

# KOL



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May 17, 2010 / 4 Sivan 5770 Volume III, Issue 7

# HAMEVASER

The Jewish Thought Magazine of the Yeshiva University Student Body

## Halakhah & Minhag







# KOL HAMEVASER

THE JEWISH THOUGHT MAGAZINE OF THE  
YESHIVA UNIVERSITY STUDENT BODY

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## About Kol Hamevaser

*Kol Hamevaser* is a magazine of Jewish thought dedicated to sparking the discussion of Jewish issues on the Yeshiva University campus. It will serve as a forum for the introduction and development of new ideas. The major contributors to *Kol Hamevaser* will be the undergraduate population, along with regular input from RIETS Rashei Yeshivah, YU Professors, educators from Yeshivot and Seminaries in Israel, and outside experts. In addition to the regular editions, *Kol Hamevaser* will be sponsoring in-depth special issues, speakers, discussion groups, *shabbatonim*, and regular web activity. We hope to facilitate the religious and intellectual growth of Yeshiva University and the larger Jewish community.

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This magazine contains words of Torah.  
Please treat it with proper respect.

## Opinions

*Aseh Lekha Rav:*<sup>i</sup>

## Opening Channels of Communication to Stern Students

BY: Chana Cooper

In a recent interview with *Kol Hamevaser*,<sup>ii</sup> Rabbi Yaakov Neuberger expressed his opposition to the institution of *yo'atsot Halakhah* (halakhic advisors on issues of Family Purity), asserting that allowing women into positions of halakhic authority would drive a wedge between female congregants and their communal rabbi. He stated further that rabbis “are and want to be very involved in the full needs of the community, including women’s issues,” and that it is necessary to “create venues and formats” in which women can feel comfortable discussing any issue with their *rav*.<sup>iii</sup>

“While YU’s undergraduate men are blessed with Rashei Yeshivah who are *talmidei hakhamim* of the highest order, Stern students have minimal opportunities to learn from them, which is both unfortunate and, in my view, unfair.”

I do not wish to address the issue of *yo'atsot Halakhah* and female rabbinic leadership in this article, but rather would like to focus on the women-rabbi relationship that Rabbi Neuberger discusses. In Stern College, the women-rabbi rift is not a theoretical one. The venues that he discusses offering opportunities for interaction between students and the rabbinic leaders of our community are currently very limited at Stern College, and the sense that the YU’s Rashei Yeshivah are and want to be involved in the needs of the next generation of women is not strongly felt. While this sentiment may not be accurate, there is little dialogue between the rabbinic figures and Stern students to assure them otherwise. The lack of access to the great rabbinic leaders of Yeshiva for those on the Beren Campus is a tremendous loss for students who yearn to learn more Torah and wish for the opportunity to ask them halakhic and hashkafic questions. Additionally, the distance between the Rashei Yeshivah and Stern women is potentially damaging for our community, which depends upon a bridge of understanding between its leaders and its constituents.

More than at any other time in history, Jewish women today have incredible opportunities for involvement in Torah learning. This is particularly true in Stern College, where students are exposed to a remarkable quantity and quality of Torah learning. There is a tremendous desire for growth in learning, as reflected

by various recent changes at Stern, including the creation of the daily Beit Midrash track for Judaic courses and the introduction of a Night Seder program. Nonetheless, the Torah learning opportunities available at Stern are still lacking. While YU’s undergraduate men are blessed with Rashei Yeshivah who are *talmidei hakhamim* of the highest order, Stern students have minimal opportunities to learn from them, which is both unfortunate and, in my view, unfair. As an institution, Yeshiva University is dedicated to the intellectual and religious development of students in all of its undergraduate programs, both the men’s and women’s colleges. To allow one college max-

imal access to the greatest Torah resources of YU and the other minimal access is not in accordance with the principles of our institution.

Providing Stern students little access to the rabbinic leaders of our community not only deprives those seeking to learn more Torah, but also precludes the opportunity for them to seek advice and ask questions from these leaders. Stern does have *mashgihim ruhaniyyim* (spiritual counselors) who are available for students to turn to for guidance. They are very active in the Stern community and their presence is a tremendous contribution to the Beren Campus. However, although their leadership is greatly appreciated, the desire to speak with the halakhic and hashkafic leaders of the YU community is still strongly felt. In accordance with Rabbi Neuberger’s words, the Rashei Yeshivah should be available to all members of the community, including women at Stern.

“In order to feel comfortable in the religious world and willingly submit themselves to its rabbinic authority, women must have the sense that the rabbis truly understand their position, especially when the issue at hand is specifically a women’s issue.”

Fortunately, there are a number of occasions on which Stern women can learn from the Rashei Yeshivah. Currently, Rav Goldwicht

gives a weekly shi’ur on the Beren Campus, but he is the only Rosh Yeshivah to do so. Additionally, the Torah Scholarship Series brings Rashei Yeshivah to Beren for one-time shi’urim, enabling students to have the privilege of hearing from these *rabbanim* at Stern. These shi’urim are very popular among Stern students and are well attended. Batya Matla Herzberg, the creator of the Torah Scholarship Series, developed the program with two goals in mind: “Firstly, to allow Stern girls the opportunity to learn Torah from some of the greatest Torah scholars Yeshiva University has to offer, and secondly, to increase the dialogue with the Rashei Yeshivah to give students the sense that our leaders are in touch with all parts of the community, including Stern.”<sup>iv</sup> After one such shi’ur given by Rabbi Herschel Reichman, Herzberg recalled, students lined up to ask questions pertaining to many different areas of Jewish interest, extending well beyond the topic of the shi’ur. “There is a genuine thirst for more Torah at Stern and the Torah Scholarship Series is a great way to partially satisfy that,” said Herzberg. However, these occasional shi’urim by definition cannot be very in-depth, and thus the amount of Torah Stern students can learn on these occasions is limited. The infrequency also means that students who want to ask religious questions rarely get the opportunity to do so.

The desire to have access to the rabbinic leaders of the Yeshiva University community is not merely driven by the eagerness to learn from the best Torah resources in YU and have the opportunity to ask them questions on numerous areas of Jewish life. It is also essential that rabbinic leaders have a thorough and true understanding of the perspectives and needs of all of a community’s constituents in order to render the best possible decisions for that community. Without much dialogue between the women of the community and the rabbis making the decisions, their halakhic rulings will more likely be ineffective or misplaced. Not only is it important for our rabbis to relate to

able in the religious world and willingly submit themselves to its rabbinic authority, women must have the sense that the rabbis truly understand their position, especially when the issue at hand is specifically a women’s issue. Without this level of trust, their dedication to religious practice and respect of religious authority is most likely severely weakened.

There is much to be done in order to increase the presence of Rashei Yeshivah on the Beren Campus, affording Stern students more opportunities for learning Torah, seeking advice from our leaders, and developing a sense of mutual understanding between YU’s women and its Rashei Yeshivah. Weekly classes given by the Rashei Yeshivah similar to Rav Goldwicht’s would be a very welcome development. An expansion of the Torah Scholarship Series would also be well received, so that instead of giving one-time shi’urim, rabbis could deliver a whole series of shi’urim in installments throughout the semester, allowing these lectures to take place both more often and be more in-depth. Additionally, Stern has many wonderful *shabbatonim* which would greatly benefit from the presence of the Rashei Yeshivah (currently, a few selected Rashei Yeshivah come down to Stern only a couple times a year for *shabbatonim*). The ideas listed here are just a few of the ways to increase the number of interactions of the Rashei Yeshivah with the women of Stern College, but there are certainly many more. Hopefully, these changes will expand the dialogue between the two parties and allow them to work together in minimizing the women-rabbi rift.

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<sup>i</sup> *Avot* 1:6.

<sup>ii</sup> Staff, “An Interview with Rabbi Yaakov Neuberger,” *Kol Hamevaser* 3,2 (November 2009): 11-13, at p. 12.

<sup>iii</sup> *Ibid.*, p. 12.

<sup>iv</sup> Based on a personal conversation with her.

# Degrees of Separation: A Farewell to Yeshiva College<sup>i</sup>

BY: Seth Herstic

1.

If the stereotypical Yeshiva College student suffers the pangs of some inner conflict unique to him, then what is the nature of that conflict? Over the years, many have found the answer in the “double-curriculum” that our college demands. According to this theory, YC’s emphasis on Torah study and secular knowledge is to blame for its students’ unique religious confusion and torment. Simply put, as the proponents of this theory say, the contents of the morning program and afternoon program clash, and this content clash creates inner clashes in undergraduates. Whereas the morning program preaches absolute faith in God, His Torah, and the Truth of tradition, the afternoon schedule teaches relativism, skepticism, and atheism. Apparently, these conflicting messages, taught by disagreeing pedagogues who do not respect one another’s worldviews, make a terrible mess in the hearts and minds of YC students.

“Thus, if there still is a unique plague of inner turmoil that afflicts the YC undergrad, it cannot be the plague of content-conflict arising from a double program, for there now exists an overstocked intellectual pharmacy offering myriad medicinal options for alleviating and curing this plague.”

Although this proposed explanation of the situation is old news, its implications may not be. The intellectual challenges that the dichotomous schedule presents may still be tearing minds and hearts apart in YC. Newcomers to the college, fresh out of a one-, two-, or three-year Torah-only stint in the Holy Land, may find the assertions of some professors and the texts they assign to be especially unsettling. Although most of these students will weather the liberal arts storm and emerge religiously unscathed, a small percentage, usually the philosophically inclined, will lose some of their religious devotion in the process. Yet an even smaller sample of YC undergrads will leave Orthodoxy solely because of philosophical factors.

Notwithstanding the very real religious anguish that a contradiction-saturated curriculum can cause, the YC student has bigger falafel to fry. After all, over the past sixty or so years, Orthodox Jewish thinkers and academics have produced and delivered many thousands of classes, articles, and books on every conflict that exists under the sun between Jew-

ish and secular wisdom. When it comes to intellectual struggles arising from Torah u-Madda, the YC student need only surf the Web or the YU library to decide which of the multitudinous extant articles addressing his particular question he would like to turn to for answers. Thus, if there still is a unique plague of inner turmoil that afflicts the YC undergrad, it cannot be the plague of content-conflict arising from a double program, for there now exists an overstocked intellectual pharmacy offering myriad medicinal options for alleviating and curing this plague.

If there still is a real, rampant, conflict rending many a YC student in two, then it is not intellectual in nature, but experiential or existential. If there still is a Torah u-Madda plague, then it is not to be detected in the college catalogue or course schedules. It is not an issue of subject matter. Rather, the conflict, the clash in the mind and heart of the YC student, is due to exposure to and the desire for contradictory modes of living, modes of living which each attract a part of his fundamental humanity. Although this tension takes on a unique form

at Yeshiva College, its basic properties may not be unique to Jewish people, but may be applicable to all people of faith in the modern world. Indeed, this more typical conflict is not unlike the one described in the Rav’s *The Lonely Man of Faith*.

2.

The tension that ails the YC student, and even the religious non-Jew, is caused by the dissonance between quantity-centered living and spiritual living. Adam the First’s preoccupation with quantity is a product of his desperate desire to exist. More than anything, Adam the First wants to *be*; his greatest fear, then, is to disappear. When he is not progressing quantitatively, he begins to feel himself fade; in order to alleviate this terrifying feeling, he turns to the *tangible*, to *things* – things that can be counted, organized, filed, felt, registered and read. He builds a bridge, buys a lot of books, starts a club, writes an essay, posts a video on the web, adds friends and posts pictures of himself on Facebook. He adds lines to

his resume. He writes, and writes much, because to him the written word seems more lasting than the spoken. He objectifies everything he can in order to advance his presence in the world. He even exploits his own heart by recording all of his sentiments on a blog. To keep a journal is not enough! He thinks, “What good are my feelings if I cannot use them to increase my fame?”<sup>ii</sup> And he publishes; because this, he thinks, more than simply writing to friends and in journals, will ensure his immortality. He avoids the amorphous, shuns the subjective, and mocks the immeasurable because such things cannot be stacked upon each other in clean rows and shown off. They cannot be *used*. Instead, he turns to quantity so that he will not disappear. He has either been convinced or convinced himself that if *he fills space, with himself and with objects, he will exist and matter more*. Thus, Adam the First is really after glory, *kavod* (which literally means “mass” or “heaviness”). If he achieves glory, he exists.

Because wanting to exist means wanting to exist completely, Adam the First’s greatest dream is to live forever, to be an immortal. Therefore, the greatest enemy of Adam the First is time. Time limits Adam the First and his accomplishments. Time tells him that he can only write so much, only build so much, only learn so much, only acquire so much, and only fill a finite amount of space; and, worst of all, it tells him that he is going to die. Thus, Adam the First’s life is a fight against time. In order to win this contest, he relies on the only thing he can: quantity. So, Adam the First buys planners and Blackberries, writes schedules, and *tries to fill his days with productivity*. Efficiency is his weapon against time; it is his saber on the battlefield of life. A great day for Adam the First is one in which he has written a smart schedule and *accomplished as much as possible*.

A quantity-centered life is also a life of distance. It is an existence of distance from people and from the projects and activities one

“Spirituality means *li-shemah*. It refers to that state of experience where deeds are done – deeds which one feels connect one with something incorporeal and greater than oneself – not for prestige, accumulation, accomplishment or profit, but for the sake of the deeds themselves.”

undertakes. Adam the First is disconnected from everything he does and from everyone with whom he interacts, and this is because everything he does is done for the sake of something else. In other words, his life is all means and no ends. He learns in order to do

well on the test, he does well on the test in order to get an A in the class, he wants an A in the class in order to achieve a high GPA, and he wants a high GPA so he can get into a top graduate program. After he gets into the top graduate program he earns a career from which he is disconnected and which he wishes to leave for a more glorified or better-paying job. But Adam the First views people as means as well. He exhibits warmth and flatters others to land an interview or infiltrate a social network; he befriends one person simply to get in touch with another; he “kisses up” to professors to ensure high marks. He views people as objects and even collects them on Facebook. Eventually, he marries a woman whose love is also just a means to an end. Due to his fixation on filling space and achieving *kavod*, he resents his peers for their accomplishments and is often beset by a fiery jealousy.<sup>iii</sup> All of this because he is driven by quantity.

3.

At the other end of the human spectrum sits the Spiritual Man.<sup>iv</sup> Do not misunderstand him or cheapen his title! He is not necessarily spiritual because he often dances in circles, claps his hands, sings, meditates, wears fuzzy, colorful *kippot*, or learns Hasidut. These activities can certainly be manifestations of spirituality or indicative of a spiritual life, but they are not definitional to spirituality and they fail to do justice to the singular life of the Spiritual Man. Saying that spirituality means singing and dancing is like saying that love means hugging and kissing. Just as there is more to love than superficial gestures, so too does spirituality go beyond externals. What, then, is spirituality? Spirituality means *li-shemah* (for its own sake). It refers to *that state of experience where deeds are done – deeds which one feels connect one with something incorporeal and greater than oneself – not for prestige, accumulation, accomplishment or profit, but for the sake of the deeds themselves*.

In Judaism, the archetypal Spiritual Man lives for religious experiences that connect him with *Ha-Kadosh Barukh Hu*; or, as Abraham J. Heschel would put it, he lives for “sacred moments.”<sup>v</sup> Since he is religious-experience-centered, he is perforce quality-centered; and,



being quality-centered, he naturally lives a life of closeness to people and to his undertakings. His life is a chain of ends, of moments, and not a string of means. Since he cares not for glory, he can honestly rejoice over his friend's achievements. Since accumulation and accomplishment do not interest him, he can surrender himself to moments and live in the now. This is why spiritual people tend to be adept at and passionate about *tefillah*, *zemirah* (singing), and *rikkud* (dance): these things are amorphous, affective, and qualitative in nature, requiring devotion to the moment, and they do not lend themselves to measurements and quantities. They are all about connection and not at all about accumulation.

Halakhah may be highly quantitative in nature, but it nevertheless demands a spiritual life from Jews. After all, the great goals of Halakhah and Torah are fear of God, love of God, knowledge of God, love for one's fellow, humility, justice, truth, and *deveikut*. We can measure the heights of our *sukkot*, the volume of our *mikva'ot*, the length of *tsitsit*, the size of our wine glasses, but can we measure love of God? Fear of God? Can we measure a Jew's sense of justice or goodness toward his fellow man? Can we measure one's immersion in prayer? Of course we cannot; and maybe that is because, more than anything, "God requires the heart" in our dealings with Him and in our dealings with each other, and matters of the heart defy quantity.<sup>vi</sup> It is impossible to measure the love of a parent for a child or the love of a husband for his wife, and one cannot com-

**“We can measure the heights of our *sukkot*, the volume of our *mikva'ot*, the length of *tsitsit*, the size of our wine glasses, but can we measure love of God? Fear of God? Can we measure a Jew's sense of justice or goodness toward his fellow man?”**

pete or win in this realm either. It would be absurd to compare two happily married couples and decide which marriage is more successful or which spouses love each other more. How would you go about calculating it? So, too, how would you go about comparing the righteousness of one *tsaddik* to another? For example, who was more righteous, R. Kook or the Hafets Hayyim? How would you figure it out?<sup>vii</sup> This is a stupid question! Judaism is about relationships, sacred moments, and matters of the heart. It may be quantity-laden, but it is spiritually centered.

4.

The stereotypical YC student is both Adam the First and Spiritual Man. The contradictions which plague him, arising from this dichotomy, are not unique to him but are experienced to some extent by all honest religious people in the world – a world which, by the way, has been quantity-driven since the dawn of time. Nevertheless, the tensions that religion

creates, and the jarring oscillations it produces in the dichotomous man, are intensified in the soul of the YC student, for he finds himself in the eerie twilight zone that is both a yeshivah and a college.

But, as I have noted, it is not the college catalogue which intensifies the sting of his already-frayed existence. He may not like having to read Rashi in the morning (or early afternoon) and Toni Morrison in the later afternoon, but the content clash is not what is really eating him. What *is* troubling him, what *is* exacerbating the pain of his imbalanced life, is the experiential conflict that the twilight zone creates. For the value systems that the yeshivah and the college are presenting are antithetical to each other.

The cause of the exacerbation can be stated quite simply: colleges promote quantity and yeshivot traditionally promote spirituality. Who are the heroes, the giants, the *gedolim* of colleges? Why, the professors, of course! And which men of yeshivot are traditionally granted the equivalent appellations? The *talmidei hakhamim* and the *tsaddikim*. Which undergraduates are the most valued in professors' eyes? The ones who think well, write well, and who will go on to graduate schools, doctoral programs, and who will produce thick, footnote-heavy dissertations.<sup>viii</sup> And which *bahurim* are (or should be) the most favored in the Rashei Yeshivah's eyes? The ones with heads on their shoulders, who surround themselves with holiness, who devote themselves to achieving the greatest goals of Torah wisdom

and Halakhah (i.e. fear of God, love of God, knowledge of God, love for one's fellow, humility, justice, truth, and *deveikut*).

It is not the substance of academic studies that is necessarily in opposition to a yeshivah's values, but the cult of academia. Academia is about quantity and Torah is about spirituality; for example, in order for a college professor to achieve that most hallowed of academic dreams, tenure, he or she needs to publish significantly. Not only that, but he must *write* like an academic! (If this is not quantity-centeredness and distance-living, then I do not know what is.) Sure, quality of work is also evaluated, but as important as anything in the path to tenure is the quantity of published works. Isn't it quantity-centeredness that inspires academics to chop up their dissertations into 23 published articles, half of which share the same thesis?

Isn't the pull of quantity-centeredness responsible for the compulsive writing of footnotes, endnotes, backnotes, frontnotes and sidenotes? Indeed, academic articles often take

place below the footnote line! This is because the archetypal academic is an Adam the First; he or she is after glory and afraid of disappearing. His outlook is in complete opposition to the spiritual person's; and the *culture* of academia, which is quantity-centered and quantity-saturated, contradicts the values of a typical

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yeshivah, which promotes axiomatic Jewish principles that are affective, amorphous, and spiritual.

But the conflict runs deeper at our college, and the confusion intensifies still. YC has managed to produce a twilight zone *within* a twilight zone.

