispute that mentions R. Akiba and his studies: R. Eleazar b. Azariah rebukes R. Akiba for studying aggadah and directs him to a more appropriate subject, the purity laws of leprosy and tents. There is a certain parallel between this charge that R. Akiba studied the wrong subject and R. Eliezer's rebuke of R. Akiba (and the Sages) for not having studied with him, that they engaged in the wrong type of study, and also the implication that R. Akiba failed to learn what he should have (thus the harshest death.¹⁰⁴) Moreover, according to the anonymous *sugya* that follows the story, R. Akiba did not even understand what he learned from R. Eliezer, much as R. Eleazar b. Azariah suggests he does not understand the workings of aggadah. The mention of leprosy (*nega'im*) also intersects with the story in that R. Eliezer knows 300 laws of the bright spot, which is one of the signs of leprosy. While the form of this tradition therefore connects to the previous *sugya* (a dictum attributed to R. Eleazar b. Pedat), the content connects to the story that follows. The student of Talmud, having encountered this tradition, is more prepared for the portrayal of R. Akiba in the story.

Now it should be noted that the BT redactional context differs from that of the PT (y. Šabb. 2:5, 5b), where the story is redacted in connection to m. Šabb. 2:7. That mishnah lists "Three things that one must state in his house on the eve of the Sabbath at dusk," the third of which is "Light the Sabbath lamp!" and then deals with what to do in cases of doubt as to whether it is still dusk. This law clearly intersects with the first scene of the story, as the setting is "the eve of the Sabbath at dusk," and R. Eliezer rebukes his son for neglecting the pressing concerns at that time. In this context the story serves to reinforce the Mishnah's admonition to light lamps at the appropriate time: even the dying R. Eliezer admonished his son to attend to this task before all others. Indeed, the previous mishnah claims that women die in childbirth as punishment for negligence in this ritual. In the BT the story has been redacted in connection with m. Sanh. 7:11 because of R. Eliezer's reference to the tradition of cucumber planting, which does not appear in the PT, and is a result of the Babylonian reworking that draws on t. Sanh. 11:5.

104 See n. 34.

Consideration of the BT redactional context supports the dating of the story to the early Stammaitic period. The redactors of this *sugya* evidently knew of the completed BT story, which had been composed at some earlier point by reworking the PT tradition. They realized that the story contradicted the Mishnah and therefore integrated it as described above: juxtaposing the story with the Mishnah, resolving the contradiction, and adding the follow-up question and answer. If the analysis above has merit, they also created a bridge to the story by including the tradition with R. Akiba's exegesis of Exodus 8:2. There is no evidence that these redactors contributed to the composition of the story, as we sometimes find,¹⁰⁵ by reworking it so as to connect it to the material with which it is contextualized. Rather, they included the story not only to resolve the contradiction with m. Sanh. 7:11, but because the depiction of R. Eliezer relates to the content of the previous *sugya*.

Appendix: Manuscript Variants

Only major variants are listed here: Munich 95 = M; Jerusalem, Yad Harav Herzog = He; Florence 9 = F²; Karlsruhe (Reuchlin 2) = K. (These manuscript abbreviations are from Michael Sokoloff, *A Dictionary of Jewish Babylonian Aramaic* [Ramat-Gan: Bar Ilan University Press; Baltimore: The Johns Hopkins University Press, 2002], 58.) Orthographic variants are not listed. Additional variants can be found in R.N. Rabinowicz, *Diqduqei sofrim*, reprint, 12 vols. (New York, 1960), 9:192–194.

- (A3) "His mind and his mother's mind." He, F², K read: "Your mind and your mother's mind."
- (B1c) "'What about *my* [death]?' He said to him, 'Yours will be more severe than theirs.'" He, F² read: "*his* [death] ... *His* will be ..."
- (B2a) "even as much (*afilu*) as a dog": F², K omit: "even as much."
- (B2b) "bright spot." K reads: "bright as snow."
- (B2c) "I said one thing, and the whole field filled up with cucumbers." K, F² read: "I taught one thing, and ..."
- (B3) "They [the Sages] said to him: 'Master.'" He omits "Master."
- (B3a) "They are made pure [by immersion] as they are" (*bameh shehen*). He, K, F² read: "They become pure by any amount" (*bemashehu*). (This would seem to be an error in light of the Tannaitic parallels.)

¹⁰⁵ See Rubenstein, *Talmudic Stories*, 255–267; idem, *Stories of the Babylonian Talmud*, 207–217.

- (B3c) “And his soul departed with ‘Pure.’” He adds: “A heavenly voice went forth and said: Happy are you, R. Eliezer the Great, that your body is pure and your soul departed with ‘Pure.’”
- (B1a) “We have come to learn Torah.” F² omits “We have come.”
- (C) “In the row (*shura*).” F² reads “in song” (or “with his eulogy”; *shira*).

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Ve-Shuv Limlakhah u-Shvut: An Older Theoretical Framework

Marcus Mordecai Schwartz

Rabbinic tradition has generally divided Shabbat prohibitions into two major categories: *melakhah* and *shvut*.¹ Unfortunately the protean vibrancy of these two terms, particularly the latter, has allowed them to escape clear definition.² The purpose of this paper is to present a working definition of *shvut* that reflects the enormous amount of change and dynamism that have characterized these two terms over the course of their existence. To be clear: My presentation in this paper is far from exhaustive, nor does it represent my final considered opinion on the matter. This paper is more of a first attempt to come to terms with the significance that the continually shifting nature of these two classifications of Shabbat practice holds for our contemporary context. Down the road, in later more developed work, I hope to foster an understanding of these practices that is faithful to precedent while recognizing the need to develop a 21st-century practice of Shabbat that is both relevant and practical. The extraordinary cultural disruption that modernity and its aftermath have imposed upon the people Israel obliges us to recover and restore the practice of Shabbat in an age when most Jews no longer observe it.

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- 1 Joel Roth divides these prohibitions into three categories in Joel Roth, “Melakhah U’Shevut: A Theoretical Framework,” *Conservative Judaism* 35, no. 3 (Spring 1982): 4–34. However, the first two of his categories are subdivisions of the *melakhah* prohibition.
 - 2 In addition to Roth, a number of contemporary scholars have made attempts to define these terms. Though overly credulous of rabbinic legal myth making, Boaz Cohen nicely collects the major sources in Boaz Cohen, “Sabbath Prohibitions Known as Shebut,” *Proceedings of the Rabbinical Assembly* 9 (1949): 123–161. I would not really call his discussion a historical analysis per se, but it is a coherent conceptualization based upon an exhaustive collection of the historical sources. Three other excellent discussions of both the origin and definitions of these terms are: (1) Y.D. Gilat, “On the 39 Shabbat Avot-melakhot” [in Hebrew], *Tarbiz* 29 (1959): 222–228; (2) Aviad Stollman, *Babylonian Talmud, Eruvin x: Critical Edition with Comprehensive Commentary* [in Hebrew], vol. 7 of *Talmud Haigud* (Jerusalem: Society for the Interpretation of the Talmud, 2006), 164–165; 275 n. 4; 286, n. 8; 357–358; (3) Richard Hiday, “One May Come to Repair Musical Instruments’: Rabbinic Authority and the History of the Shevut Laws,” *JSIJ* 13 (2015): 1–26. Both Gilat and Hiday appear awake to the shifting nature of the two prohibitions.

In working up a definition of the two terms, I find it quite difficult to assign either word a single meaning immediately and without hesitation. As we will see over the course of our discussion, the two terms are complementary rather than oppositional. They are a coupled pair and have undergone change as a coupled pair. The definition of each one rests to a significant degree on the meaning vested in its companion. When we attempt to define the one, we return to the other only to find that it has shifted while we were observing the first. This polysemous syzygy renders all definitions dependent and provisional. Perhaps, for the moment, the best working definition I am able to propose may be that *shevut* (literally “cessation” or “resting”) represents the positive side of the commandment to rest on Shabbat, while *melakhah* (literally “craft” or “task”) represents the negative side. In other words, *melakhah* is the sort of work one refrains from on Shabbat, while *shevut* encompasses the act of resting. See the appendix at the end of this paper to see the biblical background of these terms.

Of course the difficulty here is that the manner in which one positively ceases or rests from an act is to stop doing it. As such, *shevut* demands that we avoid behaviors which interfere with the act of resting on Shabbat. Thus, rather than seeing *shevut* as a positive commandment, we are captured by the illusion that it is merely another (perhaps lesser) sort of Shabbat prohibition. Indeed, we shall see that the positive encouragement to refrain from particular acts that is embodied in *shevut* is conceptualized by the Bavli as a series of rabbinic prohibitions.

I am not the first to define these fields of practice in this complex, yet seemingly binary manner; namely that *melakhah* directly forms the negative prohibitions of its kind, while *shevut* is derived from a positive impulse—yet indirectly creates all manner of prohibitions of its own sort. In this paper I will present two conceptions of *shevut* that hold fast to this composite scheme, though in different ways: That of Maimonides and that of Nahmanides. We shall see both of them attempting to explain *shevut* as the positive commandment to rest on Shabbat, while simultaneously maintaining the more recent *Amoraic* understanding of *shevut* as a rabbinic prohibition. This puts both of them under an interpretive strain. The distorting effect of this strain results in two deeply creative conceptual reworkings of the category.

Maimonides’ definition of *shevut* is undoubtedly one of the oddest descriptions of any legal concept in the Mishneh Torah:

The Torah states (Exod 23:12), “you shall rest.” You must cease even behaviors that are not *melakhah*. And the things that the Sages forbade for the

sake of rest (*shevut*) are numerous. Some of them are prohibited because they are akin to *melakhah*, and some of them are prohibited as a circumscription to prevent encroachment on prohibitions punishable by stoning.³

Three things in this statement would have had the effect of defamiliarizing *shevut* to Maimonides' audience.⁴ First, his audience would clearly have been conditioned to view *shevut* as nothing more than a rabbinic prohibition. Isaac Alfasi puts forth this view in his treatment of b. Beṣah 36b.⁵ Given the currency and authority of the *Hilkhot Rav Alfasi* in place and time, one can deduce a widespread view that *shevut* was seen as nothing more than a rabbinic prohibition. However Maimonides grounds the practice of *shevut* in the Torah's positive commandment to rest. In and of itself, this can be taken as representative of one of Maimonides' typical modes of operation. He often grounds rabbinic rules in Scripture.⁶ However his attempt to follow this typical pattern results in a near contradiction of the Bavli's claim that *shevut* is not a Torah-level (*de-oraita*) law. B. Beṣah 36b is the most explicit on this point. Nonetheless, many passages in the Bavli tally with this understanding. These include—but are not limited to—b. Šabb. 8b, 97a, 114b, 150a; b. 'Erub. 30b, 32b, 34b, 98a, 103a, 105a; b. Beṣah 33b. Instead he is quite explicit that *shevut* has its starting point in Scripture: "The Torah states (Exod 23:12), 'you shall rest (*tishbot*).'"

This brings us to the second point of oddness: Maimonides puts forth a hybrid system in which *shevut* has its inception in the Torah, but its expression in the circumscriptions enacted by the Sages. No passage in the Mishnah, nor

3 Mishneh Torah, *Hilkhot Shabbat* 21:1 (translation by the author).

4 The term "defamiliarization" was first coined in 1917 by Viktor Shklovsky in his essay "Art as Device". See Viktor Shklovskij (sic.), "Art as Technique," in *Literary Theory: An Anthology*, ed. Julie Rivkin and Michael Ryan (Malden: Blackwell Publishing, 1998). It is the method of presenting audiences with common things in unfamiliar or strange ways in order to recover and restore fresh experience of the familiar. This is exactly what Maimonides does here. For a treatment of the affinity between Shklovsky's "*ostranenie*" and Jacques Derrida's "*différance*," see Lawrence Crawford, "Viktor Shklovskij: Différance in Defamiliarization," *Comparative Literature* 36 (1984): 209–219.

5 *Hilkhot Rav Alfasi*, vol. 1, ed. Nisan Zakash (Jerusalem: Mosad Ha-Rav Kook, 1969), 258. Alfasi presents the Bavli's claims that *shevut* is a rabbinic decree and then presents the Yerushalmi's sugya that clapping is only prohibited on Shabbat when it arises from anger. However he fails to present the Yerushalmi's discussion that precedes this sugya in the same halakhah. That sugya roots *shevut* in the positive commandment to rest.

6 This is a commonplace. See, for instance, Menachem Elon, *Jewish Law: History, Sources, Principles* [in Hebrew], vol. 2, pt. 3 (Jerusalem: Magnes Press, 1988), 980–997.

in either Talmud, nor the Tosefta, nor in any extant halakhic midrash of which I am aware advances such a theory of *shevut*. This is a new, foundational redrafting of the theory underpinning *shevut*. However, Maimonides does not make this new idea of whole cloth. It is a harmonization prompted by the multiple, differing rabbinic paradigms regarding the nature of *shevut* that he inherited. We shall also see that Naḥmanides was prompted from the same motivations to attempt something similar.

Third, Maimonides makes it clear that there is a deep and abiding connection between *melakhah* and *shevut*. However he maintains a somewhat ambiguous stance, not clarifying the exact relationship between the two fields of observance. I suggest that this is intentional. It is clear that the two concepts are intimately linked, but that link was expressed in a variety of different ways prior to Maimonides. Vidal de Tolosa (1283–1360), one of Maimonides' closest readers and the author of the *Maggid Mishnah*, is unusually circumspect about Maimonides' meaning. Indeed he appears somewhat confused, and imposes the system of Naḥmanides (as well as that of the *Mekhilta* of Rabbi Shimon b. Yohai) on our passage of the *Mishneh Torah*, overlaying it with two possible, contradictory meanings:

Our master's intention is [to say] that the Torah prohibited the explicitly forbidden tasks (*melakhot*) in detail, in accordance with the general method in which they have been explicated along with their measures. However a person could still toil at things that are not *melakhot* all day long. Therefore the Torah said, "rest." This is also as Naḥmanides has written in his commentary to the Torah. So the Sages advanced and forbade many things. Or, perhaps our master's intent is that the rabbinic requirements to rest (*shevutin*) have support from the Torah: "You shall rest." This is the theory of the passages in the *Mekhilta*.⁷

De Tolosa's confusion, along with the multiple explanations he puts forth, points to the idiosyncrasy of this passage in the *Mishneh Torah*. The strangeness of the *Mishneh Torah* in this passage is suggestive of the multiple paradigms and the shifting ground upon which both *melakhah* and *shevut* rest.

Naḥmanides' approach to the problem is clarifying, and makes the dynamics of the categories come to life before our eyes. He writes:

⁷ Ad loc. I hope to address the different complex and confusing conceptions of *shevut* that we find in the collections of Tannaitic midrash at another time.

It appears to me that the meaning of the midrash [interpreting the phrase *shabbaton*] is that we are commanded on Yom Tov to rest from those activities that technically do not qualify as *melakhah*. We should not be disturbed all day to measure our grain, to weigh our fruit and possessions, to fill our vessels with wine, to move our wares, and even building stones, from house to house and place to place, and if located in a walled city, load up our donkeys, and even wine, grapes, figs, and all packages could indeed be delivered on a festival; and the marketplace would be filled with ongoing commerce, and the shops would be open and money changers' tables strewn with coins, and the workers would arise for their duties and establish their daily wages, like the rest of the week, and so on. These and similar activities, whether on Yom Tov or even Shabbat itself, all these activities do not technically constitute *melakhah*. Therefore, the Torah commands us "*shabbaton*"—that these should be days of rest and cessation of work, and not days of labor and toil. And this is a good and beautiful interpretation.⁸

Nahmanides puts forth the theory that work and rest are—by definition—performative categories: The form that each category takes in practice defines the nature and character of human toil or leisure, rather than any prior fixed nature or character that toil or leisure may have possessed determining the form of their practice. What exhausts us, or refreshes us is largely a function of whether we conceive of it as work or as rest. One could engage in hard physical activity for a long time, and feel refreshed by it, if one thinks of it as rest, and yet be exhausted by several hours of doing little more than talking, if one conceives of it as work. This is to some degree subjective and temperamental, but he seems to argue that it is the shared communal perception of acts of work or rest that imbue them with their toilsome or leisure character.

In his imagined religious context, the result of the performative quality of work and rest is such that the ambience of Shabbat is the result of human action and behavior, and only in that action and behavior is Shabbat recognizable and distinct from other days of the week. As the halakhic conception of work and rest (i.e., *melakhah* and *shevut*) change, inevitably, the quality of that ambience may change. By being conscious of the changes in conception of these acts this midrashic interpretation of *shabbaton* arms us with sensitivity to perceive which acts are less than *melakhah* but still violate the aesthetics of the day.

⁸ Nahmanides, *Commentary on the Torah*, Lev 23:24.

I hope this also arms us with the foresight to anticipate what those changing conceptions mean for the future of Shabbat in an age in which digital technology is constantly remaking our understanding of the nature of work and rest. I further pray that we will use that foresight to ensure the restoration of Shabbat to its rightful role as the guardian of the people Israel's survival and flourishing.

Appendix: *Melakhah* and *Shevut* in Scripture

The verb שבת (šbt) appears in the Torah in four passages (Gen 2:1–3; Exod 16:11–36; 23:9–12; 34:21). One is in Genesis, the other three are in Exodus. The three Exodus passages depict a commandment to rest using this verb. The noun מלאכה (*melakhah*) appears in six passages in which Shabbat is addressed (Gen 2:1–3; Exod 20:8–11; 31:12–17; 35:1–3; Lev 23:3; Deut 5:12–15). They appear together only once: Genesis 2:1–3. This passage is not prescriptive, being a creation narrative. There are five passages in which Shabbat is addressed, yet neither the verb שבת (šbt) nor the noun מלאכה (*melakhah*) appears (Lev 19:3, 30; 26:2; Num 15:32–36; 28:9–10). In order to understand what is at play here, and whether or not there are different conceptions of Shabbat commandments and prohibitions contained in the two words as they are presented in Scripture, we must first untangle the relationship between these various verses. There is also the matter of the multiple voices in which the Torah is written. I refer here to the strands of tradition or documents that certain critical Bible scholars have posited since the 19th century.⁹ Can the multiplicity of voices that we find in the Torah help us in determining the conception of these two terms and the extent to which the conception of Shabbat they represent differed historically in the time of the composition of the Bible? Finally, can we attribute the geographical, temporal, or ideological differences regarding the nature of Shabbat from these passages in the Torah?

For the sake of heuristic clarity I have created a chart that depicts the relationship between these various verses. I have also assigned a voice to each passage using the letters that Bible scholars have been using for some time (more than a hundred years) to refer to the documents—or strands of tradition that many claim the Torah contains. The Torah undoubtedly contains separate voices running the whole of its length that are consistent in vocabu-

9 For a good recent review of the hypothesis see Joel Baden, *The Composition of the Pentateuch: Renewing the Documentary Hypothesis* (New Haven: Yale University Press, 2012), 13–33.

lary; voices that leave off in one passage and then resume at a later point in a coherent, connecting way. The consistency of style, vocabulary, theology, and more that one finds in these voices is deeply convincing that they represent consistent, sustained, coherent, and differing statements submerged below the Torah's redactional layer. I think it is clear that this is the way the Torah talks—in a multiplicity of voices.¹⁰ To that extent, considering these voices and how they present the various commandments of the Torah may give us an insight into different conceptions that may have been extant at the time of the Torah's composition. In any case, in addition to assigning voices to the passages, the chart below lays out the occurrence of the two terms, or their absence, in every passage related to Shabbat in the Torah.

פרשה	קול	מלאכה	שבות	עמום
בראשית ב, א-ג	P	×	×	
*שמות טז, יא-לו	P/J			×
שמות כ, ח-יא	P	×		
שמות כג, ט-יב	E		×	
שמות לא, יב-יז	P	×		
שמות לד, כא	J		×	
שמות לה, א-ג	P	×		
ויקרא יט, ג	P/H			×
ויקרא יט, ל	P/H			×
ויקרא כג, ג	P	×		
*ויקרא כו, ב	P/H?			×
במדבר טו, לב-לו	P			×
*במדבר כח, ט-י	R			×
דברים ה, יב-טו	D1	×		

10 I think it is unduly difficult to attempt to establish an exact date for each of these voices, nor is it my duty to do so here. I will not be entering into a discussion of which of these voices preceded the other, or whether they all derive from a simultaneous moment of revelation. That is beyond the scope of this paper.

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From Confidence to Confusion: Structure and Meaning in Psalm 27

Benjamin D. Sommer

At once a song of faith and a song of doubt, Psalm 27 can be seen as a distillation of the Book of Psalms as a whole.¹ Its stanzas move from a complete but perhaps haughty faith in God to a more modest religious sentiment: hope, a less-than-full trust which aspires to confidence but admits to some uncertainty. Psalm 27 divides itself into three stanzas, and the relationship among them provides a key to the meaning of this poem. Each section has its own mood: in the first section (verses 1–6) the worshiper is confident; in the second (7–12), the worshiper is distressed; in the third (13–14), we find expressions of hope along with an implicit acknowledgement that certainty of salvation is not possible. The sections are stylistically distinct as well: in the first section, the worshiper speaks of God in the third person; in the second, the worshiper addresses God in the second person; in the third, God is again described in the third person. The shift in both mood and grammatical person at verse 7 is extremely abrupt, and this has led some scholars to argue that our chapter contains two unrelated psalms, a song of confidence in verses 1–6 and a complaint/plea psalm in verses 7–14. But such a view oversimplifies our poem. It fails to note the ways each section contains elements that foreshadow or echo the others.² Intimations of distress can be found in the first stanza, while elements of confidence underlie the worshiper's plea for help in the second. The psalm's movement back and forth between confidence and need, between believing in God's reliability and worrying about God's absence,

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- 1 Abbreviations in the notes follow the stylesheet of the Society for Biblical Literature. All translations are my own, unless otherwise noted. It is an honor to dedicate this essay to Professor Joel Roth as a small token of thanks for all he has taught and for the many *שאלות* he has answered for me and my family over the years. My thanks to Rabbi Joyce Newmark for her careful reading of the galleys.
 - 2 The same situation is found in Psalm 19: each of the two stanzas that many scholars regard as distinct and unrelated psalms is in fact full of verbal and thematic references to the other, and it is the dialogue between the two stanzas that is the key to understanding that highly integrated, unified poem. See Benjamin D. Sommer, "Nature, Revelation, and Grace in Psalm 19: Towards a Theological Reading of Scripture," *HTR* 108 (2015): esp. 379–381, 388–390.

reveals the essence of this psalm. The psalm as a whole defines a mature faith in God as encompassing doubt. This psalm further emphasizes not only intellectual knowledge of God as a savior but the experience of God's presence, which comes not only from contemplation but from ritual or ethical action.

Text and Translation

In analyzing this text, I would like to model a method of reading in which we'll first attend to local poetic structures; building on these local structures, we'll move to broader structural elements; finally, building on the broader structures, we'll turn to theological interpretation. So I think it would be worthwhile to take a look at the text as a whole and to attend to its lineation, because the first thing we need to do when we are interpreting any biblical poem is to break it into lines. In most poetic traditions, that work is done for us. When one picks up *The Oxford Book of English Verse* or *The Penguin Anthology of Twentieth-Century American Poetry* or this week's copy of *The New Yorker*, the conventions of printing tell us how the poet wants the poem to be divided. Further, in traditions in which poetry scans (that is, in poems that have meter), we usually know quite precisely where lines begin and end based on the number of syllables they contain and on their patterns of stress (in most English poetry prior to the twentieth century, for example) or vowel length (in Greek, Arabic, and medieval Hebrew poetry). But in biblical poetry we have no authoritative editions going back to the time of the poems' composition or evolution. Because biblical poetry is essentially a form of free verse,³ there is no

3 See F.W. Dobbs-Allsopp, *On Biblical Poetry* (New York: Oxford University Press, 2015), 9–10, 95–177, esp. 98–99. Similarly, Benjamin Hrushovski, "Prosody, Hebrew," in *Encyclopaedia Judaica* (Jerusalem: Keter, 1971), 13:1201, refers to the "free rhythm ... based on a cluster of changing principles" of biblical poetry, which he clearly sees as a type of free verse. On earlier literary critics (esp. Gay Wilson Allen) who rightly recognize biblical poetry as a very early form of free verse, see Dobbs-Allsopp, *On Biblical Poetry*, 95, 393 n. 3, and 396 n. 32. Dobbs-Allsopp points out (177 and 395 n. 13) that Walt Whitman himself already implied a connection between what we now call free verse and biblical poetry in his 1888 essay, "The Bible as Poetry." Whitman cites the claim of Frederick De Sola Mendes (in Mendes' lecture "Hebrew Poets") that "that rhyming was not a characteristic of Hebrew poetry at all. Metre was not a necessary mark of poetry. Great poets discarded it; the early Jewish poets knew it not." Mendes, incidentally, was one of the founders of the Jewish Theological Seminary of America and a graduate of the older JTS in Breslau, Germany. (He is not to be confused with his brother, Henry Pereira Mendes, the American JTS's president from 1897 to 1902.) Whitman's essay is available in Walt Whitman, "The Bible as Poetry," in *Complete Prose Works* (Philadelphia: David McKay, 1892), 379–382. I have not been able to locate Mendes' lecture, which (Dobbs-Allsopp suggests to me) may not exist in print; Whitman may have attended the lecture in Manhattan where he

scansion to determine where lines begin and end. So the readers have to figure this out themselves, and it will be helpful for readers of this commentary to know how I divide the poem into lines and versets. (I will follow Benjamin Harshav (Hrushovski) in labeling the two or three sub-units of a biblical poetic line as *versets*.⁴)

		לדוד	1
	ממי אירא	ה' אורי וישעי	
	ממי אפחד:	ה' מעוזי חיי	
	לאכל את־בשרי	בקרב עלי מרעים	2
	המה כשלו ונפלו:	צרי ואיבי לי	
	לא־יירא לבי	אס־תחנה עלי מחנה	3
	בזאת אני בוטח:	אס־תקום עלי מלחמה	
	אותה אבקש	אחת שאלתי מאת־ה'	4
	כל־ימי חיי	שבתי בבית־ה'	
	ולבקר בהיכלו:	לחזות בנעס־ה'	
	ביום רעה	כי יצפנני בסכה	5
	בצור ירוממני:	יסתרני בסתר אהלו	
	על איבי סביבותי	ועתה ירום ראשי	6
אשירה ואזמרה לה:	זבחי תרועה	ואזבחה באהלו	
וחנני וענני:	קולי אקרא	שמע־ה'	7
	בקשו פני	לך אמר לבי	8
	אל־תסתר פניך ממני	את־פניך ה' אבקש:	9
	עזרתי היית	אל־תט־באף עבדך	
	אל־הי ישעי:	אל־תטשני ואל־תעזבני	
	וה' יאספני:	כי־אבי ואמי עזבוני	10
למען שוררי:	ונחני בארח מישור	הורני ה' דרכך	11
ויפח חמס:	כי קמו־בי עדי־שקר	אל־תתנני בנפש צרי	12
בארץ חיים:	לראות בטוב־ה'	לולא האמנתי	13
וקוה אל־ה':	חזק ויאמץ לבך	קוה אל־ה'	14

1 Of David.

Yhwh is my light and my salvation—

Whom should I fear?

Yhwh is the sure haven of my life—

Whom could I dread?

2 When evil-doers draw near

To slander me,

My enemies and foes—

They're the ones who stumbled and fell.

lived for some years and where Mendes served as rabbi of the synagogue now known as Temple Shaarey Tefilla.

4 Hrushovski, "Prosody, Hebrew," 13:1200–1203.

- 3 Should an army encamp against me, My mind will know no fear.
Should war break out around me, I will trust in this.
- 4 One thing I ask of Yhwh, This do I request:
To dwell in Yhwh's house All the days of my life,
To gaze upon the marvel that is Yhwh, And to serve in His palace.
- 5 For He conceals me, inviolable, in His shelter, At times of danger;
He hides me in His hidden tent, High on a rock, He lifts me up.
- 6 So now, I hold my head high Above my enemies all around.
I should offer up in His tent A celebration-meal—
I should sing and play music to Yhwh!
- 7 Hear, O Yhwh, My voice, my cry!
And show me grace and answer me!
- 8 On Your behalf my mind speaks: "Seek Me out!"
It is You I seek, Yhwh— 9 Do not hide Yourself from me!
Don't thrust Your servant away in anger— You were my help!
Don't leave me, don't abandon me O God of my salvation!
- 10 Indeed, my father and mother abandoned me, But it is Yhwh who takes me in.
11 Parent me, Yhwh, teaching me Your path, And lead me on a level road
While my foes look on.
- 12 Don't feed me to my enemies! Yes, lying witnesses rise against me,
With unfair, violent testimony.
- 13 Were it not for the fact that I believe That I shall see Yhwh's goodness
While still alive ...
- 14 Hope that Yhwh will come! Courage! Let your mind be strong!
And hope that Yhwh will come.

Commentary

Verse 1.

The opening verse consists of two lines that are lexically parallel to each other: each word in the first line of the verse corresponds precisely to a word in the next. Each line contains two versets in which the second spells out the result of the first: because God is my salvation and stronghold, there is no reason for me to fear.

בְּעִיּוֹר, *Sure haven* Literally, "mountain stronghold, place of refuge." The word can refer to a fortress or fortified city, but it is also often used as a metaphor for God, e.g., Psalm 31:5, 37:39, 52:9; Isaiah 25:4; Jeremiah 16:19; Nahum 1:7;

and, most familiarly to many contemporary Jews, in the opening line of the medieval hymn, מעוז צור.

Verse 2.

בקרב, *Draw near* The verb קרב echoes the noun meaning “battle,” lending it a secondary sense that hints at “setting out to war” (see ibn Ezra and Radaq to this verse).

לאכל את בשרי, *To slander me* Literally, “to eat my flesh.” This phrase allows several plausible interpretations. It could be understood as a metaphor for the actions of the worshiper’s enemies. The metaphor implicitly compares the enemies to wild animals. This understanding of the phrase works especially well if we are understanding the enemies to be an army attacking Judah (though this seems less likely for a psalm whose speaker is an individual, not the nation), or if they are individuals who violently attack the speaker. At the same time, however, similar phrases in Aramaic (קרציה אכל) and Akkadian (*qarši akālu*) are idioms meaning “slander someone” and (in Akkadian) “initiate legal proceedings against someone, accuse someone.” Thus this speaker of the psalm could be referring to enemies who are unjustly accusing him of some misdeed, either as gossip or in a formal legal setting. This ambiguity need not be resolved by the modern interpreter; some worshipers reciting this psalm (whether in biblical times or later) might have justifiably intended these words as a metaphor for violence or warfare, while others intended it, with equal justification, as the idiom for slander or for unjust legal proceedings.

צרי ואיבי לי, *my enemies and my foes* The Hebrew is redundant in adding the first-person possessive particle לי after the first-person possessive suffixes of the nouns. Such doubling is a characteristic of the elevated language employed in ancient Hebrew poetry. Cf., e.g., כרמי שלי in Song of Songs 8:12.

המה כשלו ונפלו, *They’re the ones who stumbled and fell* The Hebrew emphasizes “they” by adding the pronoun המה, since the plural form of the Hebrew verbs already indicates the subject.⁵

5 In most editions of MT, the word המה has a טרחא (not a טפחא!) as its cantillation mark. In the cantillation of the ספרי אמ"ת the טרחא is a conjunctive cantillation mark, and consequently the first letter of כשלו has no דגש קל. But the Rödelheim edition of the MT Psalter edited by Seeligman Isaac Baer, which many siddurim follow, has a רביע מוגרש on המה, which is disjunctive. In that edition the first letter of כשלו has a דגש קל. Thus both pronunciations

כָּטְלוּ וַנִּפְלוּ, *Stumbled and fell* Contrary to the NJPS translation (“stumble and fall”), the suffix verbs in the Hebrew text do not have the frequentative meaning implied by the English present tense.

The parallelism in the second line of this verse is unusual. Had the poet employed a more typical pattern, the line would read, **צָרִי כָשְׁלוּ / וְאִיבֵי לִי נִפְלוּ** (“My foes stumbled, / my adversaries fell”). But instead the line clusters nouns in its first verset and verbs in the second. This phrasing allows uncertainty to build up in the first verset, finally to be resolved in the second, whereas the more typical parallelism would have eliminated it immediately.⁶ The implications of this intimation of disquiet in the first stanza (which is largely confident in tone) will be discussed in “Interpretation,” below.

Verse 3.

אִם־תַּחֲנֶנֶה עָלַי מַחֲנֶה...אִם־תִּקְוֶם עָלַי מִלְחָמָה, *Should an army encamp against me ... Should war break out around me* These two lines pick up the hint of warfare in the previous verse’s verb **בִּקְרַב** (“draw near”, but from a root that also means battle), developing the martial metaphor explicitly.

בְּזֹאת, *In this* This could also be rendered, “nevertheless, even so.”⁷ But the preposition **בְּ**, when used with the verb **בָּטַח** (**be confident**, or “trust”) regularly introduces the person or thing that the verb’s subject trusts. In that case, we must ask what **this** refers to. It could refer back to the confidence the speaker expressed in the previous two verses (“Though beset by enemies, I remain confident, because God who is my light and salvation is more powerful than encroaching armies”); so Rashi, Radaq, Ḥakham.⁸ Or “this” might refer forward to the request made in the next verse to dwell permanently in the Temple (“Though beset by enemies, I will be safe as long as I remain at the Temple”); so ibn Ezra. On this final possibility, see the discussion of “Settings” in the section, “Interpretation,” below.

may be regarded as correct, as are the various siddurim that adopt the one or the other. (The evidence of Rödelheim editions is of particular import, as they were used already by אדם **אדם** in **הַרְאֵשׁוֹן** in **עַדְן** in **גֵּן עֵדֶן**, as is evidenced by God’s characterization of Adam in Gen 3:9בֵּ.)

6 See John Goldingay, *Psalms 1–41*, Baker Commentary on the Old Testament Wisdom and Psalms (Grand Rapids, MI: Baker Academic, 2006), 391.

7 Arnold Ehrlich, *Psalmen: Neu uebersetzt und erklart* (Berlin: M. Poppelauer, 1905), ad loc. Hence NJPS: “Still.”

8 Amos Hakham, *The Book of Psalms*, 2 vols. [in Hebrew], Da’at Mikra (Jerusalem: Mosad Harav Kook, 1979), ad loc.

Verse 4.

שאלתי...אבקש, *Ask ... request* The request here adds an element that will be developed more in the second stanza. But even with the request, the tone of this verse remains confident.

לחזות בנעם, *To gaze upon the marvel* Elsewhere in the ancient Near East, statues of worshipers were sometimes installed at temples.⁹ Such statues, which typically have unusually large eyes, evince the delight of the worshipers who bask in the presence of their deity.¹⁰ In the Babylonian temples, actual worshipers did not come close enough to the statues of the deities to literally have enjoyed gazing at them.¹¹ The mere experience of seeing the temple building and spending time in it was enough to produce the joy. Similarly, the phrase in the psalm here does not mean literally seeing God's presence in the Holy of Holies, which was inaccessible to normal worshipers and even most priests.¹² Rather, as Craigie and Tate note, the phrase is "not to be interpreted literally, but as implying the extraordinary experience of God's beauty and glory as symbolized in the temple, specifically in the Ark."¹³ In this verse, the worshiper expresses a yearning not merely to know something about God but to bask in the delightful warmth of God's presence in the building where, Israelites believed, God actually dwelt on earth. As Martin Cohen astutely notes in his commentary on this psalm, "The poet wants to cultivate the experiential, rather

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- 9 See Shalom Holtz, "God as Refuge and Temple as Refuge in the Psalms," in *The Temple of Jerusalem: From Moses to the Messiah: Studies in Honor of Professor Louis H. Feldman*, ed. Steven Fine (Leiden: Brill, 2011), 26.
- 10 On this theme in Psalms and elsewhere in the Bible, see Othmar Keel, *The Symbolism of the Biblical World: Ancient Near Eastern Iconography and the Book of Psalms*, trans. Timothy J. Hallett (New York: Seabury Press, 1978), 314. For pictures of such statues which give a clear sense of this delight, see James B. Pritchard, ed., *The Ancient Near East in Pictures Relating to the Old Testament*, 2d ed. (Princeton: Princeton University Press, 1969), nos. 18–24.
- 11 See Ivan Hrůša, *Ancient Mesopotamian Religion: A Descriptive Introduction*, trans. Michael Tait (Münster: Ugarit Verlag, 2015), 73; Michael B. Hundley, *Gods in Dwellings: Temples and Divine Presence in the Ancient Near East* (Atlanta: Society of Biblical Literature, 2013), 48–75, esp. 68–69 and 75.
- 12 Theoretically, that presence was in fact visible; but seeing it directly would cause death instantly (Exod 33:20), though exceptions did occur (e.g., Isa 6:1–2, in which the prophet is initially dismayed because he expects to die after seeing God's presence; Exod 24:17, in which the people at the bottom of Mt. Sinai see God's presence on top of the mountain, surrounded by a thick cloud but apparently still visible through the cloud due to its intense brightness).
- 13 Peter Craigie and Marvin Tate, *Psalms 1–50*, 2d. ed., WBC (N.p.: Thomas Nelson, 2004), 232.

than merely intellectual, knowledge of God ... to know God through the senses rather than through the intellect.¹⁴ For another verse that stresses this experiential knowledge of God through the senses and not just the intellect, see Psalm 34:9.

לְבַקֵּר, *To serve* Contrary to NJPS,¹⁵ which translates “to frequent,” in ancient forms of Hebrew this verb does not mean to visit or to come regularly to a particular place; that meaning of the verb develops only in modern Hebrew. Rather, in biblical, Qumran, and rabbinic Hebrew, this verb has a range of meanings relating to “carrying out important tasks.” It can mean “to examine, to check,” especially to examine sacrificial offerings so as to ensure that they are ritually appropriate. It can also mean “to be in charge, to take care of.” Thus in the Dead Sea Scrolls the מְבַקֵּר is the official in charge of the community.¹⁶ In rabbinic Hebrew, the sense of “take care of” appears in reference to the sick, in the well-known phrase, בִּיקוּר חוֹלִים. In modern Jewish parlance, this phrase is used to refer to visiting the sick, an ethically commendable action that generally involves dropping by to cheer up a sick person. But in ancient times, when there were no hospitals and few physicians, בִּיקוּר חוֹלִים had a different meaning that fits the basic definition of the verb לְבַקֵּר noted above: it denoted *examining* and *taking of* a sick person, attending to their needs in the ways that medical professionals (especially nurses) and hospital staff members do today. Neighbors and relatives who performed the act of בִּיקוּר חוֹלִים in antiquity were not just coming over to chat. They fed and bathed the patient, applied ointments and salves to their sores, or prepared medicinal herbs for them. In modern Hebrew, the meaning of this verb meaning extends much further, to include social visits, tourism, and vacations (one can מְבַקֵּר Disney World, for example, without providing medicine for Mickey Mouse or drugs for Donald Duck). This broader sense of the verb developed out of the much more specific meaning of the phrase in older forms of Hebrew.

Thus the worshiper in our verse is not asking to be able to stop in at the temple on frequent occasions. The worshiper wants to some responsibility that will keep him there on a long-term basis.¹⁷ What emerges from this verb (*viz.*, that

14 Martin Samuel Cohen, *Our Haven and Our Strength: The Book of Psalms* (New York: Aviv Press, 2004), 79.

15 Which follows Ehrlich, *Psalmen*, ad loc.

16 This meaning appears in particular in *Seraḥ Hayahad* (the *Community Rule*) and in the Damascus Document.

17 Some scholars attempt to identify the job more specifically. Malul (in Sarna, *‘Olam Hata-*

the speaker wants to remain at the temple permanently, not simply to visit it) matches what we see earlier in this verse: the speaker wants to **dwell in Yhwh's house all the days of my life**. What circumstances might have led the speaker of this psalm to want to remain at the temple will be discussed below in "Interpretation."

Verse 5.

יִצְפְּנִי, *He conceals me, inviolable* Throughout the verse, the prefix verbs are best understood as frequentative. The verb **צִפַּן** refers to hiding something valuable. (The passive participle of this verb, **צִפּוֹן** ["hidden thing"], is used in the Passover Haggadah as another name for the **אֶפְיִקוּמָן** that is hidden after the seder meal.) The root of this verb also produces the noun **צִפּוֹן**, which means "north." That noun appears frequently in Ugaritic literature as the name of the mountain where the gods and goddesses live; in other words, it is the Ugaritic equivalent to Mount Olympus of the Greeks.¹⁸ This mythological sense of the word as connected with heavenly dwellers and with creation occasionally occurs in biblical texts (Isa 14:13; Ps 89:13; Job 26:7). Psalm 48:3 uses this noun as an appellation for Mount Zion; since **צִפּוֹן** can mean the hilltop where a deity lives, and since Yhwh dwells in the Temple on Mount Zion, Psalm 48 can use the term in the course of arguing that Jerusalem, as the city where God dwells, can never be conquered.¹⁹ Our verb **יִצְפְּנִי** in Psalm 27:5, then, may allude

nakh) maintains that the worshiper wants to be employed examining offerings. Craigie & Tate as well as Goldingay follow Jon Levenson, "A Technical Meaning for נ'מ in the Hebrew Bible," *VT* 35 (1985): 61–67, in surmising that the worshiper wishes to work as a diviner or temple prophet who seeks out oracles or performs some sort of augury in the temple. But it is neither possible nor necessary to pin down what job the worshiper wants in the temple. The verb **לְבַקֵּר** suffices to make clear, as Terrien concludes (267), that "the psalmist favors ardently the holy ambition of 'serving' in the temple without interruption." Some commentators on this verse (Rashi, ibn Ezra, Ḥakham, and Mitchell Dahood, *Psalms: Introduction, Translation, and Notes*, 3 vols., AB [Garden City, NY: Doubleday, 1966–1970]) suggest another possible meaning of **לְבַקֵּר** here, based on its similarity to the noun **בִּקְרָה** (morning): to come to the temple each and every morning. This meaning would give warrant to NJPS's translation, "to frequent." But there are no clear attestations of such a verb, and the normal meanings of the verb in ancient Hebrew ("examine" and "be in charge") fit the cultic context of our verse perfectly well, making the recourse to an otherwise unattested meaning unnecessary.

18 The word was probably pronounced *tsapān* or *tsafān* in Ugaritic, with a long *a* sound in the second syllable. It is not possible to know whether the middle consonant was pronounced *p* or *f*.

19 Note also the correspondence of **וּמִן צִפּוֹן יִהְיוּ יִסְעֲדוּן** in the fourth-century BCE Aramaic ver-

to the idea of Zion as inviolable.²⁰ Because the worshiper hopes to remain in the Temple forever to serve the God dwelling there, the worshiper will be safely sheltered in the place of God's assured protection, Zion, which is God's mountain or צפון.

בְּסֶכֶה... סֶכֶה אֱהָלוּ בְּעוֹר, *His shelter ... His hidden tent ... rock* All these terms can refer to the Temple. In Psalm 76:3 סֶכֶה (**shelter**) refers explicitly to Jerusalem, which there is called both "Salem" and "Zion." (This word is related to the more familiar סֶכֶה, "hut, shelter.") The more familiar word refers to God's hidden, heavenly abode amidst dark clouds in Ps 18:12 and Job 36:29. אֱהָלוּ (**tent**) also can refer to the Temple; see Psalms 15:1 and 61:5. Similarly, Dahood argues that עוֹר, which I translate as **rock** can mean "mountain."²¹ If this is so, that term might be an additional allusion to the Jerusalem Temple, which was located on the top of the hill known in biblical times as Zion and today as the Temple Mount. These overtones of the three words strengthen the verse's allusion to צפון as the mountain where God dwells.

בְּעוֹר יְרוּמָמִי, *High on a rock, He lifts me up* Some commentators regard this last verset as odd; the previous ones talked about the speaker being hidden and thus protected; here the speaker is exposed for all to see (though presumably high on a rock where the enemies cannot get him).²² But sudden shifts in the imagery of a psalm are not uncommon; the psalmists feel free to use multiple comparisons in their figurative language, thus yielding an array of impressions to evoke the situation they have in mind.

sion of Psalm 20 in demotic script from Egypt (Papyrus Amherst 63, column xii, lines 13–14) with וּמְצִיין יְסַעֲדֶךָ in the MT.

20 On the doctrine of Zion's inviolability, see, e.g., John Hayes, "The Tradition of Zion's Inviolability," *JBL* 82 (1963): 419–426; Ben Ollenberger, *Zion, the City of the Great King: A Theological Symbol of the Jerusalem Cult*, JSOTSupp (Sheffield: JSOT Press, 1987).

21 Dahood, *Psalms*, commenting on 18:3.

22 Charles Augustus Briggs and Emilie Grace Briggs, *A Critical and Exegetical Commentary on the Book of Psalms* (New York: C. Scribner's Sons, 1906–1907), ad loc., suggests reading בְּצַר, yielding the translation "in distress He lifts me up." But "lifting up" remains odd in that it exposes the worshiper where everything else here hides him. Ehrlich emends to יְרוּם מְמִי, yielding the translation, "He protects me in His tent / on a crag too high for me."

Verse 6.

ויעתה, *So now* One might even translate this, “So” or “Therefore.” In biblical Hebrew this word often draws a practical conclusion on the basis of what was stated immediately before.²³

וְאִזְבַּחָהּ... אֲשִׁירָה... וְאִזְמְרָה, *I should offer up ... should sing and play music* The verbs are all lengthened prefix forms (cohortatives), which denote a wish or a hope rather than a fact.

וְאִזְבַּחָהּ... זָבַחֵי תְרוּעָה, *I should offer up ... a celebration meal* This could mean sacrifices that are offered accompanied by singing (so Rashi), or by joyful shouting, or by blasts of a trumpet or shofar (so ibn Ezra). Numbers 10:10 mentions sacrifices offered on holidays and New Moons along with trumpet blasts.

This verse contains two lines. The first, like all the lines before it in the poem, contains two versets. The second, which is the last line of the first stanza, contains three.

The last lines of the second stanza also has three versets (in verses 11–12). Both lines of the brief third stanza (verses 13–14) have three versets. Thus the three-verset line seems to mark the end of a stanza within this poem. For another case in which alteration between two- and three-verset lines demarcates stanzas, see Psalm 19.²⁴

23 See F. Brown, S.R. Driver, and C. Briggs, *A Hebrew and English Lexicon of the Old Testament* (Oxford: Oxford University Press, 1907), 774a, § 2b (hereafter, **BDL**). Cf. Thomas Lambdin, *Introduction to Biblical Hebrew* (New York: Charles Scribner's Sons, 1971), 168–172, who notes this usage is especially common after **הִנֵּה**. But it can also occur after **כִּי** (which occurs in verse 5, immediately before our verse) or even without any specific word meaning “since” or “because.”

24 As Robert Gordis, “Psalm 9–10: A Textual and Exegetical Study,” *JQR* 48 (1957): 119 n. 32, notes, three-verset lines often are used to end a text or a stanza: “The same stylistic procedure,” Gordis points out, “is to be found in Ps. 13, 14, 16, 18, 19, 37, 47, 53, 55, 63, 73, 90, 94, 103, 104, 111, 119, 125, 129, 140; Job, chaps. 10, 11, 19, 26.” Cf. Wilfred G.E. Watson, *Classical Hebrew Poetry: A Guide to Its Techniques*, JSOTSupp (Sheffield: Sheffield Academic Press, 1984), 168–174, who makes the same claim about the stanza-formational role of what he calls the monocolon or orphan line—which is identical to what I am calling the third verset of a three-verset line. On this technique in Psalm 19, see Sommer, “Nature, Revelation, and Grace,” 380.

Verse 7.

As we enter the second stanza, the tone abruptly changes from serene confidence to profound distress. The mode of referring to God changes as well: having spoken of God in the third person throughout the first stanza, the worshiper now addresses God in the second.

This verse contains a poetic line that can be divided into versets in more one way. If we read according to the Masoretic accents,²⁵ it is a three-verset line: *יְהוָה קוֹלִי אֶקְרָא / וְהִגַּנִּי וְעֲנֵנִי / שְׁמַע־יְהוָה*—*Hear, O Yhwh, / my voice with which I cry! / And show grace to me and answer me!*²⁶ But one can also read against the Masoretic accents and understands it as a two-verset line: *יְהוָה קוֹלִי אֶקְרָא / וְהִגַּנִּי וְעֲנֵנִי*—*Hear my voice, Yhwh! / I cry out, and show me grace and answer me!* There is no need to call one of these ways of dividing the line right and the other wrong; some ancient Levites or scribes who performed this song probably sang it one way, while others sang it the other way.²⁷ If we adopt the three-verset

25 Both Aleppo and Leningrad put a מרכא (which is conjunctive) on קולי and a רביע (which is disjunctive) on אקרא. In some Masoretic editions, such as the Rödelheim Psalter edited by Seligman Baer (which is followed by Vilna editions of the *Miqra'ot Gedolot*), we find a צינורית appended to the מרכא on קולי. But in all cases קולי remains conjunctive. For Baer (though not for Vilna) there is a רביע מוגרש rather than a plain רביע on אקרא, but the רביע מוגרש is also disjunctive. Thus all versions of MT read disjunctions at שמעה, at אקרא, and at וענני.

26 The absence of a specific word for “with which” in the second verset is perfectly normal in the terse language of biblical poetry, which often leaves out relative conjunctions. Against this translation, however, one might argue that the enjambment separating the verb in the first verset from its object in the second verset is unlikely in biblical poetry. (On the rarity of strong cases enjambment in biblical poetry, which overwhelmingly prefers end-stopping, see Dobbs-Allsopp, *On Biblical Poetry*, 44–48, 135–139; Yaakov Kaduri, “Biblical Poetry: How Can It Be?” [in Hebrew], in *The Literature of the Hebrew Bible: Introductions and Studies*, ed. Zipora Talshir [Jerusalem: Yad Ben-Zvi Press, 2011], 297–298). But such an enjambment (in which a verb appears in one verset and its object in the next) is not altogether impossible, as the immediately preceding line of the poem shows. Alternatively, this three-verset line could be translated as three separate clauses: *Listen, O Yhwh! / With my voice I call out! / And show grace to me and answer me.*

27 Variation among performers is a normal phenomenon in performed texts, which is, of course, what the psalms were (and are). Woody Guthrie used to sing, “*This land was made for you and me*”: eight syllables, with stresses on the first, fourth, sixth, and eighth syllables—in other words, Guthrie sang the line as iambic tetrameter with an inverted initial foot. Bruce Springsteen performs this line differently: “*This land was made for you a-and me*”: nine syllables, sung as free verse rather than following a conventional meter. Both performance traditions exist (and are available on YouTube), and there is no reason to think of Springsteen’s revision of Guthrie’s original as somehow invalid, or of Guthrie’s as not yet meeting its true potential.

lineation (as I have done in my translation above), the dividing line between the stanzas is even stronger: not only does the first stanza end with a triplet, but the second stanza begins that way as well. (This will also be the case at the divide between the second and third stanzas, as we will see in verses 11–13.)

Verse 8.

A verse with multiple difficulties. Commentators have been troubled by (1) the opening word in the Hebrew, לך (which, following the lead of NJPS, I render as **On Your behalf**), (2) the plural form of the imperative verb בקשו (**Seek**), and (3) the idea of the worshiper's לב (**mind**) speaking. Various interpretations and emendations have been suggested.²⁸ My rendering follows Rashi and ibn

28 Commentators suggest a variety of renderings and emendations for the first verset (MT's פני לבִי בקשו פני לך). The simplest meaning of לך "To You." In that case, the worshiper's heart is telling God to seek the worshiper. This would make better sense if the imperative verb, בקשו ("Seek"), were in the singular, but the Hebrew has a plural verb, as it the worshiper were addressing more than one deity, which is impossible in light of the uncompromisingly monotheism of the Book of Psalms. If we emend the text by dropping the last letter of בקשו to make it singular, we can translate along with Martin Cohen, *Our Haven*, "I heard my heart say, 'Seek me' to You". Here, the worshiper is asking God to meet him halfway, as it were.

Dahood suggests a very small set of emendations that yield a very sensible text. He reads, לך אמר לבי בקש פניו (which merely alters the vocalization of the first word and transposes the odd ו at the end of MT's בקשו to the end of the next word) and translates, "Come, said my heart, seek His face!" In this case, the worshiper's mind or heart prompts him to seek God's presence. (Recall that in biblical Hebrew לב means both heart and mind.) Thus the worshiper avers that he is being reminded that God commanded us to seek Him (first verset of the line), and so the worshiper is seeking Him (second verset).

L. Delekat, *Asylie und Schutzorakel am Zionheiligtum*, HF1 (Leiden: Brill, 1967), 103, suggests a somewhat similar and graphically plausible suggestion: לך אמר לבִי בקשו פני— "Your statement is: come, seek My face!"

Two manuscripts of the LXX (Vaticanus and Alexandrinus) translate the first verset, "My heart said to You, 'I have sought Your face.' Your face, O Lord, I will seek." This is a sensible meaning, but it seems to reflect a radically different text that has בקשתי פניך rather than בקשו פני. No such Hebrew text is known, and it is difficult to understand the errors in scribal transmission that would have led from such a text to our MT. This version of LXX may attempt an exegetical revision of the underlying Hebrew. The Sinaiticus manuscript of LXX translates, "My heart said to you, It/He sought my face." This seems to read בקש instead of MT's בקשו, a less radical change. This rendering may intend to say that the worshiper's heart or mind said about God or on God's behalf that God was seeking out the worshiper, and then the worshiper replies in the next verset that he, correspondingly, will seek out God.

A final possibility has not been noted in the extensive literature on this verse: the last half of the verse (את־פניך יִהוּה אבקש = **It is You, Yhwh, that I seek**) may be a gloss by

Ezra to present a perfectly plausible rendering of MT's Hebrew without emendation.²⁹ In the first poetic line found in this verse (**On Your behalf my mind speaks: / "Seek Me out!"**), the worshiper reports that his own **mind** or heart (לב) has both meanings) spoke on God's behalf, urging him to seek out God's פנים (presence or face), which betokens especially God's favor, grace, and availability. In the subsequent poetic line (which is found at the end of verse 8 and the beginning of verse 9) the worshipers responds, declaring that he is seeking out God's presence, and begging God not to hide that presence.

This rendering raises a question, at least if it intends to keep the verb **seek** (בקשו) in the plural rather than emending to the singular form. Why does the worshiper's heart address the worshiper as a plural entity? Perhaps the plural imperative recognizes the divided nature of the worshiper's psyche: the speaker of this prayer is supremely confident in the first stanza and deeply nervous in the second stanza. We will return to the divided nature of the worshiper's mood below, in "Interpretation." Rashi suggests another answer to this question: The plural imperative might be directed towards to the people Israel generally. The worshiper's heart speaks on God's behalf, but in doing so, it speaks in the

a later scribe that comments on the previous words and is not intended as a part of the poem at all. Michael Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford: Clarendon, 1985), 48–50, has pointed out that in biblical texts, the particle **אִתּוֹ** (which usually introduces a definite direct object or means "with") introduces an explanatory comment that identifies or specifies something ambiguous or problematic earlier in the same sentence. That may be the use of this particle in our verse. In fact poetry tends to use the particle **אִתּוֹ** to introduce direct objects infrequently; in none of the cases where it might have been used in this psalm does it appear. Thus the word **פָּנֵי** may have been ambiguous: In 8a, did the worshiper ask God to seek the worshiper out (which would have been the case if the imperative verb **seek** was originally in the singular, **שׁוּ**)? Or did the worshiper's heart command the worshiper to seek God out? A glossator added the explanatory words in 8b, which attempt to make clear that it's the latter: the worshiper is talking about his own search for God's presence in 8a. If so, this reading is the earliest commentary on the Psalm. But the original intention of the psalmist (contra the reading of the glossator) may have been to ask God to seek the worshiper out. Such an interpretation fits the desperate tone of the second stanza quite well.

29 So too NJPS: "In Your behalf my heart says: / 'Seek My face!'" A similar solution is found in New Jerusalem Bible, which renders, "Of you my heart has said, 'Seek his face!'" The Hebrew participle **לְ** can mean "concerning, about"; this yields the NJB rendering. It can also "for, on behalf of," as Rashi, ibn Ezra, Radaq, and Meiri point out; this yields NJPS. For **לְ** meaning "of, concerning, regarding," see BDB 515, column a, §g(b); and Ludwig Koehler et al., *The Hebrew and Aramaic Lexicon of the Old Testament*, trans. M.E.J. Richardson (Leiden: E.J. Brill, 2001), 508, col. b, § 6 (= HALOT). For **לְ** as "for, on behalf of," see BDB 514, col. a, §e; and HALOT 508, col. b, § 8.

plural, as God issues this call not only to the individual worshiper but to all Israel. John Goldingay follows the same path and notes the significance of the plural verb: “The suppliant senses an internal voice speaking for Yhwh ... This internal voice is not just one that issues from the suppliant’s individual spirituality, because the invitation it recalls is one addressed to the people of God,” as in Psalm 105.4 and Zephaniah 2.3.³⁰

את־פְּנֵיךָ יְיָהוָה אֲבַקֵּשׁ, *It is You I seek, O Yhwh* The Hebrew word order emphasizes the direct object, פְּנֵיךָ (literally, “Your face,” “the front part of You”) by putting it first.

Verse 9.

אֵל תִּסְתֵּר, *Do not hide* This wording echoes verse 5’s אֵהְלוּ בַסֵּתֶר אֵהְלוּ (“He hides me in His hidden Tent”). In the first stanza, this verbal root (סִתֵּר) testified to God’s assured protection and the worshiper’s great confidence. Here, however, it lays bear the worshiper’s fear that God might in fact abandon him.³¹ Thus the use of this one verbal root encompasses the core contrast of the whole psalm.

Verse 10.

This verse consists of a single poetic line. The two versets of the line display phonological parallelism, as they end with similar consonants: יֵאֱסָפְנִי and עֲזַבּוּנִי.

כִּי־אָבִי וְאִמִּי עֲזַבּוּנִי, *Indeed, my father and mother abandoned me* This could be a reference to the most unlikely of events, that a parent will disavow a child; even in that extreme, God would still be reliable. Alternatively, the speak may refer to the likelihood of one’s parents’ death before one’s own (so ibn Ezra).³²

³⁰ Goldingay, *Psalms 1–41*, ad loc.

³¹ On this contrast, see the astute comments of Meir Weiss, *Ideas and Beliefs in the Book of Psalms* (Jerusalem: Mosad Bialik, 2001), 67. Similarly, Herbert J. Levine, *Sing unto God a New Song: A Contemporary Reading of the Psalms*, Indiana Studies in Biblical Literature (Bloomington: Indiana University Press, 1995), 168, states, “The expression of both security and vulnerability through the root *s-t-r* indicates the necessary interrelatedness of these emotions and the pivotal, unifying role played by *s-t-r* in the psalm.”

³² See further Shalom Paul, “Psalm xxvii 10 and the Babylonian Theodicy,” *VT* 32 (1982): 489–492; and Erhard Gerstenberger, *Theologies of the Old Testament* (Minneapolis: Fortress, 2002), 79 n. 130.