5.

Even more discouraging for the YC student than the tension he feels from his attraction to two opposing value-systems and modes of living is the confusion and disheartenment he experiences when the lines are blurred and the opposing forces in his life are confused. Navigating through an existence of quantitative desires on the one hand and spiritual ones on the other is quite challenging, but confusing spirituality with quantitative living makes thriving as a happy religious Jew impossible. Unfortunately, Yeshiva College has allowed, encouraged, and promoted such confusion on campus.

*Talmud Torah* has always invited pitfalls of elitism, arrogance, and *kavod*; one need only glance through the Mishnayot of *Pirkei Avot* to realize that the sages were well aware of this challenge. For thousands of years, Jews have been mistakenly viewing their learning of the Law as a purely quantitative endeavor and their knowledge as a tool for increasing their *kavod*; but YC took it to the next level. YC did not only let its *talmidei hakhamim* sit at the front of the study hall; it *awarded* them for their Torah scholarship with plaques, books and prizes. Chairs were created – chairs of Bible, chairs of Talmud, and chairs of Jewish philosophy. Awards were handed out annually to the finest students in MYP, BMP, IBC, and Mechinah. Elite Torah fellowships and *kolelim* were established and a Yeshiva Honors Program arose. But well before the YHP came into existence, there was the academic Jewish studies curriculum. This curriculum, though teaching *Jewish* studies, was made part of the college and not the yeshivah and represented a great oxymoron. The oxymoronic nature of this program lay not in its method, for the study of Torah has always been academic at least in part, but in its message that the quantity-driven world of academia could possibly harmonize with the yeshivah student's spiritual life, of which *talmud Torah* occupies a central role.

As such mixed messages abound, it is no small wonder that some students mistake their study of Torah for a quantitative enterprise. It is no wonder that some learn Torah for fame and the writing of articles; that students care more about finishing tractates of Talmud than actually learning them; or that *talmidim* aspire

more to the “Most High Kollel” (*Kolel Elyon*)<sup>ix</sup> than to the Most High, or that the shi'ur one attends is a matter of *kavod*. But this blurring of boundaries does not end with the quantification of Torah study; rather, it extends to the Yeshiva College student's entire religious life as well. Specifically, the confusion manifests itself in the *bahur yeshivah*'s setting of *quantitative spiritual goals*, which is a contradiction in terms.

6.

*Avodat Hashem* is unlike a weight-loss program. A *Yid* cannot simply hop on a spiritual treadmill for two weeks and afterwards weigh himself on a scale of *frumkayt*. Spirituality, by definition, defies such quantification. Nevertheless, there are those of our institution who pursue this type of spiritual routine. Some students may pursue it by deciding to pray with *kavvanah* for two weeks straight, while others may attempt it by committing to learn night *sefer* with greater passion. These goals are admirable, but they are also doomed to failure, because as soon as one sets a quantitative goal for an amorphous, spiritual act, that act is drained of all its life and dries up like an *etrog* in the sun. And as soon as one builds a spiritual *life* around such an approach, one's world becomes empty, for quantity-centeredness transforms man's actions into means, and *Avodat Hashem*, at its essence, means *lishmah*, means being *in the moment*, performing the deed for itself.

*Li-Shemah* and spirituality become especially difficult principles to live by in face of the Adam the First-driven social atmosphere of YU. In this milieu, YC bachelors are inclined to act more spiritual or religious in order to improve their chances at courting the more pious bachelorettes.<sup>x</sup> They do this because they believe that their “level” of religiosity (or “*shtarkness*”) dictates who they can date and who they will marry. “Very *frum*” guys, they claim, are going to attract “very *frum*” girls, “medium *frum*” guys are going to attract “medium *frum*” girls, and so on. These opinions are reasonable enough: a Jewish man at an early stage of his spiritual journey will probably not be a good match for a Jewish girl at a more advanced stage of hers, and vice versa; the quantification and categorization of religiosity found on websites like SawYouAtSinai

and YUConnects proves as well as drives this social phenomenon. Nevertheless, YC students and Jewish bachelors everywhere should not let this social situation affect their *avodat Hashem*; trying to better one's service of God and advance one's spiritual life in order to improve one's social prospects is a vain pursuit. Such strivings are paradoxical and futile for reasons already enumerated, and they will yield neither spiritual substance, social contentment, nor marital fulfillment. As soon as

“Showing up to morning *minyan* for three weeks straight, attending a certain “*shtark*” *minyan*, wearing a certain *kippah*, or not wearing certain kinds of pants in order to tell oneself and one's friends that one is more *frum* – in order to date certain kinds of girls – is the antithesis of religious living.”

one tries to do a spiritual act in order to land a date or a wife, the attempted act is rendered devoid of spirituality and substance.<sup>xi</sup> Showing up to morning *minyan* for three weeks straight, attending a certain “*shtark*” *minyan*, wearing a certain *kippah*, or not wearing certain kinds of pants in order to tell oneself and one's friends that one is more *frum* – in order to date certain kinds of girls – is the antithesis of religious living.<sup>xii</sup> The irony: if we only did things *lishemah* and focused on the *penimiyyut* (internal aspects), the *hitsoni* (outward) things in our lives would also take care of themselves.

7.

It says in *Kohelet*.<sup>xiii</sup> “Whoever loves silver will not be sated with silver.” Rashi offers three explanations of this phrase. His first is that “Whoever loves the commandments will not be sated with them,” and his third is, “Whoever loves Torah will not be sated with it.”<sup>xiv</sup> Although it may be a *derashah* on Rashi's *derashah*, one could expound the verse to mean that, “One who loves the study of Torah and the performance of commandments similar to the manner in which *he loves money*, will never be satisfied with them.” The reason is that money has no inherent value; its only value is in numbers. Money is, by its very nature, only a means to an end. One who loves money, therefore, does not really love *it*, does not really value an individual nickel or penny, but loves the accumulation of money. Thus, love of money represents the quintessence of quantity-centered living, where the actions of one's body and the sentiments of one's heart are only as valuable as they are useful in getting Adam the First to the next plateau along his never-ending ascent to quantity, accolades and *kavod*. Therefore, to love Torah or the commandments like one loves money will never lead to satisfaction with them. Instead, that kind of love will only lead to frustration and emptiness.

8.

That spirituality is unquantifiable and amorphous does not, God forbid, imply that

spiritual progress is a lie or a futile pursuit. On the contrary; a Jew is bidden to keep ascending the proverbial mountain to God and if he is not engaged in this effort, he is perforce regressing. A Jew must set goals, but the nature of those goals must be quantifiable, not amorphous. For example, a reasonable religious goal to set might be to pray *Ma'ariv* with a *minyan* for an entire week, or to pray *Ma'ariv* relatively slowly. Here are some other goals that make sense: visiting a sick person once a week, join-

ing the YU Chesed Club, saying an extra ten chapters of Psalms every day, spending one dinner a week with one's parents, learning in the *beit midrash* for an hour every night, ending one's learning ten minutes before *Minhah*, going to the *mikveh* on the eve of Shabbat, inviting friends over to one's apartment or dorm at least 5 times a month. These are quantitative, objective goals; and, although they may not necessarily equal spirituality, they can certainly facilitate and lead to it. Along the same lines, R. Soloveitchik often stressed that

“How can man expect to tend to both poles of his inner world without turning his life into a series of painful religious oscillations and contradictions?”

in Halakhah, the objective act precedes the inner, subjective experience, even though that immeasurable event may be the goal and fulfillment of the Law.

The opposite of this type of goal-setting is the setting of goals that try to quantify spirituality. Examples are: learning a page of Talmud in 10 minutes, making a *siyyum* every month,<sup>xv</sup> learning and understanding all of Tanakh in two years, developing an emotional bond with the sick person one visits, becoming a great rabbi, crying during *tefillah* at least once a week, really loving Jews, serving God with greater joy, being more humble, and so on. These are all wonderful, lofty goals that *can* be attained, but not by trying to grasp that which has no form.<sup>xvi</sup>

9.

Within man's soul God formed opposing dreams and in his mind He placed divergent potentials; if man is to be himself, to paraphrase R. Soloveitchik, then he must embrace both sides of his being. To mistake one side for the other may be foolish and detrimental, but

to *reject* either side is also tantamount to rejecting Creation. But how can man expect to tend to both poles of his inner world without turning his life into a series of painful religious oscillations and contradictions? How can man hope to attain unification and wholeness while pursuing paradoxical forms of living? It is not enough to merely say that conflict is creative. Sometimes a boat rocks back and forth until it capsizes and is rent by the waves. Some Jews are incapable of turning their conflicts into creations. Some simply sway, shatter, and then sink.

I, for one, am a decent sailor, *barukh Hashem*; despite all the contradiction and confusion I suffered while wandering through Yeshiva College, I kept afloat and kept trying to find that elusive balance in my religious life. Of course I never found it, and maybe I never will. My college experiences would not quite be classified as wisdom literature, and I am in no position to offer solutions and reconciliations to problems and tensions that the Rav could not overcome either in theory or practice. Nevertheless, here is what I know now: “The higher goal of spiritual living is not to amass a wealth of information, but to face sacred moments.”<sup>xvii</sup> This is the lesson of Shabbat, for Shabbat is the ultimate end. It is the “purpose of the heavens and the earth.” It is the destination of creation, the goal of the week's products. Shabbat stands in time as a playground of spirituality – a day when we stop amassing,

stop preparing, stop accomplishing, stop counting, and start focusing on the moment. Shabbat is the ultimate affront to Adam the First's dreams. It is the weekly proof of the centrality of the amorphous and immeasurable in our tradition. Its message may even teach us how to strike a balance in our everyday lives as striving religious Jews.

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<sup>i</sup> The following essay is based on an e-mail I sent to a few friends before Purim. The ideas expressed in it have been inspired by the writings of R. Soloveitchik as well as my own experiences and perceptions. This is not a research paper.

<sup>ii</sup> One need only turn on the television to see the most grotesque examples of Adam of the First's spell over our culture. It seems as if every other show is an exploitation of the sacred. Love and friendship are turned into competitions and games to be viewed and cheered at, and intimate conversations and moments are publicized for entertainment and profit. To illustrate: only in an Adam the First culture could a husband choose a television show, viewable by an entire county, as the stage upon which he informs his wife of an adulterous affair; only in an Adam the First culture could love and marriage be turned into a broadcast competition.

<sup>iii</sup> Indeed, for Adam the First, the tripartite teaching of R. Elazar ben ha-Kappar in *Avot* 4:21 may really be saying only one thing: *kavod* removes man from the world. According to this reading of the Mishnah, lust and jealousy are just bi-products of glory-seeking.

<sup>iv</sup> For fear of misrepresenting the Rav's typology, I am not calling him *homo religiosus* or the Man of Faith.

<sup>v</sup> Abraham Joshua Heschel, *The Sabbath* (Philadelphia: The Jewish Publication Society of America, 1963), p. 6.

<sup>vi</sup> For sure all of these pillars of service to God have been translated into concrete requirements and actions by our sages, but when all is said and done, they still defy quantification. <sup>vii</sup> I am aware that there is a trend in *Hazal* to compare people according to standards of righteousness. A thorough discussion of this trend is beyond the scope of this essay.

<sup>viii</sup> Earlier, I spoke of Adam the First as a utilitarian student who is primarily interested in financial success and the acquisition of things; here I am focusing on a different aspect of Adam the First's pursuit of quantity. One could not possibly enumerate all the manifestations of Adam One's character in the course of a short essay.

<sup>ix</sup> For years now, I have been trying to start a *Kolel Tahton* (Lower Kollel).

<sup>x</sup> A red-haired friend of mine recently taught me the difference between “*shtark* and *shtik*.” Apparently, when one is *acting* spiritual or “very *frum*” in order to look *shtark*, he or she is really doing *shtik*; and when one is doing something spiritual to be real, he or she is being *shtark*.

<sup>xi</sup> By this, I do not mean to make a metaphysical or Kabbalistic assertion; I do not know what takes place in the Upper Worlds when one performs religious acts for ulterior motives or for the purposes of changing his or her YU-Connects profile. Remember, the definition I propose for spirituality is an experiential one.

<sup>xii</sup> Do not even get me started with “*Adam nif'al kefi pe'ulotav*” (A person tends to behave in accordance with his [previous] actions) (*Sefer ha-Hinnukh* 16).

<sup>xiii</sup> *Kohelet* 5:9.

<sup>xiv</sup> Rashi to *ibid*.



## Kol Hamevaser: Creating a Torah Community

BY: Jonathan Ziring

Recently, *Kol Hamevaser* held its first school-wide Shabbaton. Over Shabbat, I was thinking about the importance of such an event, one where people who have a common interest in Jewish thought took the opportunity to spend time together, learn and just hang out. A few dictums of Hazal came to mind. The first is a fascinating state-

“Even the most brilliant Torah scholar needs colleagues.  
Friends sharpen each other, they help each other;  
that is the ideal.”

ment in *Bava Metsi'a*: “Ula said, ‘*Talmidei hakhamim* in Bavel stand up for each other.’”<sup>i</sup> Rashi explains that they stood “the way a student does for his teacher, as they sat together constantly in the beit midrash, asking and answering each other’s questions, with everyone learning from each other.”<sup>ii</sup> Ramban expands on this idea, saying that not only did they stand up when their friends came within four cubits of them, as would be required for any *talmid hakham*, but they even stood up as soon as they could see them at a distance, the way one is required to stand up before his primary teacher, his *rav muvhak*.<sup>iii</sup> He explains that although the *talmidei hakhamim* in Bavel did not actually learn the majority of their Torah from their colleagues, they still learned from each other constantly, and in certain respects they achieved the status of *rav muvhak* for each other. Now, while it is true that one Shabbat does not constitute “constantly,” over the course of those 25 hours I saw what promised to be the beginnings of a Torah community of people on both campuses (and beyond), who, by seriously discussing issues of Jewish thought and teaching each other, could grow together in their commitment as active members of broader Jewish society.

One might ask, as many people do, why we need *Kol Hamevaser*; why have students present their ideas in a public format like this? After all, we learn in YU with Rashei Yeshivah who are tremendous *talmidei hakhamim*, and while it is true that people can learn a lot from their peers, perhaps that is not an ideal? To me, this notion is absurd for several reasons. To begin with, when Rambam discusses the ideal friend that one should seek, he describes him as a “*haver ma’alah*,” an exalted friend.<sup>iv</sup> According to Rambam, he is the type of person who shares your goals and who wants to help you actualize your potential, just as you want to help him actualize his. He gives as an example of such a relationship the type of friendship found between teachers and their students. I have always understood from here that Rambam does not simply intend to describe the relationship that students have with their teachers, but rather means to encourage us to actively create friendships that parallel this

model, where we teach each other.

Perhaps, though, my assumption about Rambam’s meaning is incorrect. For this, I turn to an interesting Mishnah in the fourth chapter of *Avot*: “R. Nehorai says, ‘Exile yourself to a place of Torah, and do not say it will come after you, for your friends will establish it in your hands, and do not rely on your own understanding.’”<sup>v</sup> Most Rishonim understand that the word “friends” in this context is

generic, referring to one’s community, and that the Mishnah is warning people to remain in or seek out Torah communities. However, Sforno reads the Mishnah as an exhortation not to go to places where you would have no peers, even if you would be able to spread Torah among students there; rather, you should go to a community where you have equals, because it is only those who are on the same level of religious commitment and learning as you who will ensure that you keep your Torah, and no one else.<sup>vi</sup> He insightfully notes that the relationship you have with your friends is different than other relationships, and that to truly estab-

“It should be our goal to create a Torah community that extends beyond the four *amot* of the battei midrash on both campuses, and that extends beyond that walls of our Yeshiva and our University, because, at the end of the day, we and our colleagues will be the ones to define Torah in 20 years, and we might as well start building the most complete community we can now.”

lish yourself in the world of Torah, you need colleagues who can engage in that world with you – *davka* colleagues, not students, and, I would add, not teachers. Sforno continues by referencing the story in *Shabbat* 147b that gives the background to this statement of R. Nehorai. The Gemara identifies “R. Nehorai” as the nickname of R. Elazar ben Arakh, the sage who Abba Shaul claimed would outweigh all the scholars in the world combined as a result of his acuity.<sup>vii</sup> The Gemara recounts that R. Nehorai once forgot all of his Torah, despite his brilliance, to the point that he was unable to read a simple *pasuk*. To remedy this, his friends joined together and prayed for him, and together helped him regain his scholarship. Even the most brilliant Torah scholar needs colleagues. Friends sharpen each other, they help each other; that is the ideal.

However, there is a more fundamental reason why we must include everyone in the community of Torah. The Arukh ha-Shulhan, in his preface to *Hoshen Mishpat*, explains that the Torah is compared to a *shirah*, a song,<sup>viii</sup> because songs can be made more beautiful through the harmonization of different voices. So, too, he claims, the Torah is broadened,

deepened, and made all the more stunning when different opinions are voiced in discussing it. Even if a Rosh Yeshivah may have great things to say, that does not negate the possibility that another voice might be able to complement his. Shouldn’t we allow room for everyone to express his ideas (within reason), such that the Torah can become that much more complete? “*I efshar le-beit ha-midrash be-lo hiddush*.”<sup>ix</sup> everyone has a place in the beit midrash and every person has something to add to the discussion – and that includes all of our colleagues.

On that note, I want to express my gratitude to all those who read, contribute to, and edit *Kol Hamevaser* for helping cultivate a community of peers, one where we can all express our opinions freely and enrich the Torah by doing so. In the coming year, I look forward to the privilege of editing for the magazine myself and further taking part in this important endeavor. But, in truth, *Kol Hamevaser* is just one way of creating this community. It should be our goal to create a Torah community that extends beyond the four *amot* of the battei midrash on both campuses, and that extends beyond the walls of our Yeshiva and our University, because, at the end of the day, we and our colleagues will be the

ones to define Torah in 20 years, and we might as well start building the most complete community we can now. “*Ve-Attah, kitvu lakhem et ha-shirah ha-zot*” (And now, write for yourselves this song).

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<sup>i</sup> *Bava Metsi'a* 33a.

<sup>ii</sup> Rashi ad loc., s.v. “*Omedin*.”

<sup>iii</sup> Ramban ad loc., s.v. “*Ha*.” See also Rashba, Ritva, and Ran ad loc., as well as Ramban in *Torat ha-Adam, Sha’ar ha-Keri’ah*.

<sup>iv</sup> Rambam, *Commentary to the Mishnah, Avot* 1:6, s.v. “*Ve-Ameru u-keneh lekha haver*.”

<sup>v</sup> In most counts, *Avot* 4:14.

<sup>vi</sup> Sforno ad loc.

<sup>vii</sup> *Avot* 2:12.

<sup>viii</sup> *Devarim* 31:19.

<sup>ix</sup> See *Hagigah* 3a for context.

<sup>xv</sup> One might argue that there are Jews in the world who are making *siyyumim* every month, who are learning in depth, with great care and focus, and who are spiritually quite alive and well. I am not denying this. But I would argue that such individuals are either unusually bright or are learning fulltime and can afford to attach deadlines to their *talmud Torah* without hurting the quality and spirituality of their learning. In other words, they can eat their *kugl* and have it too.

<sup>xvi</sup> Concerning the keeping of a *heshbon ha-nefesh*, I think it makes sense for a Jewish man or woman to only register his or her tangible religious activities. One can keep stats on how many times one went to *minyan* that month or how many hours one spent in the Beit Midrash on a particular night, but to systematically record spirituality is a counterproductive and absurd exercise for at least two reasons. First, this is true because one cannot rate things like love of God, fear of God, and love of one’s fellow Jew, and attempting to do so breeds frustration; second, one will not be able to concentrate on loving Jews or God or praying with sincerity if he is focused on the *heshbon ha-nefesh* he is going to have to write later that day!

<sup>xvii</sup> Heschel, *ibid*.

# Halakhah and Minhag

## History and Liturgy: The Evolution of Multiple Prayer Rites

BY: Dr. Lawrence H. Schiffman

The family tree of Jewish liturgy – the *siddur* and the *mahazor* (as it is correctly vocalized) – is a long and complex one. It spans the entire history of the Jewish experience, from the earliest origins of the Jewish people to the present day. The story of the many Jewish prayer rites (*nusha'ot*) is in fact the story of the diffusion of the Jewish people and their tradition throughout the world and the development of the great Jewish communities of past and present. We seek to present the history of Jewish liturgy in a short summary, hoping that our survey will reveal the manner in which local tradition and custom served to enrich Jewish life.<sup>i</sup>

Rabbinic tradition attributes the core of the liturgy to the Men of the Great Assembly, the sages who led Israel after the time of Ezra (c. 400-250 BCE).<sup>ii</sup> Prayer texts, especially from the Dead Sea Scrolls and a section of Ben Sira preserved only in Genizah manuscripts, show that some of our contemporary liturgical language and themes were in use in the Second Temple period. Analysis of the usually-partial prayer texts preserved in Tannaitic literature indicates that already in the time of the Mishnah there were various versions of our statutory prayers.<sup>iii</sup> Further, our version follows the Pharisaic *masorah* that was paralleled by a variety of alternative texts used by other groups as evidenced in the Apocrypha<sup>iv</sup> and the Dead Sea Scrolls.<sup>v</sup> For example, the Scrolls preserve blessings for each day of the month that parallel our blessing on the creation of the lights, the first benediction before the *Shema*.

The non-Rabbinic liturgy left its mark in the language of early prayer and especially on *piyyut* (poetic liturgical texts). But, ultimately, the formulation of our statutory liturgy was to some extent stabilized in the oral traditions of the Tannaitic period and was later expanded into two versions, that of Erets Yisrael and that of Babylonia. The Tannaitic stratum, even though non-standardized in exact wording and often represented in competing versions, was the basis of the development of the Amoraic liturgy that also was never fully standardized. Nevertheless, we can speak already in the Talmudic era of Palestinian and Babylonian rites.

Characteristic of the Palestinian rite is the *birkat ha-mitsvah* recited before *keri'at Shema*, the blessing “*Tsur Yisra'el ve-Go'alo*” (the Rock of Israel and its Redeemer) recited immediately after the *Shema* instead of our “*Ga'al Yisrael*” (He Who redeemed Israel) blessing, a different recension of the eighteen

(or nineteen) benedictions of the *Amidah*, and the closing of the last *Amidah* blessing with “*oseh ha-shalom*” (He Who makes peace) in place of “*ha-mevarekh et ammo Yisrael ba-shalom*” (He Who blesses His nation Israel with peace). A further important feature was the role of Byzantine period *piyyut*. Poetry was a prominent part of the liturgy of the Second Temple period, as is evidenced in sectarian texts and fragments preserved in Tannaitic literature. From Tannaitic times, there developed a kind of proto-*piyyut* clearly evidenced in the statutory prayer of the Tannaitic period. This poetry developed into the full-fledged *piyyut* of the Byzantine period, which continued the old sectarian approach of having unique liturgical poems for every holiday and special Sabbath.

Clearly connected to *piyyut* is the contribution of *Hekhalot* or *Merkavah* mysticism<sup>vi</sup> to late Rabbinic and Byzantine period liturgy, especially the *Kedushah* hymns and prayers such as *E-l Adon*. The Babylonian liturgy adopted very little liturgical poetry when compared to the *piyyut* of Palestinian tradition.

“Regarding choice of liturgical poetry to accompany the statutory rites, great divergence in local custom was extremely common throughout the Jewish world.”

These two rites began to spread to other locales as the Jewish people itself migrated and established new communities. Already by the end of the Geonic period, a version of the Palestinian rite had spread to Italy, but we cannot speak of its canonization in any way. In Babylonia, however, the prayer book as a literary unit went through the two major redactions that, in fact, constitute different “recensions:” those of Rav Amram Gaon (d. c. 875 CE) and of Rav Sa'adyah Gaon (882-942). These prayer books were massively influential, as we will see below.

As Hellenistic Judaism began to disappear in the Greco-Roman world, Palestinian Rabbinic worship took over in two primary forms, the Romaniot rite and the Roman rite (*Nussah Italki*), both of the Palestinian type. The Romaniot liturgy was used in the Byzantine Em-

pire, Greece and European Turkey until the 16<sup>th</sup> century or perhaps later, when it was pushed out by the Sephardic rite as a result of immigration of expelled Sephardim and of the later Kabbalistic and halakhic influences of the *Shulhan Arukh*. This rite, like the Sephardic, places the *Hodu* section before *Barukh she-Amar*, inserts “*ve-yatsmah purkaneih vi-yekarev meshihei u-parek ammeih be-rahmateih le-dor va-dor*” (may He cause His salvation to sprout, bring close His Messiah, and redeem His nation in His mercy for all generations) into *Kaddish*, and uses *Keter* as a prelude to the *Kedushah* of the *Musaf* service. Numerous *piyyutim* were also included. Variation in the manuscripts and editions indicates that this rite remained fluid virtually up to its extinction. A similar *siddur* served the Jews of Corfu, Kaffa (Feodosiya, on the Black Sea) and other parts of Crimea.<sup>vii</sup>

In Italy, the Palestinian liturgy and the complex of Palestinian *piyyut* yielded a second prayer rite, the Roman, that was characterized, like that of the Land of Israel, by “*le-eila le-eila*” (thoroughly beyond [all praise]) said all

in the newly-emerging Sephardic and Ashkenazic communities. For reasons that are not totally clear, the version of Rav Sa'adyah typifies the Babylonian liturgy as it was exported with other Babylonian halakhic traditions to the emerging Jewish communities of the Iberian Peninsula.

The so-called Babylonian rite is reflected in the Sephardic prayer book, originally of the Iberian Peninsula, which, after the expulsion from Spain, spread to North Africa, Italy, Holland, parts of Germany and England, the Balkans, and the Near East, including the Land of Israel. This *nussah* also puts *Hodu* before *Barukh she-Amar*, inserts “*ve-yatsmah purkaneih vi-yekarev meshihei*” into *Kaddish*, and uses *Nakdishakh* (for *Shaharit*) and *Keter* (for *Musaf*) as preludes to *Kedushah*. Very few *piyyutim* were originally included in this rite.

When it spread across North Africa from Spain, the Sephardic rite met competing Palestinian traditions that had stretched westward, as is known from Egypt and from Kairouan in North Africa where both traditions met and fused. As a result of this fusion, as well as of the presence of local rites before the expulsion, a variety of North African versions of the Sephardic liturgy emerged, to some extent including different *piyyutim* but with the same exact text for the statutory prayers. That of Tripoli diverges most greatly from the others. At the same time, many Jews, especially in Italy, Greece and the Ottoman Empire, continued to practice their *tefillah* as they had done in Catalonia, Aragon and Castille, thus avoiding the influence of the local rites. This early Spanish rite is the forerunner of what later became known as the Spanish-Portuguese liturgy.

Simultaneously, the *Seder Rav Amram* was somehow carried to Germany where it had a strong influence on the emerging Ashkenazic liturgy and its halakhic basis, so that, for example, the fixed parts of the Ashkenazic *selihot* (penitential prayers) are found entirely in *Seder Rav Amram*. By the 10<sup>th</sup> century, the Ashkenazic rites in northern France and Germany had come into being. The northern French rite was used in England until the expulsion of 1290 and died in France with the persecutions of the 13<sup>th</sup>-14<sup>th</sup> centuries. It was also used by three communities in Piedmont (northern Italy): Asti, Fossano and Moncalva, and it is accordingly called *Nussah APaM*. There, it was still employed during High Holy Day services until modern times. The German branch preserved more Palestinian usages in the *mahazor*, such as “*Tsur Yisrael ve-Go'alo*” and a short “*Emet ve-Yatsiv*” (True and Estab-

year round in *Kaddish*. This rite was used in some synagogues in Salonika and Constantinople and remains in use in Rome, in parts of Italy, and in Italian synagogues in Jerusalem. In addition to “*le-eila le-eila*,” it uses *Keter* for all *Kedushot*, has special *Shema* benedictions for Friday evening, and includes many unique *piyyutim*. Today, however, assimilation of Italian Jewry and immigration to Italy of Oriental Jews – many from Libya – has resulted in the decline of the Roman rite. It remains, however, an important historical bridge to Ashkenaz, even as Ashkenaz was so strongly influenced by Babylonian Geonic traditions. It was not long before the same Palestinian materials, taken from Italy to Germany, formed the basis of what we might call a proto-Ashkenazic rite.

Meanwhile, the two canonizations of liturgy in Babylonia were playing a central role



lished) blessing before pre-*Amidah piyyutim*. It included a full set of *piyyutim* for *Shaharit*, *Amidah*, *Kedushah* and *Musaf* (depending on the occasion) by Palestinian and German authors. This early Ashkenazic rite remained in use in Germany (west of the Elbe River), Switzerland, Holland, Belgium, northern France and some communities in northern Italy.

An additional codification of prayers was that of Rambam. His prayer rite was designed to combine the Sephardic liturgy that he knew with his halakhic rulings. Based on an early Sephardic *nussah* and deviating from the Geonic tradition of Sa'adyah, Maimonides' liturgy had its greatest effect in Yemen where it was basically adopted in two versions to which we will return below.

Thus, by the early Middle Ages, the Palestinian *nussah* had spawned the Romaniot, Italian and early Ashkenazic rites, while the

tinian *piyyut* or its absence. By the early Middle Ages, almost all communities (Italy and Iran possibly excepted) followed the Babylonian statutory prayers in some form or other and the one-year Torah cycle, rather than the Palestinian triennial cycle. Nonetheless, Palestinian influence survived in the areas listed above, especially in elements incorporated together with holiday *piyyut*, such as the Ashkenazic recital of "oseh ha-shalom" and "le-eila le-eila" on the High Holy Days.

While by this time Hellenistic Jewish prayer rites, if they existed at all, had already fallen away, as mentioned above, we can assume that Jews on the fringes of the main Jewish communities had their own liturgies. This is certainly the case with the Persian rite that must have developed in medieval times, which assimilated earlier poetic texts and versions of statutory prayers. Regarding choice of liturgical poetry to accompany the statutory rites,

tory prayers were similar in these four towns, the *piyyutim* differed, showing that even close proximity and a common *minhag* did not prevent the rise of *mahazorim* with different poetic insertions. This rite fell into disuse in the 19<sup>th</sup> century and is probably typical of numerous early Ashkenazic and Sephardic *nusha'ot* that were never clearly delimited and are no longer practiced. Some other such rites, besides the Persian that we mentioned above, are the Aleppo liturgy, which is close to Persian rite but has some Palestinian influences, and the versions of Indian rites distinguished from the Iraqi *nussah* by their *piyyutim*.

Let us return now to trace the evolution of the three main rites we are discussing: Ashkenazic, Sephardic and Maimonidian/Yemenite.

The Ashkenazic liturgy as it was brought to Germany from Italy with an admixture of Geonic influence, especially from the *Seder Rav Amram*, formed only the basis of the fully

The Eastern branch was used in the eastern part of Germany, Poland, Lithuania, Bohemia, Moravia, Hungary and the rest of Austria, Russia, Romania, and the rest of the Balkans. In matters of some *piyyut* and rituals for special occasions, like *selihot* and *kinot* (elegies), there is a further division into "German" (adopted in the Rhine River region), "Polish" (adopted in Austria and Bohemia) and "Lithuanian" versions. Local customs were so carefully preserved that thirteen or more versions of Ashkenazic *selihot* have been printed. These different Ashkenazic rites reflect the emerging geographical identities of European areas and also the halakhic leadership of various Jewish communities. Meanwhile, France as a whole, and especially Alsace, continued to use a ritual similar to the proto-Ashkenazic one discussed above.

When Lurianic Kabbalah began to exercise its influence, Eastern European versions of the Ashkenazic *nussah* assimilated it in the 16<sup>th</sup> century, the time when Poland was a great religious, intellectual Jewish center. Hasidism would later intensify this process, so that the final product in most of today's Ashkenazic prayer books has been termed by some "Pseudo-Sefarad," containing a core of Ashkenazic rite with some added "Sefarad" elements (see below). Some German Jews, even those who had accepted innovations after Maharil, declined to adopt most of these changes and continued western Ashkenazic prayer as it was. But most, and eventually all, western European rites accepted some Kabbalistic innovations such as the *Kabbalat Shabbat* service and "*Lekhhah Dodi*" (Go forth, my Beloved).

Sephardic prayer books were radically affected by the rise of Lurianic Kabbalah. This movement influenced virtually all Jewish communities where pietists tried to follow the *kavvanot* (mystical prayer intentions) of the Ari (R. Isaac Luria, 1534-1572) and rabbis strove to have their communities employ a prayer book arranged in accord with Kabbalistic teachings, even if the worshipers themselves did not know Kabbalah. This resulted from the religious elite's acceptance of Kabbalistic doctrine and its consequent belief that only prayer books conforming to this doctrine should be used. Thereafter, virtually all local rites were eliminated, the Persian being a good example, and all Oriental communities adopted this new version of the Sephardic *nussah*. The Spanish-Portuguese liturgy, in Amsterdam and elsewhere following the expulsion from Spain, maintained a version of the mostly pre-Kabbalistic *siddur* which is used until today, although it, too, adopted *Kabbalat Shabbat*, "*Lekhhah Dodi*" and some other changes.<sup>viii</sup>

The confrontation between Lurianic Kabbalah and the Maimonidean Halakhah and liturgy in Yemen caused a major controversy still being argued over today. Two versions, "Baladi" (traditional Yemenite) and "Shami" (Syrian), developed. Baladi refused most Kabbalistic innovation as heresy, while the Shami received a strong Kabbalistic overlay.

In the aftermath of the Lurianic influence, we now have the following main rites: western Ashkenazic, eastern Ashkenazic (with Kabbal-

## History and Liturgy

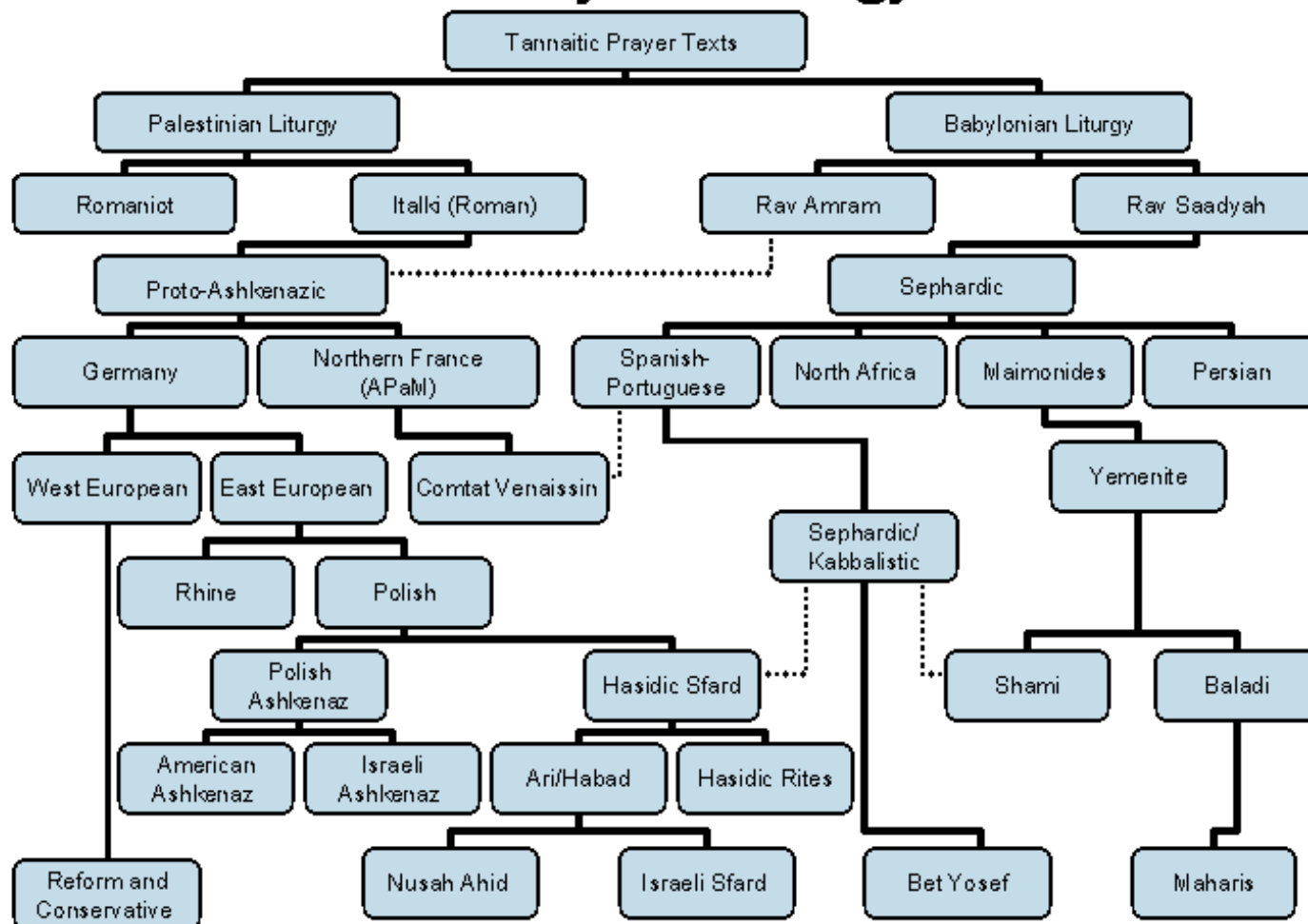


Chart designed by the author

Babylonian rite had generated the early Sephardic liturgy and a Maimonidean/Yemenite rite. None of these *nusha'ot* was free of the influence of the others, especially as a result of halakhic debate in the emerging and constantly growing literature of *posekim* (decisors), *mefarshim* (commentators) and *teshuvot* (respona).

Thus far, we have been assuming the classification of *nussah ha-tefillah* into two main groups: Palestinian and Babylonian. But this is true only regarding the influence of Pales-

great divergence in local custom was extremely common throughout the Jewish world.

An example of such a local rite is that of Comtat Venaissin in Provence. This *nussah* was used in just four towns: Avignon, Carpentras, L'Isle sur la Sorgue and Cavaillon. It is mostly like the Sephardic ritual but has influences from the northern French Ashkenazic tradition. The liturgy uses *Nekaddesh*, *Na'ar-itsekha* and *Keter* during various *Kedushot*, and "*Shalom Rav*" appears in the last blessing of all *Amidot*. In fact, however, while the statu-

developed rite and thus can be called proto-Ashkenazic, as mentioned above. In the 14<sup>th</sup> century, the textual and halakhic aspects of *minhag Ashkenaz* were standardized by R. Jacob ben Moses Moellin (Maharil, c. 1360-1427) in Mainz. He and his circle, for the most part, produced the Ashkenazic *siddur* – not the one in use today but rather a version that did not yet reflect Kabbalistic influence or the editing of modern grammarians. This Ashkenazic rite then split at some point into western and eastern branches – "German" and "Polish."

istic influence), Spanish-Portuguese (Sephardic with little Kabbalah), the Yemenite versions, and Lurianic (Sephardic and *Nussah ha-Ari*). Effectively, the original main rites had each split by this point – not only geographically, but also along lines of acceptance or rejection of Kabbalistic teachings and their effect on the prayer book.