וַיִּזְהוּהוּ יְאִסְפָנִי, *But it is Yhwh who takes me in* As is often the case, the prefix form evident in the verb allows several understandings. It can refer to the future: if someday my parents have abandoned me, God will take me in. Alternatively, the prefix form could refer to an ongoing action that began some time ago and continues in the present: ever since my parents abandoned me, God has been gathering me in. Further, it is possible that this verb is a short prefix form (recall that in most cases in biblical Hebrew, the regular prefix and the short prefix are identical; and that in poetry, the short prefix can mean not only the jussive but a preterite), in which case the verb could refer to an event in the past: when my parents abandoned me, God took me in. Finally, as a short prefix, the verb could have a volitive or modal meaning (what many biblical grammars label the jussive), expressing neither a fact about the present or past nor a prediction about the future, but the speaker's hope or desire for the future: if my parents abandon me, let God gather me in (in formal British English: God shall gather me in).³³

Verse 11.

הוֹרֵנִי, *Parent me ... teaching me* Literally, “teach me.” The Hebrew term echoes a word that means “parents” (הוֹרִים).³⁴ Thus this word picks up the previous verse's assertion that if mother and father abandon the worshiper, God will take over the parental role.

33 For this last possibility, see Goldingay, *Psalms 1–41*, ad loc., who notes, “In the context of the urgings of vv. 7–9 and 11–12, the yiqtol in v. 10b is likely jussive.” Against this, one might point out that **וַיִּזְהוּהוּ יְאִסְפָנִי** is not the first word in its clause, and as Jan Joosten, *The Verbal System of Biblical Hebrew: A New Synthesis Elaborated on the Basis of Classical Prose*, Jerusalem Biblical Studies (Jerusalem: Simor Publishing, 2012), 315–317, points out, typically the jussive (that is, the short prefix forms used with volitive meaning) is in initial position in a clause. However, Joosten also notes a number of exceptions (ibid.), so that the possibility that we have jussive here cannot be ruled out. The contrast between the subjects of the two clauses (parents and God) might account for the placement of **Yhwh** at the beginning of the clause. Further, as Joosten points out (414), word order in poetry tends to be much freer than in prose, so that the placement of the verb is even less significant for distinguishing between the short and regular forms of the prefix.

34 The imperative verb in this verse (הוֹרֵנִי) is from the root יר”ה, which also provides the words “teacher” (מורה) and “Torah.” The noun meaning parent (sg., הוֹרֵה and הוֹרֵהָ) is etymologically unrelated to our verb, since it comes from a different root, הר”ה, which means to give birth. But our imperative verb in 27:11 lends itself to a punning relationship to the words for parent because of their nearly identical pronunciation.

דרכך... בארה מישור, *Your path ... a level road* A classic case of specifying parallelism:³⁵ there are many types of ways or roads, but God's ways are **level**—Heb., מישור, a word that can mean a smooth road without bumps (rarer in the ancient world than in our own asphalt-filled one)³⁶ but can also denote righteousness and honesty.

למען שוררי, *While foes look on* Or: “Because of those who watch me insiduously.” My foes hope to see me stumble; indeed, they are trying to knock me down. So please put me on a smooth, straight road where I will walk with ease.

Verse 12.

אל התנני בנפש צרי, *Don't feed me to my enemies* The word נפש allows for several translations. It can mean “appetite, desire,” and thus “will,” (thus NJPS: “Do not subject me to the will of my foes”). It can also mean “throat,” which allows us to translate the verse, “Do not put me into the throat of my foes.”

ויפח המס, *With unfair, violent testimony* More literally, “a corrupt witness.” The word יפח was often believed to simply mean “one who breathes,” whose significance in this context is not altogether clear. On the basis of Ugaritic attestations of this word, however, we now know the word also means “witness,” which fits our context perfectly.³⁷

Our verse picks up on the ambiguity in verse 2's phrase, לאכל את בשרי. We saw above that that phrase can be an idiom meaning “to slander someone, to accuse someone unjustly,” but it can also be understood as a portrayal of cannibalism (“to eat my flesh”) that serves as a metaphor for damage the enemies hope to wreak on the worshiper. If we understand the opening words of our verse, with NJPS, as meaning “Do not subject me to the will of my foes,” then our verse picks up on the idiomatic sense of phrase back in verse 2. Our verse then extends this sense in the second and third versets of our line, with their references to false

35 On the prevalence of parallelism of specification in biblical poetry, see Robert Alter, *The Art of Biblical Poetry* (New York: Basic Books, 1985), 19–23, 57–59. Cf. James Kugel, *The Idea of Biblical Poetry: Parallelism and Its History* (New Haven: Yale University Press, 1981), 15–23.

36 Though the honoree of our Festschrift, like me, knows that many highways in our own State of New Jersey do an excellent job of teaching motorists what things were like in the ancient world.

37 See Samuel E. Loewenstamm, “Yāpēah, Yāpīah, Yāpīah” [in Hebrew], *Leshonenu* 26 (1962): 205–208, and Dennis Pardee, “YPH ‘Witness’ in Hebrew and Ugaritic,” *VT* 63 (2013): 99–108.

witnesses. But if we understand the opening of our verse to mean, “Do not put me into the throat of my foes,” then the image of cannibalism from the phrase in verse 2 returns here, rather than the idiomatic sense (“slander”). Both readings are valid. Some ancient worshipers, suffering due to false accusations or rumors, understood the phrasing the one way; others, who were in some crisis involving their enemies (and especially enemies who threaten physical violence), understood it the other way. Modern readers can legitimately take it either way as well.

Verse 13.

The first word of this verse, לֹלֵא, means “if it were not the case that.” The word in the Hebrew text appears with dots above and below it. (This is the case not only in vocalized editions of the MT but also in non-vocalized scrolls of the Psalter; the dots pre-date the work of the Masoretes.³⁸) The dots probably indicate that already in late Second-Temple times or during the rabbinic era there were scribes who doubted that the word should be present.³⁹ Indeed, ancient translation often omit the word לֹלֵא; this is the case, for example, in the LXX.⁴⁰ The difference between versions with and without this word is substantial. LXX makes our verse a statement: “I believe I shall see the LORD’s goodness in the land of the living.” But when we include this word, our verse is the relative clause of a sentence that the speaker does not complete; our verse is the

38 See Israel Yeivin, *Introduction to the Tiberian Masorah*, trans. E.J. Revell, *Masoretic Studies* 5 (Missoula, MO: Scholars Press, 1980), 44–46. According to Yeivin, a dot is to be placed above all four Hebrew letters of the word, but below only the first, third, and fourth letters. In fact various texts differ widely. Aleppo (followed by Breuer editions) have dots above and below all four letters; Leningrad (followed by BHS and Koren) has three dots above and below (and no dots for the letter ך); Baer’s edition match Yeivin’s description, with three dots above and four below.

39 So Yeivin, *ibid.*; as well as Emanuel Tov, *Textual Criticism of the Hebrew Bible* (Minneapolis, MN: Fortress Press, 1992), 55–57, both of whom discuss all fifteen occurrences of this phenomenon in scripture. Cf. the discussion of the ten cases in the Torah specifically in Saul Lieberman, *Hellenism in Jewish Palestine* (New York: Feldheim, 1950), 43–46, who notes that the Rabbis do not always understand them this way.

40 However, the previous verse in LXX ends with the word ἐαυτῆ, which could be understood to translate the word לה (“to herself, in herself”). No such word appears in the Hebrew of the verse, leading me to wonder if LXX’s otherwise superfluous ἐαυτῆ might reflect a Hebrew text that had a (partially erased?) remnant of לֹלֵא. Qumran cannot come to our help here; our one scrap containing the end of Psalm 27 (4QPs^c) is not extant for this word, though it seems to me that the placement of the words later in the verse in the line, relative to the presumed beginning of the line, allows room for it.

“if”-clause of a compound sentence whose “then”-clause never appears.⁴¹ To be sure, the intention of the implied then-clause is clear: what the speaker was thinking was something to the effect of, “If not for my faith that I will see God’s goodness, I would be completely lost.” The absence of the then-clause gives the impression that the speaker cannot bring himself to finish his sentence; his utterance brings him perilously close to an emotional place too dangerous to approach. The verse intends to make a statement of confidence, but the speaker cannot quite get the whole thing out. We have in a single verse, then, the whole back-and-forth of the psalm: the confidence of the first stanza and the anxiety of the second find are both manifest in this not-quite-complete expression of faith.

לחזות בנעם־יהוה, *See Yhwh’s goodness* This phrase echoes **לראות בטוב־יהוה**, “to gaze upon the marvel that is Yhwh,” in verse 4, helping to tie this stanza with the first stanza.

בארץ חיים, *while still alive* Literally, “in the land of the living.”⁴² Cf., e.g., Isaiah 38:11, 53:8; Jeremiah 11:19.

Verse 14.

קוה אל־יהוה, *Hope that Yhwh will come* The term **קוה** means to wait expectantly for something, to hope for something. It denotes something beyond merely desiring but less than being fully confident that the thing or person will be attained.

Who speaks this line? Does someone else say this line to the worshiper, thus introducing a second voice into this poem? Or is this line, like every other line of the poem, said by the worshiper? If so, does he say these words to an audience at the Temple, or to himself?

41 Both Rashi and ibn Ezra see the then clause as appearing in the previous verse: “False witnesses would have risen against me if I had not been confident that I would see God’s goodness.” But this means that the then-clause would begin with **כי**, which seems unlikely, since **כי** can mean “if.” Granted, we could sensibly translate **כי** here as “indeed.” But beginning a then-clause with a word that typically introduces an if-clause would have invited confusion. Further, the clause at the end of the previous verse is the second verset of one poetic line, while our if-clause in verse 13 is the first verse of a new poetic line. A single compound sentence spread over the last part of one line and the first part of another would be highly irregular for biblical poetry, which by and large shuns strong enjambment of that sort. On biblical poetry’s shunning of strong enjambment, see above, n. 26.

42 See Weiss, *Ideas*, 68–69.

The great biblical scholar Sigmund Mowinckel, followed by various commentators such as Craigie and Tate, argues that this line is said by a prophet, a priest, or a Levite at the Temple.⁴³ Both Mowinckel and Joachim Begrich argued that Temple functionaries would regularly issue responses on God's behalf to the entreaties of worshipers, though in most cases these responses are not preserved in the psalms themselves.⁴⁴ Our verse at the end of this psalm may be one of the rare instances where a prophetic or priestly oracle is in fact preserved in the biblical text. In this case, the psalm ends with a voice urging the worshiper to keep faith, rather than with a clear statement of belief by the worshiper himself. In other words, it ends with an implicit acknowledgement that the robust faith of the opening verses has been replaced with questioning hope, but not pure confidence.

Alternatively, it is possible that the worshiper recites this line. It is typical of both psalms of plea and of thanksgiving that the worshiper turns toward an audience in the temple to urge them to believe in God's saving power; indeed, the public acknowledgement of God's power is the very point of the thanksgiving song. Similarly, in many hymns of praise the speaker calls on others to praise God. But in those cases, the audience consists of more than one bystander, so the worshiper speaks to the audience with plural imperatives (see, e.g., Ps 30:5; 100:1–4). Here, however, the imperative verbs are all in the singular, which suggests that if the psalmist utters this verse, he is speaking to himself. (For a similar case, see the beginning and ending of Psalms 103 and 104, where the worshiper addresses the worshiper's own soul.) In that case, it is significant that the worshiper feels the need—and has the strength—to reassure himself. He is not completely confident, but urges himself to hope for God's salvation. (So Radaq.⁴⁵) This line, presents “an apt summary of the

43 Sigmund Mowinckel, *The Psalms in Israel's Worship*, 2 vols., trans. D.R. Ap-Thomas (Oxford: Basil Blackwell, 1962), 2:59.

44 Joachim Begrich, “Das Priesterliche Heilsorakel,” *ZAW* 52 (1934): 81–92, argued that priests issued these oracles during Temple worship. Mowinckel, *Psalms*, 2:53–73, argued that prophets issued them, but also narrows the difference between his position and Begrich's be acknowledging (2:56–58) that in light of the Books of Chronicles it becomes clear that in the Second Temple period Levites often worked as prophets in the Temple. A whole literature has developed around this issue; of particular import for confirming Begrich's original insight is Jonas Greenfield, “The Zakir Inscription and the Danklied,” in *Al Kanfei Yonah: Collected Studies of Jonas C. Greenfield on Semitic Philology*, ed. Shalom Paul, Michael Stone, and Avital Pinnick (Jerusalem: Magnes Press, 2001), 1:75–92.

45 Radaq glosses this verse, “I say to myself all the time, ‘Hope in the Lord. Do not pay attention to what the enemies say!’ ... [and I say it] a second time so that I will constantly have hope, which will not leave my heart.” Robert Harris writes (personal communication):

psychology that informs this psalm,”⁴⁶ because it is “another statement standing between plea and trust.”⁴⁷

Interpretation

The Cry of an Asylum-Seeker?

We noted above elements suggesting that the speaker in this psalm is the victim of unjust accusations (see comments to verses 2 and 12), and also that the speaker wishes to remain in God’s Temple permanently (comments to 4 and 5, especially on לִבְקֹר = *to serve* in verse 4). The confluence of these elements led several scholars, including Hans Schmidt and L. Delekat, to suggest that this psalm originally functioned as a prayer of a person seeking asylum in the Temple.⁴⁸ In ancient Israel, the altar at a temple was a place of safe refuge for a person accused unjustly of a crime. When a person in some ancient Near Eastern cultures was killed, relatives of the deceased had the right—and some people likely felt, the obligation—to kill his relative’s killer. A law in Exodus 21:12–14, however, decrees that a person who committed accidental homicide could receive refuge in a local temple. (The legal collection in which this law is found, Exodus 20–23, is one of the oldest in the Bible, dating to the era when

“Thus, for this rabbi, hope is a practiced value ... One response to a sense of hopelessness is to repeat to oneself as a kind of slogan or mantra, ‘I will remain hopeful, I will remain hopeful.’ Despite all of the things I confront that make me experience a dreadful sense of hopelessness, I will set times to remind myself—verbally and internally—to take responsibility for changing my own state of mind.”

46 Robert Alter, *The Book of Psalms: A Translation with Commentary* (New York: W.W. Norton, 2007), ad loc.

47 Goldingay, *Psalms 1–41*, ad loc.

48 See Hans Schmidt, *Das Gebet der Angeklagten im Alten Testament*, BZAW (Giessen: A. Töpelmann, 1928), and, more briefly, Hans Schmidt, “Das Gebet der Angeklagten im Alten Testament,” *OTE* 18 (1927): 143–155; and Delekat, *Asylie und Schutzorakel am Zionheiligtum*, 154–258, and esp. the useful summary on 259–269. Other such psalms, according to Schmidt, include Ps 3, 4, 5, 7, 11, 13, 17, 26, 31, 54, 55, 56, 57, 59, 94, 140, and 142—a list far too long to be convincing. Pamela Barmash, *Homicide in the Biblical World* (Cambridge: Cambridge University Press, 2005), 81, argues that “[Delekat’s] identification of the speaker of the Psalms as a fugitive killer is incorrect. While it is true that the Psalms present the enemies of the speaker as wanting to kill him and that the Psalms refer to Yhwh as protector and Yhwh’s dwelling as a place a refuge, there is no indication that the refugee has been accused of homicide.” Barmash is correct that Delekat overreads and spreads his net much too widely; the same may be said of Schmidt. But a few of the psalms they discussed may in fact been especially relevant to asylum seekers in ancient Israelite temples, and this seems especially true for Ps 27.

there were many local temples in ancient Israel, before the centralization of sacrificial worship in Jerusalem.) The avenging relative could kill the person who had caused the death of the relative if the relative found the killer before he arrived at a temple. But once the accidental killer was at the temple, he was safe. If, however, a court found him guilty of premeditated murder, he could be removed from the temple to meet his fate.⁴⁹ Once safely ensconced in the temple, the accidental killer would be employed in some non-priestly or semi-priestly capacity; if he was not from a priestly family, he could not officiate at sacrifices, but he could receive some other important role, and as a member of the temple staff, he had a ready source of food and shelter.⁵⁰ He would stay at the temple either for the rest of his life, or until he received amnesty, probably from a royal decree, or, following the logic of Numbers 35:9–34, following the death of a high priest, whereupon the deceased man's relatives lost their right to slay him.⁵¹ This notion of the temple as a place of asylum may have been applied even beyond the crime of accidental homicide, as the narrative about Solomon and Adonijah in 1 Kings 1:50–53 indicates.⁵²

It is easy to see how Psalm 27 might have been especially meaningful for such an asylum-seeker.⁵³ The people accusing him are “false witnesses and unjust accusers” (verse 12); they are committing slander against him (see comment to 2), perhaps by claiming that he committed intentional murder or some other intentional crime that would not allow him to remain in a temple, outside his pursuer's reach. Thus his claim that they want to “eat my flesh” (2) is doubly apt: as an idiom, this refers to their slander, but as a metaphor, it depicts the

49 Laws related to asylum appear in Num 35:9–29; Deut 19:1–13; and Josh 20:1–9. For an overview of this legal practice, see S. David Sperling, “Blood, Avenger Of,” in *Anchor Bible Dictionary*, 6 vols. (New York: Doubleday, 1992), 1:763–764; as well as Barmash, *Homicide in the Biblical World*, 71–93.

50 On possible roles of the person who received asylum, see Delekat, *Asylie und Schutzorakel am Zionheiligtum*, 194–256. Regarding the seeker in our psalm as a singer or a guardian at a gate, see 194–207.

51 On the latter phenomenon, see Moshe Greenberg, “The Biblical Concept of Asylum,” in *Studies in the Bible and Jewish Thought* (Philadelphia: Jewish Publication Society, 1995), 43–50.

52 On other unintentional crimes that may have led people to seek asylum, see Delekat, *Asylie und Schutzorakel am Zionheiligtum*, 154–193.

53 On Ps 27 as a psalm of the asylum-seeker, see Schmidt, *Gebet*, 15–16, 27–29; Delekat, *Asylie und Schutzorakel am Zionheiligtum*, 103–104, 197–200; as well as the useful overviews in Jon Levenson, “The Jerusalem Temple in Devotional and Visionary Experience,” in *Jewish Spirituality from the Bible to the Middle Ages*, ed. Arthur Green (New York: Crossroad, 1988), 39–43; Hans-Joachim Kraus, *Psalms 1–59: A Continental Commentary*, trans. Hilton Oswald (Minneapolis: Fortress, 1993), 333.

violence they hope to do to him. As a result, he hopes to dwell in the temple “all the days of my life,” which means that he will have a job there as a member of its staff (comment to verse 4). The various figures of the temple as safe haven, then, are intended quite literally, as are his pleas for help in the second stanza.⁵⁴

The fact that this song was especially meaningful for asylum-seekers in ancient times, however, does not mean that only asylum-seekers recited it. The language of the psalms tends to be open-ended; many phrases psalms use can be read literally or metaphorically, and the psalms shy away from excessive specificity. Consequently, people in a variety of situations can adopt a given psalm as their own. This is the case with Psalm 27. Scholars including Schmidt and Delekat are right to connect this psalm with those who seek legal haven in a temple, but other worshipers, both in antiquity and today, also have found its wording apt for their experiences. For such worshipers, the references to the safe haven of the temple functions metaphorically, whereas for the asylum-seekers, it functioned literally. For the asylum-seeker, the reference to serving in an official capacity in the temple at the end of v. 4 (וּלְבַקֵּר בְּהֵיכָלוֹ, “and to serve in His palace”) was also literal; since the asylum-seeker would remain there for years or decades, he needed employment there. Other worshipers would probably not focus on the specific meaning of the verb לְבַקֵּר (“to serve, to have a position of responsibility”), reading it more vaguely as a reference to some sort of service in the temple rather than literally as a particular job.

Faith and Doubt

A striking element of Psalm 27 is its movement from confidence to need, from believing in God’s reliability to worrying about God’s absence. How can we account for the stark contrast between the first stanza (vv. 1–6), in which the worshiper joyously proclaims trust in God, and the second and third stanzas (vv. 7–12, 13–14), in which the worshiper betrays the fear that God might be far off?⁵⁵

54 It is not possible to be sure whether this psalm functioned as a song of an asylum-seeker specifically in the Jerusalem temple or also in other temples prior to the centralization of sacrificial worship in Jerusalem in the late pre-exilic period. We saw that references to the temple’s location on a hilltop and the allusion to צִפְּוֹן in verse 5 fit the Temple on Mount Zion well, the latter especially in light of Ps 48:3. On the other hand, other temples in ancient Israel were also located on hilltops (e.g., the temple at Samaria), and insofar as Yhwh was thought to dwell in other Israelite temples, we can readily imagine that they, too, might have been referred to as צִפְּוֹן.

55 On this extreme nature of this contrast at verse 7, see Jacob (Gerald) Blidstein, “T’hillim 27,” *Yavneh Review*, Spring 1965, 21–23; Ellen Charry, *Psalms 1–50* (Grand Rapids, MI: Baker

Hermann Gunkel provides a simple answer to this question by asserting that this chapter contains two separate psalms, the first (vv. 1–6) a song of confidence and the second (vv. 7–14) a classic psalm of complaint and plea.⁵⁶ It is not outside the range of possibility that a single chapter in the Book of Psalms might contain more than one composition. After all, there are cases in which a single psalm takes up more than one chapter: an alphabetic acrostic poem is spread over Psalms 9–10; Psalms 42–43 are also a single composition with a repeated refrain at 42:6, 42:12, and 43:5. Thus the converse—that two separate songs appear in one chapter—is certainly conceivable. But several scholars have successfully defended the unity of Psalm 27. Peter Craigie and Marvin Tate point out shared vocabulary that draws together what Gunkel regards as separate poems: *שׁעִי* (vv. 1,9), *צָרִי* (2, 12), *לֵב* (3, 8, 14), *קוֹם* (3, 12), *בִּקְשׁ* (4,8), and *חִיִּים* (4, 13), in addition to the theme of seeing God’s pleasantness or goodness (4, 13). Further, it is not quite the case that the first stanza is entirely confident while the second and third completely lack elements of faith.⁵⁷ The first stanza contains intimations of the darker themes that appear later in the poem. Jacob Blidstein notes “the progressive deterioration of the roof overhead from ‘stronghold (Ma-oz)’ to ‘hut (sukkah)’ and finally ‘tent’—a glimpse into the crisis that is as yet in the distance.”⁵⁸ As Goldingay astutely notes regarding v. 1, the worshiper’s statement that he has no reason to fear draws attention to the fact that he apparently is worrying about something.⁵⁹ Harris Birkeland also argues

Publishing Group, 2015), 139–141. Radaq attempts to minimize the contrast by reading verse 4 as a strictly spiritual request and regarding verse 7 as a reference back to the request in verse 4: the worshiper is confident in God’s salvation from physical harm, but asks for the ability to commune with God in the temple or in heaven.

- 56 For this response, see Gunkel’s commentary. Cf. Hermann Gunkel and Joachim Begrich, *Introduction to Psalms: The Genres of the Religious Lyric of Israel*, trans. James D. Nogalski, Mercer Library of Biblical Studies (Macon, GA: Mercer University Press, 1998), 190–191, where Gunkel emphasizes the connection of the song of confidence in 27:1–6 to the genre of the individual complaint. That is the genre we find in 7–12, a circumstance that seems to move against Gunkel’s view that the chapter contains two different songs. Nevertheless, his proposal has been widely accepted. In fact, I spoke imprecisely in note 53 when I said that Schmidt and Delekat discuss Ps 27 as an asylum psalm; in fact they regard it as containing two separate asylum psalms, one in verses 1–6, the other in 7–14.
- 57 Rolf Jacobson captures something crucial about the alleged gulf between the two parts of the psalm in Nancy deClaisé-Walford, Rolf Jacobson, and Beth LaNeel Tanner, *The Book of Psalms*, The New International Commentary on the Old Testament (Grand Rapids, MI: Eerdmans, 2014), 242: The psalm “speaks words of fear. And words of trust. The two are not as far removed from one another as one might imagine.”
- 58 Blidstein, “T’hillim 27,” 22.
- 59 Goldingay, *Psalms 1–41*, 392. He further points out (391) that the first stanza’s “appearance of confidence is compromised by the fact that most of its lines have the short second cola

for the unity of the psalm, pointing to the presence of elements of confidence in the second and third stanzas.⁶⁰ In the first versets of the two poetic lines in v. 9, the worshiper begs God not to abandon the worshiper, but the second versets of both lines confirm that God is the worshiper's help and salvation. Similarly, in v. 13 the third stanza at least attempts to restate the confidence of the first stanza, albeit in a sentence that never reaches completion.⁶¹ These elements of unity demonstrate that Psalm 27 is a single composition that has to be interpreted as a whole. Of course, it is not outside the realm of possibility that each of the two sections once existed on its own, and that an editor, noticing

more characteristic of a lament." Indeed, the second verset of the first five lines of the poem are all quite negative.

- 60 Harris Birkeland, "Die Einheitlichkeit von Ps 27," *ZAW* 51 (1933): 218.
- 61 Gunkel further points out that v. 6 contains a vow, which is a standard way of ending a complaint song, while v. 7 begins like a classic psalm of complaint and plea. He argues that all this shows that one poem ends in 6 while another begins in 7; see pp. 114 and 116 of his commentary, and cf. Gunkel and Begrich, *Introduction*, 177, 184. But Birkeland, "Einheitlichkeit," 219, points out that to define v. 6 as an ending and v. 7 as a beginning on the basis of this formal criterion puts the cart before the horse. We can agree that v. 7 can only be a new beginning and cannot be a middle, or that 6 must be an ending, only if we put the psalm into a procrustean form-critical bed. Indeed, Birkeland points out (220), this is not the only psalm where a vow or a vocative and a plea appear in the middle: in Ps 9:15 we have a vow in the middle of a psalm, while in Ps 42–43 (a single song) the plea begins at 43:1, well into the poem. (Indeed, Gunkel himself noted that the vocative and plea that typically begin a complaint/plea do occur, albeit "far less frequently, in other positions"; see Gunkel and Begrich, *Introduction*, 152, and see esp. n. 13 there, in which Gunkel himself refers to Ps 42–43. This observation vitiates his claim in his commentary, p. 116.) Sigmund Mowinckel, *Psalmenstudien* (Amsterdam: P. Schippers, 1966), 1:148, points out that we can simply regard Ps 27 as an individual complaint/plea that has an unusually long statement of trust in its first six verses. Such an overdevelopment of that statement of trust is atypical of biblical psalms but hardly impossible, as the similar case of Ps 42–43 shows. Such a development is quite typical of Akkadian psalms of plea: they often begin with invocations and statements of trust that are in effect fairly lengthy psalms of praise. Thus the first nine lines (out of a total of eighteen) of the plea to Shamash in Alan Lenzi, ed., *Reading Akkadian Prayers and Hymns: An Introduction*, SBL Ancient Near East Monographs (Atlanta: Society of Biblical Literature, 2011), 197–216, could have been a self-standing hymn to Shamash, but this does not mean that they are a different prayer from what follows; the hymn is a lengthy first element of the plea, at once acting as an extended vocative and an explanation for why the worshiper turns to Shamash. Similarly, the first nine lines (out of twenty-five) in the prayer to Marduk found in Lenzi, 313–325, are a well-structured hymn to Marduk (as demonstrated by Tzvi Abusch, "The Form and Meaning of a Babylonian Prayer to Marduk," *JAOs* 103 [1983]), but that hymn is but a section of the longer plea psalm into which it is (Abusch shows) very well integrated at a literary-rhetorical level. The same may be said about Psalm 89, a complaint psalm that begins with a hymn of praise in verses 1–38.

the elements that link them, deliberately put them together to form the single composition that is now Psalm 27. Even in that case, however, it behooves us to ask what the editor was attempting to accomplish by putting them together, and especially by putting them together in the order they now have rather than the reverse.

We have seen that the first stanza hints at the source of fear even as it speaks of trust in God, while the second betrays worry over the possibility of God's distance while also asserting that God is a source of salvation. Then the third stanza's unfinished opening sentence acknowledges the possibility of life without trust in God while proclaiming that the psalmist indeed has this life-giving trust. The psalm closes with imperatives that call on the worshiper (and us) to wait hopefully for God. The fact that these imperatives are deemed necessary points to the existence of doubts that must be overcome. In this one psalm we have a beautiful and brief distillation of the entire Psalter as a book of doubt and faith. As the psalm moves back and forth between belief and distress, it "manifests powerful psychological verisimilitude," Robert Alter points out, because its emphasis on trust "does not preclude a feeling of fearful urgency in the speaker's plea to God."⁶²

The movement from faith to doubt demands our attention, because the direction of the journey on which this psalm leads us is the opposite of what many readers might have expected of a religious text. Our worshiper does not grow into a more conventional piety over the course of the psalm, casting aside doubts to take up the armor of faith. Rather, the worshiper sets aside a seemingly ideal faith to take on a more realistic one. In fact Blidstein argues that the psalm criticizes the simplistic faith of the first stanza, whose God he labels "an ersatz divinity, a facile projection of [the worshiper] himself."⁶³ Similarly, Ellen Charry, maintains that in the first stanza, the worshiper thinks that "he has God in his pocket."⁶⁴ While the faith of that section seems on the surface to be stronger, the truth is that in that section, the worshiper speaks of God (always in the third person!) as something he knows about, but not someone whom he knows. In the second stanza, when the worshiper moves to the second person in order to address God directly, the worshiper at last achieves the experiential contact with God that he yearned for in verse 4 ("One thing I ask ..."). It is precisely when the worshiper speaks directly to God that doubt becomes prominent. God is no longer something the worshiper claims to know

62 Alter, *Psalms*, 91.

63 Blidstein, "T'hillim 27," 23.

64 Charry, *Psalms 1-50*, 139.

all about; now God is a partner (though of course the senior partner) in a relationship, and relationships are slippery and unknowable in a way that does not conform to the simplistic faith of the first stanza.

The direction of the psalm's movement is crucial, because it models the maturing of an authentic relationship with God. A simple faith that asks no questions and admits no anxieties is not the most religious faith. A relationship that can articulate anxiety about the beloved's distance is ultimately stronger. As Charry writes, this psalm tells us that "unpleasant emotions are not to be repressed as untoward but to be healed through models that show how to handle them. Here, the psalmist gives permission to his audience to be emotionally conflicted in relation to God. He does not urge his hearers to 'grin and bear it' or 'put on a happy face,' and he does not disparage honest fear of God—abandonment ..."⁶⁵ A faith that allows no doubt is hubris: when it claims to know for sure what God will and will not do, it denies God's freedom and invests far too much in the believer's impregnable security. Such a faith is the very opposite of true piety. The wavering faith of Psalm 27 is more honest, more humble, and therefore more deeply religious. This faith is neither Pollyannish nor naive; it is realistic about the fact that God seems absent at times.

It is also quintessentially Jewish in ending neither with fear nor with complete confidence but with hope (v. 14). The final verse of Psalm 27 recalls the Pentateuch, which does not conclude with entry into the Land of Israel and the fulfillment of God's promises. Deuteronomy 34 narrates not the victory of the hero, Moses, but his death. But that chapter also leaves us with the expectation that God's promises to Moses and to the patriarchs before him will nevertheless come to fruition in coming years with the victory of Moses' assistant, Joshua. Moses' life was a success not because he completed his task but because he did not desist from it—that is, because he lived up to the teaching of his latter-day disciple, Rabbi Tarfon in m. 'Abot 2:16 ("It is not incumbent upon you to complete the task, but you are not free to desist from it"). It is significant for the nature of the Jewish religion that the Torah ends on a note of hope rather than fulfillment.⁶⁶ That tendency made it natural that the anthem

65 Charry, *Psalms 1–50*, 141.

66 Many modern scholars have suggested the possibility that in antiquity the Torah was a six-book unit ending with Joshua. Thus it is vital to realize that all known forms of Judaism (and indeed, of Samaritanism) accept the five-book Torah ending with Deuteronomy. On the fateful nature of Judaism's decision to accord the highest canonical status to the Pentateuch and not to a Hexateuch, see James A. Sanders, *Torah and Canon* (Philadelphia: Fortress Press, 1972), 27–28, 52; and David Frankel, *The Land of Canaan and the Destiny of Israel: Theologies of Territory in the Hebrew Bible* (Winona Lake: Eisenbrauns, 2011), 25–29. (I am happy to thank Rabbi Joyce Newmark for calling this important passage in Sander's

of the Zionist movement and later of the State of Israel is התקווה, “The Hope,” rather than a song with a title like, say, הניצחון, “The Victory.”⁶⁷ Hope rather than perfect confidence characterizes the most mature Jewish faith: a readiness to admit one’s fears, to look toward God expectantly while renouncing the claim to predict all God’s actions. This faith is well displayed by the Psalm 27’s journey from simple, trusting piety in its first stanza, through doubt in the second, to hope in the third.

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work to my attention.) Because the Pentateuch is more sacred and authoritative in the Jewish canon than the rest of scripture, promise takes a central place in the shaping Jewish of identity, while fulfillment is secondary. The five-book Torah, the Scroll of Guidance, points towards a goal, but does not bring us all the way there. The Torah leaves us more in the position of Moses, looking towards a promised land, than Joshua, confidently entering it; and it is Moses, not Joshua, who is the prototypical Sage of the Jewish people.

67 Or a song such as שיר בית"ר (the hymn of the Revisionist Zionists), whose tone and lyrics are so contrary to התקווה.

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Elucidating Talmudic *suryaqe*—an Exercise in Talmudic Lexicography

Shamma Friedman

For Joel—friend, poseq, gentleman



The word *suryaqe*/*šuryaqe* appears several times in the Babylonian Talmud.* This paper addresses the meaning and etymology of this term, with reference to the related entries in lexicons of Babylonian Talmudic Aramaic. In recent years, Talmudic lexicography has benefitted from Michael Sokoloff's magnificent dictionaries devoted to Galilean and Babylonian Aramaic. In keeping with his rigorous standards, Sokoloff has ushered in a new era, from which the study of Talmudic literature has derived much benefit. In the nature of things, however, there are still basic contributions to be made in this field.

The task of a lexicographer of the Talmudic Aramaic dialects is an awesome one. Comprehensiveness can come at the expense of original research on difficult entries, as the lexicographer is at times forced to content himself with offering a plausible reading that emerges from the contextual occurrences of the term, without undertaking in-depth original research.¹ I maintain that to the extent that we can engage in self-standing studies of individual lexemes, their definitions and derivations, through exhaustive investigation into the individual passages and their literary inter-relationships, a task that does not fall within the parameters of the routine work of the lexicographer, we may be able to contribute significant complementary lexicographical clarifications.

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1 Sokoloff expresses one aspect of these difficulties and the resulting limitations in his introduction to Michael Sokoloff, *A Dictionary of Jewish Babylonian Aramaic* [= DJBA] (Baltimore: Johns Hopkins, 2003), 20, § 4.5.1. See *ibid.*, 17, § 4.1.1.3.

was compelled by the authorities to accept a position that required him to hand criminals over to be punished, he was criticized by others and also felt the pangs of his own conscience. He sought validation that everyone he turned over indeed deserved punishment, and divine assurance that his actions were justified and his righteousness intact.

A

b. B. Meṣ. 83b, cod. Hamburg 165

Thereupon he laid his hands upon his belly and exclaimed: "Rejoice, my innards, rejoice! If matters on which you are doubtful are thus, how much more so those on which you are certain! I am well assured that neither worms nor decay will have power over you."

Yet in spite of this, his conscience disquieted him. Thereupon he was given a sleeping draught, taken into a marble chamber, and had his abdomen opened, and basketfuls of fat were removed from him and placed in the sun during Tammuz and Ab, and yet it did not putrefy.

But no fat putrefies!—Fat which contains red streaks does putrefy. But here, though it contained red streaks, it did not putrefy.

The motif of having faith in one's rectitude to the point that worms and decay have no power over the flesh can be found in the earlier Palestinian version of the story, which appears in *Pesiqta de Rab Kahana*. In the Babylonian Talmud, its usage is secondary and greatly expanded.

Pesiqta de Rab Kahana 11:23

As R. Elazar bar R. Shimon was wasting away, his arm once happened to get exposed, and he saw his wife both laughing and weeping. He said to her: As you live, I know why you are laughing and why you

באותה שעה הניח ידיו על בני מעיו ואמ': שישו בני מעי שישו, ומה ספק שלכן כך ודאות על אחת כמה וכמה. מובטח אני בכם שאין רמה ותולעה שולטת בכם.

ואפלו הכי לא יתבא דעתיה. אשקויה סמא דשונאתא ועילוה לבייתא דשישא וקרעוה ליה לכריסיה, והווי מפקי מיניה דיק(י) [ולי] דתרבא ומותבי בשמשא דתמוז ואב ולא מסרח.

כל תרבא נמי לא מסרח! כל תרבא דאית ביה שוריקי סומקי מסרח, והאי אע"ג דאית ביה שוריאקי סומקי לא מסרח.

ר' לעזר בר' שמע' אתשש ואתגליית אדרעה וחמא לאינתתיה דהוה דחכא ובבייא. אמ' לה חייך דאנא ידע למה דחכת וידע למה דבכית. דחכת

are weeping. You laugh because you said to yourself, “How happy am I with what has been my lot in this world! How happy am I that I have been able to cleave to the body of such a righteous man!” And you weep because you said, “Alas that such a body is going to the worms!” True, I am about to die, **but worms, God forbid, will have no power over me.** However, one worm is destined to bore behind my ear for once, as I entered a synagogue, I heard a man uttering blasphemy and I should have taken legal action against him, but I kept silent.

דאמרת טוביי מה הוה חלקי בהדין
עלמא, טוביי דאידיבקות להדין גופא
צדיקא. ובכייט דאמרת ווי דהדין גופא
אזל לרימה. וכן הוא, מדמוך אנא ברם
רימה חס ושלום לית הוא מישלוט בי,
אלא חדא תולעת דעתידא דנקרא
אחורי אודני, חדד זמן הוינא עליל
לכנשתא ושמעת קלא דחד בר נש
מחרף והווי ספיקא גבי למעבד ביה
דינא ולא עבדית.

The passage from the Babylonian Talmud can be presented as having three layers. The first segment declares R. Elazar’s confidence in his own righteousness and the powerlessness of worms and decay over his body. In the formulation of the Babylonian narrator, this is a brief episode of self-confidence sandwiched between longer episodes of pangs of conscience.

The second segment introduces the novel contribution of the Babylonian narrator: It is possible to test one’s immunity to decay and decomposition by undergoing liposuction.

The third statement is something completely different. Into the smooth-flowing vibrant narrative jumps S[̄]tam Ha-Talmud, the now well-recognized pedantic, scholastic glossator of the Babylonian Talmud. He is less devoted to artful narration, and more interested in raising empirical difficulties, thus demanding that the story not deviate from anatomical facts: “But no fat putrefies!” The lack of putrefaction is no miracle, for, so he claims, fat will not putrefy even when left in the hot summer sun! There is no excuse for peppering literary creations—or even if it is historical documentation—with non-factual ‘facts’ that are easily refuted.

The resolution of the problem likewise expresses scientific sensibilities: If the fat contains red markings, *suryaqe sumaqe*, it will putrefy, and the fat that was removed from R. Elazar’s belly did indeed contain *suryaqe sumaqe*, but it *nevertheless* did not putrefy!⁴ Miracle restored.

What is the glossator’s source for this most technical expression *suryaqe sumaqe* that is used here as a substitute for “blood”? We will see that the answer

4 The anatomical assertions of this passage reflect the science of the time. See S. Friedman, “Aristotle in the Babylonian Talmud?—A Scholastic Interpolation by the Talmud’s Anonymous Glossator,” *And Inscribe the Name of Aaron: Studies in Bible, Epigraphy, Literacy and History Presented to Aaron Demsky* (Maarav 21 [2014, published in 2017], pp. 311–317).

lies in the hyperlinks connecting passage to passage, invisible to the eye—a literary phenomenon. The search for the meaning of the elusive *suryaqe* begins with animal anatomy or, in Talmudic parlance, with the laws of ritual slaughter and preparation of kosher meat. Our journey begins with b. Ḥul. 47b, regarding the halakhic status of the lungs of slaughtered animals and the fluids found in them.

B

Once when R. Ḥananiah was ill, R. Nathan and all the great men of that age came to visit him. There was then brought in to [R. Ḥananiah] a lung whose substance [had decayed and] was tossing about within as [water] in a jug, and he declared it to be permitted. Rava said: Provided, however, the bronchial tubes within were intact. R. Aḥa, son of Rava, asked R. Ashi, How would we know it? He replied: We take a glazed earthen basin, [pierce the lung] and pour it out into the basin; if there are seen any **white streaks** (better: particles) it is *trefah*, but if not, it is permitted.

רבי חנניה חלש, על לגביה רבי נתן וכל גדולי הדור, אייתו קמיה ריאה שנספכה כקיתון, ואכשרה. אמר רבא: והוא דקיימי סמפונות. אמר ליה רב אחא בריה דרבא לרב אשי: מנא ידעינן? אמר ליה: מייתנין צעא דקוניא, ושפכינן לה בגויה; אי אית בה שורייקי חיורי טרפה, ואי לא כשרה.

Rava limits the permissibility of an animal whose lung was “tossing about” to a case where the bronchial tubes remained intact. R. Ashi suggests a practical test to determine whether the fluid that remains in the lung contains pieces of the bronchial tubes: when the fluid is poured into a bowl, if there are “white streaks” (better: particles)—“*suryaqe ḥiwre*” in it—the animal is not kosher, but if not, it is kosher.

Maimonides, *The Book of Holiness*, Laws of Ritual Slaughter 7:9:

If **white threads** are visible, then it is clear that the bronchial tubes dissolved and [the animal] is a *trefah*. If not, then only the flesh of the lung has disintegrated, and [the animal] is kosher.

אם נראה בה חוטין לבנין—בידוע שנימוקו הסמפונות וטרפה, ואם לאו—בשר הריאה בלבד הוא שנמוק, וכשרה.

Rashi explains the Talmudic term with an Old French term that means “white spots.”⁵ Maimonides defines it as “white threads.” *Suryaqe* are the bits or remnants of the flesh of the bronchial tubes.

⁵ See below, n. 42.

Note that in this Talmudic passage, “*ḥiwre*” (‘white’) is used to modify *suryaqe*, denoting the color of bronchial tubes, and not “*sumaqe*” (‘red’) as in the previous passage. If the fluid poured from the lungs contains any white particles, it means that the bronchial tubes had dissolved by the time the animal was slaughtered, and the animal is not kosher.

Here, *suryaqe* are not “veins” or “streaks,” and they are not red. This mention of *suryaqe* by R. Ashi offers a practical method for applying Rava’s requirement that it be demonstrated that the bronchial tubes are intact before the animal can be deemed kosher.

Other instances of the word *suryaqe* relate to the prohibition against consuming blood. Jewish law forbids eating blood, including pieces of meat that contain blood. The following two laws address the examination of the organs of a slaughtered animal to determine whether they contain blood. Checking for *suryaqe* is suggested in context of the testicles of a kid (b. Hūl. 93b):

C

Mar son of R. Ashi said: The testicles of a kid that is not yet thirty days old are permitted without having to peel off the membrane; thereafter, if they contain semen they are forbidden, if they do not contain semen they are permitted.

אמר מר בר רב אשי: הני ביעי דגדיא,
עד תלתין יומין—שריין בלא קליפה;
מכאן ואילך, אי אזרען—אסורין, ואי
לא אזרען—שריין.

How does one know this? If they contain red streaks [in the membrane], they are forbidden; if they contain no red streaks, they are permitted.

מנא ידעינן? אי אית בהו שורייקי
סומקי—אסורין, לית בהו שורייקי
סומקי—שריין.

Mar bar R. Ashi asserts that the testicles of a young kid that was slaughtered before reaching the age of thirty days may be eaten (even without peeling off the membrane), because they do not yet contain blood at that point.⁶ In contrast, once a kid is more than thirty days old, then if the testicles contain semen they are forbidden (unless the membrane has been peeled off), because they certainly contain blood. However, if they do not yet contain semen, they do not contain blood and thus may be eaten.

Maimonides codifies this law as follows (*The Book of Holiness*, Laws of Forbidden Foods 7:14):

⁶ The blood is subsequently found in the membrane, see b. Hūl. 93a; Miamonides, Laws of Forbidden Foods 7:13.

The testicles of a kid or lamb that is not yet thirty days old may be cooked without first being peeled; after thirty days, if **fine red threads** are visible in them, it means that blood has reached them, and one should not cook them until he peels them or cuts and salts them as we have explained. **If red threads are not yet visible in them, they are permitted.**

ביצי גדי או טלה שלא השלים שלשים יום מותר לבלשן בלא קליפה, לאחר שלשים יום אם נראה בהן חוטין דקין אדומים בידוע שהלך בהם הדם ולא יבשל עד שיקלוף או עד שיחתך וימלח כמו שביארנו, ואם עדיין לא נראו בהן חוטין האדומים מותרין.

In Mar bar R. Ashi's law, we once again have a practical ruling that distinguishes something that may be eaten from something that may not on the basis of a difference that is not readily discernible. The Stam wished to elucidate the test asserted by Mar bar R. Ashi, but actually proposes an even clearer sign. To that end, he repeats R. Ashi's phraseology as in the previous passage (b. Hūl. 47b). R. Ashi said that if there are *suryaqe ḥiwre* (white *suryaqe*) in the lung fluid, it means that the bronchial tubes had dissolved. Here, the Stam says that if there are *suryaqe sumaqe* (red *suryaqe*) on the testicles, it means they contain **blood!**⁷

From this point on, the Stam continued using this formulation in halakhic rationales and for various empirical tests in aggadic contexts. It appears as an halakhic justification in b. Pesah. 74b.

D

[With regard to] raw meat, eggs, and the jugular veins, R. Aḥa and Ravina differ [...]

אומצא ביעי ומוריקי פליגי בה רב אחא ורבינא [...]

Raw meat which turns red, it and its serum are forbidden; if it does not turn red, (it and) its serum are permitted. Ravina said: Even if it does not turn red, its serum is forbidden, [for] it cannot but contain streaks (better: traces) of blood.

האי אומצא, אסמיק, הוא וחליה אסיר, לא אסמיק הוא וחליה שרי. רבינא אמ' אפלו לא אסמיק נמי חליה אסיר. אי אפשר דלית בה שורייקי דדמא (פסחים עד ע"ב; כ"מ 6).

The ruling at the beginning of this passage, which is the continuation of a statement by R. Aḥa, suggests that the kosher status of liquid that seeps from a piece of meat can be ascertained based on its color. If it turned red (*'asmiq*), it is forbidden; if it did not turn red (*la 'asmiq*), it is permitted. Ravina disagrees, taking a more stringent position: "Even if it does not turn red its serum is forbidden."

⁷ See below, progression within the Talmud.

The Stam adds an explanation for Ravina's stringent position: "it cannot but contain *suryaqe d'd^ema*." It is not possible that this serum contains no traces of blood. The sweeping prohibition results from the concern that some blood remains in this serum, even if unseen.

In the first two instances, the white or red color of the *suryaqe* was mentioned. Here, according to the original version of the text, no color is mentioned, only "*suryaqe d'd^ema*," 'traces of blood'. We determined the original reading based on the following synopsis of primary textual witnesses.⁸ The longer secondary reading is "*suryaqe sumaqe d'd^ema*", 'red traces/streaks of blood'; tradents regularly add text rather than delete. This reading results from a conflation of the original reading with *suryaqe sumaqe*, found in A and C. The halakhic concern is clearly about 'traces of blood', with no need to say 'traces of red blood'.⁹

דדמא	שוריקא	ביה	דלא אית	אפשר	אי	Ox. Bodl. heb. e. 75/47–54
דדמא	שוריאקא	ביה	ת.....	.....	...	Camb. T-S F2(1).92
דדמא	שורייקי	ביה	דלית	איפשר	אי	Oxford Opp. Add. fol. 23
דמה	שורייקי	בה	דלית	אפשר	אי	Venice Print
דדמא	שוריקא	ביה	דלית	אפשר	אי	Vatican 125
דרמא	שורייקי	בי	דלית	אפשר	אי	Vatican 134
דדמא	שורייקי	בה	דלית	אפשר	אי	Munich 6
דדמא	שורייקי	ביה	דלית	איפשר	אי	Munich 95
דרמא	סומקי	שוריאקי	ביה	אפשר	אי	NY—Columbia X 893 T 14a
דדמא	סומאקי	שוריאקי	ביה	אפשר	אי	NY—JTS Rab. 1623/2
דדמא	סומקי	שורייקי	ביה	איפשר	אי	Vatican 109

The reason for the absence of color is simple; the other instances describe visual inspection, for which color is crucial. If one sees white *suryaqe*, it means

8 <http://www.lieberman-institute.com>.

9 One of the outstanding features of DJBA is its controlled use of manuscripts. When necessary, there is extensive use of manuscripts, but the standard operating procedure is to quote one select textual witness for each tractate. In some cases, the decision of which MS is chosen has strong implications for determining the meaning of words, and thus on the etymology as well. The default witness for b. Pesah. is Cod. New York, JTS Rab. 1623/2 (EMC 271). Despite the great linguistic value of this manuscript, it should not be relied upon exclusively with respect to the textual tradition, as the Yemenite manuscripts of this tractate are known for additions and reworkings of the original text (cf. Shamma Friedman, *Tosefta Atiqta: Pesah Rishon* [in Hebrew] [Ramat-Gan: Bar-Ilan University Press, 2002], 87–88, and literature cited there). Close scrutiny of Talmud text is best served through a thorough review of *all* primary textual witnesses, in synopsis format. This can be done far more easily today than in previous decades.

the bronchial tubes dissolved; if one sees red *suryaqe*, it means there is blood in the meat. Here, however, in Ravina's ruling, there is no visual inspection, only a rationale for a sweeping prohibition. Presumably there are traces of blood, even if they are not seen! Color plays no role. Blood is known to be red, so mentioning the color is superfluous.

In the three cases that pertain to the laws of meat consumption, the term *suryaqe* either teaches a method of inspection to determine halakhic status or offers a halakhic rationale. The functional role of *suryaqe* in these contexts implies that it refers to non-visible traces, or remnants that can appear as small pieces or tiny marks.

From this point onward, it was easy for the redactors of the Talmud to export the same view of reality and the same terminology from animal anatomy to discussions of the human body and its soft tissue, as in the story of R. Elazar b. Shimon's belly—likewise in order to distinguish two eventualities by means of a visual inspection:

B. Meṣ. 83b	Ḥul. 93b
כל תרבא דאית ביה שוריקי סומקי מסרח והאי אע"ג דאית ביה שוריאקי סומקי לא מסרח	אי אית בהו שורייקי סומקי אסירן לית בהו שורייקי סומקי—שריין
Any fat that contains red streaks putrefies.	If they contain red streaks they are forbidden.
But here, though it contained red streaks, it did not putrefy.	If they contain no red streaks, they are permitted.

The pedantic glossator dons his scholastic robes here, not only in following the scientific opinion of his time, but also in reapplying idioms used in other Talmudic contexts. The term under discussion was borrowed from its precise meanings in laws of meat consumption and reapplied as part of an adroit effort to reinstitute a miracle.

According to the science of the day, fat does not putrefy at all, whereas blood putrefies rapidly. The Stam glossator had to produce blood within the fat so that the immunity to putrefaction of the fat removed from R. Elazar's belly could be attributed to a miracle. The problem is that the same contemporary science asserted that no blood is to be found in fat.¹⁰ To resolve this, he

¹⁰ See above, n. 6.

enlisted *suryaqe sumaqe*, as if to say that there is indeed no blood, but there is something that approximates blood and that putrefies rapidly—yet even so, R. Elazar’s fat, miraculously, did not putrefy. The language *suryaqe sumaqe* and its use in distinguishing two cases by their presence or absence are likely to have been borrowed from the case of the kid (C), and serve the needs of the present passage clearly and efficiently. The contention makes sense. The presence of *suryaqe sumaqe* in human fat is not asserted on the basis of empirical observation, but results entirely of reuse of literary motifs appearing elsewhere.

In a further passage, the Stam applies these words to the context of divination by means of observing fowl. In the well-known passage that appears three times in the Babylonian Talmud,¹¹ about determining the moment of each day during which God is angry (for “His anger lasts but a moment,” Ps 30:6), it is stated (b. Sanh. 105b):

E

<p>Now, when is He angry?—In the first three hours [of the day], when the comb of the cock is white. But at all times it is white!—At all other times it has red streaks, but at that moment [of God’s anger] there are no red streaks in it.</p>	<p>אימת רתח? בתלת שעי קמייתא, כי חוורא כרבלתא דתרנגולא. כל שעתא ושעתא נמי חורא! כל שעתא ושעתא אית ביה סוריקי סומקי, ההיא שעתא לית ביה סוריקי סומקי.</p>
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This divinatory technique relates to the whiteness of the cock’s comb as the indicator of the moment of God’s anger. The Stam glossator intervenes with his challenge: “But at all times it is white!” Again, he supplies his own resolution. In response, the Stam suggests a manner of examination at the center of which stand “*suryaqe sumaqe*.” The resulting discourse resembles that of the story of R. Elazar b. Shimon:

The Story of R. Elazar b. Shimon

The Cock’s Comb (Sanh. 105b et al.)

כל תרבא נמי לא מסרח
 כל תרבא דאית ביה שוריקי סומקי מסרח
 והאי אע”ג דאית ביה שוריאקי סומקי לא מסרח

כל שעתא ושעתא נמי חורא
 כל שעתא ושעתא אית ביה סוריקי סומקי
 ההיא שעתא לית ביה סוריקי סומקי

¹¹ b. Ber. 7b, b. Sanh. 105b, b. ‘Abod. Zar. 4b.

(cont.)

The Story of R. Elazar b. Shimon	The Cock's Comb (Sanh. 105b et al.)
But no fat putrefies!	But at all times it is white!
Any fat that contains red streaks putrefies	At all other times it has red streaks
But here, though it contained red streaks, it did not putrefy.	but at that moment, there are no red streaks in it.

It is worth noting here that in the cock account, in place of אית ביה סוריִיקי סומקי “it has red streaks,” some manuscripts read פיישי ביה סוריִיקי סומקי “red streaks remain in it.” This variant well fits the notion that *suryaqe* are “remains” or “traces.”

In this divinatory formula, seeing *suryaqe* serves a diagnostic purpose. However, in this case, to see them does not require slaughtering an animal or performing surgery; the *suryaqe* are visible to all on the comb of the live rooster.

Color-change in roosters' combs is a real, objective phenomenon, regulated by testosterone levels, which, when lowered, cause the natural red to pale towards white.¹² The divine anger is a cosmic event with a hormonal effect upon fowls. The scholastic challenge (“But at all times it is white!”) flies in the face of reality! It would appear that the availability of an excellent, ready-made solution, by now common stock, prompted the objection in the first place.

The Intra-Talmudic Developmental Path

From a chronological perspective, the first appearance of *suryaqe* in the Talmudic corpus is in an exchange between two named Amoraim discussion (B): R. Aḥa asks R. Ashi how one can know whether the bronchial tubes had

12 “Spurs, combs and wattles in birds are, therefore, typical testosterone-dependent secondary sexual structures. Interestingly, when cocks fight they specifically attack one another’s combs and wattles. These structures may, therefore, be important signals during both male-male fighting and mate choice by females.” (Ian P.F. Owens and Roger V. Short, “Hormonal Basis of Sexual Dimorphism in Birds: Implications for New Theories of Sexual Selection,” *Trends in Ecology & Evolution* 10 [1995]: 46); “Take the time to look carefully at the colour of their combs ... comb might become paler than usual, or might become a darker red or purple colour, or even blotchy” (<http://www.darwinvets.com/poultry/common-chicken-problems-diseases>).

dissolved, and R. Ashi answers that we spill the fluid from the lung and observe: if it contains *suryaqe ḥiwre* it is not kosher, and if not, it is kosher. The remnants of the bronchial tubes are small white pieces.

Thereafter, this word serves the Stam as a useful term for indicating remnants that are even less solid: traces of blood within a fluid (C), or the presumption that there may be traces of blood in a fluid, even when they are not visible at all (D). This exhausts the usage with respect to the kosher laws, but the usefulness of the term continues to serve the literary goals of the Stam, even in the aggadic contexts of the fat of R. Elazar b. Shimon's belly and the cock's comb. It would appear that the intra-Talmudic lexical development parallels its functional-literary progression. Of the three uses in context of kosher laws—*suryaqe ḥiwre*, *suryaqe sumaqe*, and *suryaqe d'dema*—only *suryaqe sumaqe* was applied to the aggadic settings: R. Elazar b. Shimon's fat and the cock's comb.

Definition of Talmudic *suryaqe*

In my opinion, there is no justification for applying the definition “vein” to any one of the Talmudic instances. Yet the lexical entry in DJBA with which we began quotes three Talmudic passages under the first gloss, which lists “vein” as a meaning of *suryaqe*. The relevant line from the story of R. Elazar b. Shimon is translated there: “all fat which has red **veins** will putrefy.” However, “veins” are not implied in context. Rashi explains: “Red hues (*gevanim*), comprised of flesh.” The Soncino translation has “red streaks.” Moreover, we suggested, based on the science of the time, that the passage in fact implies that there is no blood in fat, and so certainly there are no veins. There are only *suryaqe*, some type of weakly defined red marks.

Regarding Ravina's statement in b. Pesah. 74b (D), “Even if it does not turn red, its serum is forbidden, [for] it cannot but contain [red] streaks of blood,” only the three words “*suryaqe sumaqe d'dema*” are quoted in the above-mentioned entry, and they are translated as “red veins of blood.” Even if we adopt the variant that includes “*sumaqe*,” which, as noted, is a secondary reading, there is no room to ascribe “vein” as its meaning based on context. The concern is for the presence of unseen *suryaqe* in the serum, which is a *liquid*. The unseen matter in the liquid is blood, not *veins*. Even the expanded phrase, as represented by three textual witness, should be translated “red *traces* of blood,” and not “veins.”

We may therefore delete the ascription of the meaning “veins” from all Talmudic contexts.

The second sub-entry in DJBA, bearing the definition “streak,” is comprised of the remaining two Talmudic occurrences: the cock’s comb (E) and the bronchial tubes (B). Apparently, it made little sense to locate veins in the cock’s comb, and “streak” is substituted, resulting in the translation: “all the time, (the rooster’s crest) has red streaks in it. At that time it does not have red streaks in it.” Likewise, the meaning of “veins” could not be ascribed to *suryaqe hiwre*, and the line is therefore translated: “white streaks [in a lung].” In truth, as we have seen, they are not “white streaks in a lung,” but white pieces of the flesh of the bronchial tubes found in the fluid poured from the lung.

The meaning “veins” cannot be derived from any of the Talmudic passages quoted in this entry, nor from their context, from Rashi, or from the Soncino translation. Every instance of this term in the Talmud can be explained by ascribing a single general meaning: “something tiny,” and in context, something tiny that is separate from a solid or liquid medium and can either be discerned by observation or whose presence can be deduced without being seen.