The next major development was the rise of Hasidism in the late 18<sup>th</sup> and 19<sup>th</sup> centuries. As a result of their strong connection with Kabbalah, the Hasidic masters adopted a variety of Sephardic – better, Lurianic – prayer customs. But, contrary to popular belief, they did not adopt the Lurianic *siddur*. Rather, they created a hybrid of the Ashkenazic rite, along with its *piyyutim*, and the Lurianic rite, so as to include the *kavvanot* that, nevertheless, were soon abandoned under the pressure of opponents of Hasidism. This resulted in the creation of a number of “*Sefarad*” versions and of the Ari *nussah* of Chabad. Chabad’s text was originally rationally edited, as were a few others, but the work of printers seeking to provide various *nusha ’ot* in parentheses for multiple Hasidic markets created *siddurim* with multiple versions of the same prayer merged into one. To fix this, at a later point major Hasidic groups began to issue their own versions of *Sefarad*. Today, there are multiple editions of *Nussah Sefarad* and Ari Hasidic prayer books. At the same time, in Eastern Europe and later in Israel, many Hasidic customs affected the Ashkenazic *siddurim* that were now substantially different from those used, for example, in Eastern Europe at the time of the Vilna Gaon (Gra, 1720-1797).<sup>ix</sup> Examples of Hasidically-influenced alterations include the insertion of *Tehillim* 30 (“*Mizmor Shir Hanukkat ha-Bayit le-David*”) before *Barukh she-Amar*, “*Le-Shem yihud*” (for the sake of the unification [of God]) pronouncements before *tallit*, *tefillin* and *sefirat ha-Omer*, “*Berikh shemeih*” (Blessed is His name) before *hotsa’at sefer Torah* (the bringing out of the Torah) and many more such changes. A particularly interesting example is the expunging of “*ve-yismehu bekha*” (and may they rejoice in You) from the Shabbat *Amidah* and its replacement with “*ve-yanuhu*” (and may they rest [on Shabbat]).

In Western Europe, another set of developments took place in modern times. The text of the *siddur* was edited by W. Heidenheim (1757-1832) and later by S. Baer (1825-1897), great German experts on Hebrew grammar and liturgy who believed that the pure state of the Hebrew language was its biblical manifestation and that it should therefore be the language of prayer. They each produced a prayer book in standardized biblical Hebrew grammar, while the Sephardic Lurianic rites, and even the Hasidic *Sefarad* versions, continued to use the Mishnaic grammar of the earliest prayer books. Besides altering the text of the *siddur*, the work of these scholars in producing authoritative prayer books led to the erasing of local differences. The effect of printing also contributed to this standardization, first for Ashkenazim and gradually for all the rites. The correction and standardization of *Nussah Ashkenaz* in the 19<sup>th</sup> century created a common, unifying text,

which was then updated, primarily in America and Israel, to include the Hasidic influences on East European Ashkenazic *siddurim*. The French Ashkenazic community, however, because of its own local history and because of the process of moderate reform that preserved official Consistoire Orthodoxy as the norm, uses a prayer book that maintains some aspects of the pre-modern Ashkenazic rite and has accepted only a minimum of Kabbalistic changes.<sup>x</sup>

The Sephardic prayer book of the *Edot ha-Mizrah* also underwent standardization as a result of printing and later halakhic rulings. Generally, printers attempted to publish Sephardic prayer books that followed the Lurianic liturgy. Nevertheless, these were merged with pre-existing local customs and liturgical poetry. At the same time, the influence of the Rav Yosef Karo’s *Shulhan Arukh* and *Beit Yosef* created a need to conform existing *siddurim* to its rulings. This process was completed only when so-called *Beit Yosef siddurim* were issued under the authority of R. Ovadiah Yosef who, in fact, drew on wide-ranging halakhic literature, including Ashkenazic authorities.

From the time of the Ari and Rav Yosef Karo on, constant arguments had been waged

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between those attempting, but failing, to maintain local tradition, which was often closer to Rav Sa’adyah Gaon and Maimonides, and those leading the winning march of the new “Sephardic/Oriental” version. Nevertheless, previous to Rav Ovadiah, and to the move of Oriental Jews to Israel, France and then the United States, various local rites existed, and some of them are still used, such as the Algerian, Moroccan, Libyan, Egyptian, and Babylonian or Iraqi *nusha ’ot*. Today they survive along with the standardized Rav Ovadiah prayer books advocated by assorted yeshivot and rabbis.

Meanwhile, the Ashkenazic rite went through a final stage of division with the development of the American and Israeli versions of the Eastern European (Polish), Ashkenazic minhag. Basically, the American Polish rite, used by most Ashkenazic synagogues, represents a German/British *nussah* with East European additions, while the Israeli liturgy has more Sephardic additions like *Barekhu* at the end of the *tefillah* and *Pittum ha-Ketoret* said every day. Israelis also follow many more Gra rulings than do Americans. Curiously, however, many Religious Zionist Israelis, even of Western European origin, adopted a version of Hasidic *Sefarad* as their rite after coming to Is-

rael, while East European Jews who came to America tended to abandon their allegiance to Hasidic *Sefarad* and adopted instead the Ashkenazic rite so common already in the U.S. Only later, with the immigration of many Hasidic and East European Jews after the Holocaust, did the Hasidic rite, in all its variation, become common in some segments of the American Orthodox community. For a variety of reasons, primarily the influence of yeshivot and of Israel, American Ashkenazic prayer is growing to be more Israeli over time. It is also worth mentioning that distinctions among Hasidic *Sefarad* prayer books are no longer geographically based but, as mentioned above, result from the printing of prayer books by the various Hasidic groups, a process still continuing today.<sup>xi</sup>

Finally, we should mention the Esperanto of prayer rites. In the early days of the State of Israel, then-IDF Chief Rabbi Shlomo Goren wanted to create a common *nussah* for use in the Israeli army. He sought to avoid the need to separate soldiers for religious purposes and to overcome calls for separate Ashkenazic and Sephardic military units. To this end, he adapted Hasidic *Sefarad*, in a version close to that of Chabad, into what he called *Nussah Ahid* (the unified rite) actually a form of

Chabad text with some modification. This rite never really succeeded, since Israeli Orthodox Jews preferred to follow a pattern of simply allowing the preceptor to lead the prayers according to his own *nussah*. In fact, this pattern prevails even in some synagogues, despite not being in accord with most halakhic rulings on the subject.<sup>xii</sup> Nonetheless, this approach solved the very same problem, and obviated the need for the unified rite.

Having traversed 2,000 years of Jewish history, we conclude with an observation. Local custom in prayer has been a major feature of Jewish life for its entire history. Instead of feeling uncomfortable when we enter a synagogue where things are done differently from what we are accustomed to, especially as we travel the ever-shrinking globe, we should revel in the beautiful diversity of our local customs, and in the way each Jewish community sought to fulfill its spiritual and halakhic requirements. Judaism has never insisted on uniformity, but rather has its own concept of halakhic pluralism and diversity of Minhag. The history of Jewish prayer books and their various versions and rites reflects the history of the Jewish people, its intellectual and religious development, and its migration throughout the world. We should appreciate it as a sign

of the power of the *masorah* to serve the Jewish people in every time and place.

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<sup>i</sup> No comprehensive study of this issue exists. A general picture can be gathered from E. D. Goldschmidt and R. Langer, “Liturgy,” *Encyclopaedia Judaica*, vol. 13, 2<sup>nd</sup> ed., Michael Berenbaum and Fred Skolnik (eds.) (Detroit: Macmillan Reference USA, 2007), pp. 131-139. The details presented here are, for the most part, the result of investigating numerous *siddurim* representing the various rites. Always helpful is I. Elbogen, *Jewish Liturgy: A Comprehensive History* (Philadelphia: JPS, 1993).

<sup>ii</sup> *Berakhot* 33a.

<sup>iii</sup> By “statutory prayers,” we refer to those prayers in the *siddur* that it is halakhically required to say *le-ka-tehillah*.

<sup>iv</sup> Cf. M.C. Kiley (ed.), *Prayer from Alexander to Constantine: A Critical Anthology* (Atlanta: Society of Biblical Literature, 1997).

<sup>v</sup> See L. H. Schiffman, “The Dead Sea Scrolls and the Early History of Jewish Liturgy,” in L. Levine (ed.), *The Synagogue in Late Antiquity* (New York: Jewish Theological Seminary, 1987), pp. 33-48.

<sup>vi</sup> *Merkavah* mysticism dates to the early Geonic period and concentrated on speculation about such themes as the divine throne and angelic praise of God in Heaven.

<sup>vii</sup> Cf. S. D. Luzzatto, *Mavo le-Mahazor ke-Minhag Benei Roma* (Livorno, 1856).

<sup>viii</sup> Cf. R. Kimelman, *Lekhhah Dodi’ ve-Kabbalat Shabbat: Ha-Mashma’ut ha-Mistit* (Jerusalem: Cherub, 2003), on the virtually universal acceptance of “*Lekhhah Dodi*” into Jewish liturgy.

<sup>ix</sup> Speaking of the Gra, numerous later Ashkenazic prayer books claim to represent his *nussah*, but they are usually standard prayer books corrected according to his rulings or customs, or reconstructions of the prayer book of his time with such corrections, a recent tendency of some Israeli Gra *siddurim*.

<sup>x</sup> A similar process occurred in Yemen in the 18<sup>th</sup> century. R. Yihya Salih (1715-1805), redacted the prayer book, and created a Baladi *Tiklal*.

<sup>xi</sup> While the rise of Modern Reform, Conservative and Reconstructionist prayer books is beyond the scope of this paper, we can note that the Reform prayer book was based on the German Orthodox prayer books of the 19<sup>th</sup> century, as edited by Heidenheim. The Conservative took its cue from the British *siddur*, which was itself based on earlier German editions, and the Reconstructionist prayer book took as its basis the Conservative prayer book that it sought to displace.

<sup>xii</sup> See R. Ovadiah Yosef, *Responsa Yabbia Omer*, vol. 6, *Orah Hayyim*, *siman* 10, and the sources quoted there.



*Ha-Mahamir, Mah Tavo Alav?:<sup>i</sup>*

## Religious Stringencies and Their Psychological Considerations

BY: Shlomo Zuckier

From the Talmudic dictum *safek de-Oraita le-humra* (in case of doubt concerning biblically mandated laws, follow the stringent opinion),<sup>ii</sup> it seems that Judaism values religious stringency within its halakhic framework. The word *humra* can be used in several different ways, ranging from the internal legal examples just discussed to the term's more ubiquitous use today, as referring to personal stringencies not mandated *me-ikkar ha-din* (by the basic, standard law), but which

“He has gone beyond the call of duty in his adherence to God’s Law, and he therefore often feels a true and sincere sense of religious accomplishment for that.”

one takes upon himself for reasons of personal piety.<sup>iii</sup> The latter category of individually-accepted *humrot*, in terms of the non-halakhic issues it presents, will be the focus of this article.

There is obviously much halakhic and/or exhortative material germane to this topic, which will not be pursued in this article.<sup>iv</sup> Instead, the article will attempt to analyze certain psychological and/or social considerations that pertain to the practical application of this subset of *humrot*.<sup>v</sup> It will focus on the individual level, though many of the points in this article are also applicable on broader social planes. As with most things, this analysis will be colored by the hashkafic and religious context to which its author was party, but the potential issues and considerations are presented from an impartial perspective and should hopefully be applicable to similar cases in other religious settings.

Before entering the specific content of this topic per se, it is important to delineate two different determinations of *humra* and to orient the discussion towards one of them. First, there is the question of defining the *ikkar ha-din* (basic law) and the varying levels of stringency outside of it, ranging from reasonable adoption of the minority practice in the writings of Rishonim to practices with little to no basis in the primary sources. The established range of opinions will depend on the Talmudic *sugya* and its Rishonim, along with a responsible and serious study of the *Shulhan Arukh* and its attendants, discriminating between Ashkenazi and Sefardi decisors when applicable and accompanied by an analysis of contemporary *posekim* on the issue, can yield the determination of what is *ikkar ha-din* and what is considered a legal *humra*.<sup>vi</sup> Second, there is the question of current practice in one’s community and of what qualifies as a sociological *humra*, a practice more stringent than that of

the common man in one’s surroundings. This will depend on the country one lives in, and, more specifically, his community, whether that is determined by the neighborhood in which one resides or the *shul* or *yeshivah* he frequents.<sup>vii</sup> The sociological *humra* is usually more relevant in the context of analyzing one’s psychological relation to *humrot*, as the strongest frame of reference for most people is social.

Now that the categories have been demarcated, an analysis of the psychological ramifications of the *humra* can be undertaken,

beginning with its positive consequences. In order to minimize tangential issues, let us analyze the case of someone keeping a *humra* that has significant basis in rabbinic sources but is not usually followed in his sociological context. As stated above, this section will leave out the pure halakhic benefits of following a *humra*, namely one’s increased chances of properly fulfilling the mitzvah or avoiding the *aveirah* (the validity of these claims may depend on one’s understanding of *pesak Halakhah* and one might split between the two categories), among other issues, which are of extreme significance but beyond the scope of this discussion.

The first psychological effect of *humra* observance is arguably the most obvious one. The *mahamir*, aware that the *posekim* often call for a *ba’al nefesh* (a spiritual person) to be stringent and of the *yeshivah* world’s cultural admiration for such practices, presumably feels a stronger sense of personal religious identity as a result of his observances. He has gone beyond the call of duty in his adherence to God’s Law, and he therefore often feels a true and sincere sense of religious accomplishment for that. Falling into the category of a *ba’al nefesh*, then, is the first and most salient positive effect of observing *humrot*. Conversely, it is possible that one who only follows the letter of the law and never goes a step beyond may feel a sense of mediocrity. If his religious observance is equivalent to everyone else’s and incorporates no extraordinary initiatives, he may appear spiritually deficient in his own eyes. Of course, some people are satisfied by simply fulfilling the *shurat ha-din* (line of the law) and see that as a worthy religious goal and ideal. But many others feel drawn to the idea of halakhic maximalism and disappointed when they fall short of achieving it.

Another relevant factor is that of personal

investment. One who decides to observe a *humra* within a particular *din* (law) or number of *dinim* based on his personal research and assessment of the issues feels a stronger connection to that *din* than one who follows the standard practice. We do not generally favor any one mitzvah over another,<sup>viii</sup> but a person who attaches himself to one mitzvah in particular and reflects that connection by following certain *humrot* therein will improve his overall religious observance. The halakhic system is one which of necessity permits little personal input, so *humrot* represent an arena that allows for individual expression and an increased bond to mitzvot. Assuming these extra, voluntary levels of observance are part of a healthy, broader life of religious commitment, the excitement and abundant energy generated by keeping a particular favored *din* in the best way possible can spill over and affect the rest of that person’s religious world as well.<sup>ix</sup> Of course, this idea of personal investment in a mitzvah on account of a specific *humra* is lost in a society in which everyone follows that *humra*. For example, in a place where everyone keeps *chalav Yisrael* (milk whose processing was performed under Jewish supervision), the personal investment factor is negligible; one’s observance is based on communal expectation, not personal motivation and attachment.

Nevertheless, not everything about *humrot* is positive; the same mechanism which has the power to positively affect the religious Jew also has the potential to backfire. These pitfalls are by no means inevitable, and it is more than possible to steer clear of them, but it is important to be aware of them. One of the most dangerous snares in this area is the potential

“Even if the person does not feel that he is acting for inappropriate reasons, the very fact that his *humrot* are incongruous with his general religious practice is reason enough to render this behavior inappropriate.”

for losing focus on and understanding of the proper weight of different halakhic and hashkafic issues. The *mahamir* runs the risk of preferring the *tafel* (secondary) to the *ikkar* (primary), the *shittat yahid* (unaccepted minority position) to the basic *din*. In his rush towards halakhic maximalism, he may skip steps and not sufficiently concentrate on the more basic halakhic requirements. Mental energy expended on being *makpid* (meticulous) on *humrot* might be better employed reinforcing more basic religious obligations. Indeed, at times it may be the case that someone accepts upon himself extra religious observances in

one area in order to assuage his guilt over religious failings in other areas, but this approach fails to treat the root of the problem itself.

Excessive *humra* observance not only affects mental focus, but issues of material allocation as well. Money spent on more expensive meat with an extra *hekhsher* (kosher certification) cannot be used for *tsedakah* (charity) purposes. Similarly, time spent working out practicalities related to a certain *hakhpadah* (self-imposed restriction) cannot simultaneously be applied towards acts of *hesed* (kindness) or other mitzvot. In fact, there are certain cases where a *humra* indirectly blocks certain other desirable religious goals, including cases where those who refrain from eating certain foods find their ability to be *me’urav im ha-beriyot* (involved with people) compromised. As some like to say,<sup>x</sup> every *humra* is also a *kulla*, in the sense that the extra effort (of whatever form) utilized in order to promote a particular religious observance beyond the letter of the law necessarily mitigates one’s ability to pursue other religious goals and quests.

An oft-discussed side-effect of *humrot* is the dangerous and undercutting *yohara* (presumptuousness) that it can induce. *Yohara* is discussed in several places in the Gemara<sup>xi</sup> and it casts a significant shadow in the works of the commentaries and *posekim* as well.<sup>xii</sup> The more widespread understanding of this phenomenon is that the *mahamir* may feel a certain arrogance and sense of self-importance as a result of his increased religious observance and willingness to go beyond the letter of the law. This is definitely a potentially significant problem, and one should always be cautious

not to apply his religious observance as a psychological *kardom lahpore bo* (utility).<sup>xiii</sup>

However, presumptuousness is not the only meaning of *yohara*; one need not project a pompous aura in order to fail the *yohara* test. If the *mahamir* is keeping a *humra* that is out of whack with his level of general religious observance, if his reach ventures far beyond his grasp, then this internal inconsistency itself may qualify as *yohara*.<sup>xiv</sup> Even if the person does not feel that he is acting for inappropriate reasons, the very fact that his *humrot* are incongruous with his general religious practice is reason enough to render this behavior inap-

appropriate. Proponents of this understanding champion the idea of holistic religious behavior, that one should be consistent in his spiritual goals and not inappropriately overextend in any one area, especially not one that has the potential to engender feelings of self-importance.

One significantly negative consequence of *yohara* (and here I primarily refer to its definition as presumptuousness) is the opinion one takes towards others who may not be as superlatively observant as he himself is. There are many improper attitudes that can develop in this vein, ranging from a somewhat superior and condescending approach to an outright disdain or dismissal of others' commitments to Halakhah. One example of a bad habit that can form is to begin referring to those things avoided in observance of a certain *humra* as *asur* (prohibited). This not only reflects a severely self-centered view of what the halakhah is on this issue (and how the halakhic process works in general), but it ignores the fact that there is a widely-accepted legitimate halakhic basis for the general, non-*mahamir* practice. Though one may prefer not to rely on it, that does not make such a halakhic *hetter* (permissive ruling) invalid, and far be it from some holier-than-thou layperson to condemn his neighbor for doing something *asur* when in reality it has significant justification.

Lest the reader get the wrong impression, let me be clear that, as per the "*ha-mahamir tavo alav berakhah*" formulations in the *posekim* mentioned above, the halakhic system has a very positive attitude towards *humrot*, at least when practiced in the right way by the right people. The challenge is for someone to know whether their particular situation calls for *humra* or not and whether they are acting out of the proper motivation. The fact that *humrot* have so much to offer and simultaneously contain such a risk-factor means that these issues have to be scrupulously attended to before one makes decisions about them.

This article has presented one person's perspective on the potential effects of accepting *humrot*, of both salutary and detrimental nature, in order to try to clarify some of the non-halakhic considerations concerning the acceptance of *humrot*. Hopefully, it has described the issues a person contemplating accepting a particular *humra* or *humrot* may find in store for him and has laid out the potential pitfalls and windfalls of this phenomenon for one who already follows certain *humrot* and/or is aware of people who do. Whatever we individually choose to observe, let us maximize the extent to which we keep Halakhah for the proper reasons, in the spirit of *ve-kol ma'asekha yihyu le-shem Shamayim* (so that every act is done for the sake of Heaven).<sup>xv</sup>

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<sup>i</sup> This first part of the title incorporates a play on the common phrase "*ha-mahamir, tavo alav berakhah*" (blessing should descend upon he who is stringent), instead asking what psychological consequence(s) will befall the stringent religious man.

<sup>ii</sup> See, e.g., *Beitsah* 3b.

<sup>iii</sup> It is often less than clear whether a *humra* is to be considered mandated *me-ikkar ha-din* or whether one who accepts it is doing so as an additional stringency. This issue does complicate matters, but it will be glossed over in this article in order to allow for the discussion of the article's topic within its limited space.

<sup>iv</sup> This includes cases such as *posekim* who state that a certain practice is not mandated, but *ba'al nefesh yahamir* (a spiritual person should be stringent), and those who claim that it is a halakhic ideal to be *yotse le-kol ha-de'ot* (to fulfill all the opinions) and not to enter into cases that are subject to halakhic dispute. These halakhic and exhortative issues are of utmost importance in determining what one's attitude towards *humrot* should be, but this article focuses on the somewhat subsidiary, but still vitally important, psychological aspects.

<sup>v</sup> Despite its relevance, this article will not deal with the issue of Obsessive Compulsive Disorder and its relationship to *humrot*. Because the disorder afflicts only a limited segment of the population, the article will assume the perspective of the unaffected religious majority.

<sup>vi</sup> Also relevant in this context is the severity level of the *din* at hand, where being *mahamir* on an *issur she-yesh bo karet* (a law whose transgression leads to excommunication from the congregation), for example, is very different than being *mahamir* on a late *minhag* (communal practice).

<sup>vii</sup> In different contexts, *humra* may be represented by different types of behavior; one man's *humra* is another's *kulla*.

<sup>viii</sup> *Avot* 2:1: *Ve-Hevei zahir be-mitsvah kallah ke-ba-hamurah, she-ein attah yodea mattan sekharan shel mitsvot* (Be as scrupulous in [observing] an insignificant commandment as with a severe one, for you do not know the reward given for mitsvot).

<sup>ix</sup> The concept of having a bond to a particular *mitsvah* is an idea I first heard in a *sihah* by R. Aharon Segal in Yeshivat Har Etzion, though not in the context of *humrot*.

<sup>x</sup> I have heard this line used by R. Hershel Schachter, among others.

<sup>xi</sup> The term is used in *Berakhot* 17b, *Pesahim* 54b-55a, *Sukkah* 26b, and *Bava Kamma* 59b. Whether we are generally concerned about halakhic practice leading to *yohara* or not is subject to a *mahaloket* between R. Shim'on ben Gamli'el and the Hakhamim. Regardless of those particular cases, all would agree that there are certain scenarios in which *humrot* will lead *yohara*.

<sup>xii</sup> *Shulhan Arukh* mentions it in several cases in *Orah Hayyim*, and the impact in later legal sources is significantly pronounced.

<sup>xiii</sup> See *Avot* 4:7.

<sup>xiv</sup> I heard a formulation similar to this one from R. Michael Rosensweig.

<sup>xv</sup> *Avot* 2:17.

# Minhag and Halakhah in the Talmuds: A Cross-Cultural Study

BY: Rabbi Dr. Richard Hidary

This article will define the terms "Halakhah" and "Minhag" as used in Rabbinic literature, relate these concepts to their equivalents in secular legal theory, and analyze the relationship between the two as presented by the Talmud Yerushalmi and Bavli. The word Halakhah refers to a regulation or statement of law formulated by a legislator.<sup>i</sup> The word Minhag, in both its nominal and verbal forms, is used in rabbinic literature primarily to connote a habitual practice of laypeople that is related to but not directly legislated by Halakhah.<sup>ii</sup> This might be translated as "mere custom." Generally, the rabbis recognize such customs as valid and generally encourage or require that their practice be continued, even though they are not officially legislated. In some cases, however, the practices of laypeople are considered mistaken by the rabbis because they have no basis in or even contradict

against the pro-codification position of Jeremy Bentham, both legal philosophers from 19<sup>th</sup>-century England, states in even more extreme terms: "Law, Custom, Conduct, Life – different names for almost the same thing – true names for different aspects of the same thing – are so inseparably blended together that one cannot even be thought of without the other."<sup>viii</sup>

Rabbinic literature does not maintain a consistent position on the relationship between Minhag and Halakhah. Many Talmudic passages do clearly distinguish between these categories and play down the importance of custom.<sup>ix</sup> Other passages legislate rules about how to deal with customs even at the stage when they are merely habitual practices, such as a stringency practiced by a small group with no precedent in Halakhah. These laws dictate which customs are acceptable, which customs are binding, who must keep them, when they can be changed, and how visitors to a place that keeps the custom should act. These passages

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the Halakhah.<sup>iii</sup> Rabbinic sources also use the term Minhag to describe the actual practice of laypeople regarding issues that have already been<sup>iv</sup> or are about to be legislated into Halakhah.<sup>v</sup> In this sense, Minhag could be translated as the widespread and commonly accepted form of the applied law. It is not always easy to distinguish which sense of the word Minhag is used in any given text; that Hebrew uses the same word to mean "mere custom" as well as "widespread legal practice" shows that these categories are somewhat fluid.

Secular legal theorists have debated about the relationship between custom and legislated law. John Austin, a 19<sup>th</sup>-century British legal theorist, draws a strict distinction between custom, which has no legally binding authority since it is not explicitly commanded by the sovereign, and law, which incorporates custom only when officially legislated.<sup>vi</sup> Opposing this view is Friedrich Karl von Savigny, another 19<sup>th</sup>-century jurist, who expresses the view that custom arising from the spirit of the folk is valid law.<sup>vii</sup> James Coolidge Carter, arguing

maintain Minhag as a distinct realm of law but attribute to it a level of legal validity. Yet other passages – especially in the Yerushalmi – blend these categories together by using both Minhag and Halakhah to describe the same law,<sup>x</sup> pronouncing penalties for violating customs,<sup>xi</sup> and making explicit statements such as "*Minhag mevattel Halakhah* – custom nullifies law."<sup>xii</sup>

Prior scholarship has noted the tendency throughout the Yerushalmi to define Halakhah by the common practice of the people.<sup>xiii</sup> This is consistent with the general "ancient Palestinian approach," which "placed a greater emphasis on the living, day-to-day tradition and a lesser emphasis on learned argumentation than did the Babylonian."<sup>xiv</sup> The Yerushalmi ascribes great importance to custom, which can sometimes trump official law. The Yerushalmi discourages any change in customs and seeks uniformity of custom within a locale. The Bavli, on the other hand, is more flexible in allowing people to change customs and also more often permits varieties of custom within a locale.<sup>xv</sup> Thus, the Yerushalmi's view is closer to that of Savigny and Carter while the



Bavli is closer to Austin and Bentham, although the positions of both of the Talmuds are much less extreme and systematic than those of the legal theorists.

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The significance of custom in the Yerushalmi may be related to the Yerushalmi’s efforts at codification of Tannaitic dispute and the place of custom in Roman law. R. Yohanan, the most important sage in the Yerushalmi, institutes and disseminates a list of rules about how to decide between Tannaitic disputes in the Mishnah such as, “In a dispute between R. Yosei and his colleagues, the Halakhah accords with R. Yosei.”<sup>xvi</sup> These rules are by and large followed throughout the Yerushalmi. By way of contrast, Rav Mesharsheya in the Bavli states: “These rules are to be disregarded.”<sup>xvii</sup> The Bavli generally does not make an effort to adhere to these rules.

The penchant for codification in the Yerushalmi may be related to similar trends in Roman law during the late Principate and the Dominate. Roman law incorporated an increasingly large number of sources, beginning with the publication of the Twelve Tables in 450 BCE and continuing with subsequent legislation by various assemblies, magistrates, and, later on, imperial edicts and senatorial resolutions.<sup>xviii</sup> This mass of laws that interpreted and sometimes even overturned preceding laws had grown unwieldy over time and place, prompting a sustained effort at codification beginning with Hadrian and culminating with Justinian’s *Digest*.<sup>xix</sup> This period from the second to the sixth centuries also saw the production of the Mishnah and the Talmud Yerushalmi. Previous scholars have noted parallels between Roman codes and the codificatory activity leading up to the publication of the Mishnah. Lee Levine doubts that it is mere coincidence that

“R. Akiva and his colleagues began collecting and organizing rabbinic traditions under Hadrian, when Julianus, Celsus Pomponius, and others were actively involved in making similar compilations in Rome,” and “Rabbi Judah the Prince compiled and edited his Mishnah, and tannaitic midrashim were collected under the Severans, at a time when Gaius, Papinianus, Paulus, and Ulpianus were likewise compiling codices and responsa of Roman law and commenting on earlier legal material.”<sup>xx</sup>

I would suggest that the link between Roman and halakhic codificatory activities extend even past the Mishnah.<sup>xxi</sup> In 426 CE, Theodosius II and Valentinian III issued the “Law of Citations,” which “aspired to establish a veritable hierarchy for the opinions of cele-

brated jurists.”<sup>xxii</sup> This law restated an earlier edict issued by Constantine in 321 C.E. that named five jurists (Gaius, Papinianus, Paulus, Ulpianus and Modestinus) as authorities whose

codes should carry the most weight in court. However, the multiplicity of these divergent law codes themselves required further guidelines as to which code to follow. The Law of Citations thus stipulates:

“When conflicting opinions are cited, the greater number of the authors shall prevail, or if the numbers should be equal, the authority of that group shall take precedence in which the man of superior genius, Papinian, shall tower above the rest, and as he defeats a single opponent, so he yields to two.”<sup>xxiii</sup>

One must follow the majority of jurists. When they are equally split, then Papinian is to be followed over his four colleagues. This is similar to R. Yohanan’s rules that also present a hierarchy of sages. Although the Law of Citations is codified later than the Talmudic

**“Thus, the program of unification and codification of Roman law begun by Hadrian paradoxically strengthened the importance of custom.”**

parallels, it likely has roots in earlier Roman practice.<sup>xxiv</sup> The Law of Citations and other similar laws may very well have influenced not only R. Yohanan’s penchant for uniform rules, but perhaps they even served as a model for the forms of these rules. This historical background may further explain why the rules gained widespread acceptance among the Amoraim in Erets Yisrael.

To be sure, there were also legal compilations made in Sasanian Persia during this period. Most significant is the *Madayan i Hazar Dadestan* (*The Book of a Thousand Judgments*), compiled c. 620 CE.<sup>xxv</sup> While this book does quote from a number of previous sources and includes opinions of many jurists, there is no sustained effort at choosing between them, nor any general rules about how to decide between these authorities. The *Madayan* can therefore not be classified as a code. In fact, no legal code from Sasanian Babylonia has been preserved.<sup>xxvi</sup> It would seem that diversity of legal sources and opinions was not a major problem for the Sasanians and they therefore did not have to make concerted efforts at codification and unifying rules.<sup>xxvii</sup> Ironically, then, it is precisely the great diversity of Roman law that made their legists sensitive to the problems

engendered by such diversity, and prompted them to codify and systematize their law. Sasanian law, apparently, did not face this challenge. The Babylonian rabbis would therefore also not feel pressure from their surrounding legal culture to codify their laws.<sup>xxviii</sup>

Roman law going back to the era of the Republic distinguished between *ius scriptum* and *ius non scriptum* (written law and unwritten law). Customs based on ancient traditions were part of the *ius non scriptum* and were “a source of norms which derived their binding force from the tacit consent of the people and their long-standing practice within the community.”<sup>xxix</sup> Once Rome extended citizenship to all free inhabitants of its empire in 212 CE under the enactment of the *constitutio Antoniniana*, law became uniform for all citizens. However, this did not abolish the variety of local practices across various regions and cultures. Rather, as George Mousourakis points out,

“During the Dominate the role of custom as a supplementary source of law was further recognized. [...] The centralization of law-making activity seems to have contributed, in an indirect way, to the enlargement of the role of custom as a source of law during this period.”<sup>xxx</sup>

Thus, the program of unification and codification of Roman law begun by Hadrian paradoxically strengthened the importance of custom. The various communities throughout the Roman Empire did not simply abandon their previous laws and practices upon becoming

citizens and reading a code that contradicted their own laws. Rather, many of these previous traditions now continued under the category of custom.

In a similar vein, the Yerushalmi’s emphasis on the importance of local custom may actually have resulted from its insistence on unity of law. Once one establishes that only one law may be valid, one still needs a way to justify the existence of variations of practice throughout pious rabbinic communities. Recognizing multiplicity of practice in the area of custom allows one to be more intolerant regarding multiple practices of law.<sup>xxxi</sup>

In conclusion, we have seen that the Talmud Yerushalmi places great emphasis on unity of law and so also attributes great importance to local customs as a mechanism for permitting diversity of practice within the strictures of a uniform Halakhah. The Bavli, on the other hand, is more tolerant of diversity of halakhic practice and therefore attributes less emphasis on the inviolability of custom. These differences between the Talmuds may, in some degree, relate to differences in the attitudes of the Amoraim of Erets Yisrael who emphasized the role of Halakhah in the practice of the common people, versus the Amoraim of Bavel who

focused their attention on the Halakhah as defined in the learned argumentation of the beit midrash. The difference between the Talmuds may also be partially explained by differences in the surrounding legal cultures under the respective Roman and Sasanian Empires. We can follow the repercussions of the Talmudic discussions in the next centuries, with some Rishonim writing comprehensive codes of Halakhah and others criticizing projects of codification and preferring instead that local Rabbis should judge each case individually.<sup>xxxii</sup>

Questions of uniformity and custom take on greater complexity in modern times when communication dissolves borders and when most Jewish communities have been uprooted and joined together in America and Israel. R. Sabato Morais and R. Ben-Zion Meir Hai Uziel attempted to unify Ashkenazic and Sephardic liturgy and certain halakhic practices. Both rabbis were willing to compromise their own Sephardic traditions and practices for the sake of uniformity. Their pluralistic outlook thus opened the possibility for uniformity of practice.<sup>xxxiii</sup> Conversely, Rabbi Abraham Isaac Kook and Rabbi Ovadia Yosef argued that Ashkenazim and Sephardim should each continue their prior practices because each considers the other’s laws to be in some way deficient.<sup>xxxiv</sup> Their monism thus resulted in de facto pluralism. While the latter two sages seem to have won the day so far, we should bear in mind the various models offered in the Talmuds and by the Rishonim as our communities adapt to rapidly changing times.

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<sup>i</sup> Saul Lieberman, *Hellenism in Jewish Palestine* (New York: The Jewish Theological Seminary, 1962), p. 83, n. 3. Halakhah is created when the legislator either decrees a new law, or when he codifies existing practice. As Menachem Elon writes, “A study of the formative stages of any legal system will reveal that to some extent its directions originated from customs evolved in the practical life of the society concerned, and that only at a later stage was legal recognition conferred on such customs – by way of legislation or decision on the part of legislator or judge” (Moshe Herr and Menachem Elon, “Minhag,” *Encyclopedia Judaica* (2007): 267). See also Burton Leiser, “Custom and Law in Talmudic Jurisprudence,” *Judaism* 20 (1971): 396-403; Ronald Brauner, “Some Aspects of Local Custom in Tannaitic Literature,” *Jewish Civilization* 2 (1981): 43-54; and E. E. Urbach, *The Halakhah: Its Sources and Development* (Givatayim: Yad la-Talmud, 1984), pp. 27-33 (Hebrew). Urbach further proposes that some halakhic arguments between the rabbis have their origins in diverse customs. Each rabbi chooses one among the various customs to legislate into law such that diversity of custom develops directly into diversity of Halakhah.

<sup>ii</sup> This is the usage in Mishnah *Pesahim* 4:1-5. Even though these customs are mentioned in the Mishnah, none of them are cited as the opinion of a given rabbi but rather they describe the practices of laypeople. The Mishnah simply notes the existence and validity of these customs in its attempt to legislate when one is allowed to deviate from a custom.

<sup>iii</sup> See, for example, Mishnah, *Eruvin* 10:10. See also the first section of Yerushalmi *Pesahim* 4:1 (30d) discussed at Richard Hidary, “Tolerance for Diversity of Halakhic Practice in the Talmuds,” (Ph.D. diss., New York University, 2008), pp. 52-54. Medieval rabbinic literature calls such mistaken customs *minhag ta’ut* or *minhag shetut*. See further at Daniel Sperber, *Minhagei Yisrael: Mekorot ve-Toladot* (Jerusalem: Mosad ha-Rav Kook, 1990), pp. 31-37.

<sup>iv</sup> See, for example, *Tosefta*, *Rosh ha-Shanah* 2:11, which refers to the controversy in Mishnah, *Rosh ha-Shanah* 4:5. See also Yerushalmi, *Kiddushin* 4:6 (66a), which reports that the priests ignored the halakhic ruling of the rabbis. Nevertheless, R. Abbahu expects the priests to follow their custom and almost whips a priest who violates it! This may reflect the general priority given to custom in the Yerushalmi, see below.

<sup>v</sup> Under this category would fall cases in which the rabbis decide the law by checking how the public generally practices, such as Yerushalmi, *Pe’ah* 7:5 (20c). Also in this category are practices of certain groups that are treated as law, such as “the custom of the sailors” (*Tosefta*, *Bava Metsi’a* 7:13). See more such examples at Herr and Elon, “Minhag,” p. 266.

<sup>vi</sup> See John Austin, *Lectures on Jurisprudence; or, The Philosophy of Positive Law* (London: John Murray, 1885), pp. 36-37, 101-03. See criticism of Austin’s view of custom in H. L. A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1994), pp. 44-48.

<sup>vii</sup> See Dale Furnish, “Custom as a Source of Law,” *American Journal of Comparative Law* 30 (1982): 32-33; Alan Watson, “An Approach to Customary Law,” *University of Illinois Law Review* 561-576 (1984): 564-566.

<sup>viii</sup> James Coolidge Carter, *Law: Its Origin Growth and Function* (New York: G. P. Putnam’s Sons, 1907), p. 13. See discussion at Kunal Parker, “Context in History and Law: A Study of the Late Nineteenth-Century American Jurisprudence of Custom,” *Law and History Review* 24,3 (2006): 505-08.

<sup>ix</sup> See, for example, Bavli, *Pesahim* 50b-51a, and further at Israel Shepansky, “Torat ha-Minhagot,” *Or ha-Mizrah* 40,1 (1991): 42, n. 32.

<sup>x</sup> See *ibid.*, 39, n. 9; and Herr and Elon, “Minhag,” p. 268.

<sup>xi</sup> Yerushalmi, *Pesahim* 4:3 (30d) = Yerushalmi, *Avodah Zarah* 1:6 (39d). See Shepansky, “Torat ha-Minhagot,” p. 42.

<sup>xii</sup> The Yerushalmi uses the phrase “*Minhag mevattel Halakhah*” in two contexts: Yerushalmi, *Yevamot* 12:1 (12c) and Yerushalmi, *Bava Metsi’a* 7:1 (11b). The latter citation is not so significant since it involves contractual agreements in which the general custom simply defines the assumed obligations. The former citation is more significant. See, however, David Henshke, “Minhag Mevattel Halakhah? (Le-Ishushah shel Hash’arah),” *Dine Israel* 17 (1994): 135-148, who argues that the phrase in Yerushalmi, *Yevamot* 12:1 (12c) is post-Talmudic. Although there are only these two instances, this phrase does seem to represent the general attitude of the Yerushalmi as seen in other sources. See further analysis at Herr and Elon, “Minhag,” pp. 270-271; Stuart Miller, *Sages and Commoners in Late Antique Eretz Israel* (Tübingen: Mohr Siebeck, 2006), pp. 383-385; and literature cited at Sperber, *Minhagei Yisrael*, 1:24; and Mordechai Akiva Friedman, “Teshuva be-Inyanei Tefillah mi-Zemano shel Rav Sa’adya Gaon,” *Sinai* 109 (1992): 136, n. 77.

<sup>xiii</sup> See Israel Ta-Shma, *Early Franco-German Ritual and Custom* (Jerusalem: Magnes Press, 1999), pp. 61-85 (Hebrew); Miller, *Sages and Commoners*, pp. 375-387. One example of the Yerushalmi’s use of custom is found in Aviad Stollman, “Halakhic Development as a Fusion of Hermeneutical Horizons: The Case of the Waiting Period Between Meat and Dairy,” *AJS Review* 28,2 (2004): 9-10 (Hebrew).

<sup>xiv</sup> Robert Brody, *The Geonim of Babylonia and the Shaping of Medieval Jewish Culture* (New Haven and London: Yale University Press, 1998), p. 116.

<sup>xv</sup> See further in Richard Hidary, *Dispute for the Sake of Heaven: Legal Pluralism in the Talmud* (Providence: Brown Judaic Studies, forthcoming), ch. 2.