Linguistic Development

Our journey with the term *suryaqe* is not yet complete. Linguistic development will not be stopped by bringing down the gavel; rather, the term *suryaqe sumaqe* continued to be applied in the post-Talmudic period, and the Ge’onim used it in contexts fitting their legal discussions.¹³ The geonic authors moved the term *suryaqe* to a further developmental stage, in order to express their additional clarification to the Talmudic law.¹⁴ Attached to the ileum is an array of small, hair-like blood vessels that are difficult to remove, and thus led to the prohibition of the ileum for kosher consumption. Halakhic nomenclature

13 Expanding on b. *Hul.* 113a which discusses whether there is a presumption of blood being found in intestines, *Halakhot Gedolot* (largely ascribed to R. Shimon Kayyara, first half of the ninth century) indicates that the ileum is prohibited, due to שורייקי קטיני דדמא (the “narrow *suryaqe* of blood which are in it” (Hildesheimer, 3, 212–213 [= F])). The identical phrase is used in an inquiry addressed to Rav Hai Gaon (Simcha Emanuel, ed., *Newly Discovered Geonic Responsa and Writings of Early Provençal Sages* [in Hebrew] [Jerusalem: Ofeq Institute, 1995], 164; below = G) who, in his response, returns verbatim to the prohibition in *Halakhot Gedolot*, shortens the reference to שורייקי דכנתא, “the *suryaqe* of the ileum”. Cf. *Raviah* (Bnei Brak: Sifriati, 1976), 145–146, par. 1121; and *ibid.* 4, 170.

14 There is no term for small veins or capillaries (probably meant here) in Talmudic Aramaic. *Warid* is used only in Syriac (see Brockelmann/Sokoloff, 360 and meanings there; CAL), but not in other Aramaic dialects. For larger blood vessels TB can use circumlocutions, such as *simpona* (see DJBA, 806); for smaller, שוריינא (*ibid.*, 1124). In this passage the Gaon manufactures the terminology required for his new halakhic distinction.

possessed no technical term for these capillaries. R. Sherira Gaon referred to them as *hutim*, “threads,”¹⁵ by analogy of similar structure. The author of *Halakhot Gedolot* preferred a descriptive tact: the “**narrow *suryaqe* of blood which are in it,**” taking advantage of the traditional term *suryaqe* for undefined bodies (whose presence may cause halakhic prohibition). In the passage by R. Hai Gaon¹⁶ the first mention of these small blood vessels used the long phrase as in *Halakhot Gedolot*; the second reference could then be abbreviated: שוריקי דכנתא, “*suryaqe* of the ileum.”

Once again, literary and lexical development go hand in hand. Each era adds new linguistic usages, and lexical development never ends. As clearly enunciated by E.Y. Kutcher, Talmudic Hebrew is best analyzed as two successive stages, Tannaitic Hebrew and Amoraic Hebrew,¹⁷ with substantial differences between them. Similarly, in the specific context we are treating here, we note that the language of the Ge'onim develops a further stage of usage, directly based upon the Talmudic, and growing out of it.

Progression within the Talmud

DJBA, which suggests for the etymological derivation a Syriac term defined as the “glare of the sun or fire,” opens the entry with (1) b. Pesah. 74b (= D), translated there “red veins of blood” (as indicated above, “red” is a secondary addition to the Talmud text); the second reference (2) is to *Halakhot Gedolot* (= F),¹⁸ translated “thin veins of blood.” The third (3) b. B. Meş. 83b (= A), “... red veins ...”, translation applying also to (4) b. Hul. 93b (= C); (5) (= G),¹⁹ translated “veins of the ileum”. (1–2) contain the word “blood;” (1, 3–4) “red.” (1) has both, “red” and “blood;” (5) has neither word. The progression leads from the more specified to the less specified: “blood” → “red” → “*suryaqe*” unmodified. The second sub-entry (“streak”) collects the occurrences where “vein” is impossible or improbable: (6) the rooster’s crown (= E); (7) b. Hul. 47b “*suryaqe hiwre*”—“white steaks,” farthest possible from red blood.

15 Louis Ginzberg, *Geonica II: Genizah Studies* (New York: Jewish Theological Seminary, 1909), 26.

16 See n. 13.

17 E. Yechezkel Kutscher, “Some Problems of the Lexicography of Mishnaic Hebrew and Its Comparison with Biblical Hebrew” [in Hebrew], in *Archive of the New Dictionary of Rabbinical Literature*, ed. E. Yechezkel Kutscher (Ramat-Gan: The New Dictionary of Rabbinical Literature Project, Bar-Ilan University, 1972), 30, 40.

18 See n. 13.

19 See n. 13.

In order to address the etymological question we undertook first to establish the primary meaning within the Talmudic corpus. Secondary and tertiary usages, which stem, *inter alia*, from the development of additional applications within the Talmud itself, and are then further adapted to meet the needs of writers from the geonic era, are less useful in arriving at a satisfactory etymology.

As we have seen, the first sub-entry in DJBA is devoted to the meaning “vein.” It is composed of three Talmudic references and two geonic. In our opinion, only in the geonic passages occur phrases referring to “veins” (better, perhaps, “capillaries”), or, finally, actually denote “vein.” The Talmudic passages themselves touch upon remnants, traces, and the like, and generate a progression along the lines we have suggested: B, C, D, A, E.

It is R. Ashi who can claim to have first used the term *suryaqe*. He, and the Stam after him, needed a word for tiny, insubstantial entities, the traces or remnants of some material or substance whose presence can barely be detected by the naked eye. A language’s lexicon of nouns is initially constituted by words that refer to substantial, material things; words for abstractions, conceptions, and even specks and the ethereal are constructed through semantic borrowing, or are borrowed from other dialects that have already reached this level of development.

Etymology

One final point is in order before ascertaining the etymology of *suryaqe*. The letter Ψ that begins “*suryaqe*” may in some (all?) occurrences be taken as *śin* (Ψ), based on the reading with *samekh* in Talmudic textual witnesses and Geonic quotations.²⁰ Of the 46 instances of this word in manuscripts and first print editions of the Talmud, sixteen, including several Genizah fragments and pedigreed manuscripts, attest to *samekh*.²¹

20 For example, in Ezriel Hildesheimer, ed., *Sefer Halakhot Gedolot*, vol. 3 (Jerusalem: Mekitse Nirdamim, 1987), 147 n. 49. Cf. Rashi to b. Sanh. 105b and b. 'Abod. Zar. 4b (with further attestations in the manuscripts of Rashi’s Talmudic commentaries). For Talmudic occurrences with *samekh* see appendix.

21 On rabbinic views of the letter Ψ and its two pronunciations, see Richard Steiner, “*Ketiv-Kere* or Polyphony: The *Šin-Šin* Distinction According to the Masoretes, the Rabbis, Jerome, Qirqisānī, and Hai Gaon,” in *Studies in Hebrew and Jewish Languages Presented to Shelomo Morag*, ed. Moshe Bar-Asher (Jerusalem: Bialik, 1996), 151–179, and literature sources indicated there. On the interchangeability of *śin*, *šin* and *samekh* in certain words in rabbinic texts, see Yechiel Kara, *Yemenite Manuscripts of the Babylonian Talmud* [in Hebrew], vol. 10 of *Language and Tradition* (Jerusalem: Magnes, 1983), 79.

As to etymology,²² DJBA compares the rare Syriac word ܫܪܝܩܐ “*šuriqa*,” which is defined there “glare of the sun or fire.” In Payne Smith’s dictionary, it is rendered “flashing beams of sun or fire light.”²³ Both are based on Bar Bahlul’s Syriac-Arabic dictionary, which preserves the only documentation of this word:

ܫܪܝܩܐ—وهج الحراو الشمس او النار

[“The burning (*wahaj*) of heat, the sun, or fire”]

The exact meaning of the word *wahaj* is pertinent. If *wahaj* in this quotation does not indicate “flashing” or “light,” but “burning,”²⁴ indeed more fitting to “heat,” the above adaptations of Bar Bahlul are brought into question.

The Syriac *šuriqa* can be associated with our occurrences only through the implicit association of the glare and flashes with the color “red.” There are of course rich associations of the root *s/šrq* in Hebrew and other Semitic languages with red,²⁵ although I have not seen it suggested in connection with Syriac *šuriqa*. However, any association with a shining red hue is precisely where the suggestion fails! Redness is a quality that can describe *suryaqe*, just as *whiteness* can, as in the case of *suryaqe hiwre*! Thus, color is not an essential attribute of *suryaqe*.

22 The etymologies offered speculatively in *Arukh Hashalem*, s.v. [ܫܪܝܩܐ] (Alexander Kohut, *Arukh completum sive lexicon, vocabula et res, quae in libris Targumicis, Talmudicis et Midraschicis continentur*, vol. 8 [New York: Pardes Publishing House, 1955], 167–168), are not convincing.

23 J. Payne Smith, *A Compendious Syriac Dictionary* (Oxford: Clarendon Press, 1903), 568; R. Payne Smith, *Thesaurus syriacus* (Oxford: Clarendon Press, 1879–1901), 4338, under root ܫܪܩ = whistle. Brockelmann/Sokoloff *LexSyr* does not register this word at all, but in the entry ܫܪܩ = whistle (p. 1611) we find a fifth meaning: “to shine”, based on one occurrence which is marked as doubtful. The nouns associated there with this root do not include the word under discussion.

24 Edward William Lane, *Arabic-English Lexicon* (London: Williams and Norgate, 1863–1893), 2970 (“The burning, or heat, of fire”; ‘diffusion’ is a secondary meaning [ibid.]); Hans Wehr, *A Dictionary of Modern Written Arabic*, ed. J. Milton Cowan, 3rd ed. (Ithaca, NY: Spoken Language Services, 1976), 1102.

25 Zech 1:8; See HALOT, pp. 1361–1362, even “the rising, blood-red sun”. For š/s in the root ܫܪܩ in Tannaitic Hebrew see: Kara, *Yemenite Manuscripts*, 79 n. 154. It should be noted that the shining sun is referred to in Sir 50:7 as ܫܡܫܐ ܡܫܪܩܬܐ (Zeev Ben-Hayyim, *Sefer Ben Sira* [Jerusalem: The Academy of the Hebrew Language, 1973], 62; M.H. Segal, *Sefer Ben Sira ha-Shalem* [Jerusalem: Bialik Institute, 1958], 344. Also note *masriq* instead of *mazhir* in the margin to 43:11).

In Jastrow's dictionary,²⁶ the word in question is compared to the Syriac **ܣܘܪܩܐ** "*saruqa*" with reference to Payne Smith's Thesaurus,²⁷ which in turn translates this term as "particula nebulae," small bits of cloud; Payne Smith Dictionary: "a *particle* of mist."²⁸ In Sokoloff's edition of Brockelmann's dictionary, it is translated as "wisp of cloud."²⁹ *Saruqa* means simply the "particle," as the word "cloud" is also used in context. This meaning fits well with our interpretation of *suryaqe* as "small traces" of shapeless, indistinct matter of any color. This is the primary meaning in the Talmudic instances of the word: something tiny, like the remains of a dissolved bronchial tube in lung fluid, barely visible traces of blood in a liquid, and red spots on human fat.

The Syriac word *saruqa* can be illustrated in context from *Acta martyrum et sanctorum Syriacae*:³⁰ **ܣܘܪܩܐ ܕܥܠܘܢܐ ܕܥܠܘܢܐ** "A *saruqa* of a small cloud was seen." The cloud is small, and its *saruqa* is even smaller.

Developing a word for a "[small] piece" of nebulous stuff is often done through linguistic analogy. From where can such a meaning be borrowed? Reasonably, from the realm of threads and fabrics, where we can find something similar to a small, fluffy cloud, and to the threads mentioned by Sherira and Maimonides.

The root **סר"ק** refers to the combing or carding of fiber,³¹ a basic operation in the manufacture of textiles. As a major element of the linen-making process, combing is mentioned in Isaiah 19:9 (NJPS): "The flax-workers, too, shall be dismayed, both carders (*seriqot*) and weavers chagrined." In an area where carding is done, small, light, all but worthless bits of fabric—if you wish, *saruqa/suryaqe*—can be found. Their name is readily lent to ethereal traces which interest the halakhist, and the pedantic glossator rejoiced as he further applied them to the Talmud's bold, colorful narratives.

Let us return to "the *saruqa* of a small cloud," translated above as "a wisp of cloud." One meaning of wisp is "a thin, narrow, filmy, or slight piece, fragment (of something)," as in "wisp after wisp growing, trembling, fleeting, and fading in the blue" and "a thin wisp of smoke on the horizon."³²

26 p. 1542.

27 p. 2750.

28 P. 390.

29 *LexSyr*, Sokoloff ed., 1044.

30 P. Bedjan, *Acta martyrum et sanctorum Syriacae* (Lipsiae: Otto Harrassowitz, 1894), 2, 342.

31 See *LexSyr*, Sokoloff ed., 1050; Payne Smith, *Compendious Syriac Dictionary*, 392. Jastrow's entry for the word we are dealing with does indeed refer to **סר"ק** II (= p. 1029 in his dictionary).

32 *OED*, 2437.

We may thus reasonably hypothesize that the meaning of the Talmudic “*suryaqe*” as a small trace of something is based on the small wads of fiber that are separated from the fabric during the carding process, as described in m. B. Qam. 10:10: “Wads of fiber that the launderer pulls out belong to him, and that the carder (הַפְּרוֹק/הַסוֹרֵק) pulls out belong to the householder.” Even these fluffy remnants are of some use.

Number

The lexeme under study appears in the following three immediate contexts:

שורייקי חיוּרִי
שורייקי סוּמְקִי
שורייקי דְדִמָּא

The first two are clearly plurals, modified by plural adjectives. The third, with no adjective (in the original, shorter reading),³³ is plural in most witnesses. However, in two geniza fragments we find: שוריאקא דדמא, שוריקא דדמא, almost³⁴ certainly singular: a trace.³⁵

Morphology

A plene orthography with *alef* in this word appears sporadically in the Yemenite manuscripts, and once on Cod. Hamburg 165, e.g.: שורייאקי סומאקי; שוריאקי סומקי.³⁶

The above reflect two possible realizations: 1. *šuryaqe*; 2. *šuraiqe*.

In the Yemenite reading tradition the following phonological realizations of the morphological possibilities have been recorded: *šuryaqa/e*, *šuraiqa/e*.³⁷

33 See above, D.

34 “Almost,” in light of the possible rare usage of final *alef* for masculine plural, as in Syriac (see Shamma Friedman, “Three Studies in Babylonian Aramaic Grammar” [in Hebrew], *Tarbitz* 43 [1973]: 61 n. 15).

35 This reading is also registered in the Arukh, s.v. *š^erayqa* (see n. 24): שוריקא דדמא.

36 See textual synopsis (Appendix).

37 Also a third reading has been attested: *šury^eqa/e*. See Shelomo Morag and Yechiel Kara, *Babylonian Aramaic in Yemenite Tradition: The Noun* (Jerusalem: Hebrew University Press, 2002), 267, 272.

The form *šuryaqe* has few exact morphological parallels.³⁸ Furthermore, it presents the *yod* as a consonant, yielding an anomalous quatro-literal pattern. In contrast, *šuraiqe* (with its /u-ai/ structure) can be analyzed as a diminutive form, as in the Syriac *‘ulayma* for “young lad” and בַּת *‘uzzēla* (gazelle) for a small goat.³⁹

Arabic *suryāq*

Rashi commented on the word under discussion as follows: ⁴⁰ סוריִיקי. נוק”יש, “*Suryaqe; taches* [= spots] in French. Like threads, and in Arabic a thread is called *suryāq*” (b. ‘Abod. Zar. 4b; Pesaro print). In the only surviving manuscript for this gloss⁴¹ the entire comment consists of only three words: שויריקי [!] טקש⁴² בלע’. The most reasonable explanation is that the short text is the original form of this gloss, to which Rashi added at a later time. The addition was subsequently transferred to some exemplars, while others maintained the original language, without the addition.⁴³ The original text simply presents the translation of the difficult word into Old French, exactly as appears in Rashi’s commentary to the parallel passages (b. Ber. 7b and b. Ḥul. 47b). The addition presents the definition “threads,” as against the original “spots.” The ostensible reason for the addition is that Rashi received new information, including an explanation of the word in Arabic.⁴⁴ This situation is similar to Rashi, b. Beṣah 33b s.v. במוסתקי, where

38 See *ibid.*, 266–268.

39 Z. Har-Zahav, “Diminutive and Augmentative Forms” (“*Tsurot Hahaqtanah Vehahag-dalah*”), *Lēšonénu* 1, no. 2 (1930): 132; T. Nöldeke, *Compendious Syriac Grammar*, trans. J. Crichton (London: Williams & Norgate, 1904), 71, § 112; J.N. Epstein, *A Grammar of Babylonian Aramaic* [in Hebrew] (Jerusalem: Magnes, 1960), 115; Sokoloff, *Jewish Babylonian Aramaic*, 93, etc.

40 See n. 42.

41 Parma 3155 (De-Rossi 1292).

42 This is the correct form of the Old French gloss; see Arsène Darmesteter and D.S. Blondheim, *Les Gloses Françaises dans les commentaires Talmudiques de Raschi* (Paris: Librairie Ancienne Honoré Champion, 1929), 134, no. 974.

43 In defense of this pattern, see Shamma Friedman, “Rashi’s Talmudic Commentaries and the Nature of Their Revisions and Recensions” (Hebrew), in Zvi Arie Steinfeld, ed., *Rashi Studies* (Ramat-Gan: Bar-Ilan University, 1993), 173.

44 Regarding Arabic in Rashi’s commentaries, see Avraham Grossman, “The Impact of Rabbi Samuel of Spain and Reuel of Byzantium on Rashi’s School” [in Hebrew], *Tarbiz* 82 (2014): 453–455; *idem*, “The Treatment of Lexicon and Grammar in Rashi’s Commentaries: Rashi’s Ties with the Islamic Lands” [in Hebrew], *Lēšonénu* 73 (2011): 432–433; *idem*, “Rashi’s

an addition (which can be seen as a later recension) quotes R. Samuel the Pious, the Sefaradi, including an Arabic gloss.⁴⁵ The similarity of Rashi's *la'az* to the Talmudic word *suryaqe* which he is explaining, is tantalizing! The meaning "threads" corresponds to the suggestion that the image behind the Talmudic word is related to combing fibers; the consonants of the Arabic correspond to *srq*, suggested above as the root of the Talmudic word.

The root *srq* with the meaning "card," "comb," which we have been discussing in connection with *suryaqe*, has indeed been documented in Judeo-Arabic.⁴⁶ It is possible that this word was also in use by speakers of other Arabic dialects.⁴⁷ Conversely, its not being mentioned in the general Arabic dictionaries may suggest its uniqueness to Judeo-Arabic, in essence a loan-word from Aramaic or Hebrew.⁴⁸

Even if Rashi's informant communicated his interpretation in writing, the reconstruction of the Arabic word's pronunciation is hazardous, in that we are relying on a single attestation. Were we able to conclude that the Arabic word was pronounced *suryāq*, and were it true that the Arabic word was simply a borrowing of the Talmudic *suryaqe*, we would have further confirmation of the corresponding Yemenite recitation tradition. More significant is the spelling with *samekh*, corresponding to the orthography prominent in oriental textual witnesses of the Bavli.

Most significant is the explanation "threads" (identical with Sherira Gaon's and Maimonides's explanation) which Rashi received from an Arabic-speaking sage, using a noun from the root *srq*, and belonging to the realm of fibers, lending much weight to the above suggestion regarding the Talmudic Aramaic word, which may have been absorbed in Judeo-Arabic directly from the Aramaic.

Rejection of Philosophy—Divine and Human Wisdoms Juxtaposed," *Simon Dubnow Institute Yearbook* 8 (2009): 103–104.

45 Idem, "The Impact of Rabbi Samuel", 449–450.

46 Joshua Blau, *A Dictionary of Mediaeval Judaeo-Arabic Texts* (Jerusalem: The Academy of the Hebrew Language and The Israel Academy of Sciences and Humanities, 2006), 294; see Mordechai Akiva Friedman, *A Dictionary of Medieval Judaeo-Arabic in the India Book Letters from the Geniza and in Other Texts* (Jerusalem: Ben-Zvi Institute, 2016), 200–201.

47 See S.D. Goitein and M.A. Friedman, *India Book*, vol. 1 (Jerusalem: Ben-Zvi Institute, 2009), 76 n. 12.

48 An Arabic noun سَرَق *saraq* indicating a unit (piece, oblong piece, sheet, bolt?) of silk recorded in both general Arabic and Judeo-Arabic (Edward William Lane, *Arabic-English Lexicon* [London: Williams and Norgate, 1863–1893], 1352; M.A. Friedman, *A Dictionary of Medieval Judaeo-Arabic*, 601) is of questionable etymology, would not be connected to carding, and seems to refer to units much larger than "threads."

Conclusion

Exemplary dictionaries, such as Michael Sokoloff's *Dictionary of Jewish Babylonian Aramaic*, present to the careful reader both what is known and what is not known. Such entries often allow one studying the language to step in, taking advantage of the outstanding groundwork that has been laid out for him or her, and carry the investigation a step further. The word "šuryaqa" is one such entry.

This type of challenge is not infrequent in the field of rabbinic Hebrew and Aramaic lexicography. One is moved to emulate the work of early scholars who devoted in-depth studies to particular lexemes beset with vexing complications. These studies may by necessity expand the canvas of inquiry,⁴⁹ but in the final product serve the ends of lexicography as well.

49 And thus perhaps rile a reviewer; see Yochanan Breuer, review of *Studies in the Language and Terminology of Talmudic Literature* by Shamma Friedman [in Hebrew], *Lěšonénu* 78 (2016): 216.

Appendix

A b. B. Meş. 83b

מסרח	סומקי	שוריקי	ביה	דאית	תרבא	כל	Hamburg 165
מסרח	סומקי	שורייקי	ביה	דאית	תרבא	כל	Escorial G-I-3
מסרח	סומקי	שורייקי	סריח	לא	תרב'	כל	Soncino Print
סריח	איתביה	שורייקי	סומקי	סריח	לא	אי תרבא	Vatican 115
סריח	סומקי	שורייקי	[בי'	אי	תרב'	כל	Vatican 117
דסר'	סומקי	שוריקי	בי'	אית			Munich 95
מסרח	לא	סומקי	ביה	אית	כי תרבא	כל	Florence 11-I-8
.....	.....	.....	....	א...			Spanish Print
סריח	סומקי	שורייקי	ביה	אית	אי תברא	כל	Frankfurt Barth. 107

מסרח	לא	סומקי	שוריאקי	ביה	דאית	אע"ג	והאי	Hamburg 165
מסרח	לא	סומקי	שוריקי	ביה	דאית	אע"ג	והאי	Escorial G-I-3
מסרח	לא	סומקי	שורייקי		דאיכא	אף על גב	הכא	Soncino Print
סריח	לא	סומקי	שורייקי	סומקי	ביה	דאית	אע"ג	Vatican 115
סריח	ולא	סומקי	שורייקי	ביה	דאית	אע"ג	הכא	Vatican 117
סר'	לא	סומקי	שוריקי	בי'	דאי'	אע"ג	הכ'	Munich 95
[מסרח]	לא	סומקי	שוריקי	ביה	דאית	אע"ג	האי	Florence 11-I-8
.....	...	.....	.....	....	דאית	אע"ג	י.....	Spanish Print
סריח	לא	סומקי	שורייקי	ביה	דאית	אע"ג	הכא	Frankfurt Barth. 107

B b. Hul. 47b

בגוה		ושפכי'	דקוניה	צעא	מיית'		Hamburg 169
בגוה	לה	ושפכינן	דקוניה	צעא	מייתין		Vatican 121
[בגו(א)]	לה	ושפכינ'	דקוניה	צעא	מייתין		Vatican 122
בגוה	לה	ושפכינ'	דקוניה	צעא	מייתין		Vatican 123B
בגוה	לה	ושפכינן	דקוניה	צעא	מייתין		Munich 95
בגויה	לה	ושפכינן	דקוניה	נפדא	מייתין		Or. 1080.15.52
בגויה	לה	ושפכינן	דקוניה	צעא	מייתין		Soncino Print

כשירה	לא	ואי	טריפה	חיורי	שוריקי	בה	אית	אי	Hamburg 169
כשיר'	לא	ואי	טריפה	חיוורי	שורייקי	בה	אית	אי	Vatican 121
כשי'	לא	ואי	טר'	חיורי	שורייקי	ביה	אית	אי	Vatican 122
כשיר'	לא	ואי	טריפ'	חיורי	שורייקי	בה	אית	אי	Vatican 123B
כשירה	לא	ואי	טריפה	חיורי	שורייקי	בהו	אית	אי	Munich 95
כשירה	לא	ואי	טריפה	חיוורי	שורייק.	בהו	אית	אי	Or. 1080.15.52
כשרה	לא	ואי	טרפ'	חיורי	שוריקי	בה	אית	אי	Soncino Print

C b. Hul. 93b

Hamburg 169	מכאן ואילך	אזרען אסירן ואי לא	אזרען שריין ומנא	ידעינן
Vatican 121	מיכאן ואילך	אי אזרען אסירן ואי לא	שריין [ומנא	ידעינ']
Vatican 122	מיכאן ואילך	אי זרען אסירן ואי לא	זרען שריין ומנא	ידעינן
Munich 95	מכאן ואילך	אי זרען אסירן ואי לא	זרען שריין ומנא	ידעינן
Soncino Print	מכאן ואילך	אי אזרען אסורין ואי לא	אזרען שריין מנא	ידעי'

Hamburg 169	אי אית בהו	שורייקי	סומקי אסירן ואי לא	שריין
Vatican 121	אי א' ב'	שורייקי	סומקי אסירן ואי לא	[שריין]
Vatican 122	אי אית בהו	שורייקי	סומקי אסירן ואי לא	שריין
Munich 95	אי אית בהו	שורייקי	סומקי אסירן ואי לא	שריין
Soncino Print	אי אית בהו	שורייקי	סומקי אסירן לית בהו	שורייקי סומקי שריין

D b. Pesah. 74b (see above, p. 390)

E b. Sanh. 105b, b. Ber. 7b, b. 'Abod. Zar. 4b

Barko Print	כל	שעתא ושעתא	אית ביה	סוריקי	סומקי	
Vatican 171	כל	שעתא	שביחי	בה	שורייקי	סומקי
Yad Harav Herzog 1	כל	שעתא	פישי	בה	שוריאקי	סומאקי
London BL Or. 5528	כל	שעתא ושעתא	אית ביה	ש/סורייקי	סומקי	Sanh. 105b
Munich 95	כל	שעת'	חורא ואית	בה	שורייקי		סומקי
Florence II-I-9	כל	שעתא	אית ביה	סוריקי	סומקי	
Karlsruhe—Reuchlin 2	כל	שעתא	אית בה	סורייקי	סומקי	
2068.2–3 ENA	כל	שעתא	פישו	בה	סוריקי	סומקי
ENA 3007.9–12	כל	שעתא	אית בה	שוריקי	סומ(...)[ק]י	
Florence II-I-7	כל	שעתא	אית ביה	סוריקי	סומקי	
Munich 95	כל	שעתא	פישי	בה	סורייקי	סומקי
Wien O.N. Hebr. Frag. A 33	כל	שעתא ושעתא	אית ביה	סוריקי	סומקי	Ber. 7b
Oxford Opp. Add. fol. 23	כל	שעתא	הוו	בה	סוריקי		סומקי
Paris 671	כל	שעה	פישי	ביה	שורייקי	סומקי
T-S AS 75.22	כל	שְׁעָתָא ושעתא	הוויין	בה	שוריקי	סוורקי
T-S F 1(2).15	כל	שעתא	פושו	בה	סוריקי	סומקי
Philadelphia 86	כל	שעתא	פישי	בה	שור..קי	סומקי
Soncino Print	כל	שעת'	אית ב'	שורייקי	סומקי	

סומקי	שורקי	בה	האוי	שעתא	כל	F1(2).11 T-S	
סומקי	שוריקי	בה	הו	שעתא	כל	NY—JTS Rab. 15	
סומקי	שורייקי			שעתא ושעת'	כל	Munich 95	'Abod. Zar. 4b
סומקי	שוריקי	ביה	אית	שעתא	כל	Pesaro Print	
סומקי	שורייקי	ביה	אית	שעתא	כל	Paris 1337	
סומקי	שוריקי	בה	לית	שעתא	ההיא	Barko Print	
סומקי	שורייקי	בה	לא שכיחי	שעתא	ההיא	Vatican 171	
			חורי כולהי	שעתא	וההיא	Yad Harav Herzog 1	
		ביה ש/סוריי...	לית	שעתא	[ההיא שעתא]	London BL Or. 5528	Sanh. 105b
סומקי	שוריקי	ביה	לית	[שעתא]	ההי	Munich 95	
						Florence 11-1-9	
סומקי	שורייקי	בה	לית	שעתא	ההיא	Karlsruhe—Reuchlin 2	
סומקי	שוריקי	בה	לית	שעתא	ההיא	2068.2-3 ENA	
		בה	לא הוי	שעתא	אבל ההיא	ENA 3007.9-12	
סומקי	שורייקי	ביה	לית	שעתא	בההיא	Florence 11-1-7	
סומקי	שורייקי	בה	לא פיישי	שעת'	דההיא	Munich 95	
סומקי	שוריקי	ביה	לי..	שעתא	וההיא	Wien O.N. Hebr. Frag. A 33	
		בה	לא הוי	שעתא	ההוא	Oxford Opp. Add. fol. 23	Ber. 7b
סומקי	שורייקי	ביה	לא פיישי	שעתא	ההיא	Paris 671	
		ביה	לא.....	שעתא	ההיא	T-S AS 75.22	
סומקי	שוריקי	בה	לית	שעתא	ההיא	T-S F 1(2).15	
סומקי	שוריקי	בה	לא פשו	שעתא	ההיא	Philadelphia 86	
סומקי	שורייקי	ביה	לית	שעתא	בההי	Soncino Print	
סומקי	שורקי	בה	לא הוי	א.....	הה' ...	F1(2).11 T-S	
		בה	לא הו(ה)?[1]	שעתא	וההיא	NY—JTS Rab. 15	
		ביה	לא הוה	שעת'	ההי	Munich 95	'Abod. Zar. 4b
סומקי	שורייקי	ביה	לית	שעתא	ההיא	Pesaro Print	
סומקי	שורייקי	ביה	לית	שעתא	וההיא	Paris 1337	

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Open Ye the Gates: Procedure for Returning the Torah to the Ark

Joseph H. Prouser

She'eilah

Worshippers at Temple Emanuel of North Jersey ask: When returning the Torah at the conclusion of the Shabbat/Yom Tov Torah service, when is the most appropriate time to open the Ark?

Teshuvah

Seder Hachnasat Ha-Torah, the service for returning the Torah Scroll to the Ark following its public reading on Shabbat or Yom Tov, begins (among Ashkenazim) with *Ashrei* (Ps 145, etc.). This is followed by Psalm 148:13–14 (יהללו את...הודו על ארץ...שם), and a procession carrying the Torah Scroll through the congregation while reciting either Psalm 29 on Shabbat, or Psalm 24 on weekdays. Upon approaching the Ark to return the Torah, a collection of biblical verses is recited: Numbers 10:36 (ובנחה יאמר...), Psalm 132:8–10 (כהניד...), Proverbs 4:2 (כי לקח טוב...),¹ Proverbs 3:18,17 (עץ...דרכיה דרכי נועם...השיבנו) (ה' אלֵיךְ... 5:21).

On ordinary weekdays, the procedure is briefer. *Ashrei* is recited only after returning the Torah to the Ark; there is frequently no procession beyond moving the Torah Scroll directly to the Ark; the weekday Psalm (24) is commonly read silently.

¹ Compare Ps 132:8–10 and the parallel text in 2 Chr 6:41–42.

Historical Development

These procedures are of relatively late development. Ismar Elbogen writes: “Concerning the Returning (בניסה, הכנסה) of the Torah, we learn nothing from the ancient sources, nor does *Soferim* mention it.”² Similarly, Rabbi Jeffrey Hoffman indicates that Tractate Soferim “gives details of the service for *taking out* the Torah only. Discussion of the service to return the Torah is not found until the early siddurim.”³ The dearth of classical instruction on the liturgical procedure for returning the Torah to the Ark may reflect the fact that early synagogues generally lacked a permanent Ark as an architectural feature of the sanctuary.⁴ The Torah Scroll, at the conclusion of public worship, was removed to a neighboring home or building for safekeeping.⁵

Conflicting Instructions

Contemporary siddurim offer conflicting instructions as to when, during *Seder Hachnasat Ha-Torah*, the Ark is to be opened in anticipation of receiving the Torah Scroll. Siddur Sim Shalom⁶ indicates that the Ark is to be opened following *Ashrei* and before the verses from Psalm 148. The same directive is found in the High Holiday Prayer Book edited by Rabbi Morris Silverman, *Machzor Hadesh Yameinu*, edited by Rabbi Ronald Aigen,⁷ and the new Koren Siddur, edited by British Chief Rabbi Lord Jonathan Sacks.

The Reconstructionist Movement’s Kol Haneshamah Daily Prayerbook, instructs that the Ark be opened at *Uvnucho Yomar*, following the procession with the Torah. Rabbi Hayim Halevy Donin unambiguously confirms this procedure for opening the Ark for the return of the Torah: “While the Prayer Leader is carrying the Torah back to the Ark, the one so honored should step

2 Ismar Elbogen, *Jewish Liturgy: A Comprehensive History*, trans. Raymond Scheindlin (Philadelphia: Jewish Publication Society; New York: Jewish Theological Seminary, 1993), 160.

3 Jeffrey Hoffman, “The Ancient Torah Service in Light of the *Realia* of the Talmudic Era,” *Conservative Judaism* 42, no. 2 (Winter 1989–1990): 47n.

4 See Ruth Langer, “From Study of Scripture to a Reenactment of Sinai: The Emergence of the Synagogue Torah Service,” *Worship* 72, no. 1 (1998): 43–67.

5 See b. Soṭah 38b; Shulḥan Arukh, Oḥ 149.

6 *Siddur Sim Shalom for Shabbat and Festivals*, 1998 edition. The 1985 edition edited by Rabbi Jules Harlow provides no such instruction.

7 Rabbi Aigen’s siddur was published by Congregation Dorshei Emet, the Reconstructionist Congregation of Montreal.

up ahead and open the Ark. The precise moment for doing so is when the passage *Uvnocho Yomar* is reached.”⁸

Many siddurim, even those which note the opening of the Ark at the beginning of the Torah Service, provide no explicit instruction as to when the Ark is to be opened at the service’s conclusion. Among these are the Bokser, Birnbaum, Silverman, and Artscroll/RCA siddurim, Hertz’s Authorized Daily Prayerbook, The New Union Prayerbook, Siddur Mishkan Tefillah, Siddur Rinat Yisrael, Siddur Or L’Yisrael, The New Mahzor, Mahzor Lev Shalem, the Harlow Machzor, Siddur Hadesh Yameinu, and, as indicated above, Rabbi Jules Harlow’s original edition of Siddur Sim Shalom. In his *Guide to Jewish Religious Practice*, Rabbi Isaac Klein specifies only when the Ark is to be closed—following the pastiche of verses ending with Lamentations 5:21—but not when the Ark is opened in the first place.

These conflicting and ambiguous logistical instructions have led to (and perhaps find their origin in) a variety of local practices. Congregations variously open the Ark before *Yehallelu*, at an unspecified point during the Torah procession and its accompanying Psalm, upon conclusion of that Psalm irrespective of where in the Sanctuary the procession has reached, or upon approaching the Ark prior to *Uvnocho Yomar*.

Opening the Ark at *Yehallelu*

Opening the Ark at *Yehallelu*, as per the Silverman Machzor, the revised Siddur Sim Shalom and the Koren Siddur, has an obvious drawback. The individual leading the service, those carrying any additional Torah Scroll(s), and those joining the procession (frequently the rabbi and congregational leaders) with the intention of thereby honoring the Torah, must turn their back on the open Ark (and any Torah Scrolls it still contains) and walk away! Additionally, it is proper for worshippers to face the Torah throughout the procession, requiring them, as sanctuary architecture and individual seating dictate, to turn their backs on the open Ark for much of that procession as well. As Rabbi David Fine writes of this procedure, “once the processional passes a worshipper, the worshipper has to choose between turning his/her back on the Torah in the processional or on the ark.”⁹

8 Hayim Halevy Donin, *To Pray as a Jew* (New York: Basic Books, 1980), 49.

9 Personal correspondence, November 26, 2013. Rabbi Fine instructs his congregation, Temple Israel of Ridgewood, NJ, to open the Ark only when the processional has “made its final turn and is heading back to the bima”—as this permits worshippers to face both the Torah

The principle of facing the Torah, and the gravity attached to this expression of deference, is articulated by Maimonides:

מצוה לייחד לספר תורה מקום ולכבדו ולהדרו יותר מדאי, דברים שבלוחות הברית הן הן שבכל ספר וספר, לא ירוק אדם כנגד ספר תורה ולא יגלה ערותו כנגדו ולא יפשיט רגליו כנגדו ולא יניחנו על ראשו כמשאוי ולא יחזיר אחוריו לספר תורה אלא אם כן היה גבוה ממנו עשרה טפחים.

It is a Mitzvah to assign a place for the Torah Scroll to be kept, and to accord it extreme honor and deference. The words on the Tablets of the Ten Commandments are in every Torah Scroll. One must not spit before a Torah Scroll, nor indecently expose oneself before it, nor spread one's legs before it, nor carry it on one's head as if it were a burden, nor may one turn his back to the Torah Scroll, unless it is at an elevation of ten handbreadths above the person.¹⁰

Why do such venerable liturgical authorities as Rabbi Morris Silverman (a decisive force in the shaping of non-Orthodox congregational worship in North America and beyond) and Chief Rabbi Sacks prescribe a procedure with such obvious spiritual disadvantages? At least three possibilities present themselves:

- a. Perhaps they did not consider opening the Ark in this manner a disadvantage at all. Rabbi David Small, Rabbi Silverman's current successor as spiritual leader of Emanuel Synagogue in West Hartford, Connecticut,¹¹ reports that his congregation maintains its longstanding practice, indicated in the Silverman Machzor, of opening the Ark at the beginning of the Torah procession (once the procession has descended the *Bimah*). Rabbi Small suggests that the open Ark reinforces the "numinous" nature of the moment, alerting the congregation to both the destination of the Torah and the high sanctity of the moment. These stated advantages out-

and the Ark simultaneously. Correspondence from Rabbis Joel Pitkowsky (Congregation Beth Sholom of Teaneck—home to numerous JTS faculty members), and Randall Mark (Shomrei Torah: Wayne Conservative Congregation) affirm the same liturgical policy.

10 Mishneh Torah, Hilchot Sefer Torah 10:10. Ten handbreadths is approximately 40 inches. The Torah Scrolls in the Ark of Temple Emanuel of North Jersey rest on a surface 77 inches above the sanctuary floor: less than "ten handbreadths above" anyone exceeding 37 inches in height!

11 During my 13 years as Rabbi of Congregation B'nai Sholom in Newington, CT, I had frequent occasion to worship at Emanuel Synagogue, especially throughout the year of saying Kaddish for my mother, of blessed memory. As a young member of Kadimah and USY, I attended many functions at Emanuel and was there honored with my first Hagbah!

weigh the concern about turning one's back on the Ark, according to Rabbi Small. Notwithstanding this choreographic calculus, the congregation maintains a strict policy prohibiting, e.g., Bar Mitzvah photographs being taken on the *Bimah* with the subjects' backs turned to the open Ark, as this is, under normal circumstances, deemed an act of disrespect.

- b. Rabbi Sacks' instruction that the Ark be opened at *Yehallelu* may reflect an architectural reality more common in Orthodox synagogues: the location of the *Bimah* with Torah Reader's table in the center of the sanctuary. For *Hachnasat Ha-Torah*, the procession with the Torah moves forward, directly from the centrally located *Bimah* to the Ark at the front of the sanctuary. Those in the procession face the open Ark throughout this process. This rationale does not entirely resolve the issue for those worshippers seated between the *Bimah* and the Ark, who must still turn to face the Torah as it approaches, thereby turning their backs toward the open Ark.
- c. It is very common for the Ark to be opened at *Yehallelu* during weekday morning or Shabbat Minchah services. On these occasions, as indicated above, the process of returning the Torah to the Ark is relatively brief, and it is common to omit any actual procession through the sanctuary ... to recite Psalm 24 quickly and silently ... and to move the Torah directly to the Ark. At no point during this weekday process is it necessary either for those accompanying the Torah, nor the congregation, to turn away from the Ark (unless there is a central *Bimah*—see 11b, above). A weekday Ark opening at *Yehallelu* is thus entirely appropriate. It seems likely that this feature of the weekday service was transferred by some to the Shabbat and Holiday liturgy without regard for the inadvertent slight to the Ark and the Torah Scrolls which—by virtue of the procession which is added to the more elaborate Torah Service conducted on those festive occasions—it entails. Rabbi David Wise, of Hollis Hills Jewish Center in Queens (where he shares the pulpit with Cantor Sol Zim, who has had such a profound impact on the musical expression of synagogue liturgy), thus reports that his congregation opens the Ark (in a smaller chapel) at *Yehallelu* on weekdays, and delays the opening (in the main sanctuary) to a later point on Shabbat and Holidays.

If opening the Ark at *Yehallelu* (or at the outset of the Torah procession) is designed to evoke a sense of the "numinous," such a determination is based on a subjective judgement regarding both the spiritual impact of an open Ark and the liturgical moments meriting such a measure. Recitation of the *Shema* is certainly a moment rife with the numinous (though it is our custom to remain seated, with the Ark, accordingly, shut). The silent *Amidah*—both its prescribed text and the private prayers and personal petitions we add—

demand a particular awareness of God's presence ... and the congregation is already standing. Similarly, *Barchu*, *Yizkor*, *Shocheh Ad*, etc ... all partake of the "numinous." Invoking this justification for opening the Ark for the Torah procession, to the exclusion of these other impactful moments of prayer, is unconvincing ... particularly since it compromises customary standards of deference to the Torah Scroll.

If Rabbi Sacks' prescription of an Ark opening at *Yehallelu* assumes, as a condition of its permissibility, a centrally located Bimah, obviating (or, at least, minimizing) the need to turn one's back on either the Torah or the open Ark, such a liturgical policy should be abandoned when these conditions to not obtain.

If opening the Ark at *Yehallelu* is a practice inadvertently imported from the weekday service (when there is nothing in the liturgical choreography to contraindicate this timing), the distinctive Torah procession of Shabbat and Yom Tov demand that we reassess the timing of the Ark opening. Following the weekday procedure on Shabbat results in an entirely avoidable affront to the honor of the Ark. It is a practice grounded in error.

Aggadic Perspective

Though halachic texts governing the ceremonial return of the Torah to the Ark are few, a "charming Talmudic legend"¹² suggests an early link between opening Ark doors and the recitation of Psalm 24 (as during the Torah procession on weekday festivals or, indeed, ordinary weekdays):

כשבנה שלמה את בית המקדש ביקש להכניס ארון לבית קדשי הקדשים, דבקו שערים זה בזה. אמר שלמה עשרים וארבעה רגנות ולא נענה. פתח ואמר: שאו שערים ראשיכם והנשאו פתחי עולם ויבא מלך הכבוד, רהטו בתריה למיבלעיה, אמרו: מי הוא זה מלך הכבוד? אמר להו: ה' עזוז וגבור. חזר ואמר: שאו שערים ראשיכם ושאו פתחי עולם ויבא מלך הכבוד. מי הוא זה מלך הכבוד ה' צב-אות הוא מלך הכבוד סלה ולא נענה. כיון שאמר ה' אלקים אל תשב פני משיחך זכרה לחסדי דוד עבדך—מיד נענה.

When Solomon built the Holy Temple, he wanted to bring the Ark into the Holy of Holies, but the doors of the sacred chamber clung to each other and remained closed. Solomon recited twenty-four expressions of

12 Max Arzt, *Justice and Mercy: Commentary on the Liturgy of the New Year and the Day of Atonement* (New York: Burning Bush Press, 1963), 157.

praise,¹³ but he was not answered. He then recited ‘O gates, lift up your heads! Up high, you everlasting doors, so the King of Glory may come in!’¹⁴ They pursued him to swallow him up,¹⁵ saying, ‘Who is the King of Glory?’¹⁶ He answered them, ‘The Lord, mighty and valiant!’¹⁷ He then said further: ‘O gates, lift up your heads! Lift them up high, you everlasting doors, so the King of Glory may come in! Who is the King of Glory? The Lord of Hosts, He is the King of Glory,’¹⁸ and still he was not answered. But when he said, ‘O Lord God, do not reject¹⁹ Your anointed ones; remember the loyalty of Your servant David,’²⁰ he was answered immediately.²¹

The parallels between this Aggadic text and *Seder Hachnasat Ha-Torah* are striking. Both involve a ceremonious process by which a ritual object of ultimate holiness and covenantal significance (the Ark of the Covenant; the Torah Scroll) is brought to its sanctified depository (The Temple’s Holy of Holies; the Synagogue’s Holy Ark). Each involves recitation of Psalm 24, following an earlier liturgy. Solomon’s introduction of the Ark to the Holy of Holies culminates in recitation of 2 Chronicles 6:42, while Hachnasat Ha-Torah concludes with that Scriptural context’s close literary parallel in the Book of Psalms, with which it shares significant, identical phrases:

2Chronicles 6:41–42	Psalm 132:8–10
וְעַתָּה קוֹמָה ה' אֱלֹקִים לְנוֹחַךְ אֶתְּהָ וְאֲרוֹן עֲזֶךָ	קוֹמָה ה' לְמַנוּחַתְּךָ אֶתְּהָ וְאֲרוֹן עֲזֶךָ:
כְּהִנֵּיךָ ה' אֱלֹקִים יִלְבְּשׁוּ תְּשׁוּעָה וְחִסְדֶּיךָ יִשְׁמְחוּ בְּטוֹב:	כְּהִנֵּיךָ יִלְבְּשׁוּ-צֶדֶק וְחִסְדֶּיךָ יִרְגְּנוּ:
ה' אֱלֹקִים אֵל-תִּשָּׁב פָּנֵי מְשִׁיחֶיךָ זְכֹרָה לְחִסְדֵי דָוִד עַבְדְּךָ:	בְּעִבּוֹר הַיָּם עַבְדְּךָ אֵל-תִּשָּׁב פָּנֵי מְשִׁיחֶיךָ:

13 Identified variously as a reference to 1 Kgs 8 or to the blessings recited in conjunction with a fast—See Rashi ad loc. See also Steinsaltz ad loc.
 14 Ps 24:7.
 15 Apparently thinking Solomon was blasphemously referring to himself as the King of Glory.
 16 Ps 24:8a.
 17 Ps 24:8b.
 18 Ps 24:9–10.
 19 Literally, “Do not turn away the face of Your anointed ones.”
 20 2 Chr 6:42.
 21 b. Šabb. 30a.

It is instructive that the doors to the Holy of Holies open for Solomon only following his recitation of Psalm 24 and only upon his recitation of 2 Chronicles 6:42, invoking אֱלֹהֵינוּ (God's servant, David) and asking God, אֵל-תִּשָׁבַב פָּנֶיךָ (not to reject His anointed). The mosaic of verses with which our Torah Service concludes includes the more poetic variants of these very Scriptural phrases in Psalm 132. The Talmudic narrative appears to illustrate an early *Seder Hachnasat Ha-Torah* of roughly the same form preserved in our own current practice. Indeed, the aggadic text remains intelligible only if the opening of the doors to the Holy of Holies directly paralleled the liturgical function of the Chronicles verse and its psalmodic recension in Psalm 132 as “the precise moment”²²—even at this early stage in the development of the Torah Service—at which the synagogue Ark²³ was opened in order to receive the returning Torah Scroll: following the procession with the Torah and in conjunction with the concluding Biblical verses—in contemporary practice, that is, beginning with *Uvenucho Yomar*.

Conclusion

Opening the Ark for *Hachnasat Ha-Torah* prior to (or even during) the procession with the Torah Scroll is to be avoided. It requires those leading the congregation in prayer, together with the worshippers they serve, to turn their backs either on the open Ark and any remaining Torah Scrolls it contains or on the Torah being carried in procession itself. This represents a forbidden affront to the Torah included by Maimonides in the same class as spitting, indecent exposure, coarse or unseemly personal carriage, and rough handling of the Scroll in the manner of ordinary burdens and baggage. Those contemporary siddurim that include instructions to open the Ark at *Yehallelu* either erroneously copy the weekday procedure—contraindicated by the liturgical changes unique to the Shabbat/Yom Tov liturgy—or assume specific synagogue architecture that minimizes but does not entirely avoid this offense ... yet which is rarely found in North American, non-Orthodox sanctuaries. Assertion of a subjective sense of the “numinous” or efforts to create a heightened spiritual ambience should not be given precedence over the clear halachic prohibition articulated by Maimonides ... violation of which is so easily avoided.

²² Donin, *To Pray as a Jew*.

²³ As this architectural feature was introduced to the ancient synagogue. See Section I, at n. 4, above.

The proper point in *Seder Hachnasat Ha-Torah* for the opening of the Ark is only following the Torah procession and the concomitant singing of the prescribed Psalm. This was the practice of the congregation of my youth,²⁴ of the Jewish Theological Seminary Synagogue²⁵ under the leadership of Rabbi Saul Lieberman, of blessed memory, and reflects the precedent of the Talmudic age suggested in the Aggadah, discussed above, regarding Solomon and the doors of the Holy of Holies.

Rabbi Hayim Donin Halevy was correct:²⁶ “The precise moment” for opening the Ark to return the Torah “is when the passage *Uvnocho Yomar* is reached.”²⁷

פִּתְחוּ-לִי שַׁעֲרֵי-צֶדֶק אֲבֹא-בָם אֲדַדְהָ יְיָ זֶה-הַשַּׁעַר לְה' צְדִיקִים יָבֹאוּ בוֹ:

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24 Congregation B'nai Israel of Northampton, Massachusetts, under the religious leadership of Rabbi Asher Bar-Zev. This was also the practice of my father-in-law, Rabbi William Horn of the Jewish Community Center of Summit, NJ, and of Rabbi Martin Cohen, of the Shelter Rock Jewish Center on Long Island. Rabbi Cohen, a prolific author and liturgist, and long-time editor of *Conservative Judaism*, the academic journal of the Seminary and the Rabbinical Assembly, writes (in private correspondence): “That has been the practice in every shul I can recall being in.”

25 It was my great privilege to serve Rabbi Lieberman as Seminary Synagogue gabbai for a number of years, during my undergraduate and rabbinical school tenure at JTS, a position I held at the time of Rabbi Lieberman’s passing in 1983.

26 As is the Reconstructionist Movement’s *Siddur Kol Haneshamah*, see Section II above.

27 Donin, *To Pray as a Jew*, 49.

הגיון ולשון בתלמוד הבבלי: התפתחותה של סוגיית "אתי דיבור ומבטל דיבור"

נח בנימין ביקרט

קרוב לוודאי, שכל האוחז ספר זה בידו מכיר היטב את היקף השפעתו של מורנו ורבנו יעקב בן צבי רוט על לימוד הלכה למעשה בבית המדרש לרבנים באמריקה בפרט, ובתנועה הקונסרבטיבית בכלל. פחות ידוע הוא כ"מגיד שיעור" בתלמוד. ואני, קטונתי מכל החסדים ומכל האמת אשר זכיתי לשתות מימיו בקורס מתקדם בשנת תשס"ה, אשר בו עסקנו בפרקים "היו בודקין" ו"נגמר הדין" במסכת סנהדרין—ולא היה בית מדרש בלא חידוש. שם זכיתי ללמוד את דרך לימודו בספרות חז"ל ומאז הדריכני בדרכי הנועם של מוריו. במיוחד שמתי לב לדרכו בניתוח מחלוקות בין הראשונים ז"ל בפירושיהם על התלמוד. במקרים רבים, הסביר כי סתירה בין סגנון התלמוד להגיונו (כלומר, כוונתו) הובילה את הראשונים להעדיף אחד מאלה על פני משנהו. ואנו, היושבים על כתפיהם של הראשונים וגם על אלה של החוקרים, בידינו לשלב את פירושיהם כדי לרדת לעומק הפשט. במאמר דלהלן אשתדל ליישם חלק ממה שלמדתי תחת ידו של הרב רוט. ואולי, בעה"י, אחדש דבר קטן כדי ליתן שכר להביאני בקהל הלומדים.

תשומת לב מרובה הוקדשה במחקר למבנה הספרותי הן של נרטיבים תלמודיים ארוכים¹ הן של סיפורים קצרים יותר ("מעשים"). ואולם, היבטיהן הספרותיים של סוגיות הלכתיות זכו לתשומת לב מעטה.² המאמר דלהלן יטפל בסוגיה מעין זו, המצויה במסכת קידושין ט א–

1 ראו, בין היתר, Jeffrey L. Rubenstein, *Talmudic Stories: Narrative Art, Composition, and Culture*. (Baltimore: Johns Hopkins University Press, 1999); Barry S. Wimpfheimer, *Narrating The Law: A Poetics of Talmudic Legal Stories* (Philadelphia: University of Pennsylvania Press, 2011).

2 השאלה כיצד מגדירים "ספרות" היא קריטית וקשה להכרעה. כפי שציין דייוויד קרמר, "Yet, we must admit, the Talmud is not what people commonly mean when they speak of literature, and this is precisely the problem we must overcome before we can proceed. How can the Talmud be literature (or literary) and not literature (not literary) at the same time? The solution, I believe, lies in our recognition that "literature" is being used in these discussions—often without sufficient consciousness—in two distinct ways. "Literature" is, on the one hand, something like "everything in print" or, to be somewhat less extreme, everything of import and accepted merit in print. In this usage, "literature" designates a large category with innumerable subgenres (legal literature, poetry, biography, historical literature, novel, myth, etc.). On the other hand, literature is belles lettres, and, in this usage, "literature" is a subcategory of literature. In other words, just as there is legal literature and historical literature, so too is there "literary" literature, which includes novels and poetry but may or may not include myth (depending upon how one defines the subcategory "literature")." David Kraemer, *Reading the Rabbis: The Talmud as Literature* (Oxford: Oxford University Press, 1996), 6.

ב, ושכותרתה עשויה היתה להיות "אתי דיבור ומבטל דיבור". המבנה האמנותי של הסוגיה אופייני לתלמוד הבבלי, והיא מציגה שתי גרסאות של יחידה טקסטואלית אחת,³ שבה זוג החכמים המפורסמים במאה השלישית, רבי יוחנן וריש לקיש, משמיעים עקרונות הלכתיים סותרים, ואז מקשים זה על עקרונו של זה על יסוד שלושה מקורות תנאיים.

שנינו במשנה קידושין ג:1 לפי כ"ק: "האומר לאשה הרי את מקודשת לי לאחר שלושים יום ובא אחר וקידשה בתוך שלושים יום מקודשת לשני." מחשבותיו של האיש הראשון נסותרות מפנינו, אבל בכך שהוא עושה מעשה אירוסין ובה בעת דוחה את מועד כניסת הקידושין לתוקף, הוא מאפשר לאדם אחר לבוא ולקדש את ארוסתו במקומו. התנא שבמשנה כנראה מניח שלקידושין יש שני חלקים הכרחיים: החלק הראשון הוא המעשה, בדרך כלל נתינת כסף או שווה-כסף. מעשה חייב להילוות בפעולת דיבור המצהירה כי מעשה הנתינה נועד לשם אירוסין.⁴ במקרה המובא במשנתנו, פעולת הדיבור מתבצעת בנקודת זמן מסוימת ומכילה דחייה משפטית של כניסת הפעולה לתוקף. וכך, אף על פי שהאיש אמר את מילות הקסם ביום א' בחודש, הקידושין יכנסו לתוקף רק בל' בחודש. במשך תקופה זו, מכיוון שהפעולה עדיין לא "התרחשה", האשה עדיין אינה מאורסת. ולכן, אם תקבל דמי קידושין מאדם אחר, הקידושין השניים יחולו, מפני שבשעת הקידושין השניים, הקידושין לאיש הראשון טרם נכנסו לתוקף. ובתום שלושים יום, בעת שהאירוסין לאיש הראשון היו אמורים להיכנס לתוקף, האשה כבר הינה אשת איש, ולכן אירוסיה לאיש הראשון בטלים לחלוטין.⁵ וכך, כל עוד אין קידושין אחרים באים עליה, היא מקודשת לאיש הראשון, בהנחה ששניהם עדיין בחיים בתום אותו חודש, אבל אם בא אחר תוך שלושים יום, היא מקודשת לאיש השני.

הגמרא מנסה לבחון את קווי המתאר של עקרון זה, ושואלת, בעצם, מהו שמפר את הקידושין הראשונים שלא הושלמו. האם זה כוח המעשה של האיש השני או שמא חולשת פעולת הדיבור של האיש הראשון? שאלה כזו מתעוררת במקרה הבא, כדברי התלמוד: "לא בא אחר וקידשה וחזרה בה מהו?"⁶ הבבלי מציג שתי תשובות: רבי יוחנן טוען שהאשה יכולה לחזור בה, משום שמילים עשויות לבטל מילים אחרות. לעומתו, טוען ריש לקיש שאין היא יכולה לחזור בה. העורך מציג את המחלוקת הזאת כאילו היתה חיה, במילים אחרות, כאילו היו ר' יוחנן וריש לקיש לומדים משנה זו יחד, אולי בבית מדרש, ומבטאים עקרונות אלה זה בפני זה, פנים אל פנים, כעקרונות מופשטים ומנוסחים בארמית בבליית, וכל אחד מהם מנסה להוכיח את עמדתו על בסיס ראיות תנאיות. הלשנא קמא היא כדלקמן:⁶

3 אני נוהג לפי הבחנתו של אפשטיין בין חילופי-נוסחאות (*Varianten*) לחילופי-לשונות או "פנים אחרות" (*Versionen*) של התוכן. חילופי-נוסחאות אלה חילופים הנופלים ב"טקסט" על-ידי טעויות במסירתו בין בכתב ובין בעל פה, ואילו חילופי-לשונות הם הבדלים בתוכן שהתקיימו בעת תהליך התפתחות הטקסטים עצמם. ראה אפשטיין, מבוא לנוסח המשנה, ירושלים (מאגנס, תש"ח), עמ' ג.

4 תוספתא קידושין א:א.

5 רמב"ם הל' אשות ז:יא.

6 אני מציג את הטקסט לפי כ"ו ותיקן 111, ומפריד בין שלבים של התלמוד בסימנים גרפיים אלה: המקורות התנאיים מסומנים באותיות מוטות, מימרות האמוראים בהבלטה, ודברי הסתם בגופן רגיל. שינויי נוסח מצוינים בהערות להלן.