<sup>xvi</sup> See Yerushalmi, *Terumot* 3:1 (42a) and analysis in *ibid.*, ch. 1.

<sup>xvii</sup> Bavli, *Eruvin* 46b.

<sup>xviii</sup> See O. F. Robinson, *The Sources of Roman Law: Problems and Methods for Ancient Historians* (London: Routledge, 1997); George Mousourakis, *A Legal History of Rome* (London: Routledge, 2007).

<sup>xix</sup> Robinson, *Sources of Roman Law*, pp. 16-21; Mousourakis, *A Legal History*, pp. 179-

191; and Christine Hayes, “The Abrogation of Torah Law: Rabbinic *Taqqanah* and Praetorian Edict,” in Peter Schafer (ed.), *The Talmud Yerushalmi and Graeco-Roman Culture I* (Tübingen: Mohr Siebeck, 1998), pp. 665-667.

<sup>xx</sup> Lee Levine, *Judaism and Hellenism in Antiquity: Conflict or Confluence?* (Peabody: Hendrickson Publishers, 1999), p. 135. See also Yaakov Elman, “Order, Sequence, and Selection: The Mishnah’s Anthological Choices,” in *The Anthology in Jewish Literature*, ed. D. Stern (New York: Oxford University Press, 2004), 65-70. E. S. Rosental, “Masoret Halakhah ve-Hiddushei Halakhah be-Mishnat Hakhamim,” *Tarbiz* 63 (1994): 321-374, points to a further parallel between Justinian’s Digest (I, 2, 47-48) and the Houses of Shammai and Hillel and regarding tradition and innovation in law.

<sup>xxi</sup> See Catherine Hezser, “The Codification of Legal Knowledge in Late Antiquity: The Talmud Yerushalmi and Roman Law Codes,” in Peter Schafer (ed.), *The Talmud Yerushalmi and Graeco-Roman Culture I*, pp. 581-641.

<sup>xxii</sup> George Mousourakis, *The Historical and Institutional Context of Roman Law* (Burlington: Ashgate, 2003), p. 180.

<sup>xxiii</sup> *Codex Theodosianus* 1.4.3.2-4. Translation from *The Theodosian Code and Novels and the Sirmundian Constitution*, trans. Clyde Pharr (Princeton: Princeton University Press, 1952), p. 15. For an application of this law, see *ibid.*, 9.43.1.

<sup>xxiv</sup> Just as *Codex Theodosianus* 1.4.3, quoted above, includes laws already declared by Constantine in 321-328 CE, so, too, Constantine himself may have been relying on earlier laws or common practices when he formulated his law. R. Yohanan died c. 279 CE, not long before Constantine’s edicts. Also, although the rules are attributed to R. Yohanan, they may have been formulated as such only by his students.

<sup>xxv</sup> For the English translation, see A. G. Perikhanian, *The Book of a Thousand Judgments (A Sasanian Law-Book)*, trans. Nina Garsoian (Costa Mesa, Cal.: Mazda Publishers, 1997). For the German translation, see Maria Macuch, *Das Sasanidische Rechtsbuch “Matakdan i hazar datistan” (Teil II)* (Wiesbaden: Deutsche Morgenlandische Gesellschaft, Kommissionsverlag, F. Steiner, 1981), and *idem*, *Rechtsspraxis zu Beginn des Siebenten Jahrhunderts in Iran: Die Rechtssammlung des Farrohmard i Wahraman* (Wiesbaden: Otto Harrassowitz, 1993).

<sup>xxvi</sup> See A. G. Perikhanian, “Iranian Society and Law,” in Ehsan Yarshater (ed.), *The Cambridge History of Iran, Volume 3(2): The Seleucid, Parthian and Sasanian Periods* (Cambridge: Cambridge University Press, 1968), 627-80: “Law was not codified on an all-Iran scale in Sasanian times and this document [the *Madayan*] is not actually a code but a collection of law-cases embracing all branches of private law” (*ibid.*, p. 628). See also J. P. De Menasce, “Zoroastrian Pahlavi Writings,” in *The Cambridge History of Iran, Volume 3(2)*, p. 1189; Elman, “Order, Sequence, and Selection,” p. 69; and *idem*, “Scripture Versus Contemporary

Needs: A Sasanian/Zoroastrian Example,” *Cardozo Law Review* 28,1 (2006): 153-169.

<sup>xxvii</sup> See further below, p. 401.

<sup>xxviii</sup> I only claim here that Roman law contained more diversity than Sasanian law, not that Palestinian halakhic traditions or halakhic practices were more diverse than those of the Jews in Babylonia. Although the latter claim may be true, I do not have evidence for it.

<sup>xxix</sup> Mousourakis, *The Historical and Institutional Context of Roman Law*, 20. See also H. F. Jolowicz and B. Nicholas, *Historical Introduction to the Study of Roman Law* (Cambridge: Cambridge University Press, 1972), pp. 353-355; Robinson, *Sources of Roman Law*, pp. 25-29. See also David Daube, “Rabbinic Methods of Interpretation and Hellenistic Rhetoric,” *Hebrew Union College Annual* 22 (1949): 248 and 258-259.

<sup>xxx</sup> Mousourakis, *The Historical and Institutional Context of Roman Law*, p. 355.

<sup>xxxi</sup> *Ibid.*

<sup>xxxii</sup> See Menachem Elon, “Codification of Law” in *Encyclopedia Judaica* (2007), 4:765-81.

<sup>xxxiii</sup> See Arthur Kiron, “Golden Ages, Promised Lands: The Victorian Rabbinic Humanism of Sabato Morais,” (Ph.D. diss., Columbia University, 1999), pp. 164-70; and *Piskei Uzziel be-She’elot ha-Zeman* 1 and 2, and *Mishpetei Uzziel, Even ha-Ezer* 83.

<sup>xxxiv</sup> See *Orah Mishpat, Orah Hayyim, simanim* 17 and 18, and *Yabbia Omer*, vol. 6, *Orah Hayyim, siman* 43 and *Even ha-Ezer, siman* 14.



Collective Memory and *Haroset*

BY: Daniel Fridman

The Status of *Haroset*

The place of *haroset* at the *seder* table is at once familiar and strange, predictable yet perplexing. While the presence of its companions, *matsah* and *maror*,<sup>i</sup> is mandated by the Torah, *haroset* merits no scriptural references whatsoever. As we stare at its eclectic composition year after year, we cannot help but wonder what lies within the *haroset*, and what these various elements are meant to represent.

Given the absence of any biblical sources for *haroset*, the sages of the Mishnah debated whether there was even a rabbinic obligation to eat it. In the third mishnah of the final chapter of *Massekhet Pesahim*, the *Tanna kamma* takes the position that *haroset* is not a mitsvah,<sup>ii</sup> while R. Eliezer b. Tsadok maintains that *haroset* is indeed a mitsvah, though he does not specify what the performance of it entails. In his *Perush ha-Mishnayot*, Rambam notes that the Halakhah is in accordance with the position of the *Tanna kamma*.<sup>iii</sup> Subsequently, however, Rambam ruled in accordance with the position of R. Eliezer b. Tsadok, that the *haroset* is indeed a mitsvah of rabbinic origin.<sup>iv</sup> This conclusion, that *haroset* has the status of a rabbinic commandment, is shared by Rif and Rosh as well.<sup>v</sup>

Six Dimensions of *Haroset*

In elaborating the position of R. Eliezer b. Tsadok, the Talmud makes reference to three distinct commemorative functions that the *haroset* is meant to fulfill.<sup>vi</sup> First, R. Levi asserts that the *haroset* is *zekher la-tapuah*, an homage to the apple orchards<sup>vii</sup> in which the Israelite women delivered their babies under extremely difficult circumstances during the period of Jewish enslavement in Egypt.<sup>viii</sup> Second, R. Yohanan argues that the *haroset* is *zekher la-tit*, meant to commemorate the mortar which the Jewish people had to make throughout their forced labor in Egypt. In order to incorporate both of these elements into the *haroset*, Abbaye rules that one must have a sharp tasting element in the mix, corresponding to the *tapuah*,<sup>ix</sup> and that the composition

“The positions of the various Rishonim present a considerable range of views regarding what aspects of the Jewish experience in Egypt are meant to be evoked by *haroset*.”

of the *haroset* must be thick and pasty, corresponding to the mortar. Finally, the Talmud cites a *Beraita* which mentions a third element of the *haroset*, namely spices, which are meant to be incorporated *zekher la-teven*, in tribute to the straw which the Jewish people had to seek out in order to construct bricks, making it considerably more difficult for them to meet their daily quota of labor.<sup>x</sup>

Commenting on this passage, the Tosafist-

<sup>xi</sup> cite a parallel section from Talmud Yerushalmi<sup>xii</sup> which notes a fourth commemorative dimension of the *haroset*, *zekher la-dam*, a memorial to the blood of the Jewish people<sup>xiii</sup> which was spilled over the course of the enslavement in Egypt.<sup>xiv</sup> Moreover, the Tosafists add a fifth dimension to the *haroset*, citing a previous ruling of the Geonim that fruits should be included in the recipe,<sup>xv</sup> parallel to the fruits that the Jewish people are compared to in *Shir ha-Shirim*.<sup>xvi</sup>

A sixth and final commemorative dimen-

“As we stare at its eclectic composition year after year, we cannot help but wonder what lies within the *haroset*, and what these various elements are meant to represent.”

sion of *haroset* is mentioned by the *Tur*, *zekher la-maror*.<sup>xvii</sup> In effect, the *Tur* argues that *haroset* has an overlapping function with bitter herbs, as it too commemorates the sheer bitterness of our bondage in Egypt.<sup>xviii</sup> As such, the *Tur* requires that some sour elements be added to the *haroset*.

A Dialectical Perspective on *Haroset*

Not all Rishonim subscribe to these six disparate elements of *haroset*. For example, Rambam only cites two explicitly, *zekher la-tit*, in commemoration of the mortar, and *zekher la-teven*, the straw.<sup>xix</sup> In contrast, the *Tur* makes mention of five of the components, leaving out only *zekher la-tapuah*,<sup>xx</sup> but including *zekher la-tit*, *la-teven*, *la-dam*, *la-maror*, and the fruits to which the Jewish people were likened in *Shir ha-Shirim*. Rema subscribes to four of the elements, omitting *zekher la-maror* as well as *zekher la-tapuah*.<sup>xxi</sup> Thus, the positions of the various Rishonim present a considerable range of views regarding what aspects of the Jewish experience in Egypt are meant to be evoked by *haroset*.

In any case, these six elements, when evaluated in total, may be subdivided into two distinct categories. Four of them, *zekher la-tit*, *la-teven*, *la-maror*, and *la-dam*, reflect different aspects of the suffering endured by our ancestors at the hands of their sadistic Egyptian

oppressors. On the other hand, *zekher la-tapuah*, commemorating the valor of the Jewish women whose faith was such that they could look hopefully to the future in the face of a terrifying present, as well as the inclusion of the fragrant and luscious fruits to which the Jewish people are favorably likened in *Shir ha-Shirim*, evoke unequivocally positive associations.

As such, a remarkable dialectic is intrinsic

to *haroset* itself: it is a singular composition whose elements simultaneously bear witness both to the very depths of our national degradation in Egypt as well as to the exclusive, unbreakable bonds which link the Jewish people with the Master of the Universe, as depicted in *Shir ha-Shirim*. It is a fascinating mixture with the capacity to, on the one hand, evoke the image of the blood of massacred Jewish babies flowing freely in the Nile River, and, at the same time, represent the birth of a new generation of Jewish children in the apple orchards,

in defiance of those who wished to destroy us. Even as each of its six elements bespeaks its own narrative, telling its own tale of suffering or triumph, each component coexists with all of the others. For all of the complexity of its components, the result is an organic, unified entity called *haroset*, whose totality is truly greater than the sum of its parts.

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<sup>i</sup> *Shemot* 12. In *Pesahim* 120a, the Talmud does distinguish between the statuses of *matsah* and *maror* in the absence of the *Korban Pesah*, explicating that the mitsvah of *matsah* maintains *de-Oraita* status in the absence of the *Korban Pesah*, while *maror* does not. See also Rambam, *Mishneh Torah*, *Hamets u-Matsah* 6:1,7:12. This important distinction notwithstanding, the explicit treatment given to *matsah* and *maror* in the Torah should be contrasted with the *haroset*, which is never even mentioned.

<sup>ii</sup> The presence of *haroset* at the *seder*, according to the view of the *Tanna kamma* that it is not a mitsvah, is explained by the Talmud in pragmatic terms: the *haroset* is merely meant to ameliorate the sharp taste of the *maror*. See *Pesahim* 116a.

<sup>iii</sup> Rambam, *Peirush ha-Mishnayot* to *Pesahim* 10:3.

<sup>iv</sup> Idem, *Mishneh Torah*, *ibid.* 11:7. What is particularly fascinating regarding Rambam's reversal is not only his conclusion that *haroset* is indeed a mitsvah *mi-divrei Soferim* (Rabbinic), in accordance with R. Eliezer b. Tsadok, but what appears to be a more fundamental reinterpretation of the nature of the mitsvah. In his *Peirush ha-Mishnayot*, Rambam asserts that, according to the rejected view of R. Eliezer b. Tsadok, since *haroset* is indeed a mitsvah, it requires a blessing reflecting the rabbinic commandment to *consume* the *haroset*

of “*al akhilat haroset*.” However, in *Mishneh Torah*, in which Rambam actually rules in accordance with R. Eliezer b. Tsadok, no such blessing is recorded. The classical Maimonidean super-commentaries make note of this incongruity, and offer various explanations regarding the absence of a blessing on *haroset*. For one example, see *Lehem Mishneh* to *Mishneh Torah*, *ibid.* A particularly compelling explanation of the absence of the blessing has been related to me by R. Michael Rosensweig in the name of the Rav, who argued that Rambam classified the mitsvah of *haroset* as preparing this unique dish and having it present at the Seder, but not necessarily consuming it. Thus, since consumption of the *haroset* is not part of the mitsvah, no blessing over the *haroset* is warranted.

<sup>v</sup> Rif to *Pesahim* 25b; Rosh to *Pesahim* 10:30.

<sup>vi</sup> *Pesahim* 116a.

<sup>vii</sup> Whether *tapuah* in this instance is best translated as an apple tree has been the subject of some contemporary debate, with certain authorities arguing that *tapuah* in this context is a reference to some kind of citrus fruit. For the purposes of this article, the conventional assumption will be maintained.

<sup>viii</sup> See the beautiful aggadic passage in *Sotah* 11b, which discusses the heroism of the righteous women of that particular generation in ‘whose merit our ancestors were redeemed from Egypt.’ The reference to the apple tree emerges from *Shir ha-Shirim* 8:5.

<sup>ix</sup> The fact that apples are not generally associated with a sharp taste has led some contemporary scholars to speculate that *tapuah* is best translated as a citrus fruit. See R. Hershel Schachter's article on this subject: “Inyan ha-Tapuah she-ba-Haroset,” *Be-Ikvei ha-Tson* (Jerusalem: Beit ha-Midrash de-Flatbush, 1997), p. 77.

<sup>x</sup> See *Shemot* 5 for the narrative that details the evolution of Pharaoh's decision to deny the Jewish people the raw materials necessary for the slave labor which they were forced to undertake in Egypt. The fact that the decision to deny the Jewish slaves straw caused considerable distress, over and above the suffering generated by the enslavement per se, is clearly reflected in the Talmud's distinction between the commemoration of the mortar, which the Jewish people had to work with from the earliest days of their bondage, and the commemoration of the straw, which represented a new, even crueller phase of Egyptian brutality.

<sup>xi</sup> Tosafot to *Pesahim* 116a, s.v. “*Tsarikh le-sammukheih ve-tsarikh le-kahuyeh*.”

<sup>xii</sup> Talmud Yerushalmi, *Pesahim* 10:3.

<sup>xiii</sup> See *Arukh ha-Shulhan*, *Orah Hayyim* 473:17, where R. Yehiel Mikhl ha-Levi Epstein cites, in explanation of this passage in the Yerushalmi, two different atrocities committed by the Egyptians against Jewish children. First, he cites *Shemot* 1:22, which records Pharaoh's edict mandating mass murder of newborn Jewish boys by drowning them in the Nile. Second, he cites the midrashic assertion

# Halakhah: More than Just Exegesis

BY: Jonathan Ziring

One of the most important functions of *talmud Torah* is “*la-asukei shema’eta alibba de-hilkheta*,”<sup>vi</sup> to learn Torah with the goal of deriving practical halakhic conclusions. However, to be honest, throughout high school, yeshivah in Israel and my first year in YU, most of my learning was purely theoretical. Then, this summer I attended the Summer Beit Midrash directed by Rabbi Aryeh Klapper, where the goal was to study a halakhic topic in-depth and eventually write a legal responsum, or *teshuvah*, answering a simulated question that encompassed all the aspects of the topic. Furthermore, this year, back at YU, I have been studying *Hilkhos Shabbat* in Rabbi Willig’s shi’ur, where the clear focus is to come to practical conclusions. Thus, for the first time I have had the opportunity to think seriously about the nature of *pesak* (legal

“If there are multiple answers to most questions, and exegesis cannot always determine which is correct, what factors enter the decision-making process and what parameters can be used to forge responsible *pesak*?”

ruling), and it is with this background that I share some things I have noticed. While I had often thought of *pesak* in almost Platonic terms as a result of pure halakhic exegesis and the application of theoretical principles, my recent exposure to the halakhic process has convinced me of the numerous other factors involved and has made me rethink how *pesak* works.

The process of *pesak* is almost always couched in exegesis, as it should be. Every *posek*’s goal is to take all the sources of our tradition and come to a ruling that reflects what he feels is the best interpretation of the sources. However, as Gerald J. Blidstein, professor of Jewish thought at Ben-Gurion University, aptly puts it, “Texts can be interpreted ... [and] Scripture is never a match for ingenuity,”<sup>vii</sup> or, as Hazal strikingly seem to say, “*Ein moshivin ba-Sanhedrin ella mi she-yodea le-tahev sherets min ha-Torah*” – we do not seat someone in the Sanhedrin unless he knows how to render pure a [dead] rodent based on the Torah.<sup>viii</sup> Almost no exegetical claim can be proven conclusively; a clever enough scholar can take a text and interpret it in contradictory ways, and nothing in the text can prove which way is correct.

To take an extreme example, the Gemara, commenting on Tamar’s willingness to be killed rather than defame Yehudah’s reputation and reveal that he had impregnated her, states that “a person should rather throw himself into the fiery furnace than embarrass his friend publicly.”<sup>ix</sup> Tosafot<sup>x</sup> and other commentators<sup>xi</sup> take this statement at face value, though they

struggle to explain why the sin of embarrassing someone is not counted among the traditionally accepted cardinal sins.<sup>xii</sup> Rivash, on the other hand, rules categorically that although there are many sins that Hazal compared to the three cardinal sins,<sup>xiii</sup> they do not fall under the category of *yehareg ve-al ya’avor* (be killed rather than transgress).<sup>xiv</sup> He exclaims that the notion that one should die before committing these sins “never entered anyone’s mind and no one ever thought [such an idea]! Rather, it is the way of Hazal to exaggerate the greatness of sins so people will take care not to stumble in them.” Thus, although some scholars simply accept the explicit passage in the Talmud that embarrassing people is a cardinal sin, others feel it self-evident that the Gemara’s ruling is not to be taken seriously.

Of course, commentaries rarely diverge from the literal meaning so drastically as in this case, and as much as possible shy away from

reading seemingly halakhic statements as mere exaggerations. Otherwise, if taken to the extreme, we could negate all of Torah by claiming that every command was meant rhetorically. As I have heard many times from Professor Moshe J. Bernstein, if one is not careful, instead of understanding the latter half of the Ten Commandments as imperatives, he could end up reading “*Lo tirtzah, lo tin’af*” as rhetorical questions: “Should you not kill?! Should you not commit adultery?!” However, it is clear that, given enough of a motivation, a true scholar can make almost any claim and support it exegetically.

“It is clear that a *posek*’s conception that Halakhah has to allow a person to live a normal life often enters the halakhic process.”