בבלי קידושין נט ע"א—ע"ב (לפי כ"י ותיקן 111)

- לא בא אחר וקידשה וחזרה בה מהו?
 ר' יוח' אמ' חוזרת
 ר' שמעי' בן לקיש אמ' אינה חוזרת⁷
 ר' יוח' אמ' חוזרת אתי דיבור ומבטל דיבור
 וריש לקיש א' אינה חוזרת לא אתי דיבור ומבטל דיבור
 – איתבייה ר' יוח' לריש לקיש⁸ ביטל אם עד שלא תרם ביטל אין תרומתו תרומה.⁹
 והכא דדיבו' ודיב' הוא וקאתי דיבור ומבטל דיבור
 שאני נתינת מעות ליד האש' דכמעשה ידיה¹⁰ דמי ולא אתי דיבור ומבטל מעשה
 – איתבייה השולח גט לאשתו והיגיע בשליח או ששלח אחריו שלי' ואמ' לו גט שנתת לך בטל
 הרי זה בטל!¹¹
 והא נתינת גט ליד שליח דכי נתינת מעות ליד האשה דמי. וקתני הרי זה בטל.
 התם¹² נמי (כמ?א?) [כיון]¹³ דלא מטא גיטא ליד(י)ה דיבור ודיבור הוא
 ואתי דיבור ומבטל דיבור¹⁴
 – איתבייה ריש לקיש לר' יוח' כל הכלים יורדי' לידי טומ' במחשבה ואינן עולין מידי טומאתן
 אלא בשינוי מעשה¹⁵ (ע"ב) מעשה¹⁶ [מוציא] מיד(י) מחשבה (ואין) ומיד מעשה ואין
 מחשבה מוציא(ה) [לא] מיד מחשב' ולא מיד[י] מעשה
 בשלמ' מיד[י] מעשה לא מפקא דלא אתי דיבור ומבטל מעשה אלא מידי מחשבה מיהא
 תיפוק
 שאני מחשבה דטומאה דכמעשה דמי
 כדרב פפא¹⁷
 דרב פפא רמי כת' כי יתן וקרין כי יתן הא כיצד
 כי יתן דומיא דכי יתן
 מה יתן דניחא ליה אף יותן דניחא ליה¹⁸
 מה יתן דקא עביד מעשה אף יותן דקא עביד מעשה¹⁹

7 בבא זו חסרה בכ"י Oxford Opp. 248 (367) ובדפוס.
 8 בדפוס ספרדי, ובקטע גניזה, מצוטטת גם הרישא של המשנה, "הרשה את בני ביתו לתרום תרומתו תרומה" ...
 9 משנה תרומות ג:ד
 10 המילה "ידיה" חסרה בשאר עדי נוסח.
 11 משנה גיטין ד:א
 12 כ"י מ95 גורס "הכ".
 13 השיבוש הזה מתוקן בידי יד שניה. בשאר עדי נוסח הגירסה היא, "כל כמה דלא מטא גיטא".
 14 משפט זה חסר בדפוס הספרדי ובקטע הגניזה.
 15 משנה כלים כה:ט.
 16 מלת "מעשה" חסרה בכ"י מ.
 17 ראו ב"מ דף כב ע"א.
 18 השוואה זו חסרה בכ"י מ95 וב-248 Oxford Opp.
 19 השוואה זו באה לפני חברתה בדפוס הספרדי ובקטע הגניזה.

המבנה הוא של סוגיה תלמודית קלאסית. שלוש משניות—תרומות ג:ד, גיטין ד:א, וכלים כ"ה:ט—נמסרות במהלך הדיון כדי לקבוע איזהו העיקרון המשפטי הנכון.²⁰ ר' יוחנן מתחיל את המשאומתן בציטוט מתרומות ג:ד. כאן, מורה בעל בית לאחד מבניו ביתו להפריש תרומה בהתאם למצווה בדברים י"ח. ברם, אם משנה בעל הבית את דעתו, מן הסתם כבר אינו רוצה להפריש את התרומה,²¹ וכל תרומה שתופרש בשמו על ידי בן ביתו אינה נחשבת תרומה. המשנה ממחרת להוסיף כי כלל זה חל רק במקרה ששינוי דעתו של בעל הבית התרחש בטרם החל בן ביתו בהפרשת התבואה. אילו התרחש שינוי הדעת אחרי הפרשת התרומה, היתה זו נחשבת לתרומה. האנלוגיה ברורה: האשה במשנתנו היא כבעל הבית. אם בעל הבית יכול לבטל את מינוי שליח התרומה שלו כל עוד הוא עושה כן לפני ביצוע פעולת הפרשת התרומה, כך גם יכולה אשה לחזור בה מהסכמתה בעל-פה להינשא תוך 30 יום, כל עוד היא עושה כן לפני כניסת הקידושין לתוקף בתום אותם 30 יום.

לריש לקיש, או למי שמתחזה אליו בשלב זה בסוגיה, אין קריאה חלופית למשנה זו, שהיא ברורה לחלוטין. תחת זאת, הוא מגן על עמדתו באמצעות שינוי תנאי הדיון. הוא מנסה לפרק את האנלוגיה: דיבורו של בעל הבית במינוי השליח הוא דיבור סתם, מה שיכנו רבותינו הראשונים "דיבור גרידא",²² ואילו קבלת הקידושין על ידי האשה מלווה במתן טבעת (או חפץ אחר בעל ערך). אף כי ריש לקיש אינו טוען שהפעולה אינה נחשבת פעולה של ממש עד כניסת הקידושין לתוקף ביום ל', ומודה שפעולה זו עודנה בעיקרה פעולת דיבור,²³ הוא טוען כי פעולה זו קרובה יותר לפעולה של ממש מפעולת הדיבור של בעל הבית. הנה, נראה אפוא כי ריש לקיש מקבל את כללו של ר' יוחנן, וכעת, לפחות כמוצג בתלמוד, הוא מסכים עם ר' יוחנן ש"אתי דיבור ומבטל דיבור". דעתו של ריש לקיש על המקרה, כלומר, טענתו כי האשה אינה יכולה לחזור בה מהסכמתה הראשונית, עודנה שרירה וקיימת, אבל כעת הוא מודה ש"אתי דיבור ומבטל דיבור". זהו מהלך מוזר, שעוד נשוב אליו להלן.

בשלב זה מביא ר' יוחנן מקרה מקביל נוסף לחיזוק טענתו, הפעם מגיטין ד:א. שם, אדם שולח גט לאשתו על ידי שליח. כשהוא משנה את דעתו, הוא שולח שליח אחר, או, לחלופין, רץ ועוקף את השליח הראשון בעצמו, כדי לבטל בעל-פה את הגט. כך או כך, הביטול המילולי של האיש מספיק כדי לבטל את המינוי המילולי הראשון. שוב, האנלוגיה ברורה: האיש מקביל לאשה, הגט הוא הסכמתה הראשונית להינשא, וכמענה לטענתו של ריש לקיש על המקרה הקודם שהובא, כאן יש מעשה נתינה בשני המקרים—מתן הטבעת מקביל למסירת המסר לשליח. אולם, כמובן, כפי שמציין ריש לקיש, שתי פעולות הנתינה הללו אינן מקבילות באמת. מתן טבעת אירוסין, טוען ריש לקיש לעיל, מעלה באופן כלשהו את חשיבותו של מעשה

20 על ההעדפה למספרים 3, 7-10, ראו יצחק אבישור, "דרכי החזרה במספרי השלמות (3, 7, 10) במקרא ובספרות השמית הקדומה," באר-שבע א (תשל"ג) 55-1. ראו גם ש"י פרידמן, סוגיות בחקר התלמוד הבבלי, (ניו יורק: בית המדרש לרבנים באמריקה, תש"ע), עמ' 33-34.

21 מתקבל על הדעת שמטרת כל הקטע הזה כולו היא ההבדל בין דיבור לבין מעשה. סביר שהיו מחברי הסוגיה מחשיבים גם מחשבה בגדר דיבור. ההבחנה הנאותה יותר היא אפוא בין פעולה לאי-פעולה, ולא בין פעולה לדיבור.

22 ראו פירושיהם של רמב"ן, ריטב"א ועוד שם.

23 ראו תוס' ר"י הזקן עם הערותיו של החשק שלמה.

הדיבור—שוב, אם לא לרמת פעולה של ממש, אז לפחות מעל "דיבור גרידא." לא ניתן לומר כך על מסירת הגט לשליח, הואיל וקיים כלל הלכתי לפיו "שלוחו של אדם כמותו". מבחינה משפטית, הגט נותר בידי הבעל כל עוד לא הגיע לידי אשתו.

כאן התלמוד עובר צד. ריש לקיש תוקף את רבי יוחנן באמצעות משנה כלים כה:ט. שם אנו למדים כיצד כלים מקבלים טומאה, תהליך המתרחש באמצעות מחשבתו של האומן בלבד. ברגע שבו מחליט בעל המלאכה שהחרב שהוא יוצר הושלמה, החפץ שבידו חדל להיות גוש מתכת וכעת הוא חרב. וחרב, שלא כגוש מתכת, מקבלת טומאה. עם זאת, אם אותו אומן במועד אחר מבקש, נניח, לכתת את החרב לאת, אין מספיקה מחשבתו לבדה כדי להפוך את הכלי שוב לחומר גולמי שאינו יכול לקבל טומאה. לשם כך, מודיעה לנו המשנה, יש לבצע פעולה של ממש. נראה אפוא כי לר"ל יש הוכחה שכמו שמחשבתו השנייה של בעל המלאכה אינה מספיקה לביטול מחשבתו הראשונה, כך גם "לא אתי דיבור ומבטל דיבור." ר' יוחנן, אשר כמו מכוון למדרש שרב פפא ידרוש יום אחד בעתיד (וניתוחו הוא מעבר להיקף מאמר זה), אומר בתגובה כי אין שני המקרים האלה מקבילים כל עיקר—שכן בתחום הטומאה, מחשבה היא ממש כמו פעולה בכל תחום אחר.

ואולם, כפי שרמזתי לעיל, ישנו שינוי מהותי בעמדה המיוחסת כאן לר' שמעון בן לקיש, כפי שציינו פרשנים מימי הביניים וחוקרים מודרניים כאחד.²⁴ לעיל, כבר הודה ר' שמעון בן לקיש כי באשר לתרומה, "דיבור גרידא" אכן יכול לבטל "דיבור גרידא" קודם. היה זה פרט מיוחד במקרה של קידושין—העובדה כי בנוסף לפעולת הדיבור הקשורה באירוסין, האישה גם נותן לאישה חפץ בעל ערך—אשר הוביל את ריש לקיש לפסוק שהאשה אינה יכולה לחזור בה. תוך שינוי תנאי הדיון, הוא טען כי רק מילים המלוות בפעולה כלשהי אינן יכולות להיבטל. לאחר שהוצג ריש לקיש כטוען רק בנוגע למקרה שלפנינו, נראה שהוא חוזר בו ושוב טוען נגד הרעיון הרחב ש"אתי דיבור ומבטל דיבור". שוב, זהו קטע בעייתי ביותר.

הרמב"ן, בהקדימו את חקר התלמוד המודרני, מציע פתרון אלגנטי, וזה לשונו:

ולי נראה דר"י ור"ל בסתמא אפליגו באתי דבור ומבטל דבור, ופרכיה ר"ל תחלה לרבי יוחנן כל הכלים, והדר פרכיה ר"י לדידיה תרומה והדר ביה ר"ל מדבור ודבור גרידא וקם בשיטתיה דנתינת מעות ליד האשה דהוא מעשה זוטא, וגמרא הוא דאקדים פירכא דרבי יוחנן עליה דר"ל כדקא מקדים רבי יוחנן לר"ל לעולם.²⁵

הרמב"ן מעלה שני עניינים: ראשית, המבנה הספרותי של סוגיה תלמודית אינו מוכתב על ידי הסדר שבו הדמויות ההיסטוריות המתוארות בה הקשו זו על זו בבית מדרש. שנית, "התלמוד", מה שאנו מכנים "הסתם", אינו רק מכניס שאלות ותשובות כדי לתאר את קווי המחלוקת, אלא גם אחראי על סידורן ועריכתן של יחידות קיימות. הטענה שהיו לפני העורך יחידות קבועות

24 ריטב"א ורשב"א. ראו גם נח עמינח, עריכת מסכת קידושין בתלמוד הבבלי: סידור, עריכה. גרסאות של גמרא, יחסי סוגיות, בבלי וירושלמי (תל-אביב: אוניברסיטת תל-אביב, תשל"ז), עמ' 179; דוד הלבני, מקורות ומסורות לסדר נשים (ת"א: דביר תשכ"ט), עמ' 587; צבי דור, תורת ארץ ישראל בבבל (ת"א: דביר תשכ"ט, תשל"א) עמ' 69.

25 רמב"ן, חידושויו על התלמוד, שם.

של "טקסט" (משניות וברייתות) מצד אחד, ומימרות אמוראים מצד שני, אינה מפתיעה ואינה שנויה במחלוקת.²⁶

במקרה של סוגיה זו, בניגוד לרבות אחרות ברחבי התלמוד, התברכנו בשני משאבים נוספים המסייעים להבין כיצד ומדוע סוגיה זו התהוותה כך, ובכך מסייעים לפתור את שני מאפייניה הבולטים והבעייתיים. שני המשאבים הללו הם, שלא במפתיע, מספר קטעים בתלמוד המערב, ובאופן מפתיע מאוד, גרסה חלופית, לישנא אחרינא, של כמעט כל הסוגיה כולה. נתחיל בלישנא אחרינא:

בבלי קידושין נט ע"ב (לפי כ"י ותיקן III)

רב זביד מתני לה להא שמעת' אהא²⁷

וכן האשה שנתנה רשות לשלוחה לקדשה והלכה היא וקידש' את עצמה אם שלה [קדמו] קידושיה קידושין ואם של שלוחה קדמו אין קידושיה קידושין

לא קידשה עצמה וחזרה בה מהו

ר' יוחנן אמ' חוזרת

וריש לקיש אמ' אינה חוזרת²⁸

ר' יוח' אמ' חוזרת אתי דיבור ומבטל דיבור

ריש לקיש אמ' [אינה] חוז³⁰ לא אתי דיבור ומבטל דיבור

– איתבייה ר' יוח' לר' שמעון בן לקיש³¹ ביטל אם עד שלא תרם ביטל אין תרומתו תרומה³²

אמ' רבא הכא במאי עסקינן כגון שקדם בעל הבית ותרם את כריו דהוה ליה מעשה

– איתבייה ריש לקיש לר' יוח' כל הכלים יורדין לידי טומאתן במחשבה ואין עולין מידי טומאתן

אלא בשינוי מעשה מוציא מידי מעשה ומידי מחשבה ואין מחש' מוציאה מידי מעש'

ומידי מחשבה

בשל' מידי מעשה לא מפקא דלא אתי דיבור ומבטל מעשה אלא מיד מחשבה מיהא

תפיק

א"ל שאני מחשבה דטומאה דכמעשה דמיא

וכדרב פפא

26 י"נ אפשטיין, מבואות לספרות האמוראים (ירושלים: מגנס, תשכ"ג), עמ' 12; ש"י פרידמן תלמוד ערוך, פרק השוכר את האומנין—כרך הפירושים, (ירושלים, JTS: תשנ"א) עמ' 83; יהודית האופטמן, "שלושת המרכיבים היסודיים של הסוגיה: הסתם, המימרה והברייתא," בתוך: מלאכת מחשבת קובץ מחקרים בנושאי עריכה והתפתחות של הספרות התלמודית, בעריכת אהרן שמש ואהרן עמית (רמת גן: בר אילן, תשע"ח), עמ' 39.

27 משנה קידושין ד:ט

28 בדפוס ספרד, "סבר".

29 הצגת המחלוקת בלי טעמים של החכמים חסרה במ95.

30 מ"רבי יוחנן" עד "חוזרת" חסר בדפוס ספרד, נראה לפי השמטת הדומות.

31 כמו לעיל, דפוס ספרד מצטט גם את הרישא של המשנה שם, "הרשה את בני ביתו לתרום ותרמו תרומתן תרומה".

32 כ"א מוסיף, "והא הכא דדיבור ודבור הוא וקאתי דיבור ומבטל דיבור".

דרב פפא רמי כת' כי יתן וקרינן כי יותן

הא כיצד³³ יותן דומיא דיתן מה יתן דקא עביד מעשה אף יותן דקא עביד מעש'³⁴ – איתביה ר' יוח' לר' שמע' בן לקיש השולח גט לאשתו והיגיע בשליח או ששילח אחריו שליח ואו' גט שנתתי לך בטל הוא הרי זה בט' תיובתא דר' שמע' בן לקיש [תיובתא] והיל' כוותיה דר' יוח' ואפילו בקמייתא

שתי הגרסאות של הסוגיה קרובות דיין כדי שנכירן, נכונה, כשני לשונות של אותה סוגיה.³⁵ אותם החכמים חולקים זה על זה על אודות אותו מושג משפטי ומקשים זה על זה מאותם המקורות התנאיים. עם זאת, כאשר משווים את הגרסאות באופן סינופטי, מתבררים מספר הבדלים משמעותיים. הראשון הוא המשנה עליה נסובה המחלוקת. בלשנא קמא, זוהי המשנה "שלנו" שאליה תצורף סוגיה זו לדורות, משנה קידושין ג:א. לעומת זאת, בלשנא בתרא של ר' זביד, המשנה היא משנה קידושין ד:ט:³⁶

וכן האשה שנתנה רשות לשלוחיה לקדשה והלכה היא וקדשה עצמה אם שלה קדמו קדושיה קדושין ואם של שלוחה קדמו קדושיו קדושין אין ידוע שניהן נותנין לה גט אם רצו אחד נותן לה גט ואחד כונס

כאן, בדיוק כמו בשני המקורות שעליהם סמך ריש לקיש בהקשותו על ר' יוחנן, וכפי שנראה להלן גם בטיפול התלמוד הירושלמי בחומר זה, הנושא הוא מינוי וביטול מילולי של שליחות ולא דיבור בעלמא. עובדה זו מצביעה על כך שהלשנא בתרא מקורית יותר,³⁷ ושהלשנא קמא תלויה בה ולא להיפך. עובדה זו, כפי שכבר ראו בעלי התוספות,³⁸ מובילה ישירות להבדל משמעותי נוסף בין שני הלשונות. בלשנא קמא, ר"ל מגיב על הקשיא מתרומות ג:ד על ידי גיבוש מחדש של עמדתו. ר"ל מוותר ומקבל את טענתו הבסיסית של ר"י ש"דיבור גרידא" אכן יכול לבטל "דיבור גרידא" אחר, אך עומד על כך שפסיקתו המשפטית בענייננו עומדת על כנה, על יסוד עניין טכני. בלשנא בתרא, הויתור הזה אינו נחוץ כלל, כי בשני מקרים מדובר ב"דיבור גרידא" של מינוי שליח; בשניהם אין קיימות ולו פעולות מינימליות! תחת זאת מתברר הבדל שלישי—זו הסיבה שסוגיה זו כה מעניינת את צבי דור: החכם רבא מופיע משום מקום כדי לענות על הקשיא לר"ל. עבור דור, הדבר מוכיח כי לפני רבא היה משהו מעין גרסה זו של הסוגיה, ובכך כוונתו לא רק למחלוקת בין ר"י לר"ל, אלא גם למקורות התנאיים השזורים בדיאלוג. רבא מתערב כדי לענות על הפירכא של ר"י.

33 "הא כיצד" ליתא בכ"י, Oxford Opp. 248 (367) ובדפוס ספרד.

34 בכ"י Oxford Opp. 248 (367) ובדפוס ספרד מוסיפים: "ומה יתן דניחא ליה אף יותן דניחא ליה".

35 רא' אליעזר שמשון רוזנטל, "ללשונוהיה של מסכת תמורה, "תרביץ כח:ג-ד (תשמ"ט): 317-356; אהרן עמיית, "מקומם של כתבי היד התימניים במסורת הנוסח של בבלי פסחים", *HUCA* עג (2002) עמ' 31-77.

36 כ"ק

37 רא' עמינת עמ' 179. השו' דור עמ' 67. הלבני, שלא כדרכו, מסתמך על השערות.

38 תוספות קידושין דף נט ע"ב

אם ביטל עד שלא תרם כו'—הכא לא משני כדלעיל שאני נתינת מעות ליד האשה דכמעשה דמי היינו משום דהכא ליכא נתינת מעות אלא דיבור לבד.

ההבדל הרביעי הוא שהפירכאות השניה והשלישית הפוכות. בלשנא בתרא, ר"ל מקשה ממשנה כלים כה:ט בדיוק כמו לעיל. ההבדל החמישי הוא שבלשנא בתרא, שום הגנה לא מובאת לביטול הפירכא הסופית. תחת זאת, התלמוד קובע כי ר"ל פשוט לא הכיר את גיטין ד:א,³⁹ ואי ידיעה זו מובילה את מחבר הסוגיה להסיק כי ר"י צדק, ור"ל הובס על ידי "תיובתא". אפשר לראות בקלות את כל ההבדלים הקיימים בסינופסיס:

לשנא בתרא	לשנא קמא
מקור: משנה קידושין ד:ט	מקור: משנה קידושין ג:א
מקרה: וחזרה בה במינזיה של שליח לקבל קידושין?	מקרה: לא בא אחר וקידשה וחזרה בה מהו?
דין: ר"י אומר חוזרת ר"ל אומר אינה חוזרת	דין: ר"י אומר חוזרת ר"ל אומר אינה חוזרת
טעם: ר"י: אתי דיבור ומבטל דיבור ר"ל: לא אתי דיבור ומבטל דיבור	טעם: ר"י: אתי דיבור ומבטל דיבור ר"ל: לא אתי דיבור ומבטל דיבור
א: ר"י < ר"ל ממשנה תרומות ג:ד קושיא: מינוי השליח להפריש תרומה יכול להיבטל על ידי דיבור גרידה- אז אין תרומתו תרומה	א: ר"י < ר"ל ממשנה תרומות ג:ד קושיא: מינוי השליח להפריש תרומה יכול להיבטל על ידי דיבור גרידה- אז אין תרומתו תרומה
תירוץ: רבא משווה מחטבה בעיני טומאה למעשה בעינים אחרים	תירוץ: שני קידושין כי יש בה מעשה (גתינת כסף קידושין)
ג: ר"ל < ר"י ממשנה כלים כה:ט קושיא: מכיוון ש כלים מקבלים טומאה על ידי מחשבתו של האומן אבל צריכם מעשה של ממש כדי לבטל את המעמד הזה, אי אפשר במקרה אחר שיש כח בדיבור גרידה לשנות את המעמד.	ג: ר"י < ר"ל ממשנה גיטין ד:ב קושיא: מינוי השליח לתת גט לאשתו יכול להיבטל על ידי דיבור גרידה- אז אין הגט בתופס, וגיטין הם כמו קידושין

39 זוהי אחת הראיות של אפשרות לכך שלא כל אמורא היה אמור להכיר כל חלק של המשנה. ראו מבוא לנוסח המשנה (ירושלים: מאגנס, תש"ח) עמ' 772. ר"א גם תוס' הרא"ש על אתר:

תוספות הרא"ש קידושין נט ע"ב

תיובתא דר"ל תיובתא. תימה וכי ר"ל לא ידע משנה זו, וי"ל שהיה מחלק שום חילוק בין גט

(cont.)

לשנא בתרא	לשנא קמא
תירוג: שני מחשבה בטומאה כפירושו של רב פפא לויקרא יא:לח	תירוג: אין להשוות גיטין לקידושין הואיל ומשנה בגיטין מתיחסת רק למקרה שעדיין הגט ביד השליח, מזה שאין כן בקידושין שהאשה קבלה את כסף הקידושין.
ב: ר"י < ר"ל ממשנה גיטין ד:ב. קושיא: מינוי השליח לתת גט לאשתו יכול להיבטל על ידי דיבור גרידה- אז אין הגט בתופס, וגיטין הם כמו קידושין	ג: ר"ל < ר"י ממשנה כלים כה:ט. קושיא: מכיוון ש כלים מקבלים טומאה על ידי מחשבתו של האומן אבל צריכם מעשה של ממש כדי לבטל את המעמד הזה, אי אפשר במקרה אחר שיש כח בדיבור גרידה לשנות את המעמד.
תירוג: אין. תיובתא דר"ש לקיש	תירוג: שני מחשבה בטומאה כפירושו של רב פפא לויקרא יא:לח

נפנה כעת למקבילות בירושלמי. כפי שכבר הדגישו צבי דור,⁴⁰ נח עמינת,⁴¹ ודוד הלבני,⁴² בניגוד לבלבלי, שבו מתוארים ר"ל ור"י כמצהירים על עקרונותיהם המופשטים ומביאים ראיות תנאיות פנים אל פנים, התלמוד הירושלמי מציג את דעותיהם בנפרד זו מזו. פעמיים לכל אחד מהם, המחבר האנונימי של הירושלמי מציין שישנה משנה מסוימת אשר, לפחות במבט ראשון, עשויה להפריך את עמדתו הידועה של אותו חכם. עבור רבי יוחנן, מקורות אלה הם כדלהלן:

ירושלמי גיטין ד:א, מה ט"ג⁴³

"השולח גט לאשתו" כול'. הדא פליגא על ר' יוחנן. דר' יוחנן אמ'. אדם מבטל שליחותו בדברים. פתר לה משום חומר הוא בעריות.

לקידושין ולא היה כדאי בעיני בעלי התלמוד לסדרן בתלמוד והעמידו דבריו בתיובתא וכן יש לפרש בכל מקום שסותר דברי האמורא מתוך המשנה.

- 40 דור, עמ' 8-67.
 41 עמינת, עמ' 177.
 42 הלבני, עמ' 588.
 43 לפי MS Leiden Or. 4720 כפי שהועתק ב' זוסמן, תלמוד ירושלמי, (ירושלים: האקדמיה ללשון העברית, תשס"א), עמ' 1066.

ירושלמי קידושין ד:ט, סו ט"א⁴⁴

"וכן האשה שנתנה רשות" כול'. ולית הדא פליג' על ר' יוחנן. דר' יוחנן אמ'. אדם מבטל שליחותו בדברים. פתר לה. משום חומרא דעריות. ר' יוסה ביר' בון שמע לה מן דבתרה. "וכן האשה שנתנה רשות לשלוחה לקדשה והלכה היא וקידשה את עצמה". ולית הדא פליג' על רבי יוחנן. דר' יוחנן אמ'. אדם מבטל שליחותו בדברים. פתר לה משום חומרא הוא בעריות. עבור ר"ל אנו רואים:

ירושלמי גיטין ד:ב, מוה ט"ג⁴⁵

"בראשונה היה עושה בית דין" כול'. לית הדא פליגא על ריש לקיש. דריש לקיש אמ'. אין אדם מבטל שליחותו בדברים. פתר לה בבית דין שכחו מרובה.

ירושלמי תרומות ג:ד, מו ט"א⁴⁶

ולית הדא פליגא על דריש לקיש. דריש לקיש אמ'. אין אדם מבטל שליחותו בדברים. תיפתר כגון שאמ' לו. לך וקבע [בצפון]. והלך וקבע בדרום.

כפי שכבר צוין בפירושים מסורתיים,⁴⁷ החומר שבירושלמי שונה במידה ניכרת ממה שנמצא בבבלי, הן מבחינת הצורה והן מבחינת התוכן, אך בכל זאת, הירושלמי מציג מקבילות משמעותיות. ראשית כל, אנו רואים ששני האמוראים מציגים את עמדותיהם ככלליות—עמדות שאינן מקושרות לפרטים של מקרה אחד. שנית, אנו רואים כי בארץ ישראל המחלוקת היתה קשורה במפורש לשליחות, ולא, כמו בבבלי, למחלוקת רחבה יותר על כוחן של מלים לעומת מעשים. ברם, אנו רואים כי מימרותיהם של רבי יוחנן ורבי שמעון בן לקיש היו כבר מקושרות לגיטין ד:א ותרומות ג:ד בדיוק כפי שהן מוצגות בלשנא קמא של הבבלי, וגם לקידושין ד:ט כמו בלישנא בתרא. לעומת זאת, המשנה ממסכת כלים נעדרת באופן מוזר. חזרה ללשנא קמא שבבבלי, שכעת ביכולתנו לתאר את ההיסטוריה של חיבורה. דור מניח ששתי הסוגיות היו שלמות—כלומר, כאשר ר' זביד, חכם מאמצע המאה הרביעית שהיה תלמידו של רבא, לימד את גירסתו של המחלוקת, הוא לימד לא רק את המחלוקת בין ר' יוחנן לריש לקיש ואת המשנה שאליה היא מתייחסת, אלא גם את שלושת המקורות התנאיים ואת רקמת החיבור הקושרת את הכול. אבל עמינת חולק על כך וטוען כי עורכי הסוגיה חיברו את הסוגיות האלה בזמן מאוחר יותר.⁴⁸ הוא קורא להם אמוראים, אבל רובנו היינו קוראים להם "סתם". אני מעדיף לחשוב על שתי הסוגיות האלה כתוצרי המופעים שבעלי־פה של יושבי

44 שם, עמ' 247.

45 שם, עמ' 1066.

46 שם, עמ' 228.

47 לדוגמה, הרב יעקוב יהושע פלק, כתב, "גמרא איתיביה ר"י לר"ל תרם עד שלא ביטל כו' אמר רבא הכא במאי עסקינן כגון שקדם הבעל הבית ותרם את כריו. וביירושלמי דתרומות מוקי לה בגזונא אחרייתא כגון ששינה השליח אף על גב דלא הוי שינוי גמור שיתבטל השליחות על ידו ממילא מ"מ מהני לענין שיכול הבעל הבית לבטל השליחות." פני יהושע קידושין דף נט ע"ב

48 עמ' 178.

earlier material was not only memo- ... “ arranged into literary units like those which would eventually become the Babylonian Talmud.”⁴⁹

בני סיומא אלה ירשו את המחלוקת יחד עם חלק מהחומר התנאי (גיטין ד:ב, קידושין ד:ט ותרומות ג:ד) שתמיד ליווה אותה,⁵⁰ הן בארץ ישראל הן בבבל. מחברים אלה בחרו במודל “איתיביה” של הצגת החומר, בדומה לדרך שבה משורר בוחר סונטה על פני חמשיר. במקור, הם צירפו את המחלוקת לקדושין ד:ט, כמו בגרסתו של ר’ זביד, תוך שימוש בגיטין ד:ב ותרומות ג:ד, שאותן ירשו מארץ ישראל כפרכאות. לזאת הוסיפו מעבודת הקונקורדנציה שלהם פירכא שלישיית—המשנה ממסכת כלים—אף כי זו מתאימה הרבה פחות. דבר זה נעשה ככל נראה מסיבות “ספרותיות” שיפורטו להלן. בעקבות יצחק אבישור ושמא פרידמן, ידוע כי ליחידה ספרותית המספר 3 הוא מספר הרבה יותר מספק מהמספר 51.2⁵¹ הדבר יכול היה לקרות רק כשנושא הסוגיה הפך להיות “מלים” ו“פעולות”, ולא שליחות, כפי שהיה בירושלמי ובמקורות התנאיים המקוריים. מרגע שנושא הליבה לא היה קשור עוד בשליחות, אפשר היה לנתק את המחלוקת הזאת עם המקורות התנאיים מקידושין ד:ט. ואכן, בבית מדרש אחר, בסיומא אחרת, בחרו תחתיה בקדושין ג:א, וזו הסיבה שסוגיה זו נמצאת כאן בתלמודים שלנו.

עם זאת, אינני סבור שרקמת החיבור, הסתם, כבר היתה קבועה בשעת התרחשותו של תהליך זה. הלוא מַעְבָּר זה, מהקשר של שליחות להקשר של “דיבור גרידא”, מסביר את ההבדל הבולט, שכבר הבחינו בו בעלי התוספות, בתגובתו של ר”ל לקשיא מתרומות ג:ד. הקשיא הגיונית אך ורק בהקשר של שליחות, וברגע שסר ההקשר הזה, היה על הסתם לייצר תגובה אחרת, דחוקה, שבה ר”ל מוותר על יסוד טענתו רק כדי לחזור ולאמץ אותה מאוחר יותר בסוגיה. מעבר זה גם הוביל להיפוך היחידות התנאיות השניה והשלישית בלשנא קמא. לאחר יצירת ההבחנה המלאכותית בין “דיבור גרידא” ל“דיבור מלווה בפעולה כלשהי”, יכול התלמוד להציג את ר”י כמשנה את אופן ההתקפה שלו, ולבחור מקרה מקביל יותר כדי לתקוף את טענתו המנוסחת מחדש של ר”ל.

נותרה שאלה אחת גדולה. מדוע הוסיפו עורכי הקטע המקורי, המשתקף אולי בצורה הטובה ביותר בגירסתו של ר’ זביד, את המקור התנאי השלישי? אני מאמין שהתשובה לא תתגלה על ידי שימוש בשיטות הטכניות של *Wissenschaft des Judentums* שבהן נקטתי עד כה. המתודות האלה עוזרות לנו לגלות שהעורכים עשו זאת, אך אינן יכולות לומר לנו מדוע בחרו העורכים את הקטע שבו בחרו. תחת זאת, אני סבור כי עלינו לפנות לעולם האגדה.

אחד הסיפורים הידועים ביותר בתלמוד הוא כמובן הסיפור המרתק, העגמומי, הטרגי בהחלט, על תחילתה וסופה של מערכת היחסים בין ר’ יוחנן לריש לקיש, במסכת בבא מציעא בדף פד ע”א. תחילתו ידועה היטב: ריש לקיש, המאופיין בבבלי כגלדיאטור, דבר שאינו ידוע במסורות הארץ-ישראליות אודותיו, ראה את רבי יוחנן רוחץ בירדן. ריש לקיש חשב שהחכם,

Noah Benjamin Bickart, “Tistayem: The Scholastic Culture of the Babylonian Talmud,” 49

.73 Ph.D diss., The Jewish Theological Seminary of America, 2015

השורה: יהודית האופטמן, “שלושת המרכיבים היסודיים של הסוגיה: הסתם, המימרה והברייתא”, 50

עמ’ 39–53.

ראה לעיל הערה 11.

הידוע כאיש טוב למראה, הוא אשה, וקפץ למים כדי לאנוס אותו. רבי יוחנן הבטיח לריש לקיש את ידה של אחותו אם יבוא ללמוד אצלו תורה. סוף הסיפור כך:

בבלי ב"מ פד ע"א (Hamburg 165)

יומא חד הוה קא מיפלגי בי מדרשא הסייף והסכין והפיגיון ומגל יד ומגל קציר מאימתי מקבלין טומאה [משעת גמר מלאכתן ומאימתי נגמרה מלאכתן] ר' יוחנן אמ' משיצרפן בכבשן וריש לקיש אמ' משיצחצחון במים אמ' ליה ר' יוחנן לסטאה בלסטיותיה ידע אמ' ליה מאי אהנית לי התם ר' קרו לי והכא ר' קרו לי [אמ' ליה לא אהניי לך ולא מידי] חלש דעתיה דר' יוחנן חלש ריש לקיש

אנו רואים כי כאן, המחלוקת המסיימת את היחסים שלהם זהה למעשה למקור התנאי השלישי של סוגייתנו מקידושין. גם כאן השאלה היא מתי יכול כלי לקבל טומאה. או, אם נקרא את הסיפור הזה לאור הסוגיה שלנו, מתי אפשר להניח שאומן מרגיש כי הושלמה מלאכתו? ר' יוחנן סבור כי כלי הנשק נחשב לכלי משעה שהוא מצורף בכבשן, ואילו ריש לקיש טוען כי אין הכלי נחשב לכלי עד שהוא מקורר במים. ר' יוחנן משתמש בעברו המפוקפק של ריש לקיש כדי לבייש אותו. הדבר מוביל להתמוטטות שלמה של היחסים ביניהם, וכתוצאה מכך לסוף חייו של ריש לקיש. אחרי מותו, בהמשך הסיפור הזה, מקונן ר' יוחנן על שותפו לשעבר באומרו, "כל מלתא דהוה קאמינא הוה מקשי לי עשרין וארבעה קושיאתא ופריקנא ליה ארבעה ועשרין פירוקי עד דרווחא שמעתא"⁵². זוהי, כמובן, בדיוק סוג הפעילות המתוארת בסוגיה שלנו.

אם נכונה הנחתי, נראה כי מי שהוסיף את המשנה מכלים לתוך הסוגיה שלנו הכיר את הסיפור הזה, למרות הנטייה לתארך סיפורים כאלה לשכבת העריכה האחרונה בתלמוד. עורכי הסוגיה שלנו הכירו אפוא את התיאור הפסידו-ביוגרפי של המערכה הסופית והטרגית של מערכת היחסים שלהם, וידיעה זו, יותר מכל שיקול משפטי או אקדמי אחר, היא שהביאה לבניית הסוגיה ולהצגתה בהקשר הנוכחי. על כן, קטע זה ממחיש שעורכי התלמוד תפשו את הפרויקט שלהם כפעילות ספרותית אחידה, והוא קורא תיגר על ההנחה שהיתה, בזמן עריכת התלמוד, דיכוטומיה בין אגדה להלכה. ברור כי דרושה עבודה נוספת בנושא ההגיון והלשון בפיתוח הסוגיה התלמודית, אבל חושדני שהעיסוק בעניינים היסטוריים של עריכה וסידור אכן יוכיח כי הבנייה המכוננת של דיונים משפטיים נקטה לא פעם בעדשה ספרותית. תובנה זו, בתורה, מחזקת את הנחת קיומו של קשר תוך-תלמודי לחומר נרטיבי שכבר התקבל כספרותי על ידי קהל הלומדים.

52 כשאמרתי דבר, הוא העלה עשרים וארבע קושיות, שענית להן עשרים וארבע תשובות, וכתוצאה מכך הביאו להבנה מלאה יותר של הלכה.

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תשובה בעניין ביקורת המקרא

דוד גולינקין

לכבוד הרב פרופ' יעקב רוט
איש ההלכה
שקירב דורות של תלמידים
לאהבת תורה ולשמירת מצוות
בהגיעו לגבורות.



שאלה מאת תלמיד בבית המדרש לרבנים על שם שכטר: האם מותר ללמוד וללמד ביקורת המקרא—ובמיוחד של התורה?¹

תשובה:

בתשובה זאת אנו נוכיח שמותר ללמוד וללמד ביקורת המקרא. אין בכך תמיכה באסכולה מסוימת של ביקורת המקרא, אלא היתר ללמוד וללמד שיטות שונות של ביקורת המקרא על מנת להגיע לפשוטו של מקרא. מכיוון שמדובר בנושא מסובך, אנו נחלק את התשובה לתשעה סעיפים כדלהלן:

- (I) ביקורת המקרא—מהי?;
- (II) מקורות האוסרים לכאורה את ביקורת המקרא;
- (III) חולשות כלליות במקורות הנ"ל;
- (IV) ביקורת הטקסט בספרות חז"ל ואצל חכמי ימי הביניים;

1 תשובה זאת נכתבה לכתחילה עבור תלמיד לרבנות בבית המדרש לרבנים על שם שכטר וסיימתיה בג' אב תשנ"ט. לאחר מכן, היא נידונה על ידי ועד ההלכה של כנסת הרבנים בישראל והייתה אמורה להופיע בכרך השביעי של תשובות ועד ההלכה אבל לא אסתייעא מילתא ואותו כרך לא פורסם. התשובה מתפרסמת כאן עם תיקונים ועם תוספת חלקית של ספרות שפורסמה בין השנים תשנ"ט-תשע"ח. לא ניסיתי לשכתב את התשובה לאור הספרות החדשה מכיוון שאז התשובה הייתה הופכת לספר. (יש לציין במיוחד את הספר החשוב של הרב ברנדס וחבריו הכולל 160 עמודים של מקורות; ואת ספרו של לוי, 2001). בכל אופן, אין בידי הספרות החדשה לשנות את העובדות ואת הגישה שהצגתי.

הקיצורים להלן מתייחסים לרשימת הספרות בסוף התשובה. תודתי לפרופ' ברוך שוורץ ולרב ראובן רזניק שסיפקו לי מקורות וביבליוגרפיה בזמנו, וכן לרב דוד פרנקל שהפנה אותי למאמר חשוב של הרב מרק שפיר.

- (v) ביקורת המקורות בספרות חז"ל;
 (vi) ביקורת המקורות אצל חכמי ימי הביניים;
 (vii) תקדימים ללימוד ביקורתי מתחומים אחרים;
 (viii) קדושת התורה וסמכותה לאלה שעוסקים בביקורת המקרא;
 (ix) הלכה למעשה.

(I) ביקורת המקרא—מהי?

יש שני סוגים עיקריים של ביקורת המקרא:

(א) ביקורת הטקסט או ביקורת נמוכה²

ביקורת הטקסט מניחה שתוך כדי מסירת הטקסט במשך אלפי שנים נפלו טעויות בטקסט והיא מנסה לשחזר עד כמה שאפשר את הטקסט המקורי. והרי רשימה חלקית של סוגי השיבוש עם דוגמאות מהמקרא. (לפעמים הוספתי אותיות לטקסט בסוגריים מרובעים מכיוון שאין כאן ניקוד):

1. חילופי אותיות דומות: כ/ב; ר/ד; ח/ה; ת/ה; י/ו; צ/ע; ישעיהו י"ד:ד': "מדהבה" צריך להיות "מרהבה" כמו במגילת ישעיהו מקומראן.
2. שיכול אותיות: תהלים מ"ט:י"ב: "קרבס" צריך להיות "קברס".
3. שיבושים בניקוד: ישעיהו ז:י"א: "שאלה" בקמץ צריך להיות "שא[ו]לה" בחולם.
4. שיכול פסוקים: נחום א:ט': מדובר באקרוסטיכון ופסוקי הל' והמ' הוחלפו.
5. הפלוגרפיה, דהיינו השמטת אות כשהאות מופיעה פעמיים בסמיכות: בראשית ל"ב:כ"ב: "בלילה הוא" צריך להיות "בלילה ההוא".
6. דיטוגרפיה, דהיינו הכפלת אות או מילה בטעות: ירמיהו נ"א:ג': "אל ידר[ו]ן ידר[ו]ן" (ידר[ו]ן) הדר[ו]ן קשתו".
7. תוספת אותיות: שמואל ב' כ"ב:מ"ד: "תשמרני" צריך להיות "תשמני".
8. השמטה על ידי הדומות: יהושע כ"א: ל"ה-ל"ח: בהרבה כתבי יד נשמטו כמה פסוקים מכיוון שעין הסופר קפצה מ"ערים ארבע" (פס' ל"ה) ל"ערים ארבע" (פס' ל"ח).
9. חלוקה לא נכונה של פסוקים: יואל ב:א-ב: המילים "כי קרוב" שייכות לפסוק ב'.
10. חלוקה לא נכונה של מילים: עמוס ו:י"ב: "בבקרים" צריך להיות "בבקר ים".
11. הרכבת שני נוסחים ביחד: שמואל א' כ"ח:ג': "ויקבר[ו]הו ברמה ובעירו" הוא הרכבה של "ויקבר[ו]הו ברמה" ו-"ויקבר[ו]הו בעירו".
12. הכנסת הערת שוליים למקום הלא נכון: בראשית י:י"ד: "אשר יצאו משם פלשתים" הוא הסבר למילה "כפתורים", אבל הוא הוכנס בטעות לפני "ואת כפתורים".

2 לדוגמאות אלו ואחרות ראו: D.R. Ap-Thomas, *A Primer of Old Testament Text Criticism* (Philadelphia: Fortress, 1966), 41–50; Ernst Würthwein, *The Text of the Old Testament* (Grand Rapids: Eerdmans, 1979), ch. 15; עמנואל טוב, ביקורת נוסח המקרא, ירושלים, תש"ן, עמ' 189–214.

(ב) ביקורת המקורות או ביקורת גבוהה³

ביקורת המקורות או ביקורת גבוהה נוצרה על מנת להסביר את הסתירות שבתורה. היא סבורה שהתורה וגם ספרים אחרים בתנ"ך נערכו ומיזגו בתוכם מקורות שונים ושעל ידי קריאה קפדנית אפשר לשחזר את המקורות הראשוניים ולעמוד על השקפת עולמם של המחברים השונים.

והרי דוגמאות של סתירות בתורה שהביקורת הגבוהה באה לפתור:

1. בראשית א':כ' "וַיִּרְצוּ הַמַּיִם שְׂרָץ נֶפֶשׁ חַיָּה וְעוֹף יַעֲוֹף עַל הָאָרֶץ", לעומת בראשית ב':י"ט "וַיִּצַח ה' אֱלֹהִים מִן הָאָדָמָה כֹּל חַיַּת הַשָּׂדֶה וְאֵת כָּל עוֹף הַשָּׁמַיִם".
2. שמות ל"ד:ז' [פ] "קָד עוֹן אֲבוֹת עַל בְּנֵי", לעומת דברים כ"ד:ט"ז "וּבְנֵי לֹא יוֹמְתוּ עַל אֲבוֹת, אִישׁ בַּחֲטָאוֹ יוֹמְתוֹ".
3. במדבר ל"ג:ל"ח אַהֲרֹן נִפְטָר בַּחַדָּשׁ הַהוּא, לעומת דברים י"ו: שאהרן מת במוסרה.
4. דברים ט"ז:ח' "שֵׁשֶׁת יָמִים תֹּאכַל מִצּוֹת", לעומת שמות י"ג:ט; כ"ג:ט"ו; ויקרא כ"ג:ו' (בשינוי); דברים ט"ז:ג' "שִׁבְעַת יָמִים תֹּאכַל מִצּוֹת" [ו] ת. ויש להדגיש שיש סתירה פנימית באותו פרק—דברים ט"ז.
5. בראשית פרק א' שבו ה' מכונה "אלהים", הוא טרנסנדנטי והוא ברא את אדם וחווה בו-זמנית; לעומת בראשית פרק ב' שבו ה' מכונה "י—ה אלהים", הוא אנתרופומורפי, וחווה נבראה מצלעו של אדם.
6. בראשית י"ב:י-כ' אַבְרָם יוֹרֵד לְפָרְעָה בְּמִצְרַיִם; לעומת בראשית כ"א:י"ח שבו אַבְרָהָם יוֹרֵד לְאַבְיִמֶלֶךְ בְּגֵרָה; לעומת בראשית כ"ו:ו-א שבו יַצְחָק יוֹרֵד לְאַבְיִמֶלֶךְ בְּגֵרָה.
7. בראשית ט"ד:י"ד הַגֵּר בּוֹרַחַת לְמַדְבָּר וְאַחַר כֵּךְ יוֹלֵדֶת אֵת יִשְׁמַעֲאֵל, לעומת בראשית כ"א:ח-כ' א שבו אַבְרָהָם מְגַרֵּשׁ אֵת הַגֵּר וְיִשְׁמַעֲאֵל לְמַדְבָּר.
8. בראשית כ"א:כ"ב-ל"ד אַבְרָהָם נוֹתֵן אֵת הַשֵּׁם "בְּאֵר שֶׁבַע" עַל שֵׁם "שֶׁבַע כְּבָשׂוֹת הַצֹּאֵן", "כִּי שֵׁם נִשְׁבַּעוּ שְׁנֵיהֶם", לעומת בראשית כ"ו:כ"ו-ל"ג. שם מסופר על יצחק: "וַיִּקְרָא אֶת שֵׁם שֶׁבַעֲתָה, עַל כֵּן שֵׁם הָעִיר בְּאֵר שֶׁבַע עַד הַיּוֹם הַזֶּה" (שם, ל"ג).
9. במדבר י"ג:א-ג' ה' שוֹלַח אֵת הַמְּרַגְלִים, לעומת דברים א': כ"ב-כ"ג שבו הַעַם מִבְּקֵשׁ מִמּוֹשָׁה לְשַׁלּוֹחַ מְרַגְלִים וְהוּא מִסְכִּים.
10. שמות כ':כ"א "מִזְבַּח אֲדָמָה תַעֲשֶׂה לִּי ... בְּכָל מְקוֹם אֲשֶׁר אֲזַכִּיר אֵת שְׁמִי אֲבוֹא אֵלֶיךָ וּבִרְכַתִּיךָ", לעומת דברים י"ב:י"ג-י"ד וְעוֹד עַל רִיבּוֹז הַפּוֹלְחֵן בְּמִקְוֵה אֶחָד.
11. ויקרא כ"ג:ל"ו שֶׁבַעֲתָה יָמִים שֶׁל סוֹכּוֹת בַּתּוֹסֶפֶת יוֹם נֹסֵף הַמְּכֻנָּה "עֵצֶרֶת", לעומת דברים ט"ז:ט"ז שבו יש שֶׁבַעֲתָה יָמִים שֶׁל סוֹכּוֹת בְּלִי זָכַר לְ[שְׁמִינִי] עֵצֶרֶת.
12. עשרת הדברות בשמות פרק כ', לעומת השינויים בעשרת הדברות בדברים פרק ה'.
13. לבסוף, היעילות של ביקורת המקורות מודגמת היטב בסיפור על מכירת יוסף למצרים בבראשית ל"ז:י"ח ואילך. בתורה יש ערבוב בין ראובן והמדיינים לעומת יהודה והיִשְׁמַעֲאֵלִים. כשִׁמְפְרִידִים אֵת הַסִּיפּוֹר לְשְׁנֵי מְקוֹרוֹת רוֹאִים שִׁישׁ כַּאֲן מִיּוֹזֵג שֶׁל שְׁנֵי סִיפּוֹרִים מְקַבְּלִים:

3 לדוגמאות טובות מספר במדבר ראו Jacob Milgrom, *The JPS Torah Commentary: Numbers* (Philadelphia: Jewish Publication Society, 1990), xvii-xxi.

סיפור ראובן	סיפור יהודה
פס' כ"א-כ"ג	פס' כ"ד-כ"ז
פס' כ"ח עד "מן הבור" אמצע פס' כ"ח "וימכרו" עד "בעשרים כסף" סוף פס' כ"ח "ויביאו" עד פס' ל"ו	

אכן, הסתירות הנ"ל ועוד הובילו למה שמכונה "תורת התעודות". ג'ון אסטרוק הבדיל בין מקור "ה' " (J) למקור "אלהים" (E) בשנת 1753. בשנת 1805 דה-וטה הוסיף את המקור של דברים (D) שהיא מתקופת יאשיהו (609-640 לפנה"ס). הופפלד הוסיף את המקור הכוהני (P) בשנת 1853. וולהאוזן פיתח את תורת התעודות (J,E,P,D) משנת 1878 ואילך. בימינו חוקרים רבים טוענים שיש מקור כוהני נוסף המכונה (H).⁴

(II) מקורות האוסרים לכאורה את ביקורת המקרא

הרבנים בימינו המתנגדים לביקורת המקרא מתבססים בעיקר על המקורות דלהלן:

1. משנה סנהדרין י"א:
כל ישראל יש להם חלק לעולם הבא ...
ואלו שאין להם חלק לעולם הבא:
האומר אין תחיית המתים מן התורה,
ואין תורה מן השמים,
ואפיקורוס ...
2. תוספתא סנהדרין י"ג:4-5, מהד' צוקרמנדל, עמ' 434
פושעי ישראל בגופן,⁵ פושעי אומות העולם בגופן יורדין לגיהנם ונידונין בה שנים עשר חודש, ולאחר שנים עשר חודש נפשותן כלה וגופן נשרף וגיהנם פולטתו ונעשין אפר והרוח זורה אותן ומפזרתן תחת כפות רגלי הצדיקים ... אבל המינין והמשומדים והמסורות ואפיקורסין ושכפרו בתורה ושפורשין מדרכי ציבור ושכפרו בתחיית המתים וכל מי שחטא והחטיא את הרבים ... גיהנם נינעלת בפניהם ונידונין בה לדורי דורות ...

4 לסקירה קצרה של התפתחות ביקורת המקורות ראו A.T. Chapman, *An Introduction to the Pentateuch* (Cambridge: University Press, 1911); ג'ייקובס, 1964, עמ' 243-248; ומשה ויינפלד, אנציקלופדיה מקראית, כרך ח', ערך "תורה", עמ' 492-494. לשיטת ישראל קנוהל לגבי H, ראו את ספרו מקדש הדממה: עיון ברובדי היצירה הכוהנית שבתורה, ירושלים, תשנ"ג.

5 לפי האמורא רב בראש השנה י"ז ע"א הכוונה ל"קרקפתא דלא מנח תפילין", דהיינו "גולגולת שאינה מניחה תפילין".

3. סנהדרין צ"ט ע"א

תנו רבנן: "כי דבר ה' בזה ומצותו הפר הכרת תכרת" (במדבר ט"ז:ל"א) – זה האומר אין תורה מן השמים ... תניא אידך ... ואפילו אמר כל התורה כולה מן השמים חוץ מפסוק זה שלא אמרו הקדוש ברוך הוא אלא משה מפי עצמו זהו: "כ' דבר ה' בזה" ...

4. פירוש הרמב"ם לפרק חלק, מהד' קאפח, עמ' קמ"ג-קמ"ד

והיסוד השמיני הוא תורה מן השמים. והוא שנאמין שכל התורה הזו הנמצאת בידינו היום הוזה היא התורה שניתנה למשה, ושהיא כולה מפי הגבורה ... ושהוא [= משה] במעלת לבלר שקורין לפניו והוא כותב כולה, תאריכיה וסיפוריה ומצוותיה ... ואין הבדל בין ... "ושם אשתו מהיטבאל בת מטרד" (בראשית ל"ז:ט) או "אנכי ה'" (שמות כ"א) ... הכל מפי הגבורה ... וזהו ענין "אין תורה מן השמים" (משנה סנהדרין הנ"ל) אמרו (בבבלי סנהדרין הנ"ל) שהוא האומר שכל התורה כולה מפי הקב"ה חוץ מפסוק אחד שלא אמרו הקב"ה אלא משה מפי עצמו, וזה הוא "כי דבר ה' בזה" ...

5. רמב"ם הלכות תשובה ג'ח'

שלושה הן הכופרים בתורה: האומר שאין התורה מעם השם, אפילו פסוק אחד, אפילו תיבה אחת, אם אמר: משה אמרו מפי עצמו, הרי זה כופר בתורה. וכן הכופר בפירושה והוא תורה שבעל פה ...

6. איגרת תימן (איגרות הרמב"ם, מהד' שילת, כרך א', עמ' קל"א-קל"ב)

אמרו [הישמעאלים]: המיירותם התורה ושיניתם אותה, ואתם מחקתם שם פלוני ממנה ... ועוד בהיותה קבלה רבים מרבים במזרח הארץ ובמערבה, ולא נמצא ככולם [= בכל ספרי התורה] חילוף כלל ואפילו בנקודה... ואף כי בעניין [= וכל שכן בעניין שלם] ...

7. מבוא הרמב"ן לפירושו לתורה, מהד' שעוועל, כרך א', עמ' א

משה רבינו כתב הספר הזה [= בראשית] עם התורה כולה מפיו של הקב"ה...

כלומר, לפי המשנה כל האומר "אין תורה מן השמים" אין לו חלק לעולם הבא, אבל אין היא מגדירה "תורה מן השמים" מהי. התוספתא קובעת שאלה "שכפרו בתורה" גיהנום נגעת בפניהם, אבל אין היא מגדירה כפירה בתורה מהי. הברייתא בבבלי מוסיפה שמי שאמר שכל התורה כולה מן השמים חוץ מפסוק אחד שלא אמרו הקב"ה אלא משה מפי עצמו עבר על הפסוק "כי דבר ה' בזה".

הרמב"ם בפירושו למשנה פירש את המשנה הנ"ל בצורה מחמירה וככל הנראה על דעת עצמו: "תורה מן השמים" פירושה שכל התורה הזו הנמצאת בידינו היום היא התורה שניתנה למשה, והוא מצרף לזה את דברי הברייתא בבבלי שכל האומר שמה אמר פסוק אחד מפי עצמו עבר על "כי דבר ה' בזה". במשנה תורה הוא החמיר עוד יותר ואמר "אפילו פסוק אחד, אפילו תיבה אחת"—דבר שלא נזכר באף מקור—ומיזג את הבבלי עם התוספתא: "אם אמר משה אמרו מפי עצמו [על פי הבבלי] הרי זה כופר בתורה [על פי התוספתא]". ובאיגרת תימן הוא טען שלא נמצא בכל ספרי התורה שבעולם חילוף כלל ואפילו בנקודה. הרמב"ן לא בא לפסוק הלכה, אבל הוא קובע שמה רבינו כתב את התורה כולה מפיו של הקב"ה.

לכאורה, יש כאן איסור מוחלט של לימוד ביקורת הטקסט, כי אסור לפקפק "אפילו בתיבה אחת" (משנה תורה), ומי שלומד ביקורת המקורות "אין לו חלק לעולם הבא" לפי הגדרת הרמב"ם של "תורה מן השמים" (פירוש המשנה), ואם הוא מייחס פסוק למשה הוא עובר על "כי דבר ה' בזה" (בבלי סנהדרין ופירוש המשנה) והוא כופר בתורה (משנה תורה). ואכן, הרבה רבנים אורתודוקסים בימינו פוסקים הלכה על פי הרמב"ם ואף מרחיבים את איסורו. בשנת תשל"ה פרסם הרב יצחק שמשון לנגה בירושלים את "פירושי התורה לר' יהודה החסיד", גדול חסידי אשכנז ומחברו של "ספר חסידים", שנפטר בשנת 1217. באותו פירוש יש ארבע דוגמאות ברורות של ביקורת המקורות, ובשני מקרים הוא מייחס פסוקים ל"אנשי כנסת הגדולה" (הדוגמאות מובאות להלן, סעיף VI, ב, 7). הרב משה פיינשטיין (1895–1986), אחד מגדולי הפוסקים במאה העשרים, נשאל אם מותר להדפיס או לקיים את הספר הזה (אגרות משה, יורה דעה, חלק ג', סימן קי"ד-קט"ו). הרב פיינשטיין פסק שאסור להדפיס את הספר הזה ואפילו החלקים שאין בהם כפירה. הוא הסתמך על סנהדרין צ"ט, פירוש המשנה ומשנה התורה הנ"ל והוא אף הרחיב את האיסור בשני כיוונים:

ומי שאומר שאיכא [= שיש] אפילו רק אות אחת שכתב משה בעצמו הוא כופר בתורה ובכלל "כי דבר ה' בזה", וכל שכן מי שיאמר שאיכא [= שיש] איזה דבר שאף משה לא כתבו אלא אחרים או שבאו אחרים והחסירו זה מן התורה—שהם כופרים בתורה ובכלל "כי דבר ה' בזה" ...

כלומר, הרמב"ם הרחיב את האיסור של ייחוס התורה למשה מ**פסוק אחד לתיבה אחת**; בא הרב פיינשטיין והרחיב את האיסור **מתיבה אחת לאות אחת!** הברייתא בבבלי והרמב"ם קבעו שהמייחס פסוק ל**משה עבר על "כי דבר ה' בזה"**; בא הרב פיינשטיין ובנה קל וחומר, שכל שכן שאסור לומר שבאו **אחרים** והוסיפו או החסירו מן התורה.

(III) חולשות כלליות במקורות הנ"ל

1) **האיסורים הנ"ל מבוססים על דברי אגדה:** הרמב"ם ור' משה פיינשטיין הנ"ל פוסקים הלכה על פי משנה, תוספתא ובבלי סנהדרין הנ"ל. ברם, אין שום צל של ספק שהמקורות הנ"ל הם בגדר **אגדה ולא הלכה**. הרי הביטוי "האומר X אין לו חלק לעולם הבא" הוא ביטוי אגדי מובהק. ראשית כל, כך ברור מההקשר במשנה סנהדרין פרק י'. יש שם רשימה של ארבעה-עשר אנשים או קבוצות שאין להם חלק לעולם הבא, וביניהם מנשה, דוד המבול, דוד הפלגה, אנשי סדום, עדת קורח, ואנשי עיר הנדחת. כלום יעלה על הדעת שבהלכה אנו עוסקים?! הוא הדין בפרק המקביל בתוספתא סנהדרין פרק י"ג. יתר על כן, ברור ממקומות אחרים בספרות חז"ל שמדובר בביטוי אגדי הבא להרתיע ולא בביטוי הלכתי הבא לאסור. והרי כמה דוגמאות:

א. "רבי עקיבא אומר: אף הקורא בספרים החיצונים [אין לו חלק לעולם הבא], והלווחש על המכה ... אבא שאול אומר: אף ההוגה את השם באותיותיו." (משנה סנהדרין י"א).
 ב. "ר' עקיבא אומר: המנענע קולו בשיר השירים בבית המשתאות ועושה אותו כמין זמר, אין לו חלק לעולם הבא" (תוספתא סנהדרין י"ב:י).

- ג. "אבא שאול אומר משום רבי עקיבא: אף הלוחש על המכה ... ורוקק אין לו חלק לעולם הבא" (שם; והשוו שבועות ט"ז ע"ב).
- ד. "וכל העובר אחר אשה בנהר אין לו חלק לעולם הבא" (ברכות ס"א ע"א = עירובין י"ח ע"ב).
- ה. "אבל המלבין את פני חבריו ברבים אין לו חלק לעולם הבא" (בבא מציעא נ"ט ע"א = סנהדרין ק"ז ע"א; והשוו סנהדרין צ"ט ע"א, ק"ז ע"א; אבות ג' י"א).
- אכן, אפשר לפסוק הלכה על פי אגדה ויש הרבה דוגמאות לכך במשך הדורות,⁶ אבל אין חובה לעשות כך. ובאמת, יש פוסקים חשובים שהתנגדו לפסיקת הלכה על פי אגדה. לדוגמא, רב האי גאון קבע: "והגדה אין סומכין עליה" (תשובות הגאונים הרכבי, סימן ט'); "אין סומכין על דברי אגדה" (שם, סימן צ"ח; והשוו סימנים צ"ט, שנ"ג).
- במקרה הספציפי שלנו, מתוך גדולי הפוסקים, רק הרמב"ם פסק הלכה על פי המקורות הנ"ל; הרי"ף, הרא"ש, הטור, והשלחן ערוך התעלמו מהם.

2) היחס לדוגמות ביהדות: אמנם, יש אמונות בסיסיות ביהדות, כגון קיומו של ה' וייחודו, ואותן אמונות כלולות בתרי"ג מצוות. אבל היהדות לרוב מבוססת על מעשים ולא על אמונות או דוגמות. אכן, זאת הסיבה ש"ג העיקרים של הרמב"ם נתקלו בהתנגדות חזקה במשך הדורות. יש חכמים שהתנגדו לעצם הניסיון לקבוע דוגמות. אחרים התנגדו כי אמרו שרשימת הדוגמות של הרמב"ם איננה מדויקת. ואחרים התנגדו כי אמרו שכל התורה כולה היא דוגמה וכל הכופר בכל דבר בתורה הוא מין ואפיקורוס. לבסוף, פרופ' היימן הוכיח ש"ג העיקרים של הרמב"ם לא נועדו להיות כל העיקרים, כי חסרים בהם דברים בסיסיים כגון קיום האל או בחירה חופשית, אלא הם העיקרים שמופיעים במקרה במשנה סנהדרין פרק חלק.⁷ כלומר, הדוגמות ביהדות הן ענין של מחלוקת גדולה ואי אפשר לטעון "האמן כך וכך" רק מפני שהרמב"ם קבע כך בחיבוריו. חייבים לבדוק כל נושא לגופו, שמא יש דעות אחרות בספרות התלמודית ואצל הראשונים וכן נעשה להלן.

3) מבוא התלמוד המיוחס לרבי שמואל הנגיד⁸ והמודפס בסוף מסכת ברכות בש"ס ווילנא קבע (ד"ה תיובתא): "כל מחלוקת שלא חייב המחלוקת במעשה אלא בדעת לבד לא נגדור בו הלכה כפלוני". וכן אמר הרמב"ם עצמו בשלושה מקומות בפירושו למשנה:

כבר הזכרנו לך כמה פעמים שכל מחלוקת שתהיה בין החכמים ואינה תלויה במעשה אלא קביעת סברה בלבד אין מקום לפסוק הלכה כאחד מהם. (פירוש המשנה

6 יש על כך ספרות ענפה. ראו, לדוגמא, ר' צבי הירש חיות, כל ספרי מהר"ץ חיות, כרך א', ירושלים, תשי"ח, עמ' רמ"ג-רנ"ג וכן חידושיו לנדרים מ' ע"ב; מנחם אלון, המשפט העברי, מהד' ג', ירושלים, תשמ"ח, עמ' 84-92.

7 ראו וקסמן; ג' ייקובס, 1964, מבוא; שפירו, 1993, עמ' 188-190 וכל הספרות הרשומה שם; קלנר, 1999; שפירו, 2004, "Articles of Faith" and "Belief"; Solomon Schechter, *Encyclopaedia Judaica*, s.v. *Studies in Judaism*, First Series (London: Black, 1896), 147-181.

8 אותו חיבור באמת נכתב על ידי ר' שמואל אבן חנניא הנגיד, ראש ישיבת מצרים, שחי למעלה ממאה שנה לאחר פטירתו של ר' שמואל הנגיד—ראו מרדכי מרגליות, ספר הלכות הנגיד, ירושלים, תשכ"ב, עמ' 68-73.

לסנהדרין י'ג', עמ' קמ"ה; והשוו פירושו לסוטה ג'ג', עמ' קע"ד ולשבועות א'ד', עמ' קס"ז).

אנו נראה להלן שיש תנאים ואמוראים החולקים על משנה, תוספתא ובבלי סנהדרין הנ"ל. ולפי הכלל של מבוא לתלמוד ושל הרמב"ם עצמו אין לפסוק הלכה בנידון כי לא מדובר במעשה אלא "בדעת לבד" או של "קביעת סברה בלבד". במילים אחרות, היהדות עוסקת באמונות ודעות, אבל לא החלכה.

4) לבסוף, כדי להבין את העמדה הקיצונית של הרמב"ם בנדון צריכים להבין את המציאות של זמנו. מוחמד האשים את היהודים בזיוף של התורה: "אכן אוי לאשר יכתבו את הספר בידיהם ואחר יאמרו 'מאת אלהים הוא' " (סורא ב':ע"ג בתרגומו של יוסף ריבלין). האשמה זאת פותחה אצל הוגי דעות מוסלמיים ובראשם אבן חאזם (994–1064) שפיתח את הטענה של "תחריף", שלפיה היהודים זייפו את כתבי הקודש.⁹ על רקע האשמות אלו אפשר להבין את האמרה הקיצונית הנ"ל באגרת תימן, שבה הרמב"ם כופר בדבר הידוע לכל רב וסופר— שאכן יש חילופי גרסא בתורה. הוא בעצם מכחיש כאן את קיומם של בעלי המסורה שניסו לקבוע טקסט אחיד מתוך שלל הגרסאות שעמדו בפניהם. ככל הנראה הוא הגזים בעניין זה כדי שיהודים פשוטים לא ישתכנעו על ידי טענות המוסלמים. לאחר שראינו את ארבע החולשות הכלליות בשיטת הרמב"ם, נראה עכשיו מקורות ספציפיים הסותרים את שיטתו.

(IV) ביקורת הטקסט בספרות חז"ל ואצל חכמי ימי הביניים¹⁰

1) ספרי דברים, פיסקא שנ"ו, מהד' פינקלשטיין, עמ' 423 (והשוו אבות דרבי נתן, נוסח ב', פרק מ"ו, מהד' שכטר, עמ' 29; ירושלמי תעניות ד'ב', ס"ח ע"א; ומסכת סופרים ו'ד', מהד' היגער, עמ' 169):

"מעין]נה אלהי קדם" (דברים ל"ג: כ"ז): שלושה ספרים נמצאו בעזרה— אחד של "מעונים" ואחד של "היא היא" ואחד נקרא "ספר זעטוטים". באחד כתיב "מעין אלהי קדם" ובשנים כתיב "מעונה אלהי קדם"— ביטלו חכמים את האחד וקיימו שנים. באחד כתיב תשעה "היא" [כשהכוונה ל"הוא"] ובשנים כתיב אחת עשרה "היא"— ביטלו חכמים את האחד וקיימו את השנים. באחד כתיב "וישלח את זעטוטי בני ישראל" (שמות כ"ד:ה') "ואל זעטוטי בני ישראל" (שם, פס' י"א) ובשנים כתיב "וישלח את

9 וראו גם סורא ב': קס"ט; ג'קפ"ד; ה'ט"ז (לפי המיספור של ריבלין); Norman Roth, *Proceedings of the American Academy for Jewish Research* 54 (1987): 203–236; ושפירו, 1993, עמ' 206–207 והספרות הרשומה שם.

10 על ביקורת הטקסט אצל חז"ל ואצל חכמי ימי הביניים ראו מנחם כהן בספרו של סימון, עמ' 42–69; שפרבר; וספרו החשוב של לוי, 2001.

נערי בני ישראל" ואל אצילי בני ישראל" — ביטלו חכמים את האחד וקיימו את השנים.

כלומר, מקור תנאי זה מתאר ביקורת הטקסט של התורה בתקופת בית שני והסיפור מלמד שעסקו בכך לא רק להלכה אלא גם למעשה.

(2) אבות דרבי נתן, נוסח א', פרק ל"ד, מהד' שכטר, עמ' 100 (והשוו נוסח ב', פרק ל"ז, עמ' 97 ובמדבר רבה ג:י"ד ומקבילות):

עשר נקודות בתורה, אלו הן. [ואז יש רשימה של כל המילים בתורה עם ניקוד עליהן]. למה? אלא כך אמר עזרא: אם יבוא אליהו ויאמר לי: מפני מה כתבת כך? אומר אני לו: כבר ניקדתי עליהן. ואם אומר לי: יפה כתבת, אעבור נקודה מעליהן.

כלומר, לפי אבות דרבי נתן, עזרא הסופר בכבודו ובעצמו במאה החמישית לפני הספירה עסק בביקורת הטקסט והסתפק עם מילים מסוימות שייכות בתורה אם לאו, ולכן הוא ניקד אותן כדי שיוכל לשאול את אליהו הנביא בימות המשיח. אכן, פרופ' ליברמן הוכיח (עמ' 182–183) שגם היוונים נהגו לנקד מילים מסופקות תוך כדי העתקה.

(3) בראשית רבה, ט'ה', עמ' 70; כ"י"ב, עמ' 196; צ"ד:ט', עמ' 1181–1182; ירושלמי תעניות א':א', ס"ד ע"א:

בתורתו שלר' מאיר מיצאו כתוב "והנה טוב מאד" (בראשית א':ל"א) — "והנה טוב מות" ...

"ויעש ה' אלהים לאדם ולאשתו כתנות עור וילבשם" (בראשית ג':כ"א). בתורתו של ר' מאיר מיצאו כתוב "כתנות אור", אלו בגדי אדם הראשון שדומין לפנס ...

בתורתו של ר' מאיר מיצאו כתוב [במקום "ובני דן ח[ו]ן שים" (בראשית מ"ו:כ"ג)] — "ובן דן ח[ו]ן שים" ...

בספרו של ר' מאיר מיצאו כתוב "משא דומה" (ישעיהו כ"א:י"א) — "משא רומי" ...

יש מפרשים שרבי מאיר כתב דרשות אלו בגליון ספר התורה שלו, אבל אין הדברים נראים. התנא ר' מאיר (דור רביעי) היה סופר סת"ם (קהלת רבה ב':י"ח-י"ט, מהד' הירשמן, עמ' 150 ועוד); כאן אנו שומעים על שינויי גירסא ש"מיצאו כתוב" בספר התורה שלו ואין מוחה ואין מצפץ.¹¹

11 בדיון בספר התורה של ר' מאיר, ראו ליברמן, עמ' 167–168.

4) קידושין ל' סוף ע"א:

אמר רב ספרא [אמורא בבלי, דור שלישי] משום רבי יהושע בן חנניא [תנא, דור שני] ... וא"ו ד"גחון" (ויקרא י"א: מ"ב) חציין של אותיות של ספר תורה ... בעי רב יוסף [אמורא בבלי, דור שלישי]: וא"ו ד"גחון" מהאי גיסא [= במחצית הראשונה של ספר התורה] או מהאי גיסא? אמרו ליה: ניתי ספר תורה ואימנינהו [= נביא ספר תורה ונימנה את האותיות]—מי לא אמר רבה בר בר חנה [אמורא, דור שלישי] לא זז משם עד שהביאו ספר תורה ומנאום. אמר להו: אינהו בקיאי בחסרות ויתרות, אנן לא בקיאינן [הם בקיאים בחסרות ויתרות; אנן לא בקיאים].

כלומר, רב יוסף מעיד שבני בבל בזמנו לא היו בקיאים בחסרות ויתרות שבתורה. זאת אומרת שהיו שינויי גירסא בכתוב של התורה בבבל בסוף המאה השלישית לספירה.

5) בעלי התוספות ור' עקיבא אייגר—בפירושיהם לשבת נ"ה ע"ב—כבר הבחינו בעובדה שיש הרבה שינויי גירסא בין הפסוקים המצוטטים בתלמודים לבין המסורה. אכן, עובדה זאת התבססה בעת החדשה עם פרסום מחקרים רבים שאספו מאות דוגמאות של שינויים אלה.¹²

6) תשובות הגאונים, מהד' הרכבי, סימן ג', עמ' 3 = אוצר הגאונים לקידושין, עמ' 84, סימן קצ"א:

לרב האי [גאון, 939–1038]: וש[שאלתם] "תנו רבנן: שמונת אלפים ושמונה מאות ושמונים ושמונה פסוקים [= 8,888] הוא ספר תורה, יתיר עליו ספר תלים שמונה [= 8,896], פחות ממנו דברי הימים שמונה [= 8,880]" (קידושין ל' ע"א)—באיזה מניין? והא קא חזינן דלא הוי הכין! [= והרי אנו רואים שזה לא כך!] [תשובה]: יפה הוקשה לכם, ודאי דלא הוי הכין! תורה חמשת אלפים ושמונה מאות ושמונים וארבעה פסוקים [= 5,884] וספר תילים שני אלפים וחמש מאות ועשרים וארבעה פסוקים [= 2,524], דברי הימים אלף ותשע מאות ושבעים [= 1,970]. אלא כך שמענו מפי חכמים הראשונים שאמרו ברייתא הדא [מקידושין] בסופרים מסכתא באותו ספר תורה שמיצאו אותו בירושלם שהיה משונה בכתב ובמנין פסוקין שלו וכן

12 יש על כך ספרות ענפה. ראו, בין השאר, את אליעזר לאנדסהוטה, מגיד מראשית (על ההגדה), ברלין, 1855, עמ' viii–ix; ש' וולדברג, דרכי השינויים, למברג, 1870; ש' רוזנפלד, משפחת סופרים, ווילנא, 1883; Max L. Margolis, *The Columbia College Manuscript of Meghilla* (New York, 1892), 11–14; V. Aptowitz, *Das Schriftwort in der rabbinischen Literatur*, 2nd ed. (New York: Ktav, 1970), עמ' 42–40, 30–29, 6–3; ישיעיהו מאורי, Z. Zinger, "The Bible Quotations in the Pesikta de Rav Kahana," *Textus* 5 (1966): 114–124; ירושלים, תשמ"ג, עמ' 395–417; שרגא אברמסון, סיני פ"ז (תש"ם), עמ' קצ"ג–ר"ח; ישיעיהו מאורי, ספר הזכרון למשה גושן-גוטשטיין, כרך ג', רמת גן, 1993, עמ' 286–267; ועוד הרבה.

ספר תלים וכן דברי הימים, אבל עכשיו אין תורה אלא כך ואין תילים אלא כך ואין דברי הימים אלא כך.

כלומר, רב האי גאון מסביר על פי ברייתא אבודה ממסכת סופרים שהברייתא במסכת קידושין עסקה בספר תורה ספציפי שמצאו אותו בירושלים, אבל בימינו—בבבל במאה ה'—י"א—מנין הפסוקים שונה לחלוטין.

(7) בראשית רבתי לבראשית מ"ה:ח', מהד' אלבק, עמ' 209–212:

"וישימני לאב לפרעה" (בראשית מ"ה:ח') ... בספרו של ר' מאיר כתוב "וישימני לאב" שנאמר "אשר ישה ברעהו" (דברים ט"ו:ב'). דין הוא מן מליא דכתיבן באורייתא דנפקת מן ירושלם בשבייתא וסלקת לרומי והות גניזא בכנישתא דאסוירוס [= זהו מן הדברים שכתובים בתורה שיצאה מירושלים בשבי ועלתה לרומי והייתה גנוזה בבית הכנסת של אסוירוס] ... כן היו כתיבין באורייתא דנפקת מירושלם [= כך היו כתובים בתורה שיצאה מירושלים].

מדרש בראשית רבתי מיוחס על ידי חנוך אלבק ואחרים לר' משה הדרשן בנרבונא במחצית הראשונה של המאה ה'יא, אבל חננאל מאק מפקפק בייחוס הזה.¹³ בכל אופן, המדרש הנ"ל רושם כעשרים שינויי גירסא מספר תורה שיצא מירושלים לרומא לאחר חורבן בית שני. ואפילו אם אותה מסורת איננה בטוחה מבחינה היסטורית, היא מלמדת שאותו הדרשן אינו פוסל שינויי גירסא שבתורה.

(8) במבוא של רד"ק (ר' דוד קמחי, נרבונה 1160–1235) לפירושו לנביאים ראשונים, הוא מנסה להסביר את קיומם של קרי וכתוב לפסוקים רבים:

ונראה כי המלות [= המילים] האלו נמצאו כן לפי שבגלות הראשונה אבדו הספרים ונטלטלו, והחכמים יודעי המקרא מתו ואנשי כנסת הגדולה [ש] החזירו התורה לישנה **מיצאו מחלוקת בספרים והלכו בהם אחר הרוב לפי דעתם**, ובמקום שלא השיגה דעתם על הברור כתבו האחד ולא ניקדו או כתבו מבחוץ ולא כתבו מבפנים, וכן כתבו בדרך אחד מבפנים ובדרך אחר מבחוץ (מקראות גדולות הכתר, יהושע-שופטים, רמת גן, תשנ"ב, עמ' י"ד).

כלומר, הרד"ק מסביר שאנשי כנסת הגדולה עסקו בביקורת הטקסט—במקום שיכלו הכריעו וכשלא יכלו להכריע רשמו כתיב וקרי. אכן, הרד"ק חוזר על הסבר זה פעמים רבות בפירושו.¹⁴

13 חננאל מאק, מסודו של משה הדרשן, ירושלים, תש"ע, פרק 20.

14 צבי הירש כהן, פירוש רד"ק על הושע, ניו יארק, תרפ"ט, מפנה במבוא האנגלי, עמ' xxviii לרד"ק לשמואל ב' ט"ז:ב; שמואל ב' ט"ז:ב; מלכים א' י"ז:ד; דברי הימים א' א' ז'; בראשית י"ד: א' אבל

9) ר' מאיר הלוי אבולפיה, הרמ"ה (טולידו, 1170–1244) פרסם חיבור שלם בשנת 1227 המכונה "מסורת סייג לתורה" (פרינצי, 1750) שמטרתו קביעת הנוסח המדויק של התורה.¹⁵ בהקדמה לאותו ספר הוא כותב (בעמוד מיד לאחר ההסכמות):

... ואם באנו לסמוך על הספרים המוגהים אשר בידינו, גם הם נמצאו בהם מחלוקות רבות ... ואם יאמר אדם לכתוב ספר תורה כהלכתו, ילקה בחסר וביתר ונמצא מגוש כעוזר באפלת המחלוקות ... חשתי להיחלץ ולדרוש ולחקור אחר הספרים המוגהים והמדוקדקים ... וללכת אחר [הספרים] הישנים הנאמנים ולנטות בהם אחר הרוב כדרך שנצטוונו מן התורה בכל דבר המחלוקות ללכת אחר הרוב [ראו שמות כ"ג:ב'] ...

כלומר, הוא מעיד על שינויי גרסא רבים בין ספרי התורה בימיו והוא החליט להכריע על פי דעת רוב הספרים ובדומה לספרי דברים הנ"ל (לעיל, סעיף IV, 1). אכן, הוא בעצמו כתב ספר תורה כאב-טיפוס שהרבה העתיקו ממנו בשנים שלאחר מותו.

10) ר' אברהם בן הרמב"ם (1186–1237) נשאל על הפרשיות הפתוחות והסתומות בתורה והוא השיב:

... בניגוד למה שפורש בספר אהבה [של הרמב"ם, הלכות ספר תורה ח"ד:] כבר השיבנו מקדם ואנו חוזרים כאן על תמציתו, והוא שאנו רואים שיש הרבה חילוקים בין הסופרים בדבר הפרשיות הפתוחות והסתומות, והספרים הנמצאים בישראל שונים הרבה בעניין זה, וכבר ראינו בעלי הוראה ז"ל שנקראו במעמדם [= בנוכחותם] בכל אחד מן הספרים הללו, והוא דבר של טעם, כי אין עמנו ספר העזרה (קידושין ס"ה ע"א) שנוכל לדקדק ממנו את הדבר, ואין בעניין זה קבלה שהכל מסכימין עליה, עד שנפסול מה שישתור אותה. והנכון לדקדק את הדבר כפי שהוא בחיבור [= במשנה תורה הנ"ל] בספר אהבה, אך מה ששונה ממנו אין לפסוק עליו שהוא פסול, אלא אם יהיה שונה מכל הספרים הנמצאים ... (תשובות רבינו אברהם בן הרמב"ם, ירושלים, תרצ"ז, סימן צ"א).

כלומר, רבינו אברהם פוסק נגד אביו ומקל בעניין פרשיות פתוחות וסתומות שבתורה מכיוון שאין ספר תורה מוסכם ואמין כמו שהיה בעזרה. ולכן ספר תורה רק נפסל בנידון אם הוא שונה מכל שאר הספרים.

ראו שם, הערה 2 להסברים אחרים של רד"ק לקרי וכתב. ראוי לציין שגם פרופ' ליברמן, עמ' 65, ציטט את דברי הרד"ק על קרי וכתב. והשוו ויזל, תשע"ה.

15) על חיבור חשוב זה ראו ישראל תא שמע, קרית ספר מ"ה (תשל"ל), עמ' 119–126; מרדכי ברויאר, כתר ארם צובא והנוסח המקובל של המקרא, ירושלים, תשל"ו, עמ' 12–17, 88–94; Bernard Septimus, *Hispano-Jewish Culture in Transition: The Career and Controversies of Ramah* (Cambridge: Harvard University Press, 1982), 35–38

11) ר' יום טוב ליפמן מילהאוזן (בוהמיה, המאות הי"ד-הט"ו) כתב חיבור בשם "תיקון ספר תורה" שנדפס בפעם הראשונה בשנת תשכ"ז. בתחילת אותו חיבור המוקדש לפתוחות ולסתומות שבתורה הוא כותב:

יען כי [בעוונותינו הרבים] התורה נשתכחה ולא נמצא ספר תורה כתובה כשורה מפני שהסופרים בורים והלומדים אין משימים ליבם לזאת, על כן יגעתי למצוא ספר תורה כתובה כתיקונה באותיות ובפתוחות ובסתומות ולא מיצאתי, ואין צורך לומר בדקדוק חסרות ויתרות אשר נעלם מכל בני הדור, ועל זה אנו אנוסים ... (סיני ס' [תשכ"ז], עמ' רנ"א).

כלומר, ר' יום טוב ליפמן מילהאוזן התאמץ למצוא ספר תורה כתובה כתיקונה הן באותיותיה והן בפתוחות וסתומות שבה והתייאש מכך.

12) הרמ"א, ר' משה איסרליש (פולין, 1530–1572) בהגהותיו לשלחן ערוך אורח חיים קמ"ג:ד' התייחס לשאלה מה לעשות כשנמצאה טעות בספר תורה:

דווקא [מוציאים ספר תורה אחר] שנמצא טעות גמור, אבל משום חסרות ויתרות אין להוציא [ספר תורה] אחר, שאין ספרי תורה שלנו מדויקים כל כך שנאמר שהאחר יהיה טוב יותר.

מכל הנ"ל אנו למדים שלדעת חז"ל ביקורת הטקסט התחילה בימי עזרא הסופר בכבודו ובעצמו ונמשכה במשך תקופת התלמוד. בימי הביניים חכמים גדולים כגון הרמ"ה עסקו בביקורת הטקסט של התורה, אבל חלקם הודו שאי אפשר לשחזר את הטקסט המקורי כי הטקסט שבידינו משובש למדי. זאת אומרת, שדברי הרמב"ם הנ"ל ש"כל התורה הזו הנמצאת בידינו היום הזו היא התורה שניתנה למשה" ו"שלא נמצא [בכל ספרי התורה] חילוף כלל ואפילו בנקודה" אינם עומדים בפני הביקורת. התורה נעתקה אלפי פעמים על ידי בני אדם ואי לכך נפלו בה שיבושים קטנים וגדולים. העוסק בביקורת הטקסט לא זז בלבד שאינו חוטא אלא ממשיך הוא בדרכם של בעלי המסורה וכל החכמים החשובים שמנינו לעיל.

(v) ביקורת המקורות או ביקורת גבוהה בספרות חז"ל

עד כאן ראינו מקורות רבים שהסתכלו על ביקורת הטקסט בעין יפה. בנוסף על כך, יש מקורות בתלמוד ובמדרש הממרזים על ביקורת המקורות. את המקורות האלה ניתן לחלק לשלושה חלקים:

(א) התגלות בטלבים

רבנים אורתודוקסים רבים בימינו טוענים שכל התורה ניתנה למשה בהר סיני. טענה זאת איננה מתיישבת עם המקור הבא:

גיטין ס' ע"א-ע"ב:

אמר ר' יוחנן (אמורא א"י, דור שני) משום רבי בנאה (א"י, דור ראשון): **תורה מגילה** **מגילה ניתנה** שנאמר (תהלים מ"ח) "אז אמרתי הנה באתי **במוג** [י] **לת ספר** כתוב עלי". רבי שמעון בן לקיש (א"י, דור שני) אומר: **תורה התנומה ניתנה** שנאמר "לק[ו]ח את **ספר התורה הזאת** [ושמתם א]תו מצד ארון ברית ה' [דברים ל"א:כ"ו] ... אי נמי לכדברי לוי (א"י, דור שלישי?) דאמר רבי לוי: **שמונה פרשיות נאמרו ביום שהוקם בו המשכן** [= באחד בניסן, ולא בהר סיני], אלו הן: פרשת כהנים (ויקרא כ"א), פרשת לויים (במדבר ח'), ופרשת טמאים (במדבר ט'), ופרשת שילוח טמאים (במדבר ה"א-ד'), ופרשת אחרי מות (ויקרא ט"ז), ופרשת שתויי יין (ויקרא י"ח-י"א), ופרשת נרות (במדבר ח') ופרשת פרה אדומה (במדבר י"ט).

רש"י על המקום מפרש את שלוש הדעות: ר' יוחנן סבר שהתורה מגילה מגילה ניתנה, ש"מתחילה נכתבה מגילת בראשית והדר מגילת נח והדר מגילה אברהם". ריש לקיש סבר שהתורה חתומה ניתנה דהיינו "גמורה ומסוימת ושלימה". רבי לוי סבר ששמונה פרשיות "שהוצרכו ליום [שהוקם בו המשכן] נאמרו ונכתבו ונמסרו בו ביום ונכתבו כל אחת במגילה לבדה לפי שמובדלות ורחוקות זו מזו, הלכך קרי לשאר [התורה] נמי 'מגילה' משום דכשחזר והשלימה הוצרך לכתוב מבראשית עד פרשת כהנים לבד ודילג פרשת כהנים הכתובה כבר וכתב מפרשת כהנים עד פרשת [לויים] וכן כולם".

כלומר, רק ריש לקיש מסכים עם הרבנים המודרניים הדוגלים בתורה מיני. ר' יוחנן סבר שהתורה ניתנה מגילות מגילות בשלבים וככל הנראה בסדר כרונולוגי, ורבי לוי סבר שהתורה ניתנה בשלבים ולא בסדר כרונולוגי.

(ב) עריכה אנושית

(א) ספרי במדבר, פיסקא פ"ד, מהד' הורוביץ, עמ' 80:
 "ויהי בנס[ו]ע האר[ו]ן [ו]ל"ה) (במדבר י"ל"ה) נקוד עליו מלמעלה ומלמטה מפני שלא היה זה מקומו. רבי אומר: מפני שהוא ספר בעצמו ... ר' שמעון אומר: נקוד עליו מלמעלה ומלמטה מפני שלא היה זה מקומו. ומה היה ראוי ליכתב תחתיו? ויהי העם כמתא[ו]ן ננים" (במדבר י"א:א') ...

(ב) ספרי זוטא, מהד' הורוביץ, עמ' 266:
 כל ספר שיש בו שמונים וחמש טע[ו]יות, לא יקרא בו עד שיוגה. יש אומרים: לא נאמרו כל השיעורין הללו אלא שאינה מקומה של פרשה [של "ויהי בנסוע", במדבר י"ל"ה-ל"ז, שיש בה 85 אותיות]. היה צריך לומר "וענן ה' עליהם יומם בנסעם מן המחנה" (במדבר י"ל"ד) [ואז] "ויהי העם כמתא[ו]ן ננים" (שם, י"א:א') ...

(ג) שבת קט"ו ע"ב-קט"ז ע"א

תנו רבנן: "ויהי בנס[ו]ע האר[ו]ן [ו]יאמר משה" פרשה זו עשה לה הקב"ה סימניות מלמעלה ולמטה לומר שאין זה מקומה. רבי אומר: לא מן השם הוא זה, אלא מפני שספר חשוב הוא בפני עצמו ... מאן תנא דפליג עליה דרבי [= מי התנא שחולק על רבי]? רשב"ג הוא, דתנא: רשב"ג אומר: עתידה פרשה זו שתיעקר מכאן ותיכתב במקומה, ולמה כתבה כאן? כדי להפסיק בין

פורענות ראשונה (במדבר י'ל"ג) לפורענות שנייה (שם, י"א:א') ... והיכן מקומה? אמר רב אשי: בדגלים (במדבר י'י"א ואילך).

כבר העיר פרופ' ליברמן (עמ' 178, הערה 6) שהמילה "הקב"ה" בתלמוד הבבלי (מקור ג) חסרה ברש"י, בעין יעקב ועוד, ואם כן הדבר, אותו תנא בשלושת נוסחי הברייתא וכן רשב"ג סבורים ש**משה רבינו** הוא זה שהכניס נונין הפוכין לפני ואחרי במדבר י'ל"ה-ל"ו. זאת אומרת ש**משה רבינו** לא רק היה "לבל"ר" כלשונו של הרמב"ם אלא גם עורך של התורה. ואם הוא ערך את החלק הזה, יכול להיות שערך חלקים נוספים.

2א) תוספתא סנהדרין ד' ז' ח', מהד' צוקרמנדל, עמ' 421-422:
יש שם שלוש דעות: ר' יוסי סבור שכתב התורה השתנה בימי עזרא מכתב אשורי לכתב ארמי; רבי סבור שהתורה ניתנה להם בכתב אשורי, כיוון שחטאו נהפך להם לרועץ, כיוון שזכו בימי עזרא חזרו להן אשורית; רבי אלעזר המודעי סבור שהתורה ניתנה בכתב אשורי והכתב לא נשתנה.

2ב) סנהדרין כ"א ע"ב-כ"ב ע"א
הברייתא הנ"ל מופיעה בשינויים, אבל לפניה יש מימרא אמוראית:

אמר ר' זוטרא (בבלי, דור ששי) ואיתימא ר' עוקבא (בבלי, דור ראשון): בתחילה ניתנה תורה לישראל בכתב עברי ולשון הקודש; חזרה וניתנה להם בימי עזרא בכתב אשורית ולשון ארמי; ביררו להן לישראל כתב אשורית ולשון הקודש; והניחו להדיוטות [= לשומרונים] כתב עברית ולשון ארמי.

יש במקורות הנ"ל שלוש תפיסות שונות לגבי תפקידו של עזרא: לדעת רבי אלעזר המודעי, עזרא הסופר לא שינה שום דבר בתורה. לדעת ר' יוסי ורבי, עזרא שינה את הכתב מכתב ארמי לכתב אשורי. ולדעת ר' זוטרא או ר' עוקבא עזרא תירגם את התורה לארמית וחזרה לעברית. כמובן, אפשר לטעון שהתרגום נעשה בידי שמים, אבל אם הוא נעשה בידי עזרא, יש בכך השפעה גדולה של בן-אדם על טקסט התורה שבידינו כי, כידוע, כל מתרגם משפיע מאד על תוכן הטקסט המתורגם.

3) מדרש תנחומא, כי תשא, סימן ט"ז:

"ויתן אל משה ככלתו [לדבר אתו בהר סיני, שני לוחות העדות ל]ח[ו]ת העדות, ל]ח[ו]ת אבן כת[ו]ת בים באצבע אלהים" (שמות ל"א:י"ח). אמר רבי אבהו (אמורא א"י, דור שלישי): כל ארבעים יום שעשה משה מלמעלן היה לומד תורה ושוכח. לסוף אמר לו: ריבוננו של עולם, הרי באו ארבעים יום ואיני יודע דבר! מה עשה הקב"ה? משהשלים ארבעים יום נתן לו את התורה במתנה שנאמר "ויתן אל משה ככלתו". וכי כל התורה למד משה? והלא כתיב "אר[ו]כה מארץ מ[י]ד[ה]" (איוב י"א:ט"ו)? **אלא כללים כללים לימדה הקב"ה למשה שנאמר "ככלתו".**

יש אומרים שמדרש זה עוסק בתורה שבעל פה, אבל דבר זה אינו נרמז בטקסט. יתכן אפוא שלדעת ר' אבהו ה' לימד את התורה למשה ככללים והוא זה שהפך אותם לפרטים ואם כן הדבר, משה רבינו שיחק תפקיד חשוב מאד בכתיבת התורה.

(ג) **יש פסוקים בתורה שנכתבו לאחר מותו של משה רבינו**
(1) בבא בתרא י"ד ע"ב-ט"ו ע"א:

תנו רבנן ... משה כתב ספרו ופרשת בלעם ואיוב, **יהושע כתב ספרו ושמונה פסוקים שבתורה** ... אמר מר: "יהושע כתב ספרו ושמונה פסוקים שבתורה"—תניא כמאן דאמר שמונה פסוקים שבתורה יהושע כתבן דתניא "וימת שם משה עבד ה'" (דברים ל"ד:ה'). אפשר משה [חי] וכתב "וימת שם משה"? אלא עד כאן כתב משה, **מכאן ואילך כתב יהושע**—דברי ר' יהודה ואמרי לה ר' נחמיה. אמר לו ר' שמעון: אפשר ספר תורה חסר אות אחת וכתב "לק[ו]ח את ספר התורה הזה" (דברים ל"א: כ"ו)! אלא עד כאן הקב"ה אומר ומשה כתב, מכאן ואילך הקב"ה אומר ומשה כותב בדמע ...

כלומר, לדעת ר' שמעון, משה רבינו כתב את שמונת הפסוקים האחרונים בתורה בדמע, אבל לדעת התנא בברייתא הראשונה ולדעת ר' יהודה או ר' נחמיה, יהושע כתב את שמונת הפסוקים האחרונים בתורה לאחר מותו של משה.

(2) מכות י"א ע"א:

"זיכת[ו]ב יהושע את הדברים האלה בספר תורת אלהים" (יהושע כ"ד: כ"ו) פליגי בה ר' יהודה ור' נחמיה: **חד אמר [שיהושע כתב בתורה] שמונה פסוקים וחד אמר ערי מקלט.**

[וסתם התלמוד מפרש: בשלמא למאן דאמר "שמונה פסוקים", היינו דכתיב "בספר תורת אלהים", אלא, למאן דאמר "ערי מקלט", מאי "בספר תורת אלהים"? הכי קאמר: "ויכתוב יהושע" **בספרו** "את הדברים האלה" הכתובים "בספר תורת אלהים".

יש שני רבדים של הסוגיא הזאת. ברובד הקדום, התנאי, אחד מהתנאים אומר שיהושע כתב את שמונת הפסוקים האחרונים **שבתורה** ואחד מהם אומר שהוא כתב את ערי המקלט **שבתורה**, מכיוון שנושא זה מופיע גם בספר יהושע פרקים כ'-כ"א. הדעה השנייה לא מצאה חן בעיני סתם התלמוד ולכן הוא בא ותיקן ("הכי קאמר") שהכוונה שיהושע כתב **בספרו** מה שהיה כתוב כבר ב"ספר תורת אלהים".

כלומר, יש במקורות הנ"ל שלוש גישות של התנאים: משה כתב את כל התורה; יהושע כתב את שמונת הפסוקים האחרונים שבתורה; או יהושע כתב את "ערי המקלט" שבתורה.

(VI) **ביקורת המקורות אצל חכמי ימי הביניים**

בסעיף הקודם ראינו רמזים לביקורת המקורות בספרות חז"ל. עתה נראה שדי הרבה חכמים בימי הביניים סברו שבני אדם ערכו או כתבו חלק מהתורה. מקורות אלה מתחלקים לשתי קבוצות:

(א) **משה או בן-אדם אחר ערך חלקים של התורה**¹⁶
 (1) בבראשית ל"ב:כ"א מסופר איך יעקב אבינו חילק את עבדיו לקראת המפגש עם עשו:

ויצו גם את השני גם את השלישי גם את כל הה[ו]לכים אחרי העדרים לאמר ... ואמרתם גם הנה עבדך יעקב אחרינו—**כי אמר: אכפרה פניו במנחה הה[ו]לכת לפני ואחרי כן אראה פניו אולי ישא פני.**

ר' אברהם אבן עזרא (ספרד, 1092–1167) פירש " כי אמר' יעקב בלבו; **אלה דברי משה**". כלומר, משפט זה נאמר על ידי משה רבינו ולא על ידי הקב"ה, ומכאן שמשה רבינו היה יותר מ"לבלר" הכותב מה שה' הכתיב.

(א2) ר' יוסף בכור שור (צרפת, נולד 1140) כתב בפירושו לאותו פסוק:

"כי אמר אכפרה פניו: **בעל הספר פירש** כי על כן עשה יעקב כל זאת להעביר ממנו פנים של זעם אם כוונתו לרעה ...

אפשר לטעון ש"בעל הספר" הוא הקב"ה, אבל סביר יותר להניח ש"בעל הספר" הוא משה רבינו או עורך אנושי אחר שבא להסביר את מחשבותיו של יעקב באותו רגע.

(ב) אכן, בדברים א':א' כותב ר' יוסף בכור שור:

"אלה הדברים אשר דבר משה אל כל ישראל"—סמוך למיתתו **סידר להם את התורה** כדי שלא ישתכחו המצוות ... ולכך מנה אותם מקומות שניתנה בהם תורה **שהוא רוצה לסדר**, כי תורה מקומות מקומות ניתנה.

הווי אומר, בעיני ר' יוסף בכור שור, משה רבינו הוא המסדר = העורך של ספר דברים.

(3) גם הרשב"ם (ר' שמואל בן מאיר, צרפת, 1080–1160), נכדו של רש"י ואחד מבעלי התוספות החשובים, סבר שמשה רבינו היה העורך של התורה. וכך הוא כתב בפירושו לבראשית א':א':

16 סעיף זה מבוסס על מאמרו של הרב הריס. לעוד פרשנים מימי הביניים שדברו על עריכת התורה ושאר ספרי המקרא ראו סטיינר; שלושת מאמריו של ויזל; ולוקשין.

גם כל הפרשה הזאת של מלאכת ששת ימים הקדימה משה רבינו לפרש לך מה שאמר [קן ב"ה] בשעת מתן תורה "זכור את יום השבת לקדשו" (שמות כ"ח): ...

4) ר' אלעזר מבלגנצי (צרפת, המאה הי"ב) היה תלמידו של הרשב"ם. בכמה מקומות בפירושו הוא מדבר על "הסופר" של ספר במקרא במובן של עורך (ראו פירושו ליחזקאל א"ב:ג'; יונה א"י'). וכן הוא עושה בפירושו לישעיהו ז'ב' (במקראות גדולות הכתר):

... אבל הסופר דרכו להגיד בתחלת דבריו גוף המעשה בקוצר. כיוצא בו: "ויצא יעקב מבאר שבע וילך חרנה" (בראשית כ"ח:י) ואחר כך אמר "ויפגע במקום" (שם, י"א) לפרש הדבר. אף כאן תחלה אמר שרצין ופקח עלה, ואחר כך מפרש הדבר יפה ...

כלומר, כשם שר' אלעזר מבלגנצי מדבר על "הסופר" במובן של העורך של יחזקאל, יונה וישעיהו, כך הוא מדבר על "הסופר"/העורך של ספר בראשית.

5) "סדר עולם", כרוניקה היסטורית מימי הביניים, שפורסמה על ידי א' נויבאור (סדר החכמים וקורות הימים, חלק א', אוקספורד, תרמ"ח, עמ' 163) וכן על ידי עלי יסיף בימינו (ספר הזכרונות הוא דברי הימים לירחמיאל, תל אביב, תשס"א, עמ' 368-369):

בימי משה רבינו היו ספרים כתובים, שכתבו בהם דברי הימים אשר מעולם, אבות הראשונים אשר מאדם הראשון כמו שמצינו באגדה: "ספרו של אדם הראשון כתוב בו מעשה בראשית ומעשה מרכבה ברמזים, דוגמת משנת שמואל בעסקי התקופות והמזלות."¹⁷ [ואדם מסר לשת וכן הלאה עד ימי משה.] משה רבינו כשבא לכתוב את המעוות נתיישר בעיניו לכתוב איך קבלו ישראל את התורה. ומתוך שירד לפרש מה שהיה בימיו, כתב באיזו עלילה ירדו ישראל למצרים וסדר האבות מתחילתן. ראה בספרים וכתב על פיהן מימי בראשית, ועל פי רוח הקודש עשה מה שעשה ו"כח מעשיו הגיד לעמו" (תהלים קי"א:ו) ...

כלומר, משה רבינו בעצמו כתב בתורה את תולדות עם ישראל עד ימיו על פי ספרים כתובים שנכתבו מימי אדם הראשון ואילך והוא ערך את כל החומר הזה על פי רוח הקודש.

17 לא מצאתי את המדרש הזה. על ספרו של אדם הראשון ראו סדר עולם רבה, סוף פרק ל', מהד' רטנר, עמ' 150-151 = מהד' מיליקובסקי, כרך א', עמ' 325-326; בבא מציעא פ"ה ע"ב-פ"ו ע"א; ר' מ"מ כשר, תורה שלמה, כרך ב', עמ' שמ"ו, סימן ו'; ור' לוי גינצבורג, אגדות היהודים, מהד' ב', ירושלים, תשס"ט, כרך ראשון, עמ' 178-179 באמצע הערה 27.

(ב) חלקים מסוימים של התורה נכתבו לאחר תקופת משה רבינו או על ידי נביאים אחרים

(1) מדרש חסרות ויתרות, מהד' ש"א ורטהיימר, בתי מדרשות, כרך ב', מהד' ב', ירושלים, תשי"ג, עמ' רע"ד. מדרש זה על המסורה נכתב לפני זמנו של רב האי גאון (939–1038) מכיוון שרב האי הוא הראשון לצטט ממנו.¹⁸

תריז פסוקים שעליהן נוגין הפוכים [במדבר י"ל"ה-ל"ו] ונטפלו [= והוכנסו] בתורה שה[ו] מנבואת אלדד ומידד ונשארה נבואתו [ו]נתפרשה על ידי יחזקאל, כמה שנאמר: "כה אמר ה' אלהים: האתה הוא אשר דברתי בימים קדמונים ביד עבדי נביאי ישראל ...!" (יחזקאל ל"ח:י"ז). ויש אומרים, מלמד שהיה שם ספ[ר] גנוז.

רבו הפירושים למדרש זה ובמיוחד למשפט האחרון,¹⁹ אבל, בסופו של דבר, בעל המדרש סבר שבמדבר י"ל"ה-ל"ו הוא שריד של נבואת אלדד ומידד (במדבר י"א: כ"ו-ל') שהוכנס לתורה בין הנוגין ההפוכים.

(2) גנזי מצרים: הלכות ספר תורה, מהד' א' אדלר, אוקספורד, 1897, עמ' 37. כתב יד זה מן הגניזה בקהיר נכתב כנראה על ידי ר' יוסף ראש הסדר בסביבות שנת 1200:²⁰

ובמקצת מדרשות דרשי טעמ[א] אחרינא ואמ[ר] מה ראו חכמ[ים] ליתן נוגין הפוכין על [= לפני] "ויהי העם כמתא[ו] נגים" (במדבר י"א:א)? אלא אמרו חכמים כל התורה כולה מיוחדת לנבואת משה חוץ מאילו שני פסוקין שהן מנבואת אלדד ומידד לפיכך סיגן בגון כפוף ונטפל [= והוכנס] בתורה.

גם מדרש מאוחר זה סבור שבמדבר י"ל"ה-ל"ו מהווה נבואת אלדד ומידד ולא נבואת משה רבינו.

(3) ר' יצחק מטולדו (982–1056) הובא על ידי אבן עזרא לבראשית ל"ו:ל"א: "ואלה המלכים אשר מלכו בארץ אדום לפני מל[ו]ך [ו] מלך לבני ישראל" — משתמע מכאן שהקטע נכתב בתקופת המלוכה. על כך אומר אבן עזרא: "יש אומרים כי בדרך נבואה נכתבה

18 ראו המבוא של ורטהיימר לאותו מדרש, עמ' ר"ג-ר"ה, וכן הספרות המובאת אצל ש"ז ליימן (בהערה הבאה), הערה 28.

19 ליברמן, עמ' 180, הערה 28; מ"מ כשר, תורה שלמה, כרך י"ט, עמ' 369–366; השל, כרך ב', עמ' Sid Z. Leiman, "The Inverted Nuns at Numbers 10:35–36 and the Book of Eldad; 424–420 and Medad," *JBL* 93 (1974): 348–355; Baruch A. Levine, "More on the Inverted Nuns of Numbers 10:35–36," *JBL* 95 (1976): 122–124.

20 על מחברו של "גנזי מצרים" ראו הספרות אצל ליימן הנ"ל, הערה 24; דוד גולינקין, גנזי ראש השנה, ניו יורק וירושלים, תש"ס, עמ' 23, הערה 112, ובמיוחד סדרת המאמרים של שרגא אברמסון הרשומים שם שהופיעו בסיני צ"ה-ק"ה. לדיון בקטע זה, ראו הספרות בהערה הקודמת.

זאת הפרשה, ויצחקי אמר בספרו כי בימי יהושפט נכתבה זאת הפרשה". אבן עזרא בעצמו חולק עליו, אבל ר' יצחק מטולידו סבר שהפרשה הנידונה בתורה נכתבה בימי יהושפט מלך יהודה (846–867 לפנה"ס).

4) "ורבים אמרו" המובא על ידי אבן עזרא לבמדבר כ"א:א':
 "וישמע הכנעני מלך ערד' ורבים אמרו כי זאת הפרשה יהושע כתבה, והראיה 'מלך ערד אחד' (יהושע י"ב:ד) ...". גם כאן אבן עזרא חולק, אבל "רבים" סברו כי פרשה זאת נכתבה על ידי יהושע.

א5) אבן עזרא (1092–1167) לבראשית י"ב:ו':
 "ויעבר אברם בארץ עד מקום שכם עד אלון מורה, והכנעני אז בארץ" ... ואם איננו כן יש לו סוד. והמשיכיל יידום.

ב5) אבן עזרא לדברים א':ב':

ואם תבין סוד השנים עשר – גם "ויכת[ו] ב משה" (דברים ל"א:כ"ב); "והכנעני אז בארץ" (בראשית י"ב:ו'); " [אשר י]אמר היום] בהר ה' י[ראה" (שם, כ"ב:ד); " [עוג ...] ערשו ערש ברזל [הלא היא ברבת בני עמון]" (דברים ג':א) – תכיר האמת.

ג5) אבן עזרא לדברים ל"ד:א':

"ויעל משה [מערב]ת מואב אל הר נבו" לפי דעתי, כי מזה הפסוק כתב יהושע, כי אחר שעלה משה לא כתב, ובדרך נבואה כתבו.

ד5) אבן עזרא לדברים ל"ד:ו':

"ולא ידע איש את קב[ו]רתו עד היום הזה" דברי יהושע, ויתכן שכתב זה באחרית ימיו.

בפירושים הנ"ל אומר אבן עזרא שהקטעים הנדונים נכתבו לאחר מותו של משה רבינו. הוא מרחיב את שמונת הפסוקים המיוחסים בתלמוד הנ"ל ליהושע (דברים ל"ד:ה'-י"ב) לשנים עשר פסוקים (שם, א'-י"ב). לזה הוא קורא "סוד השנים עשר" והוא משווה את שאר הקטעים המאוחרים ל"סוד השנים עשר".

6) פירוש המיוחס לרשב"ם בכ"י פריס 260 של "מושב זקנים" על התורה שפורסם על ידי יצחק לנגה, המעין י"ב/ד' (תמוז תשל"ב), עמ' 83:
 "זאלה המלכים אשר מלכו בארץ אדום לפני מל[ו]ך מלך לבני ישראל' (בראשית ל"ו:א) — פירש"ם [= פירש רשב"ם] שפרשה זו נכתבה בימי שופטים", ואז בעל מושב זקנים מקשה על אותו פירוש.

7) ר' יהודה החסיד (אשכנז, נפטר 1217) היה המחבר של ספר חסידים והמנהיג העיקרי של חסידי אשכנז הידועים בחסידותם ובאדיקותם. פירושו לתורה יצאו לאור בשנת תשל"ה ועוררו כאמור לעיל את התנגדותו של הרב משה פיינשטיין.²¹ והרי הפירושים החשובים לענייננו:

7א) פירושי התורה לר' יהודה החסיד, מהד' יצחק שמשון לנגה, ירושלים, תשל"ה, עמ' 64. רוב הפירושים נרשמו על ידי ר' משה, בנו של ר' יהודה החסיד, ולכן הוא מצטט מ"אבי".

"וישם את אפרים לפני מנשה" (בראשית מ"ח:כ') **פי' [רש] אבי: לא על יעקב נאמר כי על משה—וישם משה את אפרים לפני מנשה בראש דגל [במדבר י"כ:ב-ג] בעבור שיעקב אמר ו"אחיו הקטן יגדל ממנו" [בראשית מ"ח:י"ט]. ויהושע כתבו [אן] אנשי כנסת הגדולה, שאם תאמר משה כתבו היה לו לומר "ואני שמתתי את אפרים לפני מנשה" כמו שיש אחרי כן [בפס' כ"ב] "ואני נתתי לך שכס אחד על אחיך" ופי' [רש] אבי שמישה כתבו בשנת הארבעים ...**

כלומר, לדעת ר' יהודה החסיד, בראשית מ"ח:כ"ב נוסף לדברי יעקב על ידי משה, ופסוק כ' שמתייחס למשה נוסף על ידי יהושע או על ידי אנשי כנסת הגדולה.

(ב) שם, עמ' 138:

"[וכל קרבן מנחתך במלח תמלח] ולא תשבית מלח ברית אלהיך [מעל מנחתך] (ויקרא ב':י"ג) ... ענין אחר: שמא מתחילה היה כתיב "ולא תשבית מלח מעל מנחתך" בסתם, ואחר שמישה רבינו כתב זה ב"אתם נעבים" [= דברים כ"ט:כ"ב]—גפרית ומלח שר[י] פח כל ארצה" [אז הוסיפו וכתבו מה מלח? "מלח ברית אלהיך".

17) שם, עמ' 184–185:

"אז ישיר ישר[אל] את השירה הזאת" [במדבר כ"א:י"ז] **פירש מ"א [= מזורי אבי]: זהו הלל הגדול [= תהלים קל"ו], שלאחר שניצולו מסיחון ועוגו ועברו נחל ארנון אז נעשה זה השיר. ובחומש היה כתי [ב], אלא שדוד המלך הסיר כל מזמורי יתמי [= שלא הוזכר שם אמרם] של משה שבחומש וחיברן בספר תהלים שלו ...**

21 על פירושו של רבי יהודה החסיד לתורה ראו ברין; תא-שמע, תשנ"ד; שכטר, 1998–1999, עמ' 225, והערה iii; ושורץ. ראוי לציין שהפירושים המופיעים להלן כסעיפים 17, 17, 7' מופיעים גם בכ"י המבורג 45 שהוא פירוש על התורה לר' אביגדור כ"ק (איטליה ווינה, 1200–1275)—ראו צבי יעקב צימלס, בתוך: מאמרים לזכרון ר' צבי פרץ חיות ז"ל, ווינא, תרצ"ג, עמ' רנ"ט, הערה ע'. ומעניין הדבר שבספר פירושים ופסקים על התורה לרבינו אביגדור צרפתי ז"ל, ירושלים, תשנ"ו המהדירים—שהם יהודים חרדים—לא הדפיסו את הפשטים על התורה מכ"י המבורג 45 (ראו שם, עמ' 14) ושמא משום דברי הביקורת הנדונים כאן?

(ד7) שם, עמ' 198:

ר' יהודה החסיד בא להסביר כיצד באו בני ישראל לעציון גבר [דברים ב':ח'] אם המקום היה שייך לאדום [דברי הימים ב' ח':י"ז]. הוא מתרץ שזה לא היה שייך לאדום אלא מלך אדום נשא את מהיטבאל בת מטרד [בראשית ל"ז:ל"ט] והיא הכניסה לו את עציון גבר.

וזהו לא נעשה עדיין בימי משה כי אם "לפני מל[ו]ך מלך לבני ישראל[אל]" [בראשית ל"ז:ל"א]—פירוש, קודם שמלך שאול אחרי כן, אבל בימי שלמה כבר נעשה. לכן כתבו בימי כנסת הגדולה בחומש שלא תתמה איך בא עציון גבר לאדום כמו שכתוב בדברי הימים.

(8) ר' יוסף בונפילס (טוב עלם, ספרד, נולד 1335), צפנת פענח, שהוא פירוש על ר' אברהם אבן עזרא על התורה, מהד' דוד הרצוג, קראקא, תרע"ב, עמ' 91–92. הוא מסביר שם את דברי אבן עזרא הנ"ל (סעיף 5א) על "והכנעני או בארץ" (בראשית י"ב:ו):

...ולפי זה נראה שלא כתב משה זאת המילה [= אז] בכאן, רק יהושע או אחר משאר הנביאים כתבוה כאשר מצאנו בספר משלי (כ"ה:א) "גם אלה משלי שלמה אשר העתיקו אנשי חזקיה מלך יהודה", כי אחר ששלמה חיבר הספר, למה נזכר שם חזקיה שנולד אחר כמה דורות? רק היה זה קבלה בידם איש מפי איש מפי שלמה, ועל כן כתבוהו ונחשב כאילו שלמה כתבו. וככה בכאן היה קבלה בידי ישראל שבימי אברהם היה הכנעני בארץ, וכתב אותו אחד מן הנביאים בכאן, ואחר שיש לנו להאמין בדברי קבלה ודברי נבואה – מה לי שכתבו משה או שכתבו נביא אחר, הואיל ודברי כולם אמת והם בנבואה? ואם תאמר הנה כתוב "לא תוסיף עליו" (דברים י"ג:א) ... בפירושו הראשון בפרשת לך לך (בראשית י"ב:ד') אמר [אבן עזרא] כי לא נאמר "לא תוסיף עליו" רק על המצוות ... אבל לא על המילות [= המילים], על כן אם הוסיף נביא מילה או מילות לבאר הדבר כאשר שמע מפי הקבלה, אין זו תוספת ...

ר' יוסף בונפילס אומר שהמילה "אז" נוספה על ידי יהושע או נביא אחר ואין בכך עבירה על "בל תוסיף" כי אותו איסור חל רק על מצוות ולא על מילים. יתר על כן, אותה תוספת היא גם נבואה אמתית אפילו אם היא נוספה על ידי נביא אחר ולא על ידי משה.

(9) ר' אלעזר בן החסיד רבינו מתתיהו היה חכם מצרי. בפירושו על אבן עזרא על התורה (כ"י ותיקן 54 המובא אצל נפתלי בן-מנחם, מגנזי ישראל בוואטיקאן, ירושלים, תשי"ד, עמ' 129) הוא מסביר את דברי אבן עזרא הנ"ל על בראשית י"ב:ו' ודברים א':ב':

... ידוע, כי בהיות גלות ישורון בבבל נשתכחה התורה עד בוא עזרא הכהן, סופר מהיר בתורת ה', והחזירה להם ולא שינה דבר מכל המצווה אשר ציווה ה' את משה, אך מיתר סיפורי הדברים אשר אין נזק בהרחבת קצת מאמר בהם כאלה הנזכרים לא נזהר הנביא ההוא. ויתכן כי על פי ה' הוסיף את אשר הוסיף, כאשר עשה במסורות ובפסוקים ובטעמים ...

כלומר, לדעת ר' אליעזר בן החסיד רבינו מתתיהו, עזרא הסופר הרחיב חלקים סיפוריים של התורה כשם שהוא חידש דברים במסורות, בפסוקים ובטעמים.

10) ר' גד די לאקוילא (dell'Aquila) כתב אגרת המגינה על אבן עזרא בתחילת המאה הי"ח (נפתלי בן מנחם, ענייני אבן עזרא, ירושלים, תשל"ח, עמ' 326), בה הוא מגן על פירושו לבראשית י"ב:ו' ודברים א"ב:

אם כן החכם קשה לו דברים שנכתבו בתורה והיו אחר כך, על כן כתב אפשר שנאמרו כמשפט הלשון או שנאמרו ברוח הקודש, כמו שכתב מ"ויעל משה" (דברים ל"ד: א') עד סוף הספר כתבם יהושע ברוח הקודש. אם כן אפוא אין הוא [= אבן עזרא] בכלל "כי דבר ה' בזה" (במדבר ט"ו:ל"א על פי סנהדרין צ"ט ע"א הנ"ל) לפי שאמר שנאמרו ברוח הקודש, אבל בכלל "דבר ה' בזה" הוא [רק] מי שאמר ש**משה מדעתו** אמר אפילו פסוק אחד, דאם לא כן, הנה ר' יהודה דפליג על רבי שמעון בשמונה פסוקים שאמר יהושע כתבם [בבבא בתרא ט"ו ע"א הנ"ל] גם הוא בכלל "כי דבר ה' בזה" דמה לי ח' [פסוקים] מה לי י"ב [פסוקים]!? והלא אמרו אפילו פסוק אחד! ...

כלומר, המושג "כי דבר ה' בזה" בסנהדרין צ"ט ע"א חל רק על מי שאמר **שמשה המיציא פסוק מדעתו**, אבל ר' יהושע בבבא בתרא ט"ו ע"א ואבן עזרא בפירושו הנ"ל אמרו שפסוקים מסוימים נאמרו ברוח הקודש על ידי **נביאים אחרים** ואין בכך משום "כי דבר ה' בזה" וזה מותר.