To further complicate matters, if one has an expansive view of the concept of *eilu ve-eilu divrei E-lohim Hayyim* (these and those are the words of the Living God)<sup>xv</sup> and understands the Gemara when it says that both the opinion of those who permit and the opinion of those who forbid were given by God at Sinai to allow for multiple halakhic truths,<sup>xvi</sup> then there can be numerous valid ways of reading a given set of sources. Thus, one is confronted with the question of the Gemara, “[If this is the case,] how can I learn Torah?” or, more precisely,

“How can I decide Halakhah?”<sup>xvii</sup> Even if there are multiple correct understandings, clearly some reads are better than others, and some are altogether invalid. As *Mori ve-Rabbi* R. Aharon Lichtenstein has pointed out, while the possibility of multiple correct interpretations leaves open the potential to rule leniently *bi-she’at ha-dehak* (in a dire situation)<sup>xviii</sup> or because of *kevod ha-beriyot* (human dignity), if an opinion is clearly wrong or the *posek* himself does not consider it a viable possibility, he may not rely on it.<sup>xix</sup> However, if there are multiple answers to most questions, and exegesis cannot always determine which is correct, what factors enter the decision-making process and what parameters can be used to forge responsible *pesak*?

Concerning the question of what other factors enter the process of *pesak*, it is clear that a *posek*’s conception that Halakhah has to allow a person to live a normal life often enters the halakhic process. Some Rishonim even quote the Yerushalmi as claiming that it must be that *ed ehad ne’eman be-issurin*, a single witness is believed with regards to ritual matters, because otherwise it would be impossible to eat at other people’s houses, as one could not trust the *kashrut* of the food that was prepared under the watch of only one individual.<sup>xx</sup> No exegetical claim is made whatsoever; it is simply based on the intuition that Halakhah must provide a mechanism to enable basic social interactions.<sup>xxi</sup> R. Shelomoh Zalman Auerbach argues that one does not have to allow *resha’im*, wicked people, to manipulate the halakhic system. Therefore, a plaintiff is entitled to demand money even if the defendant threatens to blaspheme if brought to court, despite the fact that this would seem to violate the prohibition of “*lifnei ivver lo titten mikshol*” (placing an obstacle in front of a blind person)<sup>xxii</sup> by causing him to sin. He even extends this argument to permit a person to receive medical help from a Jewish doctor who threatens to violate Shabbat gratuitously against the patient’s wishes in the course of

treating him.<sup>xxiii</sup> Behind this ruling seems to be the assumption that Halakhah cannot allow *resha’im* to cripple the system, and those who follow Halakhah are entitled to lead a normal life.

Similarly, many famous Rishonim and Aharonim made halakhic decisions based on the premise that the Jewish people are fundamentally righteous, and therefore whatever they do must be correct, even if the only possible support is textually tenuous. Sometimes, these arguments are framed as a *limud zekhut*

that the Egyptians buried Jewish children alive in the buildings being constructed by the Jewish people. [For an example of such a midrash, see *Eliyahu Rabbah (Ish Shalom)* Chapter 8.] Many Rishonim maintain that the *haroset* should be made in two distinct phases (see next note), the first phase corresponding to the mortar and bricks which the Jewish people worked with in Egypt and the second phase corresponding to their blood that was spilled, thereby evoking the image of blood being mixed into the bricks. In this scheme, *Arukh ha-Shulhan*’s second citation, that of the blood of Jewish children literally being spilled in the mortar and bricks of the construction projects, is particularly apt.

<sup>xiv</sup> For the *haroset* to stimulate recollection of the blood of the Jewish people, a more dilute composition is required, presenting a conflict with R. Yohanan’s injunction that the constitution of the *haroset* be thick for the sake of commemorating the mortar. The Tosafists suggest a creative resolution to this problem, calling for a two-step program of *haroset* making. In the first step, prior to the actual *seeder*, the *haroset* should be made with a thick composition in commemoration of the mortar, as per the view of R. Yohanan. In the second phase, at the *seeder* meal itself, wine or vinegar should be added to dilute the *haroset* in commemoration of the blood. See Rabbeinu Hannanel’s commentary on *Pesahim* 120a, as well as the *Tur, Orach Hayyim* 473, which cites this same protocol in the name of Rabbeinu Yehiel, a medieval authority.

<sup>xv</sup> These include pomegranates, walnuts, figs, dates, and other fruits. Regarding contemporary eschewal of dried fruits, see *Arukh ha-Shulhan* 470:17.

<sup>xvi</sup> See glosses of Rema to *Shulhan Arukh, Orach Hayyim* 473, who rules in accordance with this view of the Geonim.

<sup>xvii</sup> *Tur, Orach Hayyim* 473. See *Arukh ha-Shulhan, Orach Hayyim* 470:17, where R. Epstein moderately reformulates the language of the *Tur*, arguing for inclusion of sour foods not *zekher la-maror* but *zekher la-shi’bud*, in commemoration of the bondage. The slightly different formulation has no impact on the overall theme, namely that *haroset*, like *maror*, is meant to memorialize the bitterness of the enslavement in Egypt.

<sup>xviii</sup> There is some controversy regarding the proper text of the *Tur*. R. Yosef Karo in *Beit Yosef, Orach Hayyim* 473 emends the text of the *Tur* to conform to the aforementioned Talmudic passage on *Pesahim* 116a. R. Yoel Sirkis, in *Bayit Hadash*, commenting on the *Tur, Orach Hayyim* 473, rejects the emendation of R. Yosef Karo, and asserts that the *Tur* was operating with a slightly different version of the Talmudic passage in question, which he argues was the text utilized by Rosh, Rif, and Rambam as well.

<sup>xix</sup> *Mishneh Torah*, *ibid*.

<sup>xx</sup> According to the *Beit Yosef, Orach Hayyim* 473, the *Tur* includes even this element *zekher la-tapuah*. Cf. *Bayit Hadash, Orach Hayyim* *ibid*.

<sup>xxi</sup> Rema to *Shulhan Arukh, Orach Hayyim* 473.



The upcoming issue of *Kol Hamevaser* on “Judaism in America” will, God willing, be released when we arrive back for Fall 2010.

In the meanwhile, the Editorial Board of *Kol Hamevaser* would like to thank our readership for another wonderful year of discussion and engagement. We look forward to an even better volume of *Kol Hamevaser* next year.

Wishing everyone a *hag sameah* during the approaching *Zeman Mattan Torateinu* and a wonderful summer!

(post facto justification), where the *posek* suggests not relying on the *hetter* (permitting ruling) if possible, but sometimes they become the basis for accepted *pesak*. The *Ba'alei ha-Tosafot* are known for using this notion of *kehillah kedoshah* (holy congregation) – the assumption that the Jewish people are fundamentally righteous, and that, even if they act in questionable ways, their practices can be justified – as a basis for reading texts in ways that ratify the status quo.<sup>xx</sup> The *Arukh ha-Shulhan*, which is more recent, is replete with arguments that are explicitly based on this principle. To take one striking example with regard to *borer* (the prohibition of selectively separating on Shabbat), the author writes that he presents his *kullot* (leniencies) in this area in order to defend the questionable practices of the women of Israel, who devote so much time to prepar-

“Even if one has the requisite erudition, he cannot *paskn* if he does not have respect for the system and its leaders, a prerequisite for being a responsible transmitter of Jewish tradition.”

ing for Shabbat, against the attacks of the author of the *Mishnah Berurah*, who accuses them of doing wrong.<sup>xxi</sup>

Even those who are hesitant to stake halakhic opinions based on the *minhag* of the masses may be willing to do so based on the actions of one or many halakhic authorities. Maharik, for example, claims that in the case of ancient customs that were established by prominent scholars, one can apply the principle of *Minhag oker Halakhah*, custom uproots law.<sup>xxii</sup> Sometimes, *posekim* are even willing to take moral considerations into account. As I have often heard from R. Lichtenstein, if he were in a situation in which a non-Jew was in fatal danger on Shabbat and there was no concern of *eivah* (enmity) on the part of the non-Jewish population toward the Jews – for instance, if he were isolated on an island where no one else would know whether or not he had saved the non-Jew – he would rely on the opinion of Me’iri and rescue him,<sup>xxiii</sup> as he would consider it a moral *she’at ha-dehak*.

However, if exegetical claims are insufficient and *posekim* rely on other, non-halakhic values in making their final decisions, what ensures that a *pesak* will responsibly reflect Halakhah? It seems to me that there are at least two criteria. One is that the *posek* be someone who understands the system in its totality. When this is the case, even if he cannot prove his argument exegetically, he can justifiably claim that his intuitions are in line with the Torah system.<sup>xxiv</sup> I have heard many times from R. Michael Rosensweig about the halakhic intuition that comes from knowledge of the entire Torah, and it is in order to ensure such intuition that Rambam requires that one be able to *paskn* in all areas of Torah in order to even be granted permission to *paskn* in a

limited area.<sup>xxv</sup> It is only with this scope and vision that one can truly understand how Halakhah works.

The second criterion can, I think, be observed in the codification of the rules of *pesak* in *Shulhan Arukh*. The halakhot concerning who can *paskn*, when he has the authority to do so, and what issues he can *paskn* on are all addressed in the same *siman* as *Hilkhot Kevod Rabbo ve-Talmid Hakham*, the laws of respect towards one’s rabbi and a Torah scholar.<sup>xxvi</sup> Many of those halakhot limit even those capable of issuing legal rulings from doing so in situations where exercising that authority would be disrespectful to their teachers. It seems that the reason for this limitation is obvious: even if one has the requisite erudition, he cannot *paskn* if he does not have respect for the system and its leaders, a prerequisite for being a

responsible transmitter of Jewish tradition. This plays itself out in the prohibition against ruling on a halakhic issue in front of one’s teacher without his permission,<sup>xxvii</sup> as well as not referring to one’s teacher by his first name.<sup>xxviii</sup> From the writings of Rema and his placement of the prohibition against ruling while intoxicated in this *siman*,<sup>xxix</sup> it seems that Halakhah also requires that one *paskn* with the utmost seriousness. It follows that these restrictions are relaxed if the *posek* is not issuing a ruling that requires his own input but is rather simply relying on earlier sources.<sup>xxx</sup> The common denominator is that part of being allowed to *paskn* is recognizing the limits of one’s own abilities and the respect one must accord to the system and all that it entails.

However, I think there is one factor that makes the process of *pesak* more complicated today, and that is the vast body of resources available to us without exposure to human transmitters of the *masorah* (tradition). The *Lehem Mishneh* suggests that the prohibition against ruling in front of one’s teacher no longer applies because books are now our teachers.<sup>xxxi</sup> If this was true in the time of Lehem Mishneh in the 16<sup>th</sup> century, it is definitely true today in the age of the Bar-Ilan Responsa Project and the Internet. Nevertheless, even if books and online resources are *technically* considered our teachers, the fundamental values represented by those laws of *kevod rabbo* must be kept in mind; we must still respect the scholars who are transmitting the *masorah*, especially those who continue to teach us, whether or not they exactly fit the category of *rabbi muvhak* (primary teacher). When a *posek* approaches the halakhic process with this respect, his opinion can legitimately enter the canon of valid *pesak*, or *divrei E-lohim*

*Hayyim*. Without this respect, however, his opinion, despite its legal brilliance, is fundamentally flawed, because deciding Halakhah is about much more than exegesis.

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<sup>i</sup> See, for example, *Sotah* 21a and *Bava Kamma* 92a.

<sup>ii</sup> Gerald J. Blidstein, “Who is Not a Jew? The Medieval Discussion,” *Israel Law Review* 11,3 (1996): 369-390, at p. 389.

<sup>iii</sup> *Sanhedrin* 17a. Based on *Va-Yikra* 11:31.

<sup>iv</sup> *Sotah* 10b.

<sup>v</sup> *Tosafot* to *ibid.*, s.v. “*Noah lo le-adam she-yappil et atsmo le-tokh kivshan ha-esh.*”

<sup>vi</sup> See, for example, Rabbeinu Yonah in *Sha’arei Teshuvah* 3:140, where he claims that this sin is subsumed under the prohibition of murder.

<sup>vii</sup> For more on the traditionally accepted cardinal sins, see, for example, *Pesahim* 25a and *Sanhedrin* 74a.

<sup>viii</sup> For simplicity concerning the three cardinal sins, I adopt the opinion accepted by Rambam (*Hilkhot Yesodei ha-Torah* 5) and *Shulhan Arukh* (*Yoreh De’ah* 157), though there are Tannaim and Amoraim who limit or expand the number of cardinal sins. See, for example, the opinion of R. Meir in *Ketubbot* 19a (and Ramban’s commentary there), who includes theft, as well as the opinion of R. Elazar in *Sanhedrin* 74a, who limits them only to idolatry.

<sup>ix</sup> *Responsa Rivash*, responsum 171. I would like to thank R. Aryeh Klapper for referring me to this source.

<sup>x</sup> *Eruvin* 13b.

<sup>xi</sup> See *Hagigah* 3b; Rabbi Michael Rosensweig, “Elu va-Elu Divre Elokim Hayyim: Halakhic Pluralism and Theories of Controversy,” *Tradition* 26,3 (Spring 1992): 4-23; and Rabbi Nathaniel Helfgot, “Minority Views and the Role of the Mara De-Atra,” August 31, 2009. Available at: <http://text.rcarabbis.org/?p=149>.

<sup>xii</sup> *Hagigah* 3b.

<sup>xiii</sup> See, for example, *Berakhot* 9a.

<sup>xiv</sup> R. Aharon Lichtenstein, “‘Mah Enosh’: Reflections on the Relation between Judaism and Humanism,” *The Torah u-Madda Journal* 14 (2006-2007): 1-61, at pp. 47-50.

<sup>xv</sup> Our version of the Yerushalmi, *Massekhet Kil’ayim* does not include this quotation.

<sup>xvi</sup> See, for example, Ramban to *Hullin* 10a, s.v. “*Ad.*”

<sup>xvii</sup> R. Michael Rosensweig pointed out that Rashi to *Yevamot* 88a, s.v. “*Ve-Amar,*” seems to make a similar claim without referencing the Yerushalmi.

<sup>xviii</sup> *Va-Yikra* 19:14.

<sup>xix</sup> *Shemirat Shabbat ke-Hilkhatah* 40:8 and n. 27.

<sup>xx</sup> Dr. Haym Soloveitchik has pointed out that the *Ba’alei ha-Tosafot* distinctly did not see themselves as reinterpreting texts, but rather as reading them the way they must be interpreted

so as not to incriminate their communities. See Haym Soloveitchik, “Religious Law and Change: The Medieval Ashkenazic Example,” *AJS Review* 12,2 (Autumn 1987): 205-221. See footnotes there for a fuller discussion of the methodology of the *Ba’alei ha-Tosafot*.

<sup>xxi</sup> *Arukh ha-Shulhan, Orah Hayyim* 319:22. See *Shulhan Arukh, Bei’ur Halakhah* 319, s.v. “*Mi-Tokh.*”

<sup>xxii</sup> *Responsa Maharik*, responsum 8.

<sup>xxiii</sup> The opinion of Me’iri is that the laws that exclude non-Jews from being saved on Shabbat only applies to idolaters, not those who are bound by religion. This opinion is found in his comments to *Pesahim* 21b, s.v. “*Kevar,*” and to *Yoma* 84b, s.v. “*Pikkuah.*” (Note that it is unclear whether the categories being distinguished are idol worshipers and those who are bound by religion, or idol worshipers and *gerei toshav*.) This ruling relates to the general opinion of Me’iri, found in hundreds of places throughout his commentary, that the non-Jews of today are not in the same halakhic category as the idolaters of the Talmud. See Moshe Halbertal, “‘One Possessed of Religion’: Religious Tolerance in the Teachings of the Me’iri,” *The Edah Journal* 1:1 (*Marheshvan* 5761): 1-24. It should be noted, however, that R. Aryeh Klapper has raised many objections to Halbertal’s contentions. The main arguments are found in a yet unpublished paper originally presented at the 2007 AJS Conference. For a summary, see [http://text.rcarabbis.org/?p=604#footnote\\_0\\_604](http://text.rcarabbis.org/?p=604#footnote_0_604), or listen to the audio version: <http://www.archive.org/details/RabbiKlapperPaskeningLiketheMeiriReflections>.

<sup>xxiv</sup> The relevance of *retson ha-Torah* (the desire of the Torah) and principles of that sort deserve to be mentioned here, though it is not within the purview of this article to deal with that topic. I hope at some point to publish an analysis of that issue.

<sup>xxv</sup> Rambam, *Mishneh Torah, Hilkhot Sanhedrin* 4:8. *Lehem Mishneh* ad loc. points out that this ruling is based on a passage in the Yerushalmi, *Massekhet Hagigah* 1:8.

<sup>xxvi</sup> *Shulhan Arukh, Yoreh De’ah* 242.

<sup>xxvii</sup> *Ibid.* 242:4.

<sup>xxviii</sup> *Ibid.* 242:13.

<sup>xxix</sup> *Ibid.* 242:13. This explanation is opposed to the understanding that the problem of *paskening* while drunk is one of simply being unable to think clearly, as implied in *Eruvin* 64a, quoted by the *Terumat ha-Deshen* 42. From the words of Rambam, it seems that *paskening* in such a state also constitutes a violation of the *kedushah* (holiness) required for *pesak*, since he codifies this halakhah in *Mishneh Torah, Hilkhot Bi’at ha-Mikdash* 1:3 and links it to the prohibition against serving in the *Beit ha-Mikdash* while inebriated.

<sup>xxx</sup> *Shulhan Arukh, Yoreh De’ah* 242:9,13.

<sup>xxxi</sup> *Lehem Mishneh to Mishneh Torah, Hilkhot Talmud Torah* 5:4.



# The Synthesis of Heritage and Personal Innovation<sup>i</sup>

BY: Ariel Pinn

The student of Torah, when reflecting upon its depth, recognizes that it must contain aspects not yet articulated by any of his predecessors.<sup>ii</sup> Which guiding principles should he use to determine if his unique insights subscribe to *amittah shel Torah* (the truth of the Torah)? The *Nefesh ha-Hayyim* (whose fourth section is dedicated to describing the unparalleled exaltedness of Torah and its role of upholding all of Creation) magnificently describes the merit of one who reaches this priceless goal:

“[Concerning] true *hiddushim* (novel ideas) in Torah which are devised by man, there is no value to the magnitude of their awesome wondrousness and their effects in Heaven. For each and every individual word, which is devised in the mouth of man, the Holy One Blessed be He kisses it and crowns it, and builds from it a new world of its own.”<sup>iii</sup>

What is required to develop a *hiddush* that will achieve such awe-inspiring heights?

“In Jewish law, a *musmakh* is not simply one who studied its laws; he must be a part of that transmission of *Masorah* which began with Moshe Rabbeinu passing the tradition on to Yehoshua.”

*Pirkei Avot*, the fundamental representation of Jewish Hashkafah (outlook), specifically places the description of Torah inheritance as its inaugural statement: “Moshe received the Torah from Sinai, *u-mesarah*<sup>iv</sup> to Yehoshua, and Yehoshua to the Elders, etc.”<sup>v</sup> This was the founding step of the institution of *semikhah*, whereby Torah is passed from sage to student. While Moshe Rabbeinu disseminated the sacred words of the Torah to Yehoshua, he also transmitted his personal guidance to the future leader of the nation. In Jewish law, a *musmakh* (one who received *semikhah*) is not simply one who studied its laws; he must be a part of that transmission of *Masorah* (heritage) which began with Moshe Rabbeinu passing the tradition on to Yehoshua. This system ensures that each student has the tutelage of a member of the *Masorah*, and is provided with the proper *shimmush talmidei hakhamim* (live experience around *talmidei hakhamim*) – the added personal *shimmush* which cannot be learned from books, but rather is an all-encompassing heritage from *Har Sinai*.