(VII) תקדימים ללימוד ביקורתי מתחומים אחרים

עד כאן ראינו שהרמב"ם והפוסקים כמוותו התנגדו לביקורת הטקסט ולביקורת המקורות. אחר כך הסברנו חולשות כלליות במקורות האוסרים והבאנו תקדימים רבים לביקורת הטקסט והמקורות בספרות חז"ל ואצל חכמי ימי הביניים.

(א) מביקורת התלמוד לביקורת המקרא

ברם, המקשה יכול להקשות בקשר לביקורת המקורות: אכן, מצאנו למעלה מעשרים מקורות המרמזים על ביקורת המקורות במשך הדורות, ועתה ניתן להוסיף מקורות נוספים על פי הספר "בעיני אלהים ואדם" שפורסם לאחרונה. אבל האם יש בכך כדי להצדיק הפרדה שיטתית של התורה למקורות שונים? הרי סך הכל במקורות שהבאנו מדובר על כעשרים פסוקים המיוחסים לנביאים שחיו לאחר תקופת משה רבינו. האם יש בכך כדי לפרנס שיטה שלימה? על זה יש להשיב על פי חקר התלמוד הבבלי בימינו. מו"ר פרופ' שמא פרידמן הראה שרבותינו הראשונים עסקו בביקורת התלמוד ובהפרדת המימרות מדברי סתם התלמוד באופן מקרי וחלקי; אם נצרף את כל הדוגמאות שהוא מביא יחד עם דוגמאות נוספות מדובר באחוז קטן מאד של סוגיות התלמוד.²² אבל אנו יכולים לקחת את שיטתם של הראשונים ולפתח ולשכלל אותה על פי כלי המחקר של ימינו, וכן הוא כותב:

22 שמא יהודה פרידמן בתוך: ח"ז דימיטרובסקי, עורך, מחקרים ומקורות א' (תשל"ח) עמ' 288–293, שנדפס מחדש באוסף מאמרי: סוגיות בחקר התלמוד הבבלי, ניו יורק וירושלים,

הנה ראינו שבעלי התוספות ורבתינו הראשונים שבאו אחריהם ידעו היטב להבחין בין דברי האמורא עצמו לדברי התלמוד שעליהם, אלא שנוקקו להבחנה זו רק במקומות שהייתה קושיא עניינית לגבי שיטתו של אותו אמורא, והקושיא נופלת עם הפרדת המימרה מלשון סתם התלמוד. אולם לצרכי המחקר של ימינו, ראוי לבצע הבחנה זו בכל מקום, בכדי להתייחס למימרות האמוראים כמקורות בפני עצמם, ולעמוד על תוכנם וצורתם המיוחדים. רק בדרך זו ניתן לחקור את תולדות המשפט התלמודי, דהיינו עמדות האמוראים בפני עצמן, בנפרד משיטות הסתמא שנוספו על ידן, שהן שונות לפעמים משיטות האמוראים. כיוצא בו לגבי המחקר הספרותי, הפרדת דברי סתם התלמוד ממימרות האמוראים תאפשר בדיקה מדוקדקת של הללו מבחינת לשון, סגנון וצורתן הספרותית.²³

הוא הדין לגבי ביקורת המקורות במקרא. אבן עזרא, ר' יהודה החסיד ושאר החכמים הנ"ל הפרידו את התורה למקורות כדי לפתור בעיה פרשנית מזדמנת. אבל אנו יכולים בעזרת כלי המחקר המודרניים לבדוק את העניין הזה באופן שיטתי על מנת להבין את התורה טוב יותר מבחינה משפטית וספרותית.

(ב) הטפעת דרכי הלימוד של חכמי העולם על חכמינו

ביקורת המקרא, ובמיוחד ביקורת המקורות, נוצרה בראשיתה על ידי נכרים וביניהם היו גם אנטישמים. אכן, פרופ' ש"ז שכטר, הנשיא של בית המדרש לרבנים באמריקה (JTS; 1902–1915) והמייסד העיקרי של התנועה הקונסרבטיבית בארה"ב, התנגד בחריפות לשיטת וולהאוזן וחתורתו. הוא כינה את הביקורת הגבוהה שלהם, דהיינו ביקורת המקורות, "אנטישמיות גבוהה" בטענה שהמניע של וולהאוזן וחבריו היה להוכיח שרוב התורה מאוחר.²⁴ ברם, בינתיים עסקו ארבעה דורות של חוקרים יהודיים בביקורת המקרא והם הגיעו להישגים מרשימים.²⁵ אף על פי כן, עד היום יש המתנגדים לביקורת המקרא בטענה שמדובר בנטע זר שנוצר על ידי גוים. ברם, האמת היא שפעמים רבות בעבר ספגו חכמי ישראל שיטות לימוד של חכמי אומות העולם ובמרוצת הזמן הפכה אותה חכמה לנכסי צאן ברזל של תורת ישראל. והרי שש דוגמאות:

(1) הגר"ש ליברמן, דוד דאובה, וסטיבן ליברמן הראו ש"ג המידות של ר' ישמעאל ול"ב המידות שההגדה נדרשת בהן הושפעו במידה קטנה או גדולה מדרכי הלימוד של המזרח הקדום ו/או של העולם ההלניסטי.²⁶

תש"ע, עמ' 12–15. במשך השנים אני מצאתי עוד חמש-עשרה דוגמאות של ראשונים שהפרידו בין מימרות לבין סתם התלמוד, אבל אין כאן מקום להאריך.

23 פרידמן, שם, תשל"ח, עמ' 293.

24 Solomon Schechter, *Studies in Judaism*, Second Series (Philadelphia: Jewish Publication Society, 1908), 31–54; idem, *Seminary Addresses and Other Papers* (New York: Arno Press, 1969), 1–7, 35–39; David Fine, "Solomon Schlechter and the Ambivalence of Jewish Wissenschaft," *Judaism* 46, no. 1 (Winter 1997): 3–24.

25 הכוונה לחוקרים כגון שפייר, קויפמן, ח"א גינבורג, וגורדיס בדור הראשון; ויינפלד, סרנה, גרינברג, מופס, ומילגרום בדור השני; ב' לוי, טיגיי, רופא והרן בדור השלישי; זקוביץ, גרינשטיין, קנהל, שורץ וסומר בדור הרביעי. וראו מאמרו החדש של סומר, 2017.

26 ליברמן, עמ' 185–212; David Daube, "Rabbinic Methods of Interpretation and Hellenistic

- (2) חוקרים רבים הראו שרב סעדיה גאון והוגי דעות אחרים בימי הביניים הושפעו מאד מ"הקאלאם" המוסלמי.²⁷
- (3) הרמב"ם בעצמו הושפע מאד מתורת אריסטו. אכן, כשהוא פרסם את "מורה נבוכים" הרבה ראו בספר נטע זר, החרימו אותו ואף שרפו אותו.²⁸
- (4) הגאונים כגון רב סעדיה גאון ורב שמואל בן חפני גאון כתבו מונוגרפיות הלכתיות על נושאים כגון שטרות, מיצרנות ובגרות. התברר לאחרונה שאותן מונוגרפיות מבוססות הן בצורתן והן בתוכנן על מונוגרפיות מוסלמיות של אותה תקופה.²⁹
- (5) פרשני המקרא בימי הביניים הושפעו מפרשני המקרא הנוצרים.³⁰
- (6) פרופ' אורבך הראה שבעלי התוספות הושפעו מהספרות הגלוסטורית והקנוניסטית של הנוצרים בזמנם; המתודה והבעיות המשפטיות דומות בהרבה מקרים.³¹
- ולכן, תהליך הייחוד של ביקורת המקרא שהתרחש במאה העשרים ובמאה העשרים ואחת הוא המשך של תהליך בן אלפי שנים שבו שאלנו דרכי לימוד מתרבויות אחרות ולאט לאט הפכנו אותם לדרכי לימוד שלנו.

(ג) החיפוש אחר האמת בערך דת³²

אלה שעוסקים בביקורת המקרא מעוניינים להגיע לפשוטו של מקרא ולאמת של הטקסט שהם לומדים. רצון זה מעוגן היטב במקורותינו. חכמים רבים במשך הדורות הדגישו את החשיבות של החיפוש אחר האמת וחלקם אף ראו בכך ערך דתי.

והרי כמה ממימרות חז"ל בנידון: "אמת זאת תורה שנאמר 'אמת קנה ואל תמכור' (משלי כ"ג:כ"ג)" (ברכות ה' ע"ב). "חותמו של הקב"ה אמת" (שבת נ"ה ע"א). אנו מברכים על התורה "אשר נתן לנו תורת אמת" (מסכת סופרים י"ג:ו, מהד' היגער, עמ' 244). "מהו 'צינה וסוחרה אמתו' (תהלים צ"א:ד)? אמר ר' שמעון בן לקיש: אמר הקב"ה: זין [= כלי זין] אני

Rhetoric," *HUCA* 22 (1949): 239–264; Stephen J. Lieberman, "A Mesopotamian Background of the So-Called Aggadic 'Measures' of Biblical Hermeneutics?," *HUCA* 58 (1987): 157–225.

27 Colette Sirat, *A History of Jewish Philosophy in the Middle Ages* (Cambridge: Cambridge University Press, 1985), ch. 2.

28 שם, פרק 6. על הפולמוסים נגד כתבי הרמב"ם ראו *Encyclopaedia Judaica* 11:747–753.

29 מנחם בן-ששון, שנתון למשפט עברי י"א-י"ב (תשמ"ד-תשמ"ו), עמ' 151–155; גדעון ליבזון, תרביץ נ"ו (תשמ"ז), עמ' 70–89; ליבזון, מחניים 1 (תשנ"ב), עמ' 74–91; תרצה מיטשם, ספר הבגרות ... וספר השנים ..., ירושלים, תשנ"ט, עמ' 66–70; Gideon Libson, *Jewish and Islamic Law: A Comparative Study of Custom During the Geonic Period* (Cambridge: Harvard University Press, 2003).

30 אפרים תלמג' בתוך: משה גרינברג, עורך, פרשנות המקרא היהודית: פרקי מבוא, ירושלים, תשמ"ג, עמ' 101–112.

31 ראו א"א אורבך, בעלי התוספות, מהד' ד', ירושלים, תשמ"מ, עמ' 744–752. אני מודה לידידי פרופ' מ"צ פוקס שהפנה אותי בזמנו לפרק זה. בשנים האחרונות יש מחלוקת בין אברהם גרוסמן וחיים סולובייצ'יק לגבי ההשפעה הנוצרית על בעלי התוספות, אבל אין כאן מקום להאריך.

32 סעיף זה מבוסס על דברי אורבך וסימון בספרו של סימון, עמ' 13–41; והשוו אבי שגיא, אלו ואלו, הקיבוץ המאוחד, 1996, פרק ט' ושכטר, 1998–1999, עמ' 207.

עושה לכל מי שהוא סוחר באמיתה של תורה. אמר ר' שמעון בר יוחאי: אמיתה של תורה זין הוא לבעליה" (במדבר רבה י"ב:ג).³³

רבי יהושע בן לוי הסביר שירמיהו ודניאל ואנשי כנסת הגדולה שינו נוסח תפילה שתוקן על ידי משה רבינו בעקבות שינויים היסטוריים. הגמרא שואלת: וכיצד עקרו תקנת משה רבינו? "אמר רבי אלעזר: מתוך שיודעין בהקב"ה שאמתי הוא, לפיכך לא חיזבו בו, ורש"י מפרש: "אמתי—מסכים על האמת ושונא את השקר" (יומא ס"ט ע"ב). בסוגיא המקבילה בירושלמי ברכות (ז"ג, י"א ע"ג) נאמר: "אמר רבי יצחק בן אלעזר: יודעין הן הנביאים שאלוהן אמיתי ואינן מחניפין לו".

גם הגאונים והראשונים חתרו אחר "אמיתה של תורה". רב סעדיה גאון (882–942) כתב בספרו "הנבחר באמונות ובדעות" שכל מי שיעיין בספרו וימצא בו דבר לא נכון—שיתקנו. "וכאשר ינהג החכם והתלמיד בספר הזה בדרך זו, יוסיף דורש האמת להגיע אל האמת, ויוסר מן המסופק ספקו, ומי שמאמין במסורת גרידא יהיה מאמין מתוך עיון ותבונה" (רס"ג, הנבחר באמונות ובדעות, מהד' קאפח, ירושלים, תש"ל, הקדמה סעיף ב', עמ' ו'–ז'). הרב אברהם אבן עזרא, שאת דבריו ראינו לעיל, כתב בהקדמה לפירושו לתורה, בשיטה האחרת: "ומהשם לבדו אירא, ולא אשא פנים לתורה".

הרמב"ם מעיד באיגרת שלו לחכמי פרובנס בעניין האסטרוולוגיה שמתוך רצונו להבין את טעמי המצוות "וגם קראתי בכל ענייני עבודה זרה כולה. כמדומה לי שלא נשאר חיבור בעולם בעניין זה בלשון ערבי שהעתיקו [= שתירגמו] אותו משאר לשונות עד שקראתי אותו והבנתי ענייניו וירדתי לסוף דעתו" (מהד' אלכסנדר מרכס, *HUCA* 3 (1926), p. 351 = בשינוי קל באיגרות הרמב"ם, מהד' שילת, כרך ב', ירושלים, תשמ"ח, עמ' תפ"א). בשמונה פרקים, פרק ד' הרמב"ם כתב: "שמע האמת ממי שאמרו".³⁴ ובמקום אחר הוא כתב: "כי אין רצוי לפניו יתעלה כי אם האמת, ואין מכעיסו כי אם השווא [= השקר]" (מורה נבוכים, חלק ב', פרק מ"ו, מהד' קאפח עמ' תמ"ג).

ר' אברהם בנו כתב שמי שמקבל דעתו של מישהו בלי עיון והבנה אם אמת היא אם לאו "שזה מן הדעות הרעות, והוא נאסר מדרך התורה וגם מדרך השכל". לאחר הבאת חולין קכ"ד ע"א הוא אומר:

ובאמת נקרא אדון זה [= רבי יהודה הנשיא] "רבינו הקדוש" כי האדם כששליך מעל פניו השקר, ויקיים האמת ויכריענו לאמיתו, ויחזור בו מדעתו כשיתבאר לו הופכה, אין ספק כי "קדוש" הוא. והנה נתברר לנו כי החכמים ז"ל [אינם מקבלים דעות] אלא מצד אמיתתם ומצד ראיותיהם, לא מפני האומר אותו יהיה מי שיהיה (קובץ תשובות הרמב"ם ואגרותיו, לייפציג, תרי"ט, חלק ב', עמ' מ"א ואילך).³⁵

33 לפירושים שונים של הביטוי הקשה "אמיתה של תורה", ראו א"א אורבך אצל סימון עמ' 21, הערה 28.

34 לפתגמים דומים מימי הביניים, ראו ישראל דוידזון, אוצר המשלים והפתגמים מספרות ימי הביניים, ירושלים, תשי"ז, מספר 603.

35 לדברים נוספים של ר' אברהם בן הרמב"ם על חשיבות האמת, ראו תשובות רבינו אברהם בן הרמב"ם, ירושלים, תרצ"ח, עמ' xxi.

גם בעת החדשה היו חכמים שהדגישו את החשיבות של החיפוש אחר האמת. הרב שמואל דוד לוצאטו, שד"ל, התייחס לענייננו בהקדמה לפירושו לישעיהו (פדואה, 1855):

היסוד הרביעי [בפירושונו] הוא אהבת האמת, והוא שתהיה תכלית מגמתנו להבין אמיתת כוונת הכותבים. ולא תהיה בחדרי ליבנו תשוקה למצוא בספרי הקודש סיוע וחיוק לאמונות וסברות שבאו לנו ממקום אחר, בין שיהיו סברות פילוסופיות, או אמונות תורניות מקובלות באומה. המידה הזאת מציאותה יקר מאד במפרשים, והיא נמצאת במדרגה רמה ברש"י ז"ל ובבן בתו רשב"ם, שעם היותם דבקים בלב שלם בדברי רז"ל, לא נמנעו מלפרש הכתובים לפי פשוטם, אף אם יהיה פירושם מתנגד להלכה ...

לבסוף, הרב קוק התייחס לענייננו באגרת שכתב לרב מאיר ברלין בשנת תרע"א (1911) כתגובה למאמר שהופיע בעיתון שנערך על ידי הרב ברלין שבו הפליג המחבר בשבחם של ההיסטוריונים האורתודוקסים ר' יצחק אייזיק הלוי וזאב יעבץ. הרב קוק כתב שאין אנו זקוקים עוד לפזמונים של שבח לאותם מחברים.

מכל מקום לא נוכל לכחש שישנם הרבה דברים טובים גם בספרים הפגומים במקומות רבים. גם לא בכל מקום צדקו [הלוי ויעבץ] בביקורת הטנדנציות שלהם. והאמת אהובה מן הכל ... והגערה למבקרי כתבי הקודש ולסופרים החופשים, כל זמן שהיא נאמרת כללית אינה אומרת כלום, ואין עמה שום טעם לשבח. (אגרות הראי"ה, כרך ב', עמ' כ').

(VIII) קדושת התורה וסמכותה לאלה שעוסקים בביקורת המקרא³⁶

עד כאן ראינו שיש מקום להתיר את העיסוק בביקורת המקרא. אבל נשאלת השאלה: ממה נובעת קדושת התורה וסמכותה למי שאינו מקבל את הגישה הפונדמנטליסטית של הרמב"ם ושל ר' משה פיינשטיין? בשאלה זאת עסקנו במקום אחר;³⁷ נחזור כאן על חלק מהדברים עם תוספת של כמה נימוקים נוספים:

(1) כבר ראינו לעיל בגיטין ס' ע"א ואצל ר' יוסף בונפילס ואחרים הרעיון של התגלות בשלבים. החכמים הדוגלים בשיטה זו אינם מאמינים בתורה מסיני אלא בתורה מן השמים. כלומר, התורה נכתבה על ידי משה רבינו ונביאים אחרים בתקופות שונות, כשכל אחד הוסיף מוד-שיח שהתנהל בינו לבין הקב"ה.³⁸

(2) התפיסה השנייה אומרת שהתורה בעצמה איננה ההתגלות אלא הביטוי האנושי או תוצרת הלוחאי של אותה התגלות. מכיון שהתורה היא הרישום האנושי של דבר ה', היא איננה

36 סעיף זה של תשובה זו פורסם בשינוי באנגלית אצל גולינקין, 2003.

37 גולינקין, 1998.

38 ראו דורף, עמ' 118-126 להוגי דעות מודרניים שסברו כך.

מושלמת. ה' לא גילה את עצמו אל בני אדם אלא דרך בני אדם. משל למה הדבר דומה? לאדם המקשיב להקלטה. הוא רוצה לשמוע את קולו של הזמר, אבל הוא נאלץ לעשות זאת דרך ההקלטה הלא-מושלמת. התורה דומה להקלטה ולא לקול הזמר בעצמו.³⁹

3) התפיסה השלישית אומרת שאין אנו יודעים בדיוק מה קרה בהר סיני לפני 3,000 שנה— אבל אין זה משנה כל כך. סמכות התורה איננה נובעת ממה שקרה בהר סיני אלא מהדרך ש"כלל ישראל" הבין ופירש את התורה במשך שלושת אלפים שנה. וכך הסביר פרופ' ש"ז שכטר בשנת 1896:

הדבר החשוב ביותר לעם היהודי איננו התורה שנתגלתה כי אם התורה כפי שהיא חוזרת על עצמה בהיסטוריה, או במילים אחרות, כפי שהיא מתפרשת על ידי המסורת ... מכיוון שפירוש המקרא או המובן המשני הוא בעיקר תוצאה של השפעות היסטוריות משתנות, יוצא אפוא שמרכז הסמכות מועבר למעשה מן המקרא ומונח בגוף חי, שכתוצאה ממגעו עם השאיפות האידיאליות והצרכים הדתיים של התקופה, מסוגל יותר לקבוע את טיבו של המובן המשני. ברם, גוף חי זה אינו מוצג על ידי חלק מסוים של האומה או רבנות רשמית כלשהי, אלא על ידי המצפון הקיבוצי של "כלל ישראל" ... גוף זה, העד היחיד לעבר ... חייב לשמור על סמכותו כמדריך האמתי היחידי של ההווה והעתיד ...⁴⁰

4) התפיסה הרביעית אומרת שהתורה מבטאת ברית נצחית בין האלהים לבין עם ישראל. העיקר בברית בין שני גורמים איננו המסמך המקורי הכתוב אלא המעשים והרגש שהצטברו במשך השנים. לימוד תורה וקיום מצוות מבטאים את הברית שלנו עם הקב"ה זה 3,000 שנה, וזה לא כל כך משנה איזה קטע מהתורה נאמר מתי.⁴¹

5) התפיסה החמישית אומרת שלימוד תורה וקיום מצוות מקדשים את חיינו והופכים את החול לקודש. ושוב, המקור הספציפי של קטע מסוים אינו משפיע על כוחן של התורה והמצוות לקדש את חיינו.⁴²

6) התפיסה השישית אומרת שקדושת התורה נובעת מכך שאבותינו ואבות אבותינו ראו בה את הספר הקדוש ביותר ביהדות. הם למדו אותו, ולא הניחו ספר אחר עליו, ונישקו אותו, וצמו כשהוא נפל, ואף הקריבו את חייהם כדי ללמוד את התורה ולשמור את מצוותיה.⁴³ משל למה הדבר דומה? לכותל המערבי. היום אנו יודעים שכותל חיצוני זה להר הבית נבנה על ידי הורדוס ורק התחילו להתפלל על ידו בסביבות שנת 1520.⁴⁴ אבל הכותל התקדש מאז

39 שם, עמ' 134-148; ג'ייקובס, 1957, פרק 7; ג'ייקובס, 1973, עמ' 202-210.

40 Schechter, *Studies in Judaism*, First Series (London, 1896), xvii-xviii.

41 גולינקין, 1998, עמ' 14.

42 שם, עמ' 14-15.

43 גרינברג, תשמ"ה, עמ' 279.

44 א"מ לונץ, ירושלים י' (תרע"ד), עמ' 1-58; יצחק יחזקאל יהודה, ציון ג' (תרפ"ט), עמ' 95-163; מרדכי הכהן, הכותל המערבי: מקורות ומסורות, ירושלים, תשכ"ז.

על ידי הדמעות והתפילות והפתקים והעלייה לרגל של מיליוני יהודים מרחבי תבל. הוא הדין לגבי התורה. התורה התקדשה על ידי 3,000 שנה של לימוד, גילויי אהבה, מסירות נפש, וקיום מצוות, וקדושה זאת לא משתנית לאור ידיעות חדשות על יצירת התורה לפני אלפי שנים.

(ix) הלכה למעשה

סיכומו של דבר, יש מקורות האוסרים את ביקורת הטקסט וביקורת המקורות של המקרא, אבל יש ארבע חולשות כלליות באותם מקורות. יתר על כן, הרבה חכמים בתקופת התלמוד ובימי הביניים עסקו בביקורת הטקסט ויש גם חכמים שעסקו בביקורת המקורות. כמו כן, יש תקדימים ללימוד בקורתי מתחומים אחרים ביהדות והחיפוש אחר האמת הוא ערך דתי. ברם, הרבנים והמורים המלמדים ביקורת המקרא חייבים למצוא את הדרכים להדגיש את קדושת התורה. התורה איננה סתם ספר, "כי הם חיינו ואורך ימינו ובהם נהגה יומם ולילה".

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עיון בסוגיית "הוא לפדות ובנו לפדות" (בכורות מט ע"ב)

י"ש מילגראם

לכבוד בעל היובל בהגיעו לשיבה
איש ההלכה ובעל מידות מעלות



הקדמה

מאמר זה מהווה פירוש לסוגיא אחת מתוך פירוש רצוף לפרק השמיני של מסכת בכורות, פרק "יש בכור"¹, שיתפרסם בסידרת "תלמוד האיגוד", פירושים ביקורתיים לתלמוד הבבלי של "האיגוד לפרשנות התלמוד" בירושלים.² הסוגיא הנידונה כאן, סוגיית "הוא לפדות ובנו לפדות", היא הסוגיא השלוש עשרה בפרק ועל בסיס הנאמר במשנה (מ' בכורות ח:ו) הסוגיא עוסקת בשאלת קדימה במצוות כאשר אב ובן שניהם חייבים בפדיון. כלומר, מקרה בו בכור לא נפדה על ידי אביו ועכשיו הוא (= הבכור) חייב בפדיון עצמו ובפדיון בנו הבכור. והשאלה היא: האם אותו האדם חייב לפדות את עצמו קודם או את בנו קודם?

בסוגיא יש שלושה רבדים של דברי חכמים. היא פותחת בדברי תנאים.³ על דברי התנאים נאמרת מימרא אמוראית של רבי ירמיה (אמורא ארצישראלית מהדור השלישי-רביעי שעלה מבבל) ובה יש אוקימתא. ולאחר מכן ישנם דברי סתם התלמוד המרחיבים את שיטת רבי ירמיה שבמירא.

¹ מאמר זה הוא פרק מתוך עבודת הדוקטור שלי שנכתבה תחת הדרכתו של פרופ' שמא יהודה פרידמן: "יש מילגראם, פירוש ביקורתי לבכורות פרק ח': חלק ראשון", אוניברסיטת בראייל, רמת גן, תשס"ו, עמ' 175–185. הדברים מופיעים כאן כבצורתם במקור אלא שכאן הוספתי קצת להערות. סוגיא אחרת, הסוגיא האחת עשרה, כבר פורסמה במקום אחר; ראה י"ש מילגראם, "דוגמא מפירוש ביקורתי לפרק 'יש בכור' (פרק ח' דמסכת בכורות) סוגיית 'מת הבן בתוך שלושים'—בכורות מט ע"א", *The Wisdom of Batsheva: Dr. Beth Samuels Memorial Volume*, ed. Barry Wimpfheimer, (Hoboken, NJ: Ktav, 2009), 21–45. פורסם גם מאמר אחר (שאף הוא מתבסס על פרק אחד מתוך הדיסרטציה); ראה י"ש מילגראם, "עיון וביקורת בשיטת פרנצוס: על הגדרת המונח 'פגום לכהונה' בתלמוד הבבלי והגורמים למחלוקת ראשונים בנושא", תפארת לישראל: ספר היובל לישראל פרנצוס, בעריכת יעקב רוט, מנחם שמלצר ויעקב פרנצוס, בית המדרש לרבנים באמריקה, 2010, עמ' 35–41.

² לסידרת הפירסומים של האיגוד לפרשנות התלמוד ראה, <http://www.talmudha-igud.org.il/>

³ נחלקו החוקרים אם יש כאן משנה או ברייתא, ראה להלן בפנים.

להלן בחלק הנקרא, "המשנה והסוגיא", המשנה מובאת על פי כתב יד קאופמן⁴ ולאחר מכן נוסח הסוגיא התלמודית על פי קטע משובח מגניזת קהיר שנמצא בספריית הבודליאנה.⁵ קטע זה, לדעתי, הוא הנציג הראשי (וכמעט היחיד) של הענף המזרחי של הפרק.⁶ לאחר הצגת טקסט התלמוד מופיעה "מסורת התלמוד", רשימה של מקבילות מהספרות התלמודית שנידונות בגוף המאמר. לאחר "מסורת התלמוד" אני מביא פירושו של רש"י על פי הדפוס הראשון, דפוס ויניציאה רפ"ב (עם תיקונים קלים). לבסוף, אחר הצגת הטקסטים, באים הדיונים על חלקי הסוגיא, כל דיון תחת כותרתו.

המשנה והסוגיא

בהבאת הסוגיא להלן אני מבחין בין רבדי הטקסט התלמודי: הרובד התנאי והמונחים השייכים לו מוצגים בגופן זה; דברי אמוראים והמונחים שנוגעים להם מודגשים; ואילו דברי סתם התלמוד והמונחים שמקדימים אותם מופיעים ללא הדגשה.⁷

משנה:

הוא לפדות ובנו לפדות הוא קודם את בנו ר' יהודה אומ' בנו קודמו שמצוותו על אביו ומצוות בנו עליו.

תלמוד:

מתני' הוא לפדות ובנו לפדות כול'

[1] תנו רבנן הוא לפדות ובנו לפדות הוא קודם את בנו רבי יהודה אומר בנו קודמו שזה מצותו על אביו וזה מצות בנו עליו.

(א) אמ' ר' ירמיה הכל מודים היכא דליכא אילא המש הוא קודם את בנו מאי טעמא מצוה דידיה עדיף כי פליגי דאיכא חמש משועבדות וחמש בני חורין.

4 Faksimile-Ausgabe des Mischnacodex Kaufmann, Holland, 1929. שם היא משנה יג.
5 כתב יד אוקספורד 2661/32 (Heb. c. 17). הקטע מתוארך מהמחצית השנייה של המאה העשירית עד המחצית הראשונה של המאה האחת עשרה ובו כתב מזרחי מרובע עד מרובע למחצה. תודתי נתונה לגב' תמר לייטר ממפעל הפלאוגרפיה העברית באוניברסיטה העברית בירושלים על עיונה המיוחד בכתב קטע הגניזה, ולראש המכון לשעבר פרופסור מלאכי בית-אריה. קטע עתיק, משובח ומפואר זה כולל כל הפרק כולו וגם חלקים נכבדים של מסכת ערכין. ראה: מ' עסיס, "מבוא למהדורה מדעית של מסכת ערכין", אסופות ה, ירושלים, תשנ"א, עמ' נג ואילך, וכן M. Krupp, *Mischnatraktat*.
'Arakin (Hildesheim: Olms, 1977), xvii.

6 ראה מה שכתבתי, מילגראם, "דוגמא לפירוש ביקורת" (לעיל הע' 1), עמ' 40 הע' 4.
7 ודע שאין התאמת הצגת המונחים ודברי אותו דור באה כקביעה מחקרית שאף המונחים נובעים מרובד מסויים, אלא התאמה זו נעשתה כדי להקל על הקורא.

- (1) ר' יהודה סבר מלוה הכתובה בתורה ככתובה בשטר דאמי ודידיה אזיל טריף אמשעבדי ובהני חמש בני חורין פריק ליה לבריה.
 (2) ורבנן סברי מלוה כתובה בתורה לאו ככתובה בשטר דאמי הילכך מצוה דידיה עדיף.

מסורת התלמוד:

[1]: הוא ... עליו, מ' בכורות ת:ו; מכילתא דרשב"י, בא. [1]-[1] (א) (2): תנו רבנן ... מצוה דידיה עדיף, ב' קידושין כט ע"א-ע"ב.

רש"י:

משנה: שמיצותו על אביו: מצות פדייתו של אב זה הית' על אביו שמת ומצות בנו עליו.

גמרא: ודידי: חמש סלעים סלעים דידיה אזיל כהן וטריף ממשעבדי שהרי שיעבודו של כהן קדם והיינו דקאמר שמיצותו על אביו כלומר שמאביו נשתעבדו אותן נכסים לכהן. **ובהנך חמ' בני חרי פריק לבניה:** מיד דאי יהיב בני חרי משום פדיון דידיה תו לא מיפריק בנו ושמא שיעבוד הלקוחו' קודם ללידת בנו. **לא ככתובה בשטר דמיא:** ואי יהיב בני חרי בשביל פדיון בנו תו לא מיפריק איהו דכהן לא מצי טריף לקוחות.

המונח 'תנו רבנן' והשימוש בו בסוגיא

סוגייתנו פותחת במונח "תנו רבנן" הרגיל לציין ברייתות. כבר העירו גם קדמונים וגם חוקרים על השימוש במונח שונה להבאת ברייתות בבבלי ותפקיד אותו מינוח בהצעת אופי שילוב הברייתות במשא ומתן התלמודי. שכן, השימוש ב"תניא" הוא להמשך עניין; ואילו השימוש ב"תנו רבנן" הוא לתחילת עניין,⁸ אבל לאו דווקא להבאת המשנה שעליה הסוגיא ולפתיחת הסוגיא כפי שאצלנו. אכן, בסוגיא שלנו אין המדובר בברייתא אלא במשנה.⁹ ומאחר שהמשנה מצוטטת אחרי ה"תנו רבנן", אפשריין קורא להבאת המשנה "פסקה" של המשנה. אפשריין סבור שמסדרי הסוגיות ציינו במונח "תנו רבנן" אף פסקאות של משנה הבאות בראש סוגיא.¹⁰ לפי אפשריין, אפוא, יש לנו כאן מקרה של פסקה של המשנה בראש הסוגיא, "מתני" הוא לפדות ובנו לפדות כול", ומיד לאחריה "תנו רבנן" בפתחת סוגיא עם הבאת המשנה שעליה הסוגיא. בבוא אפשריין להתייחס לעובדה שיש כאן סוגיא יוצאת מן הכלל שהרי היא פותחת

8 ראה אלבק, מחקרים, עמ' 12; ובעקבותיו פרידמן, "לאופיין של הברייתות", עמ' רא, הע' 5. על שיטות הקדמונים בעניין ראה אלבק, שם, עמ' 3 ואילך.

9 השווה: אפשריין, מבוא, עמ' 880-881, 901; אלבק, מחקרים, עמ' 12, הע' 1. לדעה אחרת ראה: הלבני, מקורות, נשים, עמ' תרנ ומה שכתבתי על שיטתו להלן בפנים. על נושא "תנו רבנן" לציון ברייתות ומשניות בכלל ראה: אפשריין, מבוא, עמ' 879 ואילך; אלבק, מחקרים, עמ' 12.

10 אפשריין, שם, עמ' 897, 900.

ב"תנו רבנן" ובהבאת המשנה שעליה הסוגיא, כלל את הדוגמא שלנו בתוך קבוצה שאותה הוא מכנה "פסקה כפולה" (מקרים של פסקה ישנה של המשנה שבמשך הזמן נוספה עליה פסקה שנייה כי לא הבינו שהפסקה הקדומה אכן פסקה!).¹¹

הסוגיא שלנו מופיעה גם בבבלי קידושין כט ע"א-ע"ב כמעט כלשונה כאן. שם היא מצויה כמקור שני בתוך קובץ של שלושה מקורות תנאיים שמצויינים ב"תנו רבנן" ועוסקים בפדיון הבן, ובכל אחד מצויה מחלוקת בין חכמים לבין רבי יהודה. המשנה שלנו היא המשנה היחידה בין המקורות. שאר המקורות הם ברייתות; המקור הראשון הוא, "האב חייב בבנו למול ולפדותו וללמדו תורה" (תוספתא קידושין א:יא, עמ' 279 במהדורת ליברמן; מכילתא בא, פרשה יא, עמ' 73 במהדורת האראוויטץ-רבי; ירושלמי א:ז, סא ע"א, עמ' 1154 במהדורת האקדמיה ללשון העברית) ואילו השלישי הוא, "לפדות את בנו ולעלות לרגל" וכו' (תוספתא בכורות ו:יג, עמ' 540-541 במהדורת צוקרמנדל).

לדעת אפשטיין "זו היא סוגיא שהעבירו אותה מבכורות לקידושין כלשונה".¹² אפשטיין מביא ראייה אחת לסברתו, ולדעתי ניתן להעלות סברא אפשרית נוספת אליבא דידיה. אפשטיין כותב ש"ר' ירמיה רגיל הרבה בבכורות, ובוודאי שהדברים לקוחים מבכורות".¹³ בנוסף ניתן לשער שלדעתו מקום הנושא של פדיון הבן הוא בבכורות פרק שמיני ולא בקידושין, ונראה שבקידושין אספו את החומר ששייך לפדיון הבן.¹⁴

ניתן לחלוק על שיטת אפשטיין בעניין מוקדם ומאוחר בין הסוגיות, משום שכאמור, השימוש ב"תנו רבנן" הוא בתחילת עניין (בתוך משא ומתן הסוגיא), וכן הוא דווקא בקידושין. ועוד, יש להסתפק אם אכן מדובר במקרה שלנו בתופעת "פסקה כפולה". שכן, אין כאן רק פסקה אלא כל המשנה מצוטטת ב"תנו רבנן", מה שאין כן בשאר דוגמאותיו של אפשטיין שם.¹⁵ אם כן, אין התופעה אצלנו תואמת את התופעה של "פסקה כפולה" שמתאר שם אפשטיין על פי שאר הדוגמאות שהוא מביא.¹⁶

ניתן, אפוא, להסיק שהמקור הוא בקידושין. שכן, הסוגיא בקידושין עוסקת בהרחבה בנושא פדיון הבן; ועוד, אם המקור הוא בקידושין הופעת התחילית, "תנו רבנן", מובנת יותר. בעל התלמוד בבכורות לקח מקידושין את הקטעים מתוך הסוגיא הרחבה ששייכים למשנתנו בבכורות. הפסקה וציטוט המשנה ב"תנו רבנן" שלאחריה בבכורות נוצרו כתוצאה מהעברת הסוגיא בשלמותה, עם המונח "תנו רבנן", מקידושין לבכורות.

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- 11 ראה דבריו, מבוא, עמ' 900.
- 12 שם; וכן, אמוראים, עמ' 113, מצוטט להלן בפנים; ושם, עמ' 116: "אבל קידושין לקוחה מבכורות".
- 13 אמוראים, עמ' 113, ההדגשה במקור. למופעים ראה ב' קוסובסקי, אוצר השמות לתלמוד בבלי, כרך ג, עמ' 924, 926. ועוד, חיפוש ממוחשב העלה 11 מופעים לשם "רבי ירמיה" בקידושין לעומת 15 מופעים בבכורות (שו"ת בר-אילן). אמנם טענת אפשטיין שרבי ירמיה רגיל בבכורות מוצדקת אבל אין מספר המופעים במקום אחד בהשוואה למקום אחר לבדו חייב ללמד על המקום הראשוני (ראה להלן בפנים).
- 14 כך סבר הר"א ווייס: "לא מן הנמנע, שהמקור הוא בבכורות, ובקידושין אספו את כל החומר הנתון ומשום זה יותר מבכורות" (התהוות, עמ' 200, הע' 116). אבל במקום אחר הוא יותר מסופק ואינו מכריע כלל, ראה: ווייס, התלמוד הבבלי, ח"ב, עמ' 142.
- 15 מבוא, עמ' 901.
- 16 בין הדוגמאות שהוא מביא שם, מבוא, עמ' 901, רק בדוגמא שלנו בבכורות מצוטטת כל המשנה ובשתי דוגמאות, מס' 413 יש ציטטה ארוכה אחרי "תנו רבנן" אבל לא של כל המשנה.

שיטת רבי יהודה במשנה

קריאה פשוטה של שיטת רבי יהודה במשנה מלמדת שהקטע "שמצותו על אביו" הכוונה לאבי האב, ואילו ב"ומצות בנו עליו" הכוונה לאבי הבן. היינו, שהמצווה לפדות את האב היתה מוטלת על אביו (הסב של הבן), ואילו המצווה לפדות את הבן מוטלת על האב.¹⁷ משום כך האב צריך קודם לפדות את בנו ולאחר מכן את עצמו.¹⁸ אמנם זהו פירוש המשנה כפשוטה, אבל בבואם לפרש את המשנה יחד עם מימרת רבי רמיה, הראשונים התקשו ונחלקו בפירוש שיטת רבי יהודה. דומה שפירושיהם מעידים על הקושי הבסיסי שיש בדברי רבי רמיה ביחס לשיטת רבי יהודה במשנה. אם רבי רמיה אומר ש"הכל מודים ... מצוה דידיה"¹⁹ [פדיית האב] עדיף, מתעוררת השאלה מהי כוונת רבי רמיה שאף רבי יהודה סובר כן ("הכל מודים")? הרי רבי יהודה אומר בפירוש במשנה שמצוות הבן קודמת (ולכן היא עדיפה!)²⁰

- 17 וכן פירש הגר"ש ליברמן בהקשר אחר: "ר' יהודה אומר בנו קודמו, שמיצותו על אביו, ומצות בנו עליו הרי לך שמצות הבן על האב פירושו" [ההדגשה במקור] (תוספתא כפשוטה, ח"ח, קידושין, עמ' 924); ושם, הע' 19: "ומצוות הבן ביחס לאב הרי היא על אביו (כלומר, על הסבא של בנו) ומצות בנו (כלומר, מצוות פדיון בנו) עליו"; השווה הלבני, מקורות, נשים, עמ' תרמט.
- 18 במקרה הדין נשתמרה בקטע הגניזה (ג): "רבי יהודה אומר בנו קודמו שזה מצותו על אביו וזה מצות בנו עליו".
- 19 כל עדי הנוסח של בכורות גורסים "מצוה דידיה" לעומת עדי הנוסח שבדקתי למסכת קידושין (בתקליטור מכוון ליברמן) שגורסים "מצוה דגופיה". ייתכן שהגירסא "דגופיה" מדגישה שיש הבחנה בין מצוות פדיון הבן שאב מצווה לקיים בבנו, שהיא מצווה המוטלת עליו, ובין החיוב של פדיית עצמו, שזה בא לאחר שאביו לא פדה אותו ונשאר החיוב מרחף על האדם עצמו (ועל הנכסים, אם נסבור שמלווה הכתובה בתורה ככתובה בשטר דאמי).
- 20 נראה שרש"י (קידושין כט ע"ב ד"ה ככתובה בשטר דמיא) הבין ש"מצוה דידיה עדיף" חל רק כשאין האב יכול לפדות את עצמו ובנו, אבל כאשר האב יכול לפדות את עצמו ובנו יש לו לקיים תחילה פדיון בנו (השווה בספר פני יהושע, על אתר). לדעתו האב חייב בפדיון עצמו ובפדיון בנו; הווה אומר שרש"י הבין מתוך המשנה "שמצותו על אביו ומצות בנו עליו", שמצוותו על אביו ומצוות בנו, עליו, דהיינו ששתי המצוות על האב (בניסוח אחר, "שמצותו של אביו ומצוות בנו עליו") ועם זאת "מצות בנו עליו יותר ממצותו" (שם). כך הבינו דברי רש"י התוספות בקידושין ד"ה ואזיל, עיין שם היטב; וכן משמע מהמשך דברי הפני יהושע, שהזכרתי לעיל (ואחר הבנה זו הלך החוקר נ' רובין: 'The reason given for R. Yehudah's position is that 'both the commandment for the father (to be redeemed) and the commandment of the son (to be redeemed) (devolve upon [the father])' (Rubin, "Coping," 43). אבל בבכורות פירש רש"י את המשנה לפי פשוטה: "מצות פדיותו של אב זה היתה על אביו שמת ומצות בנו עליו" (בכורות מט ע"א ד"ה שמצותו על אביו). ועוד, לדעתו אף על פי שאנו סוברים ש"אין נפרעין מנכסים משועבדים במקום שיש נכסים בני חורין" (מ' גיטין ה:ב)—וכאן העובדה שהוא פודה את בנו קודם בבני חורין מחייבת שדמיו פדיון עצמו (חוב שקדם) יבואו מן המשועבדים—אין זו אונאה מאחר ומצוות בנו עליו יותר ממצותו (ואף כאן השווה דברי בעל הפני יהושע, שם; ראה גם לשון המהרש"א על קידושין כט ע"ב). לרש"י שיעבוד הקרקע נעשה לפני לידת הבן ולכן הכהן יכול לגבות מן המשועבדים רק לפדיית האב. הווה אומר, שרק בדרך זו יצליח האב לפדות את עצמו וגם את בנו. שהרי, אם היה פודה את עצמו בבני חורין לא היה יכול לפדות את בנו מן המשועבדים כלל (כי מכירת השדה קדמה ללידת הבן). לעומת שיטת רש"י, לר"י (תוספות קידושין כט ע"ב ד"ה ואזיל) "מצוה דידיה עדיף" חל גם כאשר האב יכול לפדות את עצמו ואת בנו. לכן, לדעתו יש

עיון בפירושו של הר"ד הלבני

בעקבות הראשונים העיר הר"ד הלבני על הקושי לפרש את דברי רבי ירמיה יחד עם שיטת רבי יהודה. ועוד, הוא כותב על הבעייתיות בפירושים שהציעו הראשונים:

... קשה להעמיס את דברי ר' ירמיה: "הכל מודין וכו' הוא קודם לבנו וכו' מצוה דגופיה עדיפא", לתוך לשונו של ר' יהודה. הראשונים מפרשים שלר' ירמיה, התכוין ר' יהודה במ"ש: "שזה מצותו על אביו וכו'" להסביר למה פדיון הבן שלו גובה ממשועבדים—ולא למה מצות בנו קודמת. אבל קשה לפרש כן את ר' יהודה.²¹

הלבני מציע פתרון שמבוסס על גירסא אפשרית במשנה המקורית. משנתנו הובאה גם במכילתא דרשב"י: "הוא ל[פדות ובנו לפדות] הוא קודם את בנו ר' יהודה אומ' בנו קודמו [וכל בכור אדם בבניך] תפדה ... " (יג, יג, עמ' 43–44 במהדורת אפשטיין-מלמד). במכילתא הקטע "שמצותו על אביו ומצות בנו עליו" שבמשנה חסר. הלבני סבור שגירסת המשנה המקורית נשתמרה במכילתא דרשב"י, ושבבכורות יש הוספה למשנה בעקבות הברייתא שמצויינת בסוגיא על ידי המונח "תנו רבנן".²² הוא טוען שזוהי המשנה שפירש רבי ירמיה.²³ דומה שהלבני נטה לפרש שהמשנה ה"מקורית" לא גרסה את הקטע "שמצותו" מפני שרבי ירמיה מתעלם במימרתו מפסקה זו במשנה. אכן, רבי ירמיה אינו מתייחס לעניין על מי מוטלת כל מצווה, אלא ככל הנראה לשאלה ממונית: האם יהיה מספיק ממון לפדות גם את האב וגם את הבן. ועוד, נראה שלדעת הלבני דברי רבי ירמיה כוללים גם את הדברים עד סוף הפסקה, "מצוה דידיה עדיף".²⁴

למען האמת, קשה לקבל את הצעת הלבני שגירסת המשנה המקורית נשתמרה במכילתא דרשב"י. נכון הוא שהקטע "שמצותו על אביו ומצות בנו עליו" חסר שם, אבל לא ניתן לקבוע

אונאה כל זמן שהוא מקדים את בנו שהרי "מצוה דידיה עדיף". כלומר, הסב היה חייב בפדיון האב והאב בפדיון בנו (כפשוטו במשנה). לכן, דמי פדיון האב צריכים לבוא מנכסי הסב. כמו כן, לר"י הסב קבע שדה כאפותיקי לפדיון האב, ולאחר מכן נמכרה השדה. כאשר עומדים האב והבן להיפדות, ולאב יש רק חמישה סלעים בני חורין, הכהן גובה מן המשועבדים (אף על פי שיש בני חורין). שהרי, פדיון האב מוטל יותר על נכסי הסב מאשר על נכסי עצמו. לסיכום, כדי להתאים את שיטת רבי יהודה לפירושו של רבי ירמיה גם רש"י וגם הר"י הוכרחו לפרש פירושים קשים, שאליבא דרש"י ניתן להוציא את המשנה מפירושה המילולי; ואילו לרש"י ולר"י אנוחנו מקדימים משועבדים במקום בני חורין.

21 מקורות, נשים, עמ' תרמט.

22 ראה לעיל, "תנו רבנן", ששם הצעתי שזו משנה ולא ברייתא.

23 מקורות, נשים, עמ' תרמט. אולי חוסר המשפט במכילתא דרשב"י יעיד שהקטע הוא מאוחר יחסית. אבל בכתבי היד של המשנה ושל התלמוד שבדקתי לא ראיתי שקטע זה חסר. ועוד ניתן להניח שבזמנו של רבי ירמיה כבר גובש לשון המשנה.

24 וכאן אני חוזר על דברי הלבני, "קשה להעמיס את דברי ר' ירמיה: 'הכל מודין וכו' הוא קודם לבנו וכו' מצוה דגופיה עדיפא' ... " (מקורות, נשים, עמ' תרמט; ההדגשה שלי—י"מ). מכאן שהוא סובר שהמימרא ממשיכה עד למילה "עדיפא". ועוד, מהתייחסותו אל המשך הדברים שבפסקה "רבי יהודה סבר" משתמע שהוא כולל אף פסקאות (1) ו(2) במימרת רבי ירמיה; ראה מה שכתבתי להלן בפנים.

שהקטע חסר כי אין המדרש גורס אותו, שהרי מדובר בהשלמת קרחה על ידי המהדירים.²⁵ כלומר, המהדירים מילאו את החסר על פי סברא ובתוך סוגריים מרובעות: "ר' יהודה אומ' בנו קודמו [וכל בכור אדם בניין] תפדה ... " (עמ' 43-44).²⁶ אם כן, אי אפשר לסבור כדעת הלבני, שהרי, ניתן היה לומר שכתב היד גרס "שמצותו"—או כל דבר אחר—ולא מה שמילאו המהדירים.

אפילו עם הצעותיו של הלבני שהמשנה שפירש רבי ירמיה לא גרסה "שמצותו", ושהקטע הנידון כולו דברי רבי ירמיה, עדיין קשה לו להלבני לקבל שרבי ירמיה מפרש "הכל מודים ... מצוה דידיה עדיף" כאשר לפי רבי יהודה "בנו קודמו", ואף המכילתא דרשב"י גורסת "בנו קודמו"! כדי לפתור את הבעייה הנידונה הלבני סובר שלדעת רבי ירמיה אף רבי יהודה טוען ש"מצוה דידיה עדיף", כי "פירש ר' ירמיה 'בנו קודמו', שגובה תחילה מן בני חורין".²⁷ הוא מביא כראייה לכך "שגובה תחילה מן הבני חורין" על פי סדר הדברים כפי שהובא במקבילה בקידושין כט ע"ב: "בהני חמש פריק לבריה ואזיל כהן וטריף ליה לחמש משועבדים לדידיה". אולם, דברים אלו מופיעים בסדר הפוך בסוגיא שלנו, וניתן לומר שכאן נשתמר הסדר המקורי. להלן שתי המקבילות:²⁸

קידושין כט ע"ב	בכורות מט ע"ב
ר' יהודה סבר מלוה דכתיב בתורה ככתובה בשטר דמאי בהני חמש פריק לבריה ואזיל כהן וטריף ליה לחמש משועבדים לדידיה ורבנן סברי מלוה דכתיב באורייתא לאו ככתובה בשטר דמאי והילכך מצוה דגופיה עדיף.	ר' יהודה סבר מלוה הכתובה בתורה ככתובה בשטר דמאי ודידיה אזיל טריף אמשעבדי ובהני חמש בני חורין פריק ליה לבריה ורבנן סברי מלוה כתובה בתורה לאו ככתובה בשטר דמאי הילכך מצוה דידיה עדיף.

אמנם פירשתי לעיל שמקור הסוגיא הוא בקידושין ושהסוגיא הובאה אחר כך לבכורות, אך אין מן הנמנע שבבכורות נשתמר הסדר המקורי, המתאים פחות לשיטת רבי יהודה במשנה. הרי לא מסתבר שתהיה הקפדה על סדר דברים כפי שהוא מצוי בקידושין מאחר שסבר "שמצווה דידיה עדיף", והדעת נותנת שהגבייה לפדיון עצמו היא תקדים, וכזה הוא סדר הדברים בבכורות! הסדר נהפך בקידושין בכדי להתאים את הדברים לשיטת רבי יהודה ש"בנו קודמו", וכן בכדי לתרץ את קושיית בעל הדין שיטען כבעלי התוספות בבכורות (מט ע"ב ד"ה ודידיה), "היכי טריף ממשעבדי הא אין נפרעין מנכסים משועבדים במקום שיש בני חורין והא

25 עיינתי בסרט של כתב היד (פטרבורג, פירקוביץ II A 268) ואכן יש במקום הנידון קרע ולא ניתן לדעת בבירור מה גרס שם המדרש. על כתב היד ראה כהנא, אוצר, עמ' 51 ס' 1.

26 במבוא המהדורה לא נרשמו סימני הההדרה. לסימני הההדרה ראה: כהנא, המכילתות, עמ' 120, הע' 18.

27 שם.

28 גם רבינו תם אינו גורס כבספרים שלנו: "ובבכורות אמרי' ... את עצמו יפדה מבני חרי והמשעבדי יפדה הכהן עבור בנו[!]" (ספר הישר, החידושים, סי' תרעז, עמ' 391); ואולי זו הגהת עצמו, או שרשם על פי הזיכרון.

איכא חמש בני חורין". אם כן, אין הסברא שרבי ירמיה מפרש את "בנו קודמו" במשמעות "גבייה מבני חרי תחילה" הכרחית. ועוד, יש צורך לבחון אם אכן יש קושי בעובדה שרבי ירמיה סובר "מצוה דידיה עדיף" במקום שרבי יהודה אומר "בנו קודמו", שהרי במקום שיש אוקימתא ניתן לצפות שתבטא היצירה הספרותית של האמוראים ושל בעלי התלמוד.²⁹ לכן, לא ניתן להקשות מן "קושי" מסוג זה.³⁰

דברי סיכום

אליבא דהלבי פסקאות (א), (1) ו(2) הן תוצאה של פעולתו האמוראית של רבי ירמיה.³¹ אולם בניגוד לשיטת הלבני, אנו מחלקים את הפסקאות לשתי שכבות שונות: דברי אמוראים ודברי סתם התלמוד (ראה בציור הסוגיא לעיל). נראה שבמקום להדגיש את דיני הקדימה במצוות כבמשנתנו, רבי ירמיה מדגיש נקודות כלכליות: "הכל מודים היכא דליכא אילא חמש הוא קודם את בנו כי פליגי דאיכא חמש משועבדות וחמש בני חורין".³² זאת ועוד, אנו נוטים לפרש שפסקאות (1) ו(2) הן סתמאיות משום שתי סיבות עיקריות: (א) אם כל הנאמר היה מימרא אמוראית, היה מדובר במימרא ארוכה מאד, דבר שאינו

29 אם מדובר ברבי ירמיה (כפי שסבור הלבני), כנראה כרגיל לאמורא זה. על שיטתו של רבי ירמיה ראה א' היימן, תולדות תנאים ואמוראים, עמ' 807-808; זילברג, כך דרכו, עמ' 92 ואילך. זילברג, "קושיותיו של רבי ירמיה". ולאחרונה, Wolf, "Rabbi Yirmiyah".

30 אם ניתן היה להקשות קושיות מסוג זה אז מכיוון שסדר דברי רבי ירמיה המקוריים הם כסדרם בבכורות, יתעורר קושי נוסף כי הכלל "אין נפרעין מנכסים משועבדים במקום שיש נכסים בני חורין" נקבע כבר במשנה גיטין ה:ב.

31 ראה הע' 24 לעיל.

32 אולי נראית אף הסברא שהדגשה זו מעידה על קושי חברתי-כלכלי שבגללו הוכרח רבי ירמיה להדגיש נקודות אלו, אבל מדוגמא אחת בלבד קשה להסיק מסקנה. ואם הסבר זה נכון הוא, אולי יש תירוץ משום מה רבי ירמיה אינו סבור כהכלל "אין נפרעין" בבואו להסביר שיטת רבי יהודה: לא יצטרך האב להוציא ממון על פדיון עצמו וידחה פדיון בנו עד שיהיה לו ממון או עד שהבן יפדה את עצמו. הווה אומר, שבמשנה התייחסו התנאים לשאלת קדימה במצוות ואילו רבי ירמיה חידש שבעניין כלכלי עסיקינו, אך, נ' רובין טוען שאף דברי המשנה מציגים התייחסות למצב כלכלי דווקא: Ruben, "Coping," 43-44. "... we can say that from the question posed by the Tannaim, whether one cannot afford both, that there was economic hardship, either because the redemption cost was high or because the combination of the two was cause for economic hardship ... The final decision was only reached in the days of R. Yirmiya ... that according to all the father must first redeem himself while the son will then redeem himself when he is able to. It is doubtful that such a question would have been asked had the amount of money been merely symbolic. Here we become aware of a situation, which may be no more than theoretical, where a second generation will also suffer economic hardship. The very discussion, even if it is but hypothetical, indicates an awareness of economic distress" (Rubin, "Coping," 43-44). ועוד, למען האמת ניתן לסבור שאף רבי ירמיה לא אמר את דבריו משום המצב הכלכלי אלא פירש לפי דרכו היצירתי; ראה הע' 29. וכל העניין צריך עיון נוסף, ואין כאן המקום להאריך עוד.

רגיל בקרב אמוראים,³³ (ב) נראה שהנושא "מלווה כתובה בתורה"³⁴ מופיע לרוב ברובד הסתמאי בבבלי.³⁵ לפיכך, לשיטתנו ניתן לומר שאכן רבי ירמיה הוא ההופך את הנושא מקדימה במצוות לענייני ממון. לאחר מכן בעלי התלמוד הוסיפו "מצווה דידיה עדיף"³⁶ והדיון על "מלווה כתובה בתורה" וגבייה מבני חורין ומשועבדים.

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33 ראה פרידמן, "האישה רבה", עמ' 303.

34 עוד על נושא זה ראה אצל אפשטיין, אמוראים, עמ' 119.

35 ראה: ב' בכורות מח ע"א; ערכין כ ע"א; אבל בערכין ז ע"א לא ניתן להכריע אם הכלל הוא בפי האמורא רבא אם לאו.

36 בשני המקומות; ודומה ש"מאי טעמא מצוה דידיה עדיף" בתוך דברי רבי ירמיה נוסף על פי הנאמר בפסקה (2) ו"הילכך מצוה דידיה עדיף".

פרידמן, שמא יהודה. "פרק האישה רבה בבבלי בצירוף מבוא כללי על דרך חקר הסוגיא". בתוך: מחקרים ומקורות מאסף למדעי היהדות, ספר א, בעריכת ח"ז דימיטרובסקי, עמ' 275–442. ניו יורק: בית המדרש לרבנים באמריקה, תשל"ח.
 קוסובסקי, בנימין וחיים יהושע. אוצר השמות לתלמוד בבלי. ירושלים: משרד החינוך והתרבות ובית המדרש לרבנים באמריקה, תשל"ז-תשמ"ג.

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רבי משה יהודה עבאס: חכם שקורותיו וכתביו טרם ראו אור

שמואל גליק

הקדמה

לחקר כתבי רבי משה יהודה עבאס [להלן: רמ"ע; רבינו]* הגעתי על דרך הגלגול מעניין לעניין ואגב אורחא בהיותי טרוד בזיהוי חמש טיוטות של תשובות מחכמי האימפריה עות'מאנית שבגניזת קהיר¹ שנכתבו על נייר ששימש מעטפות למכתבים, שבצידו האחד מופיע שם השולח שמואל סידי ושמו של הנמען גיסו, ר' גבריאל קונפורטי [להלן, ר"ג] (קהיר, המאה הי"ז), ובצד השני טיוטה של תשובה.²

זמן רב התלבטנו מיהו המשיב של תשובות אלו, האם ר"ג (ששמו מופיע כנמען) או אביו ר' דוד קונפורטי (שאלוניקי, קהיר; שע"ח—לאחר תמ"ד), [להלן, ר"ד]³, שקיבל את מעטפות המכתבים מבנו והשתמש בהן כטיוטות לתשובותיו.

אחת מהתשובות (כ"י T-S 10J16.23) פותחת במילים "כה הראני בני ידידי חמודי החכם מאוד נעלה לתהלה כ[...]. גבריאל נר"ו"⁴. פתיחה זו מעידה כי תשובה זו בוודאי אינה מאת ר"ג אלא נכתבה על ידי אביו. אלא שעדיין נותר ספק לגבי זהותו של המשיב בשאר התשובות; וגם לגבי תשובה זו, הסתפקנו מי הוא הכותב, האם התשובה נכתבה על ידי ר"ד קונפורטי, ובנו רק סיפק לו את נייר הכתיבה,⁵ או שמא ר"ג העתיק גם תשובה זו, שהרי כולן נכתבו באותה כתיבת יד. לשם כך היה עלינו לאתר אוטוגרף המיוחס לר"ד או לר"ג ולהשוות את כתיבות היד עם שרידי התשובות שלפנינו.

באותה עת עסקנו גם בזיהוי תשובה נוספת מכ"י אחר שבגניזת קהיר, שכלל דף אחד דו-צדדי שבצדו האחד חלק מתשובה שזוהתה כתשובת ר' שמואל ן חביב (שבשוליה נרשמה

* מספרי הדפים בכ"י המופיעים להלן, בטקסט או בהערות, מפנים כולם לתשובות עבאס שבכ"י Mich. 470, שבספריית הבודליאנה באוקספורד. אלא אם צוין אחרת.

1 ראו גליק, שרידי תשובות קמברידג'; גליק, שרידי תשובות אדלר.

2 ראו גליק, שרידי תשובות קמברידג', ב, בהערות התוכן, עמ' 832, 848 [במדור "על המשיב"], עמ' 866 [במדור "חומר ומצב השתמרות", ושם בהע' 3], וראו שם, עמ' 894, ושם הע' 20.

3 ר"ד קונפורטי היה דיין בקהיר, וכמה מתשובותיו פזורות בספרי שו"ת של חכמי התקופה, ראו עליו גליק, חמודות מצרים [א], עמ' נו-סז. על גלגולם של תשובות ר"ד קונפורטי שבגניזת קהיר, ראו גליק, שרידי תשובות קמברידג', א, עמ' לח-מא.

4 שם, בעמ' 858.

5 מעטפות המכתבים שקיבל מגיסו, שמואל סידי.

הערה אנונימית חשובה בכתיבת יד אחרת), ובצדו השני טיוטת תשובה ללא חתימה, הכתובה בכתיבת יד הזהה לטיוטות של ר' דוד (או ר' גבריאל) קונפורטי.⁶ ממאמרו של ווינטרויב שהתפרסם בישורון בשנת תש"ס,⁷ למדנו כי ר"ד כתב תשובה בדין מינקת לרמ"ע והיא נמצאת בקובץ תשובות רבי משה יהודה עבאס, כ"י Mich. 470 (דף 149א) שבספריית הבודליאנה. שם גילינו כי תשובת ר"ד היא אוטוגרף חתום בכתיבת ידו.⁸ מהשוואת כתיבות היד הסקנו שכל טיוטות התשובות שלפנינו הם מכתיבת ידו של ר' דוד קונפורטי, והוא המשיב והכותב של כל התשובות. כאמור, תשובת ר"ד נמצאה בקובץ גדול של כ"י הכולל עשרות תשובות בכתיבת ידו של רמ"ע, שרובם הגדול טרם ראו אור. ואידי דאתו לידן כל הני מילי מעלייתא, גמרנו אומר לעסוק בגאולת כתביו של רמ"ע ולדובב שפתי ישנים.⁹

מאמר זה יסקור את כתביו של רמ"ע, כתבים שטרם ראו אור, כתבים שאבדו וכתבים שנחקרו בחלקם,¹⁰ והם: 1—ש"ת. 2—פירוש "כסא כבוד" למסכתות קטנות. 3—ספר קול יהודה. 4—ספר תקון שבתות. 5—קובץ שירים ומליצות ששיגר רבי משה יהודה עבאס למשוררי וחכמי דורו. 6—מפתחות לש"ת מהר"י בן לב.¹¹

- 6 לתופעה שבשני צדדי הגליון מופיעות כתיבות יד של שני אישים שונים ראו גליק, שרידי תשובות קמברידג', א, עמ' מד, סמוך הע' 56.
- 7 ווינטרויב, עמ' נה-סט.
- 8 פרט זה לא צוין במאמרו של ווינטרויב. אגב אורחא, תוך כדי דפדוף בין עלי כתב היד גילינו להפתעתנו תשובה נוספת בכתיבת יד הזהה להערה האנונימית שעל תשובת ר"ש ן חביב החתומה על ידי ר' דוד ב"ר פנחס הכהן מאדריאנופול ובכך פתרנו שתי תעלומות.
- 9 בעת כתיבת המאמר סיימנו את עריכתן האחרונה של עשרים ושתיים תשובות מתוך ארבעים ושלש שבכתבי היד (עליהם נרחיב בהמשך הדברים), אשר אי"ה יראו אור בקרוב.
- 10 איגרות השיר ופיוטיו של רמ"ע נחקרו על ידי מאיר ולנשטיין, ופורסמו במאמרו: ולנשטיין, איגרות לאברהם, עמ' 119-124; הנ"ל, איגרת שירה, עמ' 285-301; הנ"ל, המשורר, עמ' 171-178; ולנשטיין, ויטאל, עמ' 163-166; ולנשטיין, מכתב, עמ' רנ-רנב; ולנשטיין, משוררי מצרים, עמ' 239-244; ולנשטיין, עבאס, א, עמ' 54-68; ב, עמ' 135-148; הנ"ל, על אחד, עמ' 259-277. חוקרים אחדים ההדירו תשובות אחדות מתוך כ"י Mich. 470 (על כתב היד ראו להלן, עמ' 480-481): אברהם י ווינטרויב (ווינטרויב), אליאב שוחטמן (שוחטמן, עבאס); יעקב ש' שפיגל (שפיגל, יו"ט שני [= שפיגל, פתחי תפילה ומועד, עמ' 440-448]). ויש שהפנו לתשובות בודדות שבכ"י זה והם: לאה בורנשטיין, יצחק בן צבי, מאיר בניהו, אליעזר בשן, אברהם יערי, מיכאל ליטמן ומינה רוזן (על כך ראו בהרחבה גליק, חמודות מצרים [ב], במבוא).
- 11 לדעת ולנשטיין, עבאס, א, עמ' 60 הע' 14, רמ"ע חיבר גם פירוש על מסכת בבא מציעא. לפי שעה לא מצאנו בסיס לכך.

א. תולדות המהבר

רבי משה יהודה ב"ר מאיר עבאס,¹² משורר ופייטן, פרשן, דיין ומשיב. נולד כנראה בשאלוניקי או בסביבתה¹³ בסוף המאה ה"ט", ונפטר ברשיד שבמצרים לאחר שנת תל"ז.¹⁴ הוא היה כנראה נצר למשפחת עבאסי הידועה,¹⁵ שבמרוצת הדורות הוציאה מתוכה פייטנים וחכמים ידועי שם, והם: ר' יהודה ב"ר שמואל (מחבר הפיוט "עת שערי רצון להפתח"—פיוט לראש השנה הנאמר בקהילות ספרדיות קודם לתקיעת שופר),¹⁶ ר' יעקב בן משה ׳ן עבאסי,¹⁷ ר'

- 12 שמו מופיע במקורות בצורות שונות: "משה עבאס", "יאודה עבאס", "משה יאודה עבאס", "משה יהודה עבאס" (רוואניס, ד, עמ' 387, סבור שהשם "משה" נוסף לו בחוליו ולעת זקנתו; לפי שעה לא מצאנו תימוכין לדברים אלו]. בקובץ שירים ומליצות ששיגר משה יהודה עבאס למשוררי חכמי דורו (כ"י 58 Opp. add 8°; בכתיבת ידו), פעמים הוא חותם: "יאודה עבאס" ופעמים "משה יאודה עבאס", ויש שהוא חותם "עבאסי", "עבאש". את תשובותיו הוא נהג לחתום: "הצעיר משה יאודה עבאס"; "זעירא משה יהודה עבאסי" (ס"י); "משה יהודה עבאס" (ס"ב-כד); "יאודה עבאס" (ס"מ); "הצעיר ומשרת בשם אלוהיו הצעיר משה יאודה עבאס" (ס"מ), וראו עוד אצל ולנשטין, עבאס, א, עמ' 56-57; ולנשטין, עבאס, ב, עמ' 135 הע' 1.
- 13 ראו עליו: אנציקלופדיה יהודית, ג, עמ' 38; בורנשטיין, הנהגת הקהילה, עמ' 336 [שנולד בשנת שס"א]; בניהו, לקורות, עמ' 41-42; ולנשטין, עבאס, א, עמ' 54-60; יודאיקה, 2, עמ' 39 [שם צוינו שנות לידתו ופטירתו (1601-1671)]; רוואניס, ד, עמ' 387 [סבר שנולד בקהיר ונפטר שם בשנת תל"ד]. וראו גם אצל שוחטמן, עבאס, עמ' 384-385; שפיגל, יו"ט שני, עמ' 117-118. לא מצאנו תימוכין לשנת לידתו, מסולל חייו החל ככל הנראה בשאלוניקי או בסביבתה, משם עבר לקושטא וחזר לשאלוניקי, ומשם לרשיד שבמצרים. בנדודיו לגיוס תרומות שב מעת לעת לשאלוניקי, ואולי אף דר שם. היכרותו הטובה עם שפת הלדינו המופיעה בכמה מהשאלות שנדונות בתשובותיו מחזקות השערה זו.
- 14 בכ"י "תוצאות חיים", פירוש על התורה לר' שמואל ויטאל, ספר שמות [כ"י הספרייה הלאומית 1597:8; אוטוגרף, נכתב בשנת ת"ו], ספר במדבר [כ"י ביהמ"ד לרבנים של צרפת, פריס, Ms. 100] מופיע שיר מאת רמ"ע "עין שאו וראו", שנכתב לכבוד הספר ומחברו. בראש ספר דברים [כ"י קמברידג' Add. 536, דף 84] כותב ר"ש ויטאל: "התחלתי לכתוב בו ביום שלישי שמנה ימים לחדש אייר שנת התל"ו ליצירה", ובסוף הכרך (בדף 270א) סיים בהבאת שירו של עבאס: "ואלה דברי המשורר נעים וזמירות ישראל כה"ר משה יהודה עבאס נר"ו"—מכאן שבשנת תל"ו היה רמ"ע בחיים [תוספת בשעת ההגהה: לאחרונה עלה בידינו להוכיח כי רמ"ע נפטר לאחר שנת תל"ז—ראו תשובות רבי משה יהודה עבאס, עמ' 71, הע' 25 (בהכנה לדפוס)].
- 15 ראו בהקדמת רמ"ע לספר הפיוטים, כ"י "תקון שבתות" [דף 33, שו" 10]: "הלא תוכם לעבאסים רשמת" [ס] אשר המה בגן עדן ויושבים".
- 16 יש המשערים שמוצאו מספרד, משם נמלט למרוקו באמצע המאה ה"ב, בעקבות רדיפות היהודים בידי שושלת אל-מוואחידון. הוא פעל בארם צובא ובבגדד, ונפטר בשנת 1167—ראו עליו: בן יעקב, יהודי בבל, עמ' לו; שירמן, עמ' רצז-רצח; ברנשטיין, עמ' רטו, אות לח; יודאיקה, 2, עמ' 40, בערכו. בנו, שמואל, המיר דתו וכתב ספר שטנה נגד היהדות (ראו תחכמוני, עמ' 23: "ויצחק בנו [של ר' אברהם אבן עזרא, שעליו מדובר בשורות הקודמות] [...] בבואו לארצות מזרח וכבוד יה עליו לא זרח והסיר מעליו את מעילי הדת היקרים ופשט את בגדיו ולבש בגדים אחרים. ור' יהודה בן עבאס גם הוא בא מארצות מערב למזרח ... גם הוא הוליד בן פריץ הפליא נבלות והמרמיץ"). הוא היה מהנדס, רופא ועסק באסטרונומיה. ראו עליו: אייזנשטיין, אוצר ישראל, עמ' 289-290, בערך עבאס שמואל; שירמן, שם; פליישר, עמ' רסח-רסט.
- 17 מתרגם פירוש המשניות לרמב"ם על סדר נשים. ר"י עבאסי היה תושב הואסקה (Huesca) שבממלכת אראגון. הוא פעל במאה ה"ג, והתכתב עם הרשב"א (ראו שו"ת הרשב"א, ח"ג, ס" קלד). תרגום זה נדפס לראשונה תחת השם "יעקב ׳ן עכסאי", בנאפולי רנ"ב, יחד עם פירוש

משה עבאס¹⁸, ר' יום טוב ב"ר יונה עבאס¹⁹, ר' שמואל עבאסי²⁰, ר' אבינדב עבאסי²¹, ר' משה עבאס (הראשון)²²; ומגיהי ספרים ידועים שנדפסו בשנים תס"ג-תס"ט באמסטרדם, והם: אהרן עבאס²³ ורפאל בן יהושע עבאס²⁴.

בשאלוניקי למד אצל ר' מרדכי קלעי²⁵ ואפשר שהיה גם תלמיד לר' שלמה ב"ר יצחק לבית הלוי²⁶, שאיתו שמר על קשר מכתבים ואף ביקש ממנו תמיכה כספית.²⁷ משאלוניקי

הרמב"ם. הוא חזר ונדפס בסוף מסכתות התלמוד במהדורת בומברג ר"פ, ולאחר מכן כמעט בכל דפוס התלמוד. זכריה פרנקל (דרכי המשנה, עמ' 329) כותב כי "הטובה בהעתקות אלה האחרונים נראה ההעתקה לס' נשים, ור' יעקב עכסאי המעתיק נודע ליורד אל עומק הדבר"; ראו גם קופפר, תרגום, עמ' 149–151. ראו עליו: יודאיקה, 2, עמ' 40, בערכו; אייזנשטיין, אוצר ישראל, בערכו.

18 חי בספרד במאה ה"ד-ט"ו. נולד בטודלה, למד אצל ר' שלמה ב"ר חסדאי (ראו שו"ת הריב"ש, סי' תמו) והשתתף בוויכוח בטורטוסה (בין השנים 1413–1414)—ראו עליו הברמן, אגרות, עמ' 27 [= הברמן, מפרי העט והעת, עמ' 155–179].

19 תשובתו מובאת בשו"ת זכרון יהודה לר' יהודה בן הרא"ש, סי' פא.

20 נזכר בספר הזכרון להריטב"א, עמ' פג: "ועורני עוד אל הענין הזה החכם הנלבב ר' שמואל בן עבאסי תמ"ד [= תהי מנוחתו כבוד] שהיה בקי מאד בספר המורה".

21 מחבר הפיוט "אנא ברוב חסדיך" (ראו פינסקר, עמ' 121). טובי (שירים חדשים, עמ' 51–72). משער "שהיה דמות מרכזית בקהילת יהודי בגדאד במחצית הראשונה של המאה ה"ג".

22 חי קרוב לזמנו של רבינו והתגורר בתיירה (Fire; סמוך לאיזמיר שבתורכיה). ראו את שאלתו המעמיקה בשו"ת מהרש"ך, ח"ג, סי' מז. רש"ך בתשובתו (שם, סי' מח) מעתיר עליו שבהים מופלגים ומבטל את דעתו בפניו, וראו שם (סי' מז): "ורוממות מעלת חכמתו יגלגל הענין באופן שיגיע התשובה לידי פה העיר מגנשיא, אשר בה מקום מושבי. כי עקרתי דירתי מהעיר טיריא, בהכרח ולא ברצון. אשר שם עלי טעם בן המלך יר"ה, להיות משרת לפניו במלאכת הרפואה. וארוחתי נתנה לי מאת בן המלך הנזכר עשרים לבנים בכל יום". ר"מ עבאס (הראשון) היה קרובו של ר' דוד קונפורטי, שכתב עליו בספר קורא הדורות, עמ' קמב: "ה"ר משה עבאס מעיר טיריא, חכם גדול ורופא מובהק והיה לו פרס מאת המלך ... והוא היה קרובי מצד אמי, שהיה חתנו של בעל לוית חן, והיה פייסן גדול וחבר קצת תוכחות". וראו את דברי המהדיר דבליצקי (במבוא לספר קורא הדורות, עמ' 20 הע' 16) המייחס לו את הפיוט "עת שערי רצון", אך כאמור, פיוט זה נכתב בידי ר' יהודה ב"ר שמואל עבאס (ראו שד"ל, עמ' 15–16). וראו: בניהו, לקורות, עמ' 41–42; רוזאניס, ג, עמ' 212 [שם, "משה בן יעקב עבאס"]; עמנואל י"ש, מצבות שאלוניקי, עמ' 312–313, מס' 715.

23 בשו"ת פרח מטה אהרן (ח"ב), בדף האחרון, שמו מופיע ב"התנצלות המגיה".

24 בספר פרחי כהונה, לר' אהרן הכהן פרחיה, בדף האחרון, שמו מופיע ב"התנצלות המגיה".

25 ראו ולנשטיין, עבאס, א, עמ' 65, על השיר שכתב לו "למרי ועטרת ראשי הרב הכולל מרדכי קלעי"; ר"מ קלעי היה ראש ישיבה בקהל פורטוגל שבשאלוניקי, ונפטר בשנת ת"ז (ראו עליו: עמנואל י"ש, מצבות שאלוניקי, עמ' 296–297; מולכו, מצבות, עמ' 315, מס' 939; קורא הדורות, עמ' קנטקס, ושם רשימת תלמידיו). חלק מהאישים שרמ"ע התכתב עימם היו תלמידיו, כמו: ר' דוד קונפורטי ור' יוסף פריץ.

26 ר' שלמה לבית הלוי "הבחור" (שמ"א לערך—שצ"ד). תלמידו של ר' חיים שבתי (מהרח"ש)—ראו עליו: בניהו, ר"ש חיון, עמ' ט; בניהו, בית יוסף, עמ' קכד; עמנואל י"ש, גדולי שלוניקי, עמ' רס-רסא; עמנואל י"ש, מצבות שאלוניקי, ח"א, עמ' 262; קורא הדורות, עמ' קסג-קסה; רוזאניס, ג, עמ' 182–183.

27 ראו ולנשטיין, עבאס, ב, עמ' 138, סמוך להע' 33.

עבר לקושטא והתגורר בשכונת יאמבול,²⁸ שם למד תורה בישיבתו של ר' יוסף מטראני.²⁹ בין רבותיו בקושטא היו גם ר' יונה עדילה³⁰ ור' יחיאל באסן.³¹ מקושטא עבר כנראה לזמן קצר לוונציה. בהיותו מורה הוראה ובקי בדיני ממונות השיב שם לשאלות שהתעוררו בקרב יהודי המקום.³² לבסוף השתקע ברשיד שבמצרים,³³ בה היה לרב³⁴ ולדיין.³⁵ הוא נפטר שם כאמור לאחר שנת תל"ז.

ב. כתביו

1. שו"ת

רוב תשובותיו של רבינו מרוכזות בשני כתבי יד המצויים בספריית הבודליאנה: כ"י Mich. 470 [להלן כ"י 470] הכולל 277 עמודים; וכ"י Opp. 326 [להלן כ"י 326] הכולל 275 עמודים (וכ"י Opp. 326/2—8 עמודים). ייתכן שבמקורן התשובות היו אגודות בתכריך אחד ללא סדר מסוים, ומטעמי נוחות, או כדי למוכרן לאספנים במחיר גבוה, הופרדו הכתבים לשני תכריכים. התשובות אינן מסומנות במספרי סימנים ואין בסידור התשובות מוקדם ומאוחר. מרבית התשובות חתומות בחתימת ידו של רבינו. כתבי היד כוללים גם העתקות של התשובות

28 ראו כ"י כסא כבוד (Or. 5009, דף 78 שו" 23–25): "אני בבחרותי ראיתי בק"ק יאנבולי את הישיש כה"ר שבתי גאלימידי זלה"ה שהיה אומר כל אלו המנהגים בקול ערב ובנעימה" [אפשר שר' שבתי הוא ר' שבתי בכ"ר אליה הנוכר בכנסת הגדולה, אבן העזר, הגהות בית יוסף, סי' מב, ס"ק ז: "וכ"כ ... וה"ר אליה גאלימידי ומה"ר שבתי בכ"ר אליה בתשובה כ"י". ר' אליה גאלימידי הנוכר לפניו הוא כנראה אביו של ר' שבת]. קהילת יאנבולי נוסדה על ידי יהודי יאנבול (Yanbolu) שהועברו מבלגריה לאיסטנבול [קושטא] במסגרת ה'סורגון של הסולטאן העות'מאני, מחמד השני, בשנת 1453 (ראו: הד, 306–299; לנגר, עמ' קיא-קיב, בהע' 46, מתלבטת שם אם הכוונה ליאמבול שבבלגריה או ליאמבול שבקושטא). עדותו של רמ"ע על מנהגי בית הכנסת שראה בבחרותו בקהילת יאנבול היא בוודאי השכונה בה התגורר בקושטא.

29 בכתביו הוא מכנה אותו "מורי"—ראו בסי' ח [דף 350], ובסי' לב [דף 211א].
30 הוא אביו של ר' שמואל עדילה. ראו עליו את דברי רבינו סי' ח [בראש דף 347]: "שמואל עדילה נר"ו לא יכבה לעד בן הקדוש האלהי בר וגבר מרי ועטרת ראשי כמה"ר יונה עדילה זלה"ה". ראו עליו שו"ת ר' יהוסף מליריאה, מבוא, עמ' כה.

31 ראו גליק חמודות מצרים [ב], עמ' 780, סמוך לציון 58.
32 ראו בראש התשובה שבסי' כב [דף 132א]: "נשאלתי בעיר ויניציא יע"א על אנשים כתבו שטנה על מוהרשד"ם זלה"ה". ייתכן שאף התשובה שבסי' כא [דף 125א–131ב], העוסקת בצוואת יצחק מאישטרו, שותפו של יוסף קאלבו, ונוכרים בה מטבעות ונציאניים (חמש מאות דוקטי ויניציני קורינטי), נכתבה בהיותו בוונציה.

33 על קורותיה של רשיד (רוזטה) בעת שרמ"ע דר בה—ראו גליק, חמודות מצרים [ב].
34 ר' רפואה שלום בתשובתו בסי' ג [דף 11א] פונה לרמ"ע בתואר "החכם השלם הכולל"; תואר זה מלמד שרבינו נשא במשרה רשמית. על תארים בקהילה ראו הכהן, תורת התארים, עמ' 513–521, הסבור שהתואר "רב הכולל" ניתן בדרך כלל לרב הקהילה או לרב העיר. אולם תואר זה הוענק גם לרבנים בולטים בקהילה, ככל הידוע רמ"ע לא שימש בתפקיד רבה של רשיד.

35 ראו בראש תשובת ר' חסדאי הכהן פרחיה בסי' יט [דף 115ב]: "ראיתי מה שהשיב על השאלה הנ' החכם השלם הדיין המצויין כמה"ר משה יאודה עבאס נר"ו". לדעת בורנשטיין, הנהגת הקהילה, עמ' 336, הוא "נתמנה כרב בקאהיר וייסד בה ישיבה ותלמוד תורה והשתכר מזה" (לפי שעה לא מצאנו תימוכין להשערה זו).

שחלקן הועתק פעמים אחדות. במרבית ההעתקות קיימים שינויים, תיקוני טעויות, הוספות או השמטות. לא תמיד ניתן לדעת איזו העתקה מייצגת את הנוסח הסופי. בכ"י 326 יש יותר תשובות אוטוגרפיות כפולות שיש להן מקבילה גם בכ"י 470.

כתבי היד עברו תחנות שונות בדרכן מביתו של רמ"ע (או יורשיו) ועד שהגיעו לספריית הבודליאנה שבאוקספורד. חתימות הבעלים בכ"י 326 ובכ"י 470 [שמספרו הישן: Mich. 793]³⁶ מאפשרות לשחזר את מסעם של כתבי היד מעת שיצאו מידי המחבר או יורשיו ועד להגעתם למשכנם שבספריית הבודליאנה.

אנו סבורים כי הבעלים הראשונים של כתבי היד (כ"י 326 וכ"י 470) היה השד"ר ר' יוסף טאראגאן,³⁷ שקנה או קיבל אותם מיורשי רבינו (אולי בהיותו בדרכו בשליחות ירושלים). חתימתו, וכן אישורו שמכר את כתבי היד ליצחק סבע,³⁸ מתנוססים בשני כתבי היד.³⁹ מביתו של סבע נדדו כתבי היד לספרייתו של הרב דוד אופנהיים (ורמיזא-פראג, תכ"ד-תצ"ז).⁴⁰ ייתכן מאוד שהוא קיבל אותם מדודו, ר' שמואל אופנהיים, בנקאי עשיר שישב בווינה, שקיבל כתבי יד בעברית מתורכיה מהנסיך אויגן מסבויה, ראש מועצת המלחמה האוסטרית, כהוקרה על תמיכתו הכספית במלחמה.⁴¹

לאחר מותו של ר"ד אופנהיים הוצאה ספרייתו שבהמבורג למכירה (פעמים אחדות), ושם רכש ר' שמואל שמעיה פאפון⁴² את כ"י 470 בלבד, וכנראה כרכו עם כ"י 471 "שו"ת ר' משה זרחיה גוטה) ובו גם הטביע את חותמו.⁴³ פאפו מכר את כ"י 470 (כרוך עם כ"י 471) לר' חיים מיכל. לאחר מותו נמכר אוסף הספרים שלו לספריית הבודליאנה, ושם קוטלגו שני כתבי היד (של רמ"ע ורמ"ז גוטה) במספר קטלוגי אחד: Mich. 793.⁴⁴ התכריך השני (כ"י 326)

36 כ"י 470 הגיע לספריית הבודליאנה כרוך עם כ"י 471 "שו"ת ר' משה זרחיה גוטה).
37 ר"י טאראגאן היה שד"ר ירושלים בשנת תפ"ז, בשליחות לקהילות תורכיה ויוון. ראו יערי, שלוחי א"י, עמ' 376, 380 [אין להחליפו בר' יוסף יחיאל טאראגאן, שהיה מחברי בית דינו של ר' יעקב משה עייאש בירושלים, נפטר בשנת תק"פ—ראו עליו: תולדות חכמי ירושלים, ג, עמ' 215, אות לא; הכהן מ', הארץ הטובה, עמ' 228; בן יעקב, ירושלים, עמ' 314–315; גליס, אנציקלופדיה, ב, עמ' עח].

38 אפשר שיצחק סבע הוא הגביר מאיזמיר הנזכר בהקדמת הספר "בן אוני" לר' בנימין זאב ב"ר זאב מזאמוטש, שתמך בו וסייע להדפיס את ספרו (ראו בהקדמה שם; יערי, מחקרי ספר, עמ' 22–23).

39 בסי' ב [דף גא] נרשם: "מכרתיה לח"ר יצחק סבע אני הצעיר יוסף טאראגאן". כך גם בכ"י 326 (דף הו): "מקנת כספי לי הצעיר יוסף טאראגאן ומכרתיה לה"ר יצחק סבע נרו". אפשר שהיה זה בעת שסבב בשנת תפ"ז כשד"ר בערי תורכיה.

40 ראו עליו יודאיקה, כרך 12 עמ' 1419–1421, בערך Oppenheimer, David Ben Abraham

41 ראו שם, עמ' 1431–1433, בערך Oppenheimer, Samuel

42 ראו עליו: רות, עמ' שכו; וילנסקי, עמ' פ-פא; בניהו, חיד"א, עמ' רכו, תכג. הוא נפגש עם החיד"א והתכתב עימו בשנים תקי"ד (ראו מעגל טוב, עמ' 6) ותקל"ז (ראו באתר "קדם" פריט 24). סבו, שנקרא אף הוא שמואל שמעיה פאפו, עסק במסחר ספרים והיה חתנו של ר' משה זכות, שחי סמוך לתקופתו של רמ"ע—ראו באתר (שם, פריט 16) הסכם שותפות בין רבי מרדכי זיסקינד הלוי וולרשטיין ("וולרשטיין") מפראג ור' שמואל פאפו, שנחתם בוונציה בר"ח תמוז תכ"א (1661), ובו רשימת סחורות ורשימת ספרים למכירה.

43 חתימתו מופיעה בכ"י 471 בדפים א2, א8 (נמחקה בקווים), א34, א53, א86, א101, א133.

44 לאחר שהפרידו בין הכתבים, קוטלג "שו"ת ר' משה יהודה עבאס ככ"י Mich. 470 ושו"ת ר' זרחיה גוטה ככ"י Mich. 471.

נמכר עם שאר הספרים שנותרו בספרייתו של ר"ד אופנהיים לספריית הבודליאנה⁴⁵ וניתן לו המספר הקטלוגי Opp. 326.

הספר "תשובות רבי משה יהודה עבאס" מופיע ברשימת הספרים שבספר "רשימה תמה" (המבורג 1782),⁴⁶ ומופיע גם ברשימת ספריו של ר' חיים מיכל "אוצרות חיים"⁴⁷. ניתן לקבוע בוודאות כי כתב היד שהיה בידי ר"ח מיכל הוא כ"י 470 ולא כ"י 326, שהרי בספרו "אור החיים" (עמ' 152, מס' 325), בו הוא תיאר את כתב היד, ציין בין שמות המשיבים המצויים בכתב היד את ר' אור שרגא המכונה פייבש,⁴⁸ "וחתם שם על שני פסקים להרב מו"ה יהודא עבאס בתשובותיו הנמצאים עמי בכ"י הגדולים ממש". "שני הפסקים" הם שתי הסכמות של ר' אור שרגא לתשובת רמ"ע שבס"ב [דף 10ב], וס"ו [דף 37א–38א], הנמצאים רק בכ"י 470 ואינם נמצאים בכ"י 326.⁴⁹

ר"ד אופנהיים נפטר בפראג בשנת תצ"ז (1736). לאחר מותו נדדה ספרייתו מהעיר הנובר, שבה נשמרה בחייו, ועברה להמבורג. כתשעים ושלוש שנים לאחר מותו, בשנת 1829, רכשה ספריית בודליאנה את האוסף מידי יורשיו. ר' חיים מיכל נפטר בשנת תר"ג (1843); לאחר מותו שמרה אלמנתו במשך חמש שנים על האוסף, עד שנמכר לספריית בודליאנה בשנת 1848, וכך חזרו שני כתבי היד של רבינו להתאכסן במחיצה אחת אבל בשני כרכים נפרדים. מה בין תשובות עבאס שבכ"י 326 לתשובותיו בכ"י 470? בתחילה סברנו כי כ"י 470 כולל את הנוסחים הסופיים של התשובות ואילו כ"י 326 הוא מעין אסופה של טיוטות. לאחר בדיקה יסודית של שני כתבי היד, מסקנתנו היא שאין לקבוע שכל התשובות שבכ"י 470 הן הגרסאות האחרונות של תשובות רבינו. אמנם לרוב הגרסה האחרונה אכן מצויה בכ"י 470, אבל חלק לא מבוטל מהנוסחים הסופיים נמצא בכ"י 326. להלן תיאור שני כתבי היד:

1א. כ"י 470

התשובות שבכתב יד זה נכתבו בכתיבה ספרדית רהוטה.⁵⁰ קונטרסי התשובות נכרכו יחד כפי שהיו בעת כתיבתם. הכורך לא טרח ליישר ולחתוך את קצות הדפים בצורה אחידה (מלבד דפים 38–6). כתיבות היד (כולל של עבאס) אינן אחידות. הן נכתבו בקולמוסים ובזמנים שונים.

כתב היד כולל ארבעים וארבע תשובות. שלושים וארבע מאת רמ"ע (עשרים ושבע בחתימת ידו המסולסלת ותשובה אחת בכתיבת ידו ללא חתימה); עשר תשובות נוספות נכתבו בידי חכמים אחרים והם: ר' רפואה שלום; ר' אור שרגא פייבש (בחתימת ידו); ר' שמואל עדילה (בחתימת ידו); ר' דוד קונפורטי; ר' דוד בן פנחס הכהן; ר' חסדאי הכהן פרחיה

45 על נודודי ספריית ר"ד אופנהיים עד שהגיעה לספריית הבודליאנה ראו דושינסקי, עמ' 39–45.

46 ראו רשימה תמה, דף כא ע"א; הספר כולל את רשימת הספרים מספריית ר"ד אופנהיים שהוצאו למכירה על ידי איצק כהן זעליגמן. וראו גם קהלת דוד, עמ' 296, מס' 689.

47 ראו שטיינשניידר, עמ' 68, מס' 793.

48 בשנת תכ"ה היה בשליחות ירושלים במצרים.

49 כאמור, ר"ד אופנהיים החזיק בספרייתו גם את כ"י 326, כפי שתואר ברשימת הספרים שבספר רשימה תמה, דף כא ע"א, אות שי"ן: "שו"ת מהחכם מהר"מ יהודה עבאס מובא בשו"ת תורת חסד סי' כג כ"י ספרדי". תיאור זה מופיע בשינויים קלים בשער של כ"י 326, שהועתק כנראה מרשימת הספרים הנוכרת.

50 מידות: כ-21.7 × 15.8 ס"מ.

(בחתומת ידו); ב' תשובות של ר' יהודה חביליו (התשובה השנייה היא בחתימת ידו); ר' אהרן הכהן פרחיה (בחתומת ידו) ור' חיים בנבנשת. תשובות של חכמים שאינן אוטוגרפים הועתקו בכתיבת ידו של רמ"ע. לשלושים ושתיים מהתשובות הנ"ל, יש מקבילות חתומות בכ"י 326 (לחלקן יש יותר מגרסה אחת חתומה).

יב. כ"י 326

בראש כתב היד⁵¹ נוסף שער מאוחר [דף א2], בכתיבה ספרדית בינונית, ובו כתוב:

שו"ת מהדיין המצוין הנ"מ [= הנכבד מאוד] משה יהודה עבאס. בשו"ת תורת חסד סי' כג⁵² אומר וז"ל: ראיתי מה שהשיב על השאלה הח' [כס] השלם הדיין המצויין כמהר"ר משה יאודה עבאס נר"ו ע"ש.⁵³

כתב היד כולל חמישים ושבע תשובות (כולל תשובות שלהן מקבילות בכ"י 470; 33—חתומות; 24— שאינן חתומות). ארבעים ושבע תשובות מרמ"ע (30 בחתימת ידו); תשע תשובות מחכמים אחרים (4 מהן חתומות): ר' יוסף טייטאצק,⁵⁴ ר' רפואה שלום (בחתומת ידו), ר' שמואל עדילה, ר' דוד קונפורטי (בחתומת ידו), ר' דוד בן פנחס הכהן (בחתומת ידו), ר' חסדאי הכהן פרחיה, ר' יהודה חביליו (שתי תשובות בחתימת ידו), ר' אהרן הכהן פרחיה.

ככמה מתשובותיו של רמ"ע נראה בבירור שהוא הגי' אותן זמן רב לאחר שכתבן, והוסיף בשולי הגיליון הערות.⁵⁵ בגב הכריכה נוספה מדבקה בכתיבת יד אשכנזית: "שו"ת מן הרב י' משה יהודה עבאס כ"י ספרדי". בשעת כריכת הדפים נחתכו הקצוות ויושרו בצורה אחידה, כתוצאה מכך נפגעו כמה הערות שבשולי הגיליונות.

2. כ"י כסא כבוד—פירוש על מסכתות קטנות

ר' משה יהודה עבאס הוא כנראה החכם הספרדי הראשון⁵⁶ שכתב פירוש על ד' המסכתות הקטנות. הפירוש "כסא כבוד"⁵⁷ נמצא בשני כתבי יד שנכתבו בכתיבת ידו:

- 51 מידות: 14.6 × 20.8 ס"מ. על הכריכה הפנימית שבסוף הספר נרשם: pp. 275–282 taken out and bound separately" [16. IX. 1949 A72B]. בשנת 1949, בעת כריכת הספר, הופרדו דפים אלו (משום גודלם; מידות הדפים: 19.2 × 27.1 ס"מ; 33 שורות) ונכרכו בכריכה נפרדת בכ"י Opp. 326/2. דפים אלו כוללים תשובה אחת שיש לה גרסה מקבילה בכ"י 470 בסי' טו [דף 884–888].
- 52 כ"י 326 דף 114–121א (גליק חמודות מצרים [ב], סי' יט).
- 53 נוסף שם בכתיבת ידו של הספרן "וגם תמצא באוצרות חיים 1–470 (793) Mich".
- 54 תשובה זו אינה שייכת לקובץ תשובות רבינו וכנראה שרבינו העתיק אותה לצרכיו ומשום מה השתרבבה לקובץ. התשובה סומנה אצלנו כנספח.
- 55 כמו למשל בדפים 199–200א (דפים אלו בולטים מכריכת הספר ואינם חתומים בצורה אחידה כשאר דפי הספר).
- 56 חכמים ספרדים נוספים שכתבו אחריו פירוש למסכתות הקטנות הם: ר' חיים יוסף דוד אזולאי (ירושלים, תפ"ד-תקס"ו), "ככר לאדן" ו"כסא רחמים"; ר' יהודה נג'אר (תוניס, נפטר בתק"ץ), "שמחת יהודה"; ר' חיים פלאג'י, "עיני כל חי".
- 57 ראשי תיבות: כלה, שמחות [אבלות], סופרים, ודרך ארץ [כבוד]. החיד"א, בספרו שם הגדולים, בערך יהודה עבאס (אות נג), פירט את שמות החכמים שהסכימו לספר:

- א. כ"י ספריית מונטיפיורי (Ms. 64); 58; 81 דף, כולל פירוש לארבע המסכתות הקטנות. הגליונות גדושים בהערות שוליים ויש בכך ללמד כי רבינו בחן ובדק את חיבורו פעמים אחדות ובכל פעם חזר, הוסיף ותיקן.⁵⁹
- ב. כ"י הספרייה הבריטית (Or. 5009); 94 דף. כתב היד אינו כולל פירוש למסכת דרך ארץ. בהקדמת הספר מופיע שיר באקרוסטיכון "משה יהודה עבאס". רבינו טרח והעתיק את חיבורו מכ"י מונטיפיורי לכ"י זה, והוסיף בתוך הפנים את ההערות הרבות שבשולי גליונות כ"י מונטיפיורי.⁶⁰

1. ר' יונתן גאלנטי (הרב יג"ן), מחכמי צפת. בשנת ת"י"ב יצא בשליחות למצרים ומשם נסע לתורכיה ושהה בה בין השנים ת"י-ת"ט (בשנת ת"ט ביקר בתיריה ושם כתב כמה מתשובותיו). הוא חזר לצפת ונפטר בה בשנת תל"ח (ראו עליו פוזילוב, עמ' 64-66). 2. ר' יהודה שאראף, מחכמי מצרים. בשנת ת"ה למד בישיבתו של ר' אברהם סכנדי בקהיר בחברת ר' דוד קונפורטי. בשנת תכ"ג היה ברמלה, ובשנת תכ"ה חזר למצרים ומשם יצא לעזה כדי להיפגש עם נתן העזתי ולבדוק מפיו את השמועות. לאחר מכן יצא לתורכיה כדי להיפגש עם שבתי צבי, בדרכו נלקח בשבי והוחזק במלטה. לאחר שנפדה (לאחר תכ"ט לערך), חזר כנראה למצרים. בשנת תל"א היה במצרים בשנת תל"ב שהה באדריאנופול במחיצתו של שבתי צבי. כנראה שבשנת תל"ג יצא לאיטליה והתגורר בליוורנו עד לפטירתו בשנת תל"ה. (ראו: תמר, לביור, עמ' רמא; בניהו, אגרות ר"ש אבוהב, עמ' 38; על השנים שבהן היה במצרים ראו בניהו, דור אחד בארץ, עמ' שע-שעד). 3. ר' שלמה [נסיים] אלגאזי, נולד בברוסה (Bursa) סמוך לשנת ש"ע. למד שם אצל אביו ר' אברהם, ואצל ר' יוסף גאנסו. מברוסה עבר לגאליפולי (Gelibolu) ושם למד אצל ר' יוסף ששון ור' מאיר די בוטון. בשנת ת' שהה בקושטא וכנראה למד אצל ר' יחיאל באסאן. בשנת ת"ו לערך עבר לאיזמיר ויסד שם ישיבה. בין תלמידיו היו חתנו ר' אהרן לפאא, ר' חיים ן' מנחם אלגאזי ור' דוד קונפורטי. סמוך לשנת תל"ג עלה לארץ ישראל. הוא התגורר בירושלים, אך שהה לעיתים גם בשכם וחרבון וכן היה במצרים ובאלכסנדריה. נפטר בין השנים תמ"ד-תמ"ח (ראו עליו: בניהו, חכמי ירושלים, עמ' שד-שה; שפיגל, אלגזי, עמ' 117-123). 4. ר' יהודה חביליון, נולד בירושלים. בשנת ת"ח כנראה שהה בצפת ובשנת תכ"א היה בירושלים. משנת תכ"ג היה רבה של כיוא (Chio) לאחר זמן עבר למצרים והיה לרבה של אלכסנדריה. בשנת בשנת תנ"ב עלה לחברון, ובשנת תנ"ז חתם שם בראש רבני חברון על פסק דינו של ר' אברהם ישראל זאבי בעניין תנאי בגט. נפטר לפני שנת תס"ד (ראו הבלין, ר' אברהם הלוי, עמ' 250-258). 5. ר' שמואל ויטאל, נולד בשנת שנ"ח בדמשק. ביקר במצרים לפני שנת ת"ה. בשנת תכ"ד לערך עבר להתגורר במצרים, ונפטר שם בשנת תל"ז. 6. ר' דוד גרשון, נולד סמוך לשנת שע"ה. רבה של רשיד משנת ת"ג. בשנת תכ"ח לערך ביקש מרמ"ע חוות דעת הלכתית בעניין עגונה. נפטר בין השנים תס"ד-תס"ו. החיד"א החזיק בכ"י "כסא כבוד" של רבינו.
- 58 על פי קטלוג הירשפלד, עמ' 14 מס' 64, ר' חיים יוסף דוד אזולאי (החיד"א) היה אחד מבועלי כ"י מונטיפיורי (וראו שם הגדולים, ערך יהודה עבאס). כ"י זה נמצא עתה באוסף רובינס שבספריית אוניברסיטת ברקלי ומספרו הוא: Ms. Robbins 273. כתב היד היה באוסף שז"ח הלברשטם (מס' 346), נמכר לאחר מותו (1900) לספריית מונטיפיורי שברמסגייט (Ramsgate, Kent) שבבריטניה, משם הועבר לאחר זמן לספריית Jews' College שבלונדון. בשנת 2004 נמכר במכירה הפומבית של "סותביס" לאוניברסיטת ברקלי (לתיאור כתב היד ראו באתר "סותביס").
- 59 המהדורה שבכ"י מונטיפיורי קדמה למהדורה שבכ"י Or. 5009 שבספרייה הבריטית. ההוספות בגליונות שבכ"י Or. 5009 אינן מופיעות בכ"י Ms. 64, מאידך גיסא ההוספות והתיקונים שבגליונות שבכ"י זה, מופיעים כולם בפנים שבכ"י Or. 5009.
- 60 כתב היד היה באוספו של מוכר הספרים פישל הירש (נפטר בברלין ב-5 ביוני 1896) ונרכש ממנו על ידי המוזיאון הבריטי ב-13 באפריל 1896.

הדף הראשון של ההקדמה חסר ונמצא בכ"י גינצבורג 1614 [ראו נספח א].⁶¹ רבינו מפרט שם את המקורות שעליהם התבסס בפירושו. כיוון שהראשונים לא פירשו את המסכתות הקטנות, הוא נאלץ להביא את לחמו ממרחק, והוא איתר בתלמודים (בבלי וירושלמי) סוגיות ומימרות מקבילות שהתפרשו על ידי הראשונים על אחר, והסתייע בהן לפירושו. לצורך עבודתו הוא נוקק לספרים רבים, אך אלה לא היו מצויים בביתו.⁶² בהקדמה לספר הוא כותב כי חסרו לו אפילו ספרי יסוד כמו תלמוד וספר הטור. כדי לכתוב את פירושו הסתייע בספרייתם של שני חכמים, ר' שמואל חיון⁶³ ור' יהודה מר עלי:⁶⁴

בהיותי מאסף לכל המחנות נבהלתי שלא הי{ה} בידי לא תלמוד ולא טורים, והכין לי האל שני בתים מנאמני אהבתי, צנתרות הזהב, לנבון וחכם כה"ר שמואל חיון יצ"ו ולאחי וראש מזה בן מזה מחסותא דבבל, חכם שלם בכל גור אריה יהודה מר עלי נר"ו, שהחזיקו שניהם ידי בספריהם בכל המצטרך.

ברשימתו (Ms. Guenzburg 1614), רבינו מציין את הספרים בהם השתמש להכנת פירושו והם: רש"י ותוספות על התלמוד, פירושי הר"ף, הר"ן, הרא"ש, הראב"ד, הרשב"א והרמב"ן. ספרי פוסקים: סמ"ג, סמ"ק ורבינו ירוחם. וכן ספרי שו"ת: מהרי"ק, רד"ך, מהר"י בן לב ומהר"י ן' חביב. יש והוא מביא שמועה בשם האר"י כמו: "ואני הצעיר שמעתי משם האר"י זלה"ה שרמוז בתורה בפסוק שמתל"ך ל"א בלת"ה ר"ת [=ראשי תבות]: שע"ת מית"ה לובשי"ן תכריכין, כ"ן לובשים אותם בעת [יד] ל"בא ת'חיית ה'מתים. כן שמעתי מפי ת"ח" (כ"י Or. 5009, דף 39ב שו" 3-1).

פרשנותו מצטיינת בצניעות ובענווה רבה, הוא אינו מסתיר מהקורא כי נעלם ממנו פירוש של מילה או של מונח. כמו בכ"י Or. 5009, דף 32א שו" 12-11: "וחקרתי מאד ופשפשתי לידע

61 להלן, עמ' 491.

62 על מחסור בספרי הלכה בסיסיים הוא מתאונן רבות גם בתשובותיו—ראו למשל: בסי"ב ב [דף 6ב, שו" 9]: "לא ימצא אתי שום ספר קטון או גדול אפילו כהדין דרדקי דבי רב ... בהיותי נודד ללחם ממקום למקום". או, סי"ד [דף 27ב, שו" 4]: "וידיני מעכ"ת לכף זכות כי לא נמצא אתי הרמב"ם זלה"ה".

63 לפי שעה לא ברור מיהו ר"ש חיון זה. הוא בוודאי אינו ר' שמואל חיון, בעל שו"ת בני שמואל (נכדו של מהרשד"ם). או אחד מצאצאיו, שכן הוא נפטר בשנת שס"ח ולא השאיר אחריו צאצאים (ראו עמנואל י"ש, מצבות שאלוניקי, עמ' 187, מס' 425; וראו שם נוסח מצבתו: "לא נשאר אח ובן לו"; מולכו, מצבות, עמ' 192, מס' 596; עמנואל י"ש, גדולי שאלוניקי, עמ' קפו-קפז). ייתכן ור' שמואל חיון הנזכר בדברי רבינו היה מבני משפחתו של משה חיון במצרים (ראו בניהו, מפנקסיהם, עמ' ל-לא [= בניהו, שמועות שבתאיות, עמ' תעא]), שר' משה חיון ובנו נחמיה חייא התעכבו במצרים שש שנים, כנראה בין השנים תכ"ח-תל"ד, בדרכם לארץ ישראל. רבינו נעזר בספרייתו בין השנים הנ"ל (ואפשר שחלק מבני משפחת חיון נשארו במצרים). הדעת נותנת שכאשר רמ"ע כתב את חבורו "כסא כבוד" הוא שהה במצרים, שהרי באותה עת הוא גם נעזר בספרייתו של ר"י מרעלי (ראו הערה הבאה) שהיה תושב מצרים.

64 ראו עליו למדן, תיקון סופרים, עמ' 21-23. הוא נפטר לאחר שנת ת"מ (ראו שם, עמ' 23, על דפיס מכתבת ידו בעותק של ספר שנכתב בשנת ת"מ). שנותיו חופפות פחות או יותר לשנותיו של רמ"ע. וראו גם גליק, שרידי תשובות קמברידג', ב, עמ' 722; גליק, שרידי תשובות אדלר, א, עמ' 1.

מהו בריתו⁶⁵ ולא ידעתי מהו בריתו. והמעין יעין ויראה הבנת בריתו; או שם, בדף 37 שו' 28: "אמר הכותב לא מצאתי גלוי דין זה של פותח⁶⁶ בשום מקום". וראו ביחוד שם, דף 66א שו' 22: "אמר הכותב כמה יגיעות יגעתו להבין זאת ההלכה ולא הבנתי, לכן אמרתי השתיקה היא טובה". פעמים, רבינו מוצא לנכון להודיע לקורא שמחמת שזמנו דחוק, לא עיין כראוי בעניין מסוים.⁶⁷

מאידך גיסא הוא אינו נרתע מלתמוה ולהקשות בלשון רכה ומעודנת על דברי ראשונים ואחרונים.⁶⁸ הוא גם אינו נמנע מלהעיר על נוסח מוקשה שבמסכתות הקטנות. פעמים, לאחר דרישה וחקירה, הוא מציע תיקוני נוסח או שמצביע על נוסחים עדיפים, או מפנה לנוסחים אחרים שבכתבי יד או בחיבורי הראשונים.⁶⁹

כשנזדמנה לו הלכה שכבר נכתבה ונתפרשה ושוב חזרה ונשנתה ללא צורך, הוא לא נרתע מלהעיר שיש למוחקה.⁷⁰ כאשר נראה לו שבטקסט מסוים יש מן הגוזמא, הוא נוטל חירות

65 הנוסח שהיה לפניו אכן היה משובש ובמקום "בצידו" היה כתוב "בריתו" (ראו מסכת שמחות, פ"ח ה"ז: "ונותנין דיותו וקולמוסו בצידו").

66 אף כאן נזדמן לרבינו נוסח משובש ובמקום "פוחח" נכתב "פותח" (ראו מסכת שמחות, פ"ט ה"ח: "פוחח אינו קורע").

67 ראו שם, דף 46א שו' 6-7: "זה המעשה הובא ללמדנו מוסר ותוכחה. ובאפס פנאי לא שמתי לבי לדרוש אלו הפסוקים ולראות הקשה שיש בזה המעשה. ובעזר השם לא אשיב ידי [מ]לדרשם כיד אלדי הטובה עלי".

68 ראו כ" Or. 5009, דף 21ב שו' 24-25: "ואני בע"ד [= בעניות דעתין] נפלאתי עד מאוד על בת"ה [= בעל תרומת הדשן] זלה"ה ולא מלאני לבי לחלוק על דבריו והמעיינים יע"ש [= יעינו שם]; שם, דף 38א, שו' אחרונה—דף 38 ב שו' 5: "ועוד כתב שכתב הרב המגיד בסוף ה' תעניות ... ואני בע"ד [= בעניות דעתין] נקשתי מאד בלשון ה"ה [= הרב המגיד] זלה"ה שכתב ... ואנכי עפר ואפר ולא בינת אדם לי לא ידעתי אכנה במה שהקשה והמעין יעין ויצילני משגיאות"; שם, דף 54א שו' 39—דף 54א שו' 1: "ועיין בכתבים של בעת"ה [= בעל תרומת הדשן] ז"ל בס"ג צ"ג וכתב ... ותמהני מאד איך לא שת לב לדברי הרמב"ם זלה"ה"; שם, דף 59 שו' 33-34: "ואני אומר אני מבין תשובת הראב"ד זלה"ה שהרי הרמב"ם זלה"ה כן כתב והכי גרסינן".

69 ראו שם, דף 4א שו' 20: "מצאתי בספר כתיבת יד נסחא אחרין"; שם, דף 30ב בתוספת שבשול הימני: "וזאת נסחת הגמ' האמיתית"; שם, דף 31א שו' 21-22: "אמר הכותב בדפוס בתלמוד זאת הממרא מלאה שיבושים, ואין הלשון נופל על הלשון. וזאת הנסחא מצאתיה בספר תורת האדם וכן בטור יע"ש"; שם, דף 31ב, שו' 8-10: "אמר הכותב בע"ד [= בעניות דעתין] זאת הנסחא משובשת כשיעין המעין היטב, אבל מצאתי ספרים אחרים וכתוב ... ובעיני זאת הנסחא ישרה בעיני"; שם, דף 55 שו' 6: "זאת ההלכה בדפוס היא משובשת והנה לך ההלכה"; שם, דף 72ב שו' 23-24: "זאת ההלכה מצאתיה משובשת אשר לא כדת ואחר עמל ויגיעה הגהתיה מספר כתיבת יד וזאת היא הנסחא האמיתית וכן היא"; שם, דף 80 שו' אחרונה—דף 81א שו' 3: "נל"ע שהוא טעות גדול בדפוס ... ונר[אה] ל"ע"ד שזאת הנסחא משובשת ... ונסחת הרמב"ם זלה"ה היא אמיתית כנסחת הגמ' [א"]; שם, דף 86 שו' 1-2: "אמר הכותב אחר עמל וטורח וכמה יגיעות עד שמצאתי נסחא אמיתית. שבדפוס כתוב ... ומצאתי להרא"ש זלה"ה נסחא אמיתית".

70 ראו שם, דף 59 שו' 38-39: "אמר הכותב כמדומה לי שזאת ההלכה כולה מותרת משום שכל זה מפורש למעלה, ובזאת ההלכה אין כל חדש כאשר יראה המעיין"; שם, דף 65 שו' 29-30: "זאת ההלכה מפורשת עם שלמעלה וכמעט שלא הייתי רוצה לכתובה, אלא שיראתי שלא תרוין גולגלתי ויראתי מפני האף וכתבתיה". ביטוי דומה מופיע גם בדף 88א שו' 18-23: "אמר הכותב בראותי כי מאכן ואילך עד סוף המסכתא, שהם כ"א פרקים, הכל הוא מנהגי התפילות מזמן קדמון, כל א[ח]ד [וא] כפי מנהג מקומו ואין בהם שום חדוש, עם כל זאת יראתי שלא ירצצו את מוחי לעה"ב [= לעולם הבא] לכן העליתי לשונם לבד על ספר ולא יגרעו מהמסכתא. וה' יגמור

לעצמו שלא להעתיק את הקטע. אולם הוא מקפיד שלא להסתיר או להעלים זאת מהקורא, ומצטדק על כך. וכך כתב בסוף מסכת סופרים:⁷¹

אמר הכותב בראוטי ההלכה הט' שהיא מעשה שעושה לאברהם גדול מהענקים, גוזמא בלי שום חידוש, לא כתבתיו ... והלשון פה משונה עד מאד ולא מלאני לבי לשנותו וה' יגמור בעדי אנס"ו.

כאשר רבינו מתלבט אם להגיה את הנוסח שלפניו על פי סברה, הוא מקפיד לשתף בלבטיו את הקורא.⁷²

מתי נכתב "כסא כבוד"? קשה לדעת במדויק. בכתבי היד אין קולופון ולא מוזכר אף ברמזיה תאריך כלשהו. סביר להניח שרבינו סיים את כתיבתו ברשיד לאחר שנת ת"ג, השנה בה ר' דוד גרשון (שהוא אחד מהמסכימים) הגיע לכהן שם כרב, ואולי יש לאחר אף לאחר שנת תכ"ח.⁷³

3. ספר קול יהודה

כשנחה על רבינו הרוח, שלח ידו בשירה. רבים משיריו הם מכתמים ואיגרות מחורזות ששיגר ללידידים, חכמים או נדיבים שתמכו בו. על ספרו "קול יהודה" למדנו מאזכורו בהקדמה לפירושו "כסא כבוד", החיבור כלל כנראה רננות ושירי קדש לצד מבחר משירי החול ומכתמים שכתב לידידיו, מוקיריו ותומכיו. בראש כ"י גינצבורג 1614,⁷⁴ הוא כותב:

{אש} שם בפי ניב ומבטא להללו ולשיר לְשֵׁמוּ בַכ"ד מיני רננות כאשר יראה [...] בספרי אשר חברתי וקראתיו קול יהודה⁷⁵ ולהלל לשבח לפאר לרומם ולקלס למי שעשה עמדי תילי תילים חסדים.

בעדי ובעד כל ישראל, וכל הקורא ומגיה איזה טעות יבורך מפי עליון, ואל יאשימני אם כה ימצא שום טעות, אלא ידין אותי לכף זכות והשם ישלם פעלו".

71 שם, דף 93א.

72 ראו שם, דף 22א שו' 24-25: "וכמעט אומר שכפי כל אלו הלשונות, שנפל כאן טעות וצריך להיות 'מוחרס' והמעין יעין". לאחר שורות אחדות (שו' 27-28) הוא משנה דעתו ומכריע: "זאת הברייתא לא שייכא אלא אמנודה ולכן לא מלאני לבי להגיה למעלה במקום 'מנודה' 'מוחרס' והמעין יעין". וראו גם שם, דף 357ב שו' 9-10: "וכמה יגיעות יגעתו לתקן זאת הנסחא ולא עלה בידי, ויראתי להגיהו אולי מקוצר ידיעתי הוא שלא הבנתיו".

73 ראו לעיל, סוף הע' 63.

74 ראו להלן, נספח א, עמ' 491.

75 על אזכור ספרו "קול יהודה" בשיריו "לבי למחוקקי ישראל" שבכ"י תקון שבתות ראו להלן לאחר הע' 84.

4. כ"י תקון שבתות

החיבור⁷⁶ כולל אנתולוגיה של מבחר פיוטים מגדולי הפייטנים שקדמו לרמ"ע, פרי עבודתו של רבינו ור' יצחק חביב. לא מצאנו בחיבור זה פיוטים שרמ"ע חתום עליהם או מיוחסים לו,⁷⁷ מלבד הקדמה ושיר פתיחה. על מטרת החיבור כותב ר"י חביב בהקדמה [דף א2] כך:

אמר הצעיר ... יצחק בן לאדוני אבי החכם הנעלה כמה"ר אליעזר חביב נר"ו,⁷⁸ בהיותי משתעשע באהבת החכם הנעלה נעים זמירות ישראל כמוה"ר משה יהודה עבאס נר"ו, עלה בלבנו לחבר ולכתוב ולחתום על ספר, כל אמרי אבותינו הקדושים אשר בארץ המה, אשר חברו ... על מקדש ה' והיכלו, ועל ירושלים וציון ערי הקדש. וטרחנו יגיעות רבות עד מצא זעיר שם זעיר שם נפוצות ומפוזרות מחוקות ומטושטשות ... וזאת היא ההקדמה אשר תקן ויסד החכם הנעלה נעים זמירות ישראל, כמה"ר משה יהודה עבאס נר"ו, אשר הוא אזור כגבר חלציו, והוסיף כח על כחו ברוב חולשתו,⁷⁹ והוציא גם הוא את אשר אתו החוצה אל העין ויען ויאמר ...

[מכאן ועד סוף ההקדמה באים דברי רמ"ע]:

לבי לחוקקי ישראל ...

לבי לעשות לירושלם קינה ומספד, חמד ואוה לבכות את השרפה שרפת בית ה', מדי חדש בחדשו ומדי שנה בשנה. ותען נפשי ותאמר, הטוב לך כי תעשוק להבאיש יגיע כפיך, כי יאלף עונך⁸⁰ פיך ושפתך יענו בך,⁸¹ ואין לך לעמוד בפני גדולים. לכן תרתי בלבי ללקוט אמרי צדק מהראב"ע זלה"ה, ומכל גדולי משפחתי, ומהרב יעקב גומל זלה"ה,⁸² להביאם אל הספר בעט ברזל ועופרת. ויראו העמים והשרים את יפים,⁸³ ובתוכם תכנתי גם אני מילין על יהודה ועל ירושלם ...

ופי פציתי בשירתי ... [דף א3-ב3]

אשחר אל שחרים וערבים, בשירים הלבבות הם משיבים ... מלאני לבי לעמוד בין גדולים, ביקר הם, וחביבים מבוני לב אשר עמדו והיו ברך יחד מאד, לאל קרובים. צרפתים כצרוף כסף⁸⁴ מזוקק, בפיוטים ותוכחות חטובים, קראתימו בשם אל, קול יהודה, וחברתים במנין נחשבים ... שאו עין בתוכחות ... אשר חבר ויסד ... ואברהם

76 כ"י שוקן SL-I-25 (מ"י 5385, מתכ"י סרט 45350), כתיבה מזרחית, המאה הי"ז.

77 אמנם בכתב היד מופיעים פיוטים החתומים בשם "משה", ובראשם אף נרשם כי הפיוט הוא לה"ר משה ז"ל, ר' משה זה קרוב לוודאי אינו רבינו.

78 ר' יצחק ב"ר אליעזר חביב (נוכר בשו"ת יד אהרן, ח"ב, אבן העזר ח"א, נאספות, סי' ט, חתום כעד לפני בית דין שבגליפולי) הוא ככל הנראה ממשפחת ר' שמעון חביב, רבה של גליפולי.

79 נראה שבעת כתיבת ההקדמה רבינו סבל מחולשה, כנראה מחמת זקנותו המופלגת.

80 איוב טו, ה.

81 שם טו, ו.

82 כנראה חכם איטלקי. נזכר בפירוש "מנחת שיי" לר' ידידיה נורצי, בראשית ב, כב.

83 על פי אסתר א, יא.

84 על פי זכריה יג, ט.

ועזרא שמו הוא ... הלא תוכם לעבאסים רשמתי[ם], אשר המה בגן עדן ויושבים ...
והרב יעקב גומיל בצחות לשונו הן ידומה בלהבים

5. קובץ שירים ומליצות ששיגר משה יהודה עבאס למשוררי וחכמי דורו
כתב היד ms. Opp. add 8° 58 שבספריית הבודליאנה (56 דפים בכתיבת ידו של רבינו).⁸⁵
כולל ארבעים ושלוש איגרות פיוטיות שכתב רבינו לעמיתיו.⁸⁶ את רוב האיגרות חתם בשם
"יאודה עבאס". אחדות מהן חתם "משה יאודה עבאס". מספר איגרות כתובות בכתיבת ידו
אך ללא חתימתו. להלן תיאורי תוכן האיגרות כפי שמובא בדפי הספר, מהם ניתן ללמוד על
קשריו הענפים של רמי"ע עם חכמי דורו:

- דף 2א: זאת ההלצה שלחתי אותה אל החכם השלם הרב הכולל מוהר"ר חיים שבתי על ענין
אשר לא ראיתי נדבת ק"ק אשר התנדבו.
- דף 2ב: אחרת אשר שלחתי אל האשל הגדול הכהן הגדול כמוהר"ר אשר הכהן נר"ו על
הענין עצמו.
- דף 3א: ... אשר שלחתי אל החכם השלם חסיד ועניו כמוהר"ר אברהם מוטל נר"ו.
- דף 4א: ... ועל רוב הבלי במלולי נשאתי משלי ואומר כמהללי אחרת אשר שלחתי אל החכם
השלם החסיד ועניו הדיין המצויין כמוהר"ר שלמה לבית הלוי נר"ו על הענין עצמו.
- דף 4ב: למרי ועטרת ראשי הרב הכולל כמהר"ר מרדכי קלעי נר"ו כשנפטרה זוגתו מב"ת
- דף 5א: אחרת לנ"ז נר"ו על הענין עצמו.
- דף 6א: עוד אחרת שלחתי למורי הנז' על אשר כי הבאים אחרי עברו לפני ולקחו קודם
ממני הנדבה.
- דף 6ב: מליצה זאת שלוחה מאתי אל החכם השלם כה"ר שמואל ברוך נר"ו על אשר שלחתי
בחופתי גרו"ש מלא שלחתי ידי בעיטי להשיבו בחן ובחסד.
- דף 7א: אגרת אשר שלחתי לאישקופיא אל החכם השלם כמה"ר יוסף חנדאלי נר"ו על
מריבה אשר נפלה בין זוגתי ובין ה"ר משה פראנקו יצ"ו על גביית כתובתה אשר
שלח לה לאמר שיגבה אותה מבית קדש אשר הייתי דר בה.
- דף 8ב: רן ושירה בשפה ברורה שלוחה מאתי לאחי נאמן אהבתי כה"ר יצחק די ליאון נר"ו
תושב מצרים מקושטנדינה כששמתי פני העירה שלונקי בשיר שפה וניב יפה.
- דף 10א: שיר ומכתם שלוח מאתי להר' רחמים מרזוק תושב מצרים קודם בואי פה שלונקי.
- דף 11א: עוד תכנתי ושלחתי לנז' בהיותי בארץ מצרים על אשר חשבו מזימה סרני העיר
להאבידני, באלפא ביתא מתיבות ח"י ח"י.
- דף 13א: מנחה ורן אשר שלחתי בהיותי בתוך מצרים אל השר המרום כה"ר אהרן בירב
נר"ו.

85 בכ"י אוקספורד-בודלי, קטלוג נויבאואר מס' 2580 (מס' כ"י במתכ"י F 22283). לתיאור כתב
היד ותוכנו ראו ולנשטיין, עבאס, א, עמ' 54. מידות: 14.1 × 9.7 ס"מ. כתב היד כרוך בכריכת בד
ירוקה. על שדרת הכריכה נרשם באותיות מוזהבות: JUDAH ABBAS BENJAMIN OF TOLEDO
[התוספת BENJAMIN OF TOLEDO, מתארת את ב' העמודים האחרונים [57א-57ב], מיומנו של
בנימין מטודלה, הכתובים בכתיבת יד אחרת].

86 כמה מהאיגרות והמכתמים פורסמו במאמרו של ולנשטיין—ראו לעיל, הע' 10.

- דף א15: עוד שלחתי לגביר נעלה לתהלה הר"ר חיים תלמיד נר"ו.
- דף א16: עוד שלחתי לאחי נאמן אהבתי כה"ר יצחק דיליאון יצ"ו מקושטנדינה למצרים כששמתי פני נגד שלוניקי וירט הדרך לנגדי נשאתי קול להודיעו.
- דף א17: שירה מפוארה אשר שלחתי אל החכם השלם הדיין המצויין כמה"ר מאיר די בוטון נר"ו על אשר רצה לחזות כתב מעשי ידי.
- דף א18: שירה זומרה אשר שלחתי אל החכם השלם המרומם כמה"ר חזקיה רומאן נר"ו אשר הפליא חסדו עם אדוני אבי.
- דף א20: ואחר בא אלי תשובתו קמתי בעז ותעצומות לשובב נתיבות לשבת לו.
- דף א22: עוד שלחתי אל החכם השלם כמה"ר יוסף חנדאלי נר"ו על ענין הנ"ז לעיל ולא השיב תשובה.
- דף א23: ויהי ביום א' בבוקר בא בא [!] אלי שירה זומרה מעלפת ספירים מהחכם השלם כמה"ר חזקיה רומאן נר"ו מחרוז לי מר"ת אל דרך האלפא ביתא, וזאת תשובתי אליו מחרוז ב"י בא"ב.
- דף א24: עוד שלחתי אל החכם השלם הדיין המצויין כמה"ר פאלקון נר"ו משלונקי.
- דף א25: אגרת בשירה אשר שלחתי אל החכם השלם כמה"ר יהודה עוזיאל נר"ו על אשר חדל זיו תארו לראות ימים.
- דף א26: אגרת אשר שלחתי אל החכם השלם כמה"ר משה מאיו נר"ו בשמעי את שמעי [!] הטוב.
- דף א28: עוד שלחתי אל החכם השלם כמה"ר חזקיה רומאן נר"ו אשר חלה מעט חליו.
- דף א29: עוד שלחתי לאהובי יקר רוח כה"ר יצחק די ליאון יצ"ו לאהבן [!] השואל כמה"ר אליה ויטאץ יצ"ו.
- דף א31: כתב אשר שלחתי להגביר כה"ר שמואל בורגויש יצ"ו כשהלכתי לרודיש לדרוש בק"ק יע"א ועברו ימים ולא ענו שום דבר.
- דף א32: שיר אשר שלחתי אל החכם השלם כמה"ר מאיר יצחקי נר"ו אשר פרחו ציצים לבנים בזקנו ויסד שיר הוא וכראותי מתיקות ניב לשונו פציתי ואמרת.
- דף א33: אגרת אשר שלחתי אל החכם הנעלה כה"ר יצחק אריזה יצ"ו ברודיש.
- דף א34: ספר אמרי שפר אשר שלחתי אל החכם המרומם הרב הכולל הדין המצויין כמה"ר יום טוב ׳ יעיש על אודות אשר עשקני לוחץ.
- דף א36: עוד לנ"ז על הענין עצמו.
- דף א38: כתב אשר שלחתי אל החכם השלם כמה"ר יהודה עוזיאל נר"ו לבקשת החכם השלם כמה"ר זרחיה גוטה נר"ו.
- דף א40: למרי ועטרת ראשי הרב הכולל כמה"ר קלעי נר"ו משנפטרה זוגתו מב"ת.
- דף א41: עוד בהיותי בארם צובה שלחתי לשי ומנחה לחכם המרומם כמה"ר משה הררי נר"ו יזכרהו השם לטובה ויעזרהו ויברכהו בשבתו ובקומו ויתן אויביו הקמים עליו נגפים לפניו והוא יעלה למעלה ראש.
- דף א42: עוד שלחתי להחכם הנעלה שרש היחס והמעלה כמה"ר יעקב הכהן נר"ו.
- דף א43: עוד שלחתי לחמד בחורים החכם הנעלה כה"ר אברהם שניאור יצ"ו.
- דף א45: שלחתי אל החכם הנעלה כה"ר עילי אסיאס נר"ו.
- דף א45: עוד שלחתי אל החכם השלם כמה"ר אברהם מלמד נר"ו.
- דף א46: עוד לנ"ז.

- דף 46ב: שלחתי אל ה"ה כה"ר שבתי מימון יצ"ו.
 דף 47א: שירה אשר תכנתי לנפשי הענוגה.
 דף 48ב: עוד שלחתי לגביר ומרומם.
 דף 49א: עוד שלחתי אל החכם השלם כמה"ר אברהם היכני נר"ו בערבי פסחים.⁸⁷
 דף 52א: עוד שלחתי.

6. מפתחות לשו"ת מהר"י בן לב

מתשובת רבינו [כ"י Mich. 470, דף 28א, סי"ד, שו"י 11-10], משתמע שהוא הכין מפתחות לשו"ת מהר"י בן לב. וכך השיב בתשובתו לר' רפואה שלום על שהעיר לו שכביכול לא חש לדברי מהריב"ל בעוד שהוא העמיק רבות בתורתו:

ואפילו בקטון שבכולם מכ"ש עם מוהר"י ן' לב זלה"ה, חס וחלילה ומה גם כי בחיי ראשי מנעורי ועד עתה, כל יגיע כפי לא היתה אלא עם מוהר"י ן' לב זלה"ה נפשי ונשמתו דבוקים בו והראיה המפתחות אשר עשיתי על ספריו הנחמדים [ההדגשה משלי ש.ג.] כי כמעט כל תשובותיו חקוקות על לוח לבי.

מה הניע את רבינו להתמיד בלימוד שו"ת מהר"י בן לב? אמנם בתקופתו גדולי החכמים הרבו לעסוק בשו"ת מהר"י בן לב,⁸⁸ אבל מדוע טרח טרחה מיוחדת בהכנת מפתחות חדשים ומפורטים? ייתכן שהיה זה בהשפעת מורשתו של ר' שלמה לבית הלוי הזקן משאלוניקי, שהיה תלמידו של מהריב"ל ועסק רבות בתורת רבו.⁸⁹ הוא אף ערך את המפתחות לשו"ת מהר"י בן לב, ח"א, קושטא [ש"כ-שכ"ה]. אפשר שנכדו, ר' שלמה בית הלוי,⁹⁰ שהיה כנראה אחד מרבותיו של רמ"ע בשאלוניקי, שיכנע אותו להשלים את עבודת זקנו, ולשפר ולשכלל את המפתחות.

לאחרונה מצאנו בכתבי גניזת קהיר שבספריית כ"ח בפריס, דף בודד (כ"י IHC.42), שאמנם זוהה בעבר כקטע ממפתחות לשו"ת מהר"י בן לב, אבל לא זוהה מי הוא הכותב. לאחר בדיקת כתיבת היד זיהינו בוודאות שהדף נכתב בכתיבת ידו של רמ"ע. דף זה [ראו תוכנו בנספח ב]⁹¹ כולל שני עמודים ובהם מעין מפתח לשו"ת מהר"י בן לב, ח"א, סי"מח-נד, ובהם תוכן הסימנים, וכן תוכן שיטות הפוסקים המוזכרות בתשובות והכרעת ר"י בן לב. נראה שדף זה הינו חלק מקונטרס המפתחות של שו"ת מהר"י בן לב, ח"א, שעליו העיד רבינו בתשובתו "והראיה המפתחות אשר עשיתי על ספריו הנחמדים ...". סגנון הכתיבה הולם

87 על אברהם היכני ואיגרותיו ראו במאמריו של ולנשטין, איגרת שירה; איגרת לאברהם.
 88 ראו לדוגמא: ר' חיים בנבנשת בשני ספריו שו"ת בעי חיי, וכנסת הגדולה, שהזכיר את מהריב"ל בספריו למעלה מ-2,800 פעמים; ר' מרדכי הלוי בשו"ת דרכי נעם, שהזכירו למעלה מ-100 פעמים, וחכמים נוספים מאותו דור שציטטו רבות את מהריב"ל בספריהם כמו: ר"ש ויטאל, בשו"ת באר מים חיים; מהר"ם חביב בספרו גט פשוט; ר' אברהם די בוטון בשו"ת לחם רב ועוד. ראו בנטוב, שיטת לימוד, בייחוד עמ' י-יא.
 89 בקובץ שירים ומליצות מצויות שלוש איגרות פיוטיות שנכתבו לר"ש לבית הלוי (ראו לעיל, עמ' 487 בתיאור האיגרות, דפים 4א-4ב). רמ"ע פונה אליו בתואר "מורי"—וראו ולנשטין, עבאס, ב, עמ' 138, סמוך להע' 33.
 91 להלן, עמ' 493.

יותר "כרטסת מידע" על פי סדר הסימנים מאשר מפתח סימנים מקובל לספר שו"ת. ייתכן שרבינו הכין כרטסת זו כבסיס נתונים לשם הכנת המפתחות לד' חלקי הספר, ומפתחותיו הסופיים כללו מפתח עניינים ומפתח ביאורים (כמו בג' החלקים שיצאו לאור בשנים ש"ז-ש"ג). וייתכן שדף זה הוא שריד למפתחות שהכין בשלב הסופי. תשובה על כך לא נדע, כיון שמפעלו של רבינו לא ראה אור.

מה עלה בגורלם של מפתחות אלו? כידוע, שו"ת מהר"י בן לב, חלקים א-ג, מהדורה ראשונה נדפסה בחיי המחבר (שנפטר לאחר שנת של"ט),⁹² בקושטא בשנים [ש"כ-שכ"ה]-ש"ג,⁹³ בפורמט גדול, והוא כולל מפתח סימנים ומפתח "באורים מדבורים חמורים מהתוספות ולשונות הגמרא דנפקי מיניהו טובא" (מעין מפתח מסכם לשיטות הפוסקים). חלק ד' נדפס בכפר קורו גישמי הסמוך לקושטא [ללא ציון שנת הדפוס; כנראה בשנת ש"ז],⁹⁴ בפורמט קטן, ללא ציון מספרי עמודים ומספרי הסימנים, וללא מפתחות! כתשע שנים לאחר הדפסת חלק ד' בקורו גישמי, נדפס חלק זה מחדש בשנת שס"ו, בבית הדפוס זאניטו זאניטי שבוונציה, כולל מפתח (מפתחות השאלות והסוגיות).⁹⁵ אולם בשונה מהמפתחות לחלקים א-ג שנדפסו בחיי מהריב"ל, מפתח זה הוא רק מפתח לסימנים ללא "מפתח באורים מדבורים חמורים ...". היוזם להדפסת ספר זה מחדש הוא כנראה ר' יצחק בן לב (בנו של מהריב"ל), שלא היה שבע רצון מהדפסת חלק ד' שבמהדורת ש"ז.⁹⁶ קרוב לוודאי שרבינו לא היה מעורב בהכנת המפתח של מהדורת שס"ו. אמנם בתחילה סברנו שיש מקום להשערה כי רבינו ערך את המפתח למהדורה זו בצעירותו כפי שכתב בתשובתו לר' שלום רפואה:⁹⁷ "מנעורי ועד עתה".⁹⁸ הביטוי "מנעורי" מציין לשנות בחרותו

92 ראו תמר, לביור, עמ' רלו, שמוכח שנפטר לאחר של"ט. וראו בנטוב, רשימות הסטוריות, עמ' ט, הע' 36, שבשנת שמ"ה נזכר בברכת המתים. ואולם ראו מולכו, ר"י ן לב, עמ' רצו, הע' 11, המוכיח כי בכ"ג שבט ש"א הוא היה עוד בחיים (וראו שו"ת מהר"י בן לב, ח"ב, ס"ז, שהשנה היא שכ"א ולא ש"א), ואכמ"ל.

93 על שנות הדפסת דפ"ר של שו"ת מהר"י בן לב, ראו הכהן מ', ליד המעיין, עמ' שנו-שסא.

94 ראו הכהן מ', ליד המעיין, עמ' שסא.

95 ראו בניהו, הספרים, עמ' קנה, ספר שנים ושמונים.

96 על מעורבותו של ר' יצחק בן לב בהדפסת ספרי אביו ועריכת המפתחות, ראו הקדמת ר' חנניה ן יקר, עורך המפתחות של שו"ת מהר"י בן לב, חלק ג': "ויהי היום בשורה יוצאת מפי הרב המחבר נ"ו לחפש בחדרי משכיות ... וכל אקלידי דמר מסר לשמעיה אני ... וביד בנו החכם הנעלה כה"ר יצחק ן לב. שנינו אנחנו שלוחי דמר ... קמנו לפתוח זה השער ... נמסרו בידינו מפתחות ... להציב ציונים ... על כל תשובה ותשובה ... ולרמוז בכל דבר אשר לפלל בו הרב בגמרא ורש"י ותוספות ודברי הפוסקים ז"ל ... ראינו לא נוכל לשאתו כי רב ממנו אורך הדרך ... וקצר מצע הזמן ... הביטוי הליכות ש"בא' [כלומר, לקחנו דוגמה משו"ת הרשב"א] והריב"ש בתשובותיהן מפתחותיהן מסודרות על פי ההלכות ... ואנחנו בדרך זו נתהלך". וראו בחלק ד', מהד' קורו גישמי, בסוף החידושים על מסכת קידושין (הדפים אינם ממוספרים): "אמר המדפיס בעבור תברכני נפש הבן, בנן של קדושים, הלא הוא החכם הנעלה כה"ר יצחק ן לב יצ"ו בן הרב המחבר ז"ל, אשר אותה נפשו ליכות את הרבים ונכבדים ... ואסף איש טהור הדבורים העמוקים שבמסכת קידושין המה בכתובי בספר הראשון מהרב אביו ז"ל ... צוה להדפיסם פעם שנית בספר רביעי הלז, ואני לעשות רצונו חפצתי צדקו נפשו והדפסתים כלם ברורים".

97 תשובת ר' שלום רפואה נמצאת בס"ג [דף א11-א25], תשובת רבינו להשגת ר' רפואה נמצאת בס"ד [דף א28-ב28 שו' 10].

98 כאמור בס"ד [דף 28, שו' 11]. למרות הכבוד הרב שרחש רבינו למהר"י בן לב, הרי שבמחלוקת

בהם עסק בלימוד שו"ת מהר"י בן לב. אלא שכדי ליחס לו את עריכת המפתח של חלק ד' מהדורת שס"ו, יש להקדים את שנת לידתו לפחות לשנת שמ"ה (1585),⁹⁹ ויהיה עלינו להניח שאת תשובותיו האחרונות הוא כתב בגיל תשעים ואחת ומעלה.¹⁰⁰

המפתחות לשו"ת מהר"י בן לב שרבינו ערך, אם בצורתן שבכ"י III.C.42 ואם במתכונת אחרת, אבדו ולא הובאו לדפוס.

למרות כתיבתו הענפה של רבינו בתחומים רבים, אישיותו אינה נוכחת בין חכמי התקופה, תשובותיו, חיבוריו ומרבית שיריו ופיוטיו עדיין מונחים בקרן זווית כאבן שאין לה הפוכין—
הכם שנשכה.

נספח א

ms. Guenzburg 1614

דף בודד מהקדמת רבי משה יהודה עבאס לחיבורו "כסא כבוד" שבכ"י הספרייה הבריטית (Or. 5009), הנמצא בראש כ"י כנסת חכמי ישראל: שאלות ותשובות כנסת חכמי ישראל;
שבספרייה הלאומית במוסקבה, אוסף גינצבורג.¹⁰¹

דף נא

[.] צעירא דמן חבריא

[...] נבון ונעלה [...]

[...] {ה} בורא ויתנש {א} [...]

1. א {ש} ר שם בפי ניב ומבטא להללו ולשיר
2. לשמו בכ"ד מיני רננות כאשר יראה
3. {הרואה} בספרי אשר חברתי וקראתיו קול יהודה להודות להלל לשבח
4. לפאר לרומם ולקלס למי שעשה עמדי תילי תילים חסדים מכמה
5. הרפתקי דעדו עלי בהיותי נע ונד בעולם. אשר מנעורי ועד
6. הנה לא שלותי ולא שקטתי ולא נחתי מטלטול לטלטול, בין בים
7. ובין ביבשה. ואם אבא לחבר ולפרש חסדי אל ונפלאותיו אשר עשה
8. עמדי לא יספיקו ימים ולילות ויכלה הזמן והמה לא יכלו. אשר
9. {ע} ל כן תרתי בלבי לאמר לו דומיה תהלה, וסבותי אני ליאש את לבי

שבין ר"י בן לב לר' יוסף קארו הוא פסק כר"י קארו—ראו ס"ה [דף 333 שו" 5–6]: "ומוהר"י קארו זלה"ה סביר דברים כפשוטן ומסיק כהרמב"ן זלה"ה לענין דינא, ומימיו אנו שותים ומפיו אנו חיים וכולנו נגררים אחר דבריו".

99 בהנחה שהיה בסביבות גיל העשרים בעת הכנת המפתחות, וכן שהעבודה נמשכה כשנה-שנתיים לערך.

100 את התשובה שבס"י יז [דף 895–102א] כתב אחר שנת תל"ז (1676). גם השיר לכבוד ספרו של ר' שמואל ויטאל, פירוש על התורה, הוא כתב כאמור בשנת תל"ז. את התשובה שבס"י לט [דף 264א–269א] כתב בשנת תל"ז (ראו גליק, חמודות מצרים [ב], עמ' 717, הע' 25).

101 בראש הדף קרע בצד ימין, וכן בשוליים סמוך לאמצע הדף. בראש דף נא בשוליים השמאליים נרשם באותיות גדולות: ס' כסא כבוד.

10. עַל כָּל הָעֵמֶל שֶׁעֲמַלְתִּי בִימֵי הַיְלָדוּת, וְאִמְרַתִּי אֲנִסְכָּה בְּשִׂמְחָה
11. בְּתוֹךְ שְׂרִים וְשֵׁרוֹת וְתַעֲנֻגוֹת בְּנֵי אָדָם, וְלֹא מִנְעַתִּי אֶת לְבִי מִכָּל
12. שִׂמְחָה. וּבִבּוֹאֵי בִשְׁנַיִם פְּנִיתִי בְּכָל מַעֲשֵׂי וּבְעֵמֶל שֶׁעֲמַלְתִּי
13. וְרֵאִיתִי שֵׁשׁ יִתְרוֹן לְחִכְמָה כִּיתְרוֹן הָאוֹר מִן הַחֹשֶׁךְ. וְטוֹב לְלַכֵּת אֶל בֵּית
14. אֲבֵל מַלְכַת אֶל בֵּית מִשְׁתֵּה בְּאֶשֶׁר הוּא סוֹף כָּל הָאָדָם. אֶת כָּל זֶה רֵאִיתִי
15. וְנָתַן אֵל לְבִי כִּי גֹבֵר יְמוֹת וִיחַלֵּשׁ וַיִּגּוֹעַ אָדָם וַאֲיוֹ. וְמָה אַעֲשֶׂה כִּי
16. יָקוּם אֵל וְכִי יִפְקוֹד מֶה אֲשִׁיבֵנּוּ. וְאַחֲשָׁבָה לְדַעַת זֹאת וּלְחֻזוֹת אִיזָה
17. הַדְּרֵךְ יִשְׁכּוֹן אוֹר בְּקוֹם לְמִשְׁפַּט אֱלֹדִים מֶה אֲשִׁיב לֵה' אֲשֶׁר עַל כֵּן
18. נִהְפְּכוּ עָלַי צִירִי, וְחֹס לְבִי בְּקִרְבִּי וּבְנִפְשִׁי אֲשֶׁר יוֹקֵדֶת כָּל הַיּוֹם. וּבְרֵאוֹתֵי
19. כִּי עוֹד הַשֶּׁמֶשׁ בְּמִרְוּמִים, רוּחַ ה' אֱלֹדִים מִשַׁח עָלַי תַּחַת רוּחַ כְּהֵה.
20. וְרֵאִיתִי צְדִיקִים יוֹשְׁבִים וְעִטְרוֹתֵיהֶם בְּרֵאשִׁיהֶם וְעֵתִידִים לְעִמּוּד
21. בְּלִבוֹשֵׁיהֶם, וְזוֹ הִיא הָעֵטְרָה וְהַלְבוּשׁ מִן הַתּוֹרָה אֲשֶׁר יִגְעוּ בָּהּ,
22. וְנָתַן אֶת נַפְשָׁם עֲלֶיהָ. וְאַפֵּן עַל יְמִין וּשְׂמָאל, וְנִמְצָאתִי עֵרוֹם
23. וְעֵרִיָּה, וּבִבִּיתִי אֵין לֶחֶם וְאֵין שְׂמֵלָה וְנִפְשִׁי נִבְהָלָה. וְלִכֵּן קִמַּתִּי
24. וְאֶת חֲצֵנִי נִעַרְתִּי, וְאַף כִּי זָקַנְתִּי כָּל סִפְרֵי בְּדַקְתִּי וּמִצָּאתִי אַרְבַּע
25. מִסְכַּתוֹת שֶׁבַתְלִמּוּד כְּגוֹף בְּלִי נִשְׁמָה, וְאֵין דּוֹרֵשׁ אוֹתָם. אֲשֶׁר עַל
26. כֵּן תִּרְתִּי בְּלִבִּי לְתוֹר וּלְחַפֵּשׂ מְקוֹם מוֹצֵאִים וּמוֹבָאִים, וְלֵהֲכִינֵם
27. בְּפִי{רו} שֶׁ רִשׁ"י וְתוֹסֵפּוֹת, וְרַב אֶלְפָּס, וְהַרְ"ן, וְהַרְ"שׁ, וְהַרְ"ב, וְהַרְ"ב"א,
- וְהַרְ"מב"ם,
28. וְ{ה}ר{מב} "ן, וְהַסַּמ"ג, וְהַסַּמ"ק, וְר"י בְּעַל הַנְּתִיבוֹת, וּמוֹהַר"י קוֹלוֹן, וּמוֹהַרְ"ד

דף יב

1. וּמוֹהַר"י י' לָב, וּמוֹהַר"י י' חֲבִיב, וּמוֹ[...]
2. כָּל א' וְא' עַל מְקוֹמוֹ בְּשִׁלּוּם וְת' [..] תִּים בְּרֵייתָא בְּרֵייתָא הַ{לָּכָה}
3. הַלְכָה כְּאֲשֶׁר פִּסְק הַמְּאֹר הַגְּדוֹל אֲשֶׁר הָאִיר עֵינַי חֲכָמִים [..] מוֹהַר"י
4. קֶאֱרוּ זִלְהָה, הוּא הוּא אֲשֶׁר פִּתַּח בְּתִי כְּנִסְיוֹת וּבְתִי מְדַרְשׁוֹת, הוּא אֲשֶׁר
5. הִיקַל מַעְגָּלִי עוֹלֵי אֲשֶׁר הִיָּה הַמִּשְׁאָ כְּבִדָּה עָלַי עַד מָאֵד, כִּי עַל כָּל זֹאת
6. נִלְאָה נִלְאָתִי עַד מִצָּא מְקוֹם מוֹצֵא כָּל הַהֲלָכוֹת. וְאֵלּוּלֵי שְׂאֵלְדֵי אֲבִי עֲזַרְנִי
7. וְהִיָּה עֲמָדִי לְתִמּוּךְ יָדִי, וְנָתַן בִּי כַח לְעִמּוּד עַל עֲמָדִי, וְהַחֲזִיק [..]
8. כְּעֵין שֶׁל תּוֹרָה. וּבִהְיוֹתִי מֵאִסְפָּ לְכָל הַמַּחֲנוֹת נִבְהָלְתִּי שֶׁלֹּא הִיָּו סִפְרֵי{ם}
9. בְּיָדִי לֹא תִלְמוּד וְלֹא טוֹרִים, וְהִכִּין לִי הָאֵל שְׁנֵי בְּתִים מִנְאֲמָנֵי אֶהְבֵּתִי, {שְׁנֵי
10. צְנִתְרוֹת הַזֶּהָב לְנִבּוֹן וְחֲכָם כְּה"ר שְׂמוּאֵל חִיּוֹן יִצ"ו וְלֵאחֵי וְרֵאשׁ מִזֶּה
11. בֵּן מִזֶּה מִיַּחְסוֹתָא דְּבַבֵּל, חֲכָם שְׁלָם בְּכָל, גּוֹר אֲרִיָּה יְהוּדָה מֵר עָלַי
12. נִרְוִי, שֶׁהַחֲזִיקוּ שְׁנֵיהֶם יָדֵי בְּסִפְרֵיהֶם בְּכָל הַמִּצְטָרֵךְ. אֲשֶׁר עַל כֵּן יְכוּל{תִּי}
13. לְהַפִּיק רִצּוֹן מִעֵת(?) וְלֵהֲכִין לִי כִּס"א, אֲוֵלִי אֲזַכָּה לְשַׁבֵּת בּוֹ אֲנִי וְזַרְעִי
14. בְּעוֹלָם שְׂכוּלוֹ טוֹב וְכוּלוֹ אֲרוּךְ. וְנִפְלָ בְּמִקְרָה הָאֵמֶת לְקֶרָא אֶת שֵׁם
15. הַסֵּפֶר כִּס"א כְּבוֹד שְׁהוּא: כְּלָה, סוֹפְרִים, אֲבֵל רִבְתִּי, וְדֶרֶךְ אֲרָץ כוֹלָה
16. כְּבוֹד, עִם דֶּרֶךְ אֲרָץ זוֹטָא הוּא הַכְּבוֹד הַמְּבִיא אֶת הָאָדָם לְחַיֵּי הָעוֹלָם.
17. וְלִכֵּן אַחֲלָה פְּנֵי כָּל רוּאֵי חֲבוּרֵי זֶה אֵל יִלְעִיגְנִי וְאֵל יִאֲשִׁימְנִי בְּשׁוּם
18. דְּבַר, מִשּׁוּם תְּרִי טַעְמִי: חֲדָא, שְׂרֵאִיתִי שְׂרַבּוּ כְּמוֹ רַבּוֹ הַטַּעֲוִיּוֹת אֲשֶׁר

19. מצאתי, אשר נלאתי לבקש. לישנא טבא אשר יתכונן על לב הקורא.
20. וגדולה מזאת גדול העניות, ועניותא גדיל שמיה. כי כל ימי עני רע"ם
21. אפילו שבתות וימים טובים, ומתוך דוחקי ומצוקי בדקתי עד מקום
22. שהגיעה ידי, ולפי שכלי אשר חנני אלדים. ולפי שכלו יהולל איש. וכראותי
23. דברי חז"ל הקורא בלא זמרה ושונה בלא נעימה עליו הכתוב אומר
24. כי דבר ה' בזה לכן שמחתי ערבה לי כי בילדותי יגעתו ועסקתי
25. בזמרה כדי לקרות בזקנתי בנעימה ופציתי פי בשירתי וכה אמרתי

נספח ב

Paris AIU: IHC.42

דף דו-צדדי (מידות: 22.1 × 15.7) מפתח לשו"ת מהר"י בן-לב ח"א, סי' נ-נ"ד, בכתיבת ידו של ר' משה יהודה עבאס.¹⁰²

צד א (I^{v103})

1. מכבדת את בעלה וכו' ולמד מתנא דבי אליהו מה טיבה של יעל שבאת על ידה תשועה
2. וכו' קידושין פ"ק אתה ואמך חייבים וכו' גיטין פ' הניזקין לקח מן האישה ואח"כ מן האשה
3. מקחו בטל וכו'. ופסק שזכה שמעון בחזקתו.
4. $\text{מ}^{\text{ט}} \text{על א' שא} \{ \text{מ} \} \{ \text{ר} \} \}$ שהיה עובר ה"סכמה וכו' תשובת הרמב"ם ז"ל שכל מי שהיה
5. עומד בבית הכנסת בשעת החרם וענה אמן נתחייב בשבועה וכל
6. מי שלא ענה אמן פטור מכלום וכו' הרמב"ם מי שנשבע או נדר שלא לדבר עם
7. חבירו יכול לכתוב לו כתב או לדבר עם אחר והוא שומע וכו' פ' שבועות שמים
8. אמר שמואל גמר בלבו צריך להוציא בשפתיו וכו' רש"י וראבי"ה והרמב"ן ז"ל ס"ל דאפילו
9. במילי דלא מגדר מלתא ואפרושי איסורא אלא תיקון העיר לבד יכולים להציע קצתם
10. וכו' והרמב"ם ור"ת זלה"ה ס"ל דמיירי בהתנו ביניהם מתחלה ונאותו בו כולם ושוב חזרו

102 ראו לעיל, עמ' 487.

103 כך צ"ל. בתיאור התצלומים בפרויקט פרידברג החליפו בין הצדדים.

11. בו קצתם המרדכי ומוהרי"ק והרא"ם זלה"ה וכו' הרשב"א ז"ל סי' ר"פ צבור שמתקנים
12. תקנות לצורך ציבור ועמדו שנים וכו'. ופסק שאין באותו היחיד עון אשר חטא.
13. נ"א על מי שהקדיש מעות לת"ת אם יוכלו להחליפם לצדקה אחרת וכו' ב"ב פ"ק ורש"ן
14. בני העיר לעשות קופה תמחוי ותמחוי קופה וכו' ואיפליגו בה רבבתא הרב ן
15. מיגאש והרמ"ה ז"ל פירשו לשנותה דוקא לצורכי עניים כגון כסות ומדור וכיוצא בו וכו'
16. וראיה מ' שקלים מותר עניים לעניים וכו' וגם ת"ר האומר סלע זו לצדקה עד שלא באת
17. {לידי} גבאי מותר לשנותה וכו' ב"ב פ"ק אמר אביי מריש הוה עביד מר תרי כיסי חד לעניי
18. דעלמא {וחד} לעניי דמתא וכו' וקשיא להו הא דערכין פ"ק ישראל שהתנדב מנורה או נר
19. לב"ה אסור {לשנ} וְתה וכו' הר"י ז"ל ס"ל דלכל דבר מצוה משנין ואפילו שלא לצורכי עניים וכו'
20. ורש"י ז"ל דאפילו לדבר הרשות משנין וכו' ב"ב פ"ק אמר אביי מריש הוה יתיב מר
21. אציפי דבי כנשתא כיון דשמע {וכו'} וכן ס"ל ר"ת והרמב"ם והרשב"א {א וה} רמב"ן והרא"ש
22. והר"ן ז"ל וס"ל דהיא דערכין כשאין צורך לקהל וכו' והריטב"א ז"ל האריך וכו' {נד} בת יחיד
23. אין כח ביד הקהל לשנותה וכו' וכן כתב הרשב"א ז"ל ומוהרי"ק ז"ל התיר לשנות מעות
24. עניים לבנין ב"ה וכו' הרא"ש ז"ל כלל י"ג סי' י"ד על אודות הצבור שמתנדבין לצורך ב"ה

צד ב (י"ז)

1. יכולין לשנות לצורך ת"ת וכו' ומעות ת"ת להצלת נפשות דוקא וכו' טור סי' רנ"ט הרא"ש סי'
2. רנ"ה שיכולים לשנות אפי' מת"ת להצלת נפשות וכו' מרדכי ב"ב פ"ק מעשה באחד שנתן
3. מקצת נכסיו לצדקה וכו' פ' יש נוחלין הרי שהלך בנו וכתב כל נכסיו לאחרים פרק
4. הגזול קמא אמר אביי הכסף מכפר {מחצ}ה וכו'. ופסק דאין כח להחליפם.

דיני רבית {ו}קמיוש

- .5 נ"אב מה שמוכרים סחורות יותר מכדי שווים בהמתנה ומלוים מעות אי הוי
- .6 רבית קצוצה או אבק רבית וכו' פ' אזהו נשך ת"ר מפריז אדם על שדהו ואינו
- .7 חושש משום רבית וכו' ושם אמר רב נחמן טרשא שרי וכו' ופירש ר' האי דטרשא
- .8 שרי למכור סחורה בהמתנה ביותר מדמיה ובלבד שלא יפרש לו וכו' והתוספות
- .9 והרא"ש ז"ל פסקו דשרי כש"ה {ה}י"ה השער קבוע הוי כקץ ואסיר וכו' טור ז"ל ונראה
- .10 דאפילו אינו מפרש בהדיא אין היתר אלא במעלהו מעט וכו' מהר"ם ז"ל בתשובה וששאלת
- .11 על ענין הבחור שהלוה לך מעות ואתה נותן לו הוצאה וכו'. ופסק דאסור למעבד הכי
- .12 נ"בג על ענין הקאמיוש שעושים הסוחרים שמקבלין עליהם אחריות הים וכו' פרק
- .13 איזהו נשך המלוה את חברו לא ידור בחצירו חנם וכו' רש"י ז"ל על ההי {א} {דל} א
- .14 ישכור ממנו בפחות וכו' תוספות ויש להם טעם אחר לדבריו דכשמלוה על השדה
- .15 שרי טפי בנכייטא וכו' ת"ר פ' אזהו נשך ת"ר מפריז על שדהו ואינו חושש וכו' ורש"י
- .16 ז"ל בדקן וכן ס"ל בעל התרומות בדקן וכו' מהר"ם ז"ל וששאלת על ענין הבחור וכו' תוספות
- .17 פ' אזהו נשך על ההיא דאמר ליה יהיבנא לך ה' בזוזא וכו' פסקי הר"א"ש פ' אי {זהו
- .18 נשך וליכא למימרו דכיון דאמר ליה הלויני ודור בחצרי וכו'. ופסק דאסור {ל}מעבד הכי
- .19 נ"גד על מעות יתומים שבאו הירש"י {ם} ושואלים הם הריוח מהשנים שעברו וכו'
- .20 פ' המ {פ} ק"ד אצל שולחני אם מעות {צרויני} לא ישתמש בהן ואם מותרין ישתמש
- .21 אבל ב"ה בין צרויני ובין מותרין לא ישתמש וכו' מרדכי פ' איזהו נשך משם מהר"ם ז"ל
- .22 מעשה היה באפוטרופוס דיתמי שהלוה מעות היתומים וכו' פ' השולח יתומים אין
- .23 צריכין פרוזבול וכו' רש"י ז"ל בפ' איזהו נשך על ההיא דאמר רב אשי חזינן גברא [שומר הדף:] דמשכן

קיצורים ביבליוגרפיים

אייזנשטיין, אוצר ישראל = יהודה דוד אייזנשטיין, אוצר ישראל, אנציקלופדיה לכל מקצועות תורת ישראל, ספרותו ודברי ימיו, א', ניו יורק 1913–1907.

The Jewish Encyclopedia, 1–12, new York and London, 1901–1905 = אנציקלופדיה יהודית אתר "סותביס" = sothebys.com/en/auctions/ecatalogue/2004/important-hebrew-manuscripts-from-the-montefiore-endowment-no8040/lot.57.html

אתר "קדם" = www.kedem-auctions.com/he/node/28824
 בורנשטיין, הנהגת הקהילה = לאה בורנשטיין, ההנהגה של הקהילה היהודית במזרח הקרוב משלהי המאה ה־17 ועד סוף המאה ה־18, חיבור לשם קבלת תואר דוקטור לפילוסופיה, רמת גן תשל"ח.
 בן אוני ר' בנימין זאב ב"ר זאב מזאמוטש, בן אוני, אימיר תצ"ח.

בן יעקב, יהודי בבל = אברהם בן יעקב, יהודי בבל מסוף תקופת הגאונים ועד ימינו, ירושלים 1979.
 בן יעקב, ירושלים = אברהם בן יעקב, ירושלים בין החומות: לתולדות משפחת מיוחס, ירושלים תשל"ז.
 בנטוב, רשימות היסטוריות = חיים בנטוב, "רשימות היסטוריות של רבינו יוסף מטראני", תשובות ופסקי מהר"ט החדשים, מהד' לייטנר, ירושלים תשל"ח, עמ' א-כח.
 בנטוב, שיטת לימוד = חיים בנטוב, "שיטת לימוד התלמוד בישיבות שאלוניקי ותורכיה", ספונות יג (תשל"א-תשל"ח), עמ' ה-קב.

בניהו, אגרות ר"ש אבוהב = מאיר בניהו, אסף תדפיסים על הרמח"ל והשבתאות, "אגרות ר' שמואל אבוהב ור' משה זכות ובני חוגם בעניני ארץ ישראל". ירושלים תשט"ו.
 בניהו, בית יוסף = מאיר בניהו, "ספר בית יוסף והמפנה שחולל בחלכה", אסופות ג (תשמ"ט), עמ' צט-קמ.

בניהו, דור אחד בארץ = מאיר בניהו, דור אחד בארץ: איגרות רבי שמואל אבוהב ורבי משה זכות בעניני ארץ ישראל, שצ"ט-תכ"ו, ירושלים תשמ"ח.
 בניהו, הספרים = מאיר בניהו, "הספרים שנדפסו בויניציאה בבית הדפוס של זאניטי", אסופות, ח"ב, ירושלים תש"ס.

בניהו, חיד"א = מאיר בניהו, רבי חיים יוסף דוד אזולאי, ירושלים תשי"ט.
 בניהו, חכמי ירושלים = מאיר בניהו, "שלשה מחכמי ירושלים", סיני יז (תש"ה), עמ' שד-שד.
 בניהו, לקורות = מאיר בניהו, "לקורות היהודים בתיריאי", ציון יב (תש"ז), עמ' 48–37.
 בניהו, מפנסיהם = מאיר בניהו, "מפנסיהם של ר' בנימין הכהן ור' אברהם רוויגו" מיכאל א (תשל"ג), עמ' ט-עז.

בניהו, ר"ש חיון = מאיר בניהו, ספר בני שמואל לרבי שמואל חיון, מבוא, ירושלים תשנ"ב.
 בניהו, שמועות שבתאיות = מאיר בניהו, שמועות שבתאיות מפנסיהם של ר' בנימין הכהן ור' אברהם רוויגו, ספונות יד (תשל"א-תשל"ח), עמ' תנא-תקכה.
 ברנשטיין = שמעון ברנשטיין, "מחזור טריפולי פייטניו ופויטיו", סיני יט (תש"ו), עמ' צט-קד; רח-ריז; שיג-שלו.

גט פשוט = ר' משה בן שלמה אבן-חביב, גט פשוט, מהד' אברהם ד' שלם, ירושלים תש"ם.
 גליס, אנציקלופדיה = יעקב גליס, אנציקלופדיה לתולדות חכמי ארץ ישראל, א-ב, ירושלים תשל"ד.
 גליק, חמודות מצרים [א] = שמואל גליק, גליק, חמודות מצרים, א, תשובות חכמי מצרים האחרונים מגניזת קהיר, ירושלים תשע"ח.

גליק חמודות מצרים [ב] = שמואל גליק, חמודות מצרים, ב, תשובות רבי משה יהודה עבאס [בהכנה לדפוס].

גליק, שרידי תשובות אדלר = שמואל גליק, שרידי תשובות מחכמי האימפריה העות'מאנית, מגניזת קהיר שבאוסף א"ג אדלר שבספריית ביהמ"ד לרבנים באמריקה, א-ב, רמת גן וגני יורק תשע"ו.

גליק, שרידי תשובות קמברידג' = שמואל גליק, שרידי תשובות מחכמי האימפריה העות'מאנית, מגניזת קהיר ומכתבי יד שבאוספי אוניברסיטת קמברידג', א-ג, ירושלים תשע"ג-תשע"ד.

דבליצקי, קורא הדורות = ספר קורא הדורות להרב ר' דוד קונפורטי ז"ל, מבוא, מהד' אהבת שלום, ירושלים תשס"ח.

דושינסקי = יעקב קאפל דושינסקיא, "תולדות הגאון ר' דוד אופנהיימער", הצופה לחכמת ישראל ה (תרפ"א), עמ' 39-45.

הבלין, ר' אברהם הלוי = שלמה זלמן הבלין, רבי אברהם הלוי מחבר שו"ת גנת ורדים ובני דורו, עבודת דוקטור, האוניברסיטה העברית, ירושלים תשמ"ג.

הברמן, אגרות = אברהם מאיר הברמן, "אגרות שלמה דאפיירה למשה עבאס", אוצר יהודי ספרד ז (תשכ"ד), עמ' 24-42.

הברמן, מפרי העט והעת = אברהם מאיר הברמן, מפרי העט והעת, ירושלים תשמ"א.

הד = Uriel Hed, "The Jewish Communities of Istanbul in the Seventeenth Century", Oriens 6 (1953), pp. 299-314.

הכהן מ', הארץ הטובה = מרדכי הכהן, הארץ הטובה, ירושלים תשמ"ד.

הכהן מ', ליד המעיין = מרדכי הכהן, "ליד המעיין", סיני יח (תש"ו), עמ' שנו-שסא.

הכהן, תורת התארים = דב הכהן, "תורת התארים—מיסוד התארים של תלמידי החכמים באיזמיר", אסופה ליוסף, ירושלים תשע"ד, עמ' 503-527.

הקר, בית הלוי = יוסף הקר, "ישראל בגויים בתיאורו של ר' שלמה לבית הלוי משאלוניקי", ציון לד (תשכ"ט), עמ' 43-89.

ווינטרויב = אברהם ישעיהו ווינטרויב, "תשובה בדין היתר נשואין למינקת שנתגרשה—לרבי דוד קונפורטי ז"ל ורבי משה יהודה עבאס ז"ל", ישורון ז (תש"ס), עמ' נה-סט.

וילנסקי = מיכאל וילנסקי "על רבני אנקונה", סיני כה (תש"ט), עמ' סד-פב.

ולנשטין, איגרת לאברהם = מאיר ולנשטין, "איגרת לאברהם היכני מאת משה יהודה עבאס", שי להימן: מחקרים בספרות העברית של ימי הביניים, ירושלים תשל"ז, עמ' 119-124.

ולנשטין, איגרת שירה = מאיר ולנשטין, "איגרת שירה (ב) לאברהם היכני מאת משה יהודה עבאס", קבץ על ידי כ (תשמ"ב), עמ' 285-301.

ולנשטין, המשורר = מאיר ולנשטין, "המשורר יצחק די ליאון ע"פ כ"י שוקן וכ"י אוקספורד", ספר היובל תפארת ישראל, לונדון תשכ"ז, עמ' 171-178.

ולנשטין, ויטאל = מאיר ולנשטין, "לדמותו של שמואל ויטאל לפי איגרת-שירה של משה יהודה עבאס", פרקי שירה [מגניזת השירה והפיוט של קהילות ישראל, רמת-גן] א (תש"ז), עמ' 163-166.

ולנשטין, מכתב = מאיר ולנשטין, "מכתב איש מצרים לאיש ארץ ישראל (?) במאה השבע עשרה", סיני ל (תשי"ב), עמ' רנ-רנב.

ולנשטין, משוררי מצרים = מאיר ולנשטין, "משוררי מצרים במאה הי"ז ע"פ כ"י שוקן 37", באורח מדע (תשמ"ו), עמ' 239-244.

ולנשטין, עבאס = מאיר ולנשטין, "משה יהודה עבאס", מלילה א (תש"ד), עמ' 68-54; מלילה ב (תש"ו), עמ' 135-148; מלילה ג-ד (תש"י), עמ' 240-254.

ולנשטין, על אחד = מאיר ולנשטין, "על אחד מן המשוררים המפוארים בני המאה השבע-עשרה במצרים (על-פי כ"י שוקן 37)", מחקרים בספרות עם ישראל ובתרבות תימן, ספר היובל ליהודה רצהבי בעריכת י' דישון וא' תזן, רמת גן תשנ"א, עמ' 259-277.

זכרון יהודה = ר' יהודה בן אשר, זכרון יהודה, מהד' מכון ירושלים, ירושלים תשס"ה.
טובי, שירים = יוסף טובי, "שירים חדשים למשוררי בבל מן המאות ה"ב-ה"ג", מחקרים בתולדות יהודי
עיראק ובתרבותם, בעריכת שמואל מורה, אור יהודה תשמ"א, עמ' 51-72.

יודאיקה = Encyclopaedia Judaica, 1-16, Jerusalem 1971-1972

יערי, שלוחי א"י = אברהם יערי, שלוחי ארץ ישראל, ירושלים תשי"א.

יערי, מחקרי ספר = אברהם יערי, מחקרי ספר—פרקים בתולדות הספר העברי, ירושלים תשי"ח.
כבר לאדן = ר' חיים יוסף דוד אזולאי (החיד"א), כבר לאדן, פירוש למסכת סופרים, ליוורנו תקס"א.
כנסת הגדולה = ר' חיים בן ישראל בנבשת, כנסת הגדולה, מהד' מכון הכתב, א-ד, ירושלים תשמ"ד-
תשס"ה.

כסא רחמים = ר' חיים יוסף דוד בן רפאל יצחק זרחיה אזולאי (החיד"א), כסא רחמים, פירוש ותוספת
על מסכת סופרים, אונגוואר תר"ל.

למדן, תיקון סופרים = רות למדן, ספר תיקון סופרים לר' יצחק צבאח, מבוא—קובץ שטרות עבריים—
הועתק בירושלים בשנת שצ"ה (1635), תל אביב 2009.

לנגר = רות לנגר, "שלבים קדומים בהתפתחותה של הוצאת התורה והכנסתה בבית הכנסת בימי
הביניים: עיון בטקסים של סדר רב עמרם גאון ושל מסכת סופרים", כנישתא ב (תשס"ג), עמ' צט-
קיא.

מולכו, מצבות = מיכאל ש' מולכו, מצבות בית העלמין של יהודי שאלוניקי, תל אביב תשל"ה.
מולכו, ר"י לב = מיכאל ש' מולכו, "ר' יוסף ן לב (מוהריב"ל)", סיני מח (תשכ"א), עמ' רצ-רצח.
מנחת שי = ר' ידידיה נורצי, מנחת שי, מהד' בצר, ירושלים תשס"ה.
מעגל טוב = ר' חיים יוסף דוד בן רפאל יצחק זרחיה אזולאי (החיד"א), מעגל טוב, ירושלים תר"א.
ספר הזכרון לריטב"א = ר' יום טוב אלאשבילי, ספר הזכרון לריטב"א, בעריכת קלמן כהנא, ירושלים
תשמ"ג.

ספר פרחי כהונה = ר' אהרן הכהן פרחיה, פרחי כהונה, אמשטרדם תס"ט.
עיני כל חי = ר' חיים פלאג"י, עיני כל חי, אומיר תרל"ה.
עמנואל י"ש, מצבות שאלוניקי = יצחק שמואל עמנואל, מצבות שאלוניקי, ירושלים תשכ"ג.
עמנואל י"ש, גדולי שלוניקי = יצחק שמואל עמנואל, גדולי שלוניקי לדורותם, כרך א, תל אביב תרצ"ו.
פוזילוב = גיורא פוזילוב, חכמיהן של ארבע ערי הקודש, א-ב, ירושלים תש"ס-תשס"ב.
פינסקר = שמחה פינסקר, לקוטי קדמוניות, וינה תר"ך.
פליישר = יהודה ליב פליישר, "קורות יצחק אבן עזרא", סיני כא (תש"ז), עמ' רסג-רעו.
פרנקל, דרכי המשנה = זכריה פרנקל, דרכי המשנה—התוספתא, מכילתא, ספרא וספרי, תל אביב
תשי"ט.

קהלת דוד = קהלת דוד, רשימת אוצר הספרים המפואר ... המבורג תקפ"ו.
קופפר, תרגום = אפרים קופפר, "תרגום עברי עתיק לפירוש הרמב"ם למשנה סדר נשים", עלי ספר יא
(תשמ"ד), עמ' 149-151.

קורא הדורות = ר' דוד קונפורטי, קורא הדורות, מהד' אהבת שלום, ירושלים תשס"ח.
קטלוג הירשפלד = Hartwig Hirschfeld, Descriptive Catalogue of the Hebrew MSS. of the
Montefiore Library, London 1904

קטלוג נויבאוואר = Adolf Neubauer, Catalogue of the Hebrew manuscripts in the Bodleian
Library and in the college libraries of Oxford ..., 1-3 (volume 2: with Arthur Ernest
Cowley), Oxford 1886-1906

רוזאניס = שלמה אברהם רוזאניס, קורות היהודים בתורקיה וארצות הקדם, ב-ג, סופיה, תרצ"ז-תרצ"ח;
ד, תשנ"ז.

רוזן, הקהילה היהודית = מינה רוזן, הקהילה היהודית בירושלים במאה הי"ז, תל אביב תשמ"ה.

רות = בצלאל רות, "רבני אנקונה", סיני כא (תש"ז), עמ' שכג-שכו.

רשימה תמה = רשימה תמה: ומתואמה בסידור אב ... מן קבוצת ספרים, ונקראה בשם ביבליותיקי ...
אשר מאז מקדם / קיבץ ריבה ואסף ... מהורר דוד אופנהיים ... כעת במצות בעליה ... הרר איצק
כהן בן ... זעליגמן כהן ... המבורג תקמ"ב [1781].

שד"ל = שמואל דוד לוצאטו, בתולת בת יהודה: לקוטי שירים מדיואן ר' יהודה הלוי זצ"ל, פראג ת"ר.

שו"ת באר מים חיים = ר' שמואל בן חיים ויטאל, באר מים חיים, תל אביב תשכ"ו.

שו"ת בעי חיי = ר' חיים בן ישראל בנבנשת, בעי חיי א-ג, שאלוניקי תקמ"ח-תקנ"א.

שו"ת דרכי נועם = ר' מרדכי בן יהודה הלוי, דרכי נועם, ונציה תנ"ז.

שו"ת יד אהרן = ר' אהרן בן משה אלפנדרי, יד לאהרן, א-ה, אומיר תצ"ה-תקכ"ו.

שו"ת לחם רב = ר' אברהם די בוטון, לחם רב, קראקא תרמ"ה.

שו"ת מהר"י בן לב (מהריב"ל) = ר' יוסף בן דוד אבן לב, מהר"י בן לב, א-ג, קושטא [ש"כ-שכ"ה]-של"ג;
ד, קורו גישמי [שנ"ז].

שו"ת מהרש"ך = ר' שלמה בן אברהם הכהן, מהרש"ך, א-ד, שאלוניקי שמ"ז-ש"ן.

שו"ת פרח מטה אהרן = ר' אהרן בן חיים אברהם הכהן פרחיא, פרח מטה אהרן, א-ב, אמסטרדם
תס"ג.

שו"ת ר' שלמה (מהר"ש) לבית הלוי = ר' שלמה בן יצחק לבית הלוי, מהר"ש לבית הלוי, שאלוניקי תי"ב.

שו"ת ריב"ש = ר' יצחק בן ששת ברפת, ריב"ש, ירושלים תשנ"ג.

שוחטמן, עבאס = אליאב שוחטמן, "תשובת ר' משה יהודה עבאס בשאלת גבולה הצפוני של א"י",
תחומין ב (תשמ"א), עמ' 383-391.

שטיינשניידר = משה שטיינשניידער, אוצרות חיים, רשימת ספרי החכם המנוח מהור"ר חיים בן יוסף
כהר"ר יוסף מיכל הנכתבים ... והנדפסים ובהשתדלות היורשים המוציאים לאור, נוסף מפתח
האוצר על כ"י כולל הוספות ותיקונים ... מאת ... משה שטיינשניידער, ופתיחה ... מאת ... דר צונץ,
המבורג תר"ח.

שירמן = חיים שירמן, "המשוררים בני דורם של משה אבן עזרא ויהודה הלוי", ידיעות לחקר השירה
העברית בירושלים, כרך ששי, ירושלים תש"ו, עמ' רמט-שלט.

שם הגדולים = ר' חיים יוסף דוד בן רפאל יצחק זרחיה אזולאי (החיד"א), שם הגדולים, ירושלים תשנ"ב.
שמחת יהודה = ר' יהודה נג'אר, שמחת יהודה, פירוש למסכתות סופרים, שמחות, כלה ודרך ארץ רבה
וזוטא, ירושלים תשע"ב.

שפיגל, אלגזי = יעקב שמואל שפיגל, "לתולדות הרב שלמה אלגזי והדפסת ספריו והמסתעף מזה",
עלי ספר ד (תשל"ז), עמ' 138-117.

שפיגל, יו"ט שני = יעקב שמואל שפיגל, "על שני ייכוחים בעניין יום-טוב שני—תשובת ר' משה יהודה
עבאס מכתב-יד ובירור בתשובת ר' יעקב הכהן", עלי ספר יח (תשנ"ו), עמ' 123-115 [= הנ"ל, פתחי
תפילה ומועד, עמ' 448-440].

שפיגל, פתחי תפילה ומועד = יעקב שמואל שפיגל ואהרן ארנד, פתחי תפילה ומועד, אלקנה תש"ע.
תולדות חכמי ירושלים = אריה ליב פרומקין ואליעזר ריבלין, תולדות חכמי ירושלים, א-ד, תרפ"ח-
תר"צ.

תמר, לביור = דוד תמר, "לביור שנת פטירתם של גדולי חכמי ארץ ישראל ותורכיה", סיני ע (תשל"ב),
עמ' רלא-רמא.

תשובות ר' יוסף מליריאה = תשובות רבי יהוסף מליריאה וחכמי הדור בצפת, מהד' יעקב ש' שפיגל,
ירושלים תשמ"ח.

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