Is there any room in this framework, one based on reverence for traditions of the past, for novel ideas?<sup>vi</sup> This question of permissibility to engage in *hiddush* was once presented to the Hazon Ish, *zts”l*:

“How can it be tenable to invent new

thoughts in Torah after it was given in its entirety at *Har Sinai*? [ Presumably,] the creator of new ideas is merely revealing that which was previously hidden in the words? The Hazon Ish replied: All the laws of nature have been set in the world from the time it was created. However, Torah contains the thought of Hashem Who is above Creation, and [therefore] any explanation in the writings [of Torah] which has not yet been revealed has not yet reached the stage of ‘Creation,’ rather, its existence is [solely] in the knowledge of the One Above. Only after a person merits and perceives the intention of the Giver of the Torah in some explanation – only starting from that moment is the *hiddush* materialized into the reality of the created world, [and is thus] accordingly called a new idea.”<sup>vii</sup>

His words show that there surely is a concept in Judaism of man-driven *hiddush* resulting from thorough engagement with the Torah, as is well known in every *beit midrash*. Indeed, we see this manifest when each year a multi-

tude of new works can be found on the shelves of Judaica stores.

Ha-Gaon ha-Rav Yosef Dov Ha-Levi Soloveitchik, *zts”l* (henceforth “the Rav”), illustrated this idea by quoting the *hesped* (eulogy) which Ha-Gaon ha-Rav Velvel Soloveitchik, *zts”l* (his uncle), delivered for Ha-Gaon ha-Rav Hayyim Soloveitchik, *zts”l* (the Rav’s grandfather). There, he described that in R. Hayyim’s exploration of the vast depths of Torah, “he had no need for a library [of *sefarim*]; his bookshelf contained only the fundamental sources and no more.”<sup>viii</sup> This highlighted his reliance on the core Jewish sources alone to develop his novel and creative interpretations. R. Shalom Carmy relates that the Rav himself shared a similar approach to *talmud Torah* (study of Torah).<sup>ix</sup> Additionally, many decisions have been made in Judaism by *talmidei hakhamim* about new events and issues which arose in their generations. For example, the crisis of Jewish assimilation in Europe prompted the Hafets Hayyim, *zts”l*, to approve Sarah Schenirer’s righteous request to start the Bais Yaakov movement. Even though the movement diverged from the traditional model of female education that occurred within the home, the Hafets Hayyim realized that based on the prevailing conditions, something had to be done.

Similarly, Ha-Gaon ha-Rav Moshe Fein-

stein, *zts”l*, permitted women to go to the *mikveh* with earplugs, a ruling which went against prior opinions on the subject.<sup>x</sup> Subsequently, the *sho’el* questioned whether one can follow this decision, considering that it was against the conclusions of previous generations. R. Moshe contended that it is irresponsible to decide a law based solely on the works of earlier generations, as there are constantly new cases that arise. The Torah is to be implemented in each generation in accordance with its arbiters of Halakhah.<sup>xi</sup> It is certainly permissible for a *talmid hakham* to state an opinion contradictory to previous rulings of Aharonim and at times even the Rishonim.<sup>xii</sup> This must be done with “an in-depth examination of the Talmud and the classic literature, utilizing sharp intellect and accurate proofs, even if the conclusions are new [...] as is stated: ‘The only consideration for the judge is that which his eyes see.’<sup>xiii</sup>” One caveat is that his words may not conflict with those of the globally accepted authorities on *Shulhan Arukh*. Additionally, this should only be exercised in great need, similar to the aforementioned case which would otherwise result in the termination of a marriage.<sup>xiv</sup>

The Rav, in *Halakhic Man*, emphatically addresses the importance of *hiddush*:<sup>xv</sup> “Halakhic Man is a spontaneous, creative type. He is not particularly submissive and retiring, and is not meek when it is a matter of maintaining his own views.”<sup>xvi</sup> However, in the context of his passion for *hiddush*, he adds a critical stipulation to the halakhic man’s outlook: “He recognizes no authority other than the authority of the intellect (obviously, in accordance with the principles of tradition).”<sup>xvii</sup> The Rav then continues to describe how *hiddush* is placed on a pedestal in Judaism. He stresses that *hiddush* is not merely permissible – it is imperative:

“Halakhic man received the Torah from Sinai not as a simple recipient but as a creator of worlds, as a partner with the Almighty in the act of creation. The power of creative interpretation (*hiddush*) is the very foundation of the received tradition [...] All new, creative insights that a bright student will glean are an integral part of the Oral Law<sup>xviii</sup> [...] The essence of the Torah is intellectual creativity.”<sup>xix</sup>

However, while the implementation of creativity is essential, there is a limitation on the context within which one can exercise it. As the Rav cautions in *Halakhic Mind*, “If an objective compass be lacking, the final port of landing is uncertain.”<sup>xx</sup> There is a distinction between suggesting a *hiddush* and steering towards *shinnui* (change), which is a departure from the *Masorah*.<sup>xxi</sup> The Rav strongly contests an approach that embraces *shinnuyim*: “The abandonment of certain traditional concepts in favor of more modern ones is nothing but sheer whimsicality if not foolhardy iconoclasm.”<sup>xxii</sup>

Historically, this issue came to a head when a certain rabbi decided to overstep this

boundary, moving from *hiddush* to *shinnui*, and the Rav was subsequently forced to address it in a *derashah* (sermon) at the Rabbinical Council of America Convention.<sup>xxiii</sup> His opening statements illustrate the gravity of his words: “What I am going to say, I want you to understand, is my credo about Torah and about the way Torah should be taught and Torah should be studied.”<sup>xxiv</sup> He then firmly establishes the role of intellect in *talmud Torah*:

“[...] The study of Torah has never been for me dry formal intellectual performance, no matter how important a role the intellect plays in *limud hatorah* [...] *talmud torah* is more than intellectual performance. It is a total, all-encompassing and all-embracing involvement – mind and heart, will and feeling, the center of the human personality - emotional man, logical man, volunteristic man – all of them are involved in the study of Torah. *Talmud torah* is basically for me an ecstatic experience, in which one meets G-d [...] So must every Jew who engages in *talmud torah* stand before G-d with fear, awe, and tremor.”<sup>xxv</sup>

Perforce of this perspective, the true student of Torah will display humility, since he is engaged in the awesome words of Hashem.<sup>xxvi</sup> “When a finite being meets the Infinite, the Maker of the world, this meeting must precipitate a mood of humility.” This humility effects a surrender to the Almighty in two areas. There is a surrender of “everyday logic” in deference to the reasoning of the *Masorah*, and also a surrender of the will of a person to the dictates of the *Masorah*. He must have a complete *kabbalat ol malkhut Shamayim* (acceptance of the yoke of Heaven) – and a yoke can be uncomfortable at times.<sup>xxvii</sup>

From a background of *talmud Torah* that is rooted in complete *kabbalat ol malkhut Shamayim*, the Rav continues by outlining four areas which emerge from such a relationship:

“Firstly, we must pursue the truth through singular halachic Torah-thinking and Torah-understanding: from within, in accord with the methodology given to Moshe and passed on from generation to generation. The truth can be discovered only through joining the ranks of the *Chachmei ha-Masorah* [the ones knowledgeable in the *Masorah*]. To say, ‘I have discovered something the Rashba didn’t know, the Ketzos didn’t know, the Go’on of Vilna had no knowledge of; I have discovered an approach to the interpretation of Torah which is completely new,’ is ridiculous.”<sup>xxviii</sup>

For one to be part of the *Hakhmei ha-Masorah*, his statements must be made from within the framework of that *Masorah*; to say a *hiddush* based on the surrounding influences is what leads to assimilation. Secondly, instead of suffering an inferiority complex due to a prevailing societal motto that runs against the *Masorah*, one should feel a pride in that very

*Masorah* and eradicate any desire to yield emotionally to modern conceptions. Thirdly, “One must not try to gear the halachic norm to the transient values of a neurotic society. (That’s what our society is.)” Lastly, we are required “to revere and to love and to admire the words of the *Chachmei ha-Masorah*, be they *tano'im*, be they *amoro'im*, be they *rishonim*. They are the final authorities.”<sup>xxxix</sup>

The Rav explains, based on the words of Rambam,<sup>xxx</sup> that one who makes an imprudent statement about the *Hakhmei ha-Masorah* is touching on heresy:

“To speak about changing *halochos* of *Chazal* is at least as nonsensical as discussing communism at a Republican National Convention. It is discussing methods of self-destruction and suicide [...] We are opposed to *shinuyyim* (changes), but *chidush* is certainly the very essence of *Halocha*. *Chidushim* are within the system, not from the outside [...] The human being is invited to be creative, inventive, and engage in inspiring research – from within, but not from without.”<sup>xxxi</sup>

There are two seemingly opposing ideals which must come to a resolution. The call for *hiddush* declares that the *talmid* should engage in a free-minded approach. However, the foundations of the *Masorah* define parameters. The confluence of these two principles, as R. Rosensweig explains the Rav’s aforementioned ideas,<sup>xxxii</sup> is a recognition that we first surrender to the Almighty by maintaining a full *kabbalat ol malkhut Shamayim*, an aspiration which takes much time and effort to achieve. Thereafter, the *hiddushim* of this halakhic man,

## “The ultimate scholar of Torah, the *talmid hakham*, exhibits creativity.”

who embodies a heightened level of *ahavat Hashem* (love of G-d) and *yir'at Hashem* (awe of G-d) and is anchored in the *Masorah*, will be amongst the greatest Torah insights.<sup>xxxiii</sup>

Additionally, for a *talmid hakham* to issue a *hiddush* for halakhic application, he must be widely recognized in the Torah community. In describing such a personality, R. Rosensweig employed the phrase of being an “*ilan gadol*” (a big tree, i.e. a *talmid hakham* of great stature who is widely recognized). To make a decision that seemingly goes against the longstanding tradition of the Jewish people would require one, or perhaps two, *talmidei hakhamim* of this stature. This requirement of “big shoulders” is highlighted by the *Ketsot ha-Hoshen* in his *sefer* when defining the “*talmid vatik*” (veteran student) who is expected to develop *hiddushim* based on his human mental capacities, as long as they have been found to be in-line with the ways of the Torah and the ideas of previous Torah sages. [To dissuade all who may jump to include themselves in this elite category, see the continuation of the words of the *Ketsot* where he tries to justify himself as being worthy of this status!]<sup>xxxiv</sup>

As we have seen, the ultimate scholar of Torah, the *talmid hakham*, exhibits creativity. In fact, it is critical to the definition of a Torah sage. As R. Moshe Feinstein clearly stated, it would be prohibited to base a decision solely on an earlier source without an in-depth personal examination of the issue in its new context as well. Similarly, the Rav enthusiastically encouraged such innovation. However, as both R. Moshe and the Rav added, it would be heretical to go in any way against the *Masorah* upon which Judaism rests, be it the specific, mandated halakhot and minhagim or the her-

## “It would be heretical to go in any way against the *Masorah* upon which Judaism rests, be it the specific, mandated halakhot and minhagim or the heritage of how a Jew should properly perform his *avodat Hashem*.”

itage of how a Jew should properly perform his *avodat Hashem*. To reach the level of a *talmid hakham* certainly requires years of development in the walls of a beit midrash. Additionally, there must be *shimmush talmidei hakhamim* to develop an understanding of what has been called “the fifth section of *Shulchan Arukh*,” i.e. the types of halakhic rulings which require personal intuition. These are but some of the many ways of properly acquiring Torah, which are listed in the last chapter of

*Pirkei Avot* and expanded upon in Rambam’s description of how to acquire the *Keter Torah* (the Crown of Torah). Ultimately, all of the 48 methods mentioned in that last chapter of *Pirkei Avot* are necessary to ensure that one is in line with the *retson Hashem* (will of G-d) when crafting a *hiddush*. Within such a framework, it is obligatory for the *talmid hakham* to present his *hiddushim*.

May it be Hashem’s will that we succeed in reaching *amittah shel Torah* (the truth of the Torah) through this careful enterprise of innovation within tradition.

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<sup>i</sup> I would like to give praise to Hashem for giving me the *sayya'at di-Shemaya* necessary to engage in this work. Thank you to (in alphabetical order) R. Shalom Carmy, *shlit"a*, R. Michael Rosensweig, *shlit"a*, and R. Hershel Schachter, *shlit"a*, for contributing their time

and wisdom, and (again in alphabetical order) Sarit Bendavid and Shlomo Zuckier for their editing and valuable comments. Any errors throughout should be attributed to the author.  
<sup>ii</sup> See R. Baruch Simon, “*Ve-Ten Helkeinu be-Toratekha*,” *Imrei Barukh* (Lakewood, NJ: MBH Publishers, 2009-2010), pp. 9-16, especially p. 14 where he quotes *Alshikh*’s interpretation of the words in the Shabbat *Shemoneh Esreh* “*ve-ten helkeinu be-Toratekha*” (and grant our portion in Your Torah) as referring to the [unique] portion in the Torah which each soul received at *Har Sinai*.

<sup>iii</sup> R. Hayyim Volozhiner, *Nefesh ha-Hayyim* 4:12.

<sup>iv</sup> It is difficult for me to translate this word appropriately, since I do not know of a proper English equivalent for a giving of the entirety of Moshe Rabbeinu’s Torah, guidance, and personality. Perhaps “deliver” or “convey” would scratch the surface.

<sup>v</sup> *Avot* 1:1.

<sup>vi</sup> I once heard that a *talmid* has permission to state a *hiddush* since he is merely recalling the Torah which he forgot in his mother’s womb (cf. *Niddah* 30b). A similar approach is presented in *Imrei Barukh* (ibid.).

<sup>vii</sup> Shlomo Cohen (ed.), “*Hiddush Mahu*,” *Pe'er ha-Dor*, vol. 3 (Bnei Brak: Netsah, 1970), p. 79; qtd. in R. Hershel Schachter, “*Hiddushei Torah*,” *Ginat Egoz* (Brooklyn, NY: Flatbush Beth Hamedrosh, 2007), pp. 5-7, at p. 6. See further “*Hiddushei Torah*,” ibid., for terrific insights on this topic.

<sup>viii</sup> R. Joseph B. Soloveitchik, “*Ma Dodekh mi-Dod*,” in Pinhas H. Peli (ed.), *Be-Sod ha-Yahid ve-ha-Yahad: Mivhar Ketavim Ivriyyim* (Jerusalem: Orot, 1976), pp. 189-254, at p. 234.

<sup>ix</sup> Based on a personal conversation.

<sup>x</sup> R. Moshe Feinstein, *Responsa Iggerot Moshe, Yoreh De'ah* 1:101 (for entire paragraph).

<sup>xi</sup> See Rashi to *Devarim* 19:17, s.v. “*Asher*,” who quotes that Yiftah in his generation was like Shemuel in his generation, and both should be respected. Rashi is intimating that even if the Torah sages of his time are not equal in prominence to those of previous generations, one must follow their decisions.

<sup>xii</sup> See R. Hershel Schachter, *Nefesh ha-Rav* (Jerusalem: Hotsa'at Bet ha-Midrash di-Flatbush, 1999), p. 34, who quotes R. Soloveitchik as stating that while until the end of the Gemara there is no room to argue, it is permissible after that point for a great *talmid hakham* to assert his own opinions under certain con-

ditions, as will be described.

<sup>xiii</sup> Cf. *Bava Batra* 131.

<sup>xiv</sup> *Iggerot Moshe* ibid. [Please note that differing views of how to reach a *Halakhic* decision have been expressed by *talmidei hakhamim* throughout the generations.]

<sup>xv</sup> I would like to thank R. Schachter, *shlit"a*, for citing many of the following sources in *Nefesh ha-Rav*, p. 64.

<sup>xvi</sup> R. Joseph B. Soloveitchik, *Halakhic Man*, trans. by Lawrence Kaplan (Philadelphia: Jewish Publication Society of America, 1983), p. 79. See further the Rav’s words in *Yemei Zikkaron*, trans. by Moshe Krone (Jerusalem: World Zionist Organization, 1986), pp. 85-88, where he stresses that Hashem commands man to further that which He initially created.

<sup>xvii</sup> *Halakhic Man*, ibid.

<sup>xviii</sup> See Yerushalmi, *Pe'ah* 2:6 and *Midrash Rabbah* to *Va-Yikra* 22:1.

<sup>xix</sup> *Halakhic Man*, pp. 81-82.

<sup>xx</sup> Rabbi Joseph B. Soloveitchik, *Halakhic Mind* (Ardmore, PA: Seth Press; New York: Free Press, 1986), p. 90.

<sup>xxi</sup> See ibid., p. 130.

<sup>xxii</sup> Ibid., p. 90.

<sup>xxiii</sup> I cite in this article from two versions of this *derashah*: “Surrendering to the Almighty,” ed. Eitan Fiorino, *Mail-Jewish* (n.d.). Web access: March 14, 2010 (currently unavailable at the site); and “Surrendering to the Almighty,” ed. Dr. Isaac Hersh, *Light* 116 (1975), pp. 11-15, 18, available at: <http://www.scribd.com/doc/4070482/Joseph-B-Soloveitchik-Surrendering-to-the-Almighty-and-reaction>.

<sup>xxiv</sup> Qtd. in Fiorino.

<sup>xxv</sup> Qtd. in Fiorino.

<sup>xxvi</sup> Qtd. in Hersh, pp. 11-12 (for entire paragraph).

<sup>xxvii</sup> Ibid.

<sup>xxviii</sup> Ibid.

<sup>xxix</sup> Ibid., pp. 12-13 (for entire paragraph).

<sup>xxx</sup> Rambam, *Mishneh Torah, Hilkhos Teshuvah* 3:8.

<sup>xxxi</sup> Qtd. in Hersh, pp. 13-14, 18.

<sup>xxxii</sup> Based on personal conversations.

<sup>xxxiii</sup> R. Rosensweig drew a parallel from the Gemara in *Menahot* 29b, where Moshe Rabbeinu was listening to the shi'ur of R. Akiva and was disheartened that he was unable to understand it. Thereafter, R. Akiva responded to a question by one of his students by saying that a certain law was known only based on a *halakhah le-Moshe mi-Sinai* (law taught to Moshe at Sinai), and this put Moshe Rabbeinu’s mind at rest. What transpired here was Moshe Rabbeinu’s distress that there were teachings outside of the *Masorah*. When he heard that it was all based on the same Torah, however, he was elated. What we see from this story is that being within the *Masorah* serves as the lynchpin to any *hiddush*.

There are many who desire, whether for psychological or social reasons, to invent highly revolutionary ideas, and this does not follow from the right to deliver a *hiddush*. As the Rav pointed out on multiple occasions, R. Hayyim Soloveitchik was revolutionary in his style of learning by using a new set of categories, but this was obviously rooted in the same Torah as that of Rashba, the *Ketsot ha-Hoshen*, and the



Netsiv. His *Yoreh De'ah*, where pots and pans became theoretical halakhic constructions, was the same *Yoreh De'ah* that the Shakh had commented upon. As is exemplified by *kiddush ha-hodesh* (the sanctification of the new month), the choice of which day *rosh hodesh* (first day of the new Jewish month) will fall out on is in the hands of the *Sanhedrin*, even if they intentionally avoid selecting the most natural day. However, their choice is still limited; they may choose to make the previous month 29 or 30 days, but no less and no more.

Examples such as the aforementioned decision of the Hafets Hayyim to permit the Bais Yaakov movement, or, similarly, the Rav's encouragement of women to engage in *talmud Torah* at higher levels, can be viewed in one of two ways. Some suggest that they fall under the category of "*Et la'asot la-Hashem, heferu Toratekha*" – "It is a time to act for Hashem; they have annulled your Torah" (*Tehillim* 119:126). This concept was used to permit the writing of the *Torah she-be-Al Peh* (Oral Law) (*Gittin* 60a), and is used in similar, very limited cases where the violation of certain principles is necessary for the protection of the Jewish people (see Rashi to *Tehillim* *ibid.*, s.v. "*Et*"). Rambam compares this to the necessary evil of undergoing an amputation to save the rest of the body – if Torah was not written down, it would have been lost forever. The state of affairs in Europe following the Enlightenment and later in America, where many women were pursuing higher degrees, prompted this principle to be invoked. Others claim that these breaks from tradition are in fact an ideal, for women are allowed or even should be encouraged to increase their understanding of Torah. They will have a *kivyum* (fulfillment) of *talmud Torah*, and at the very least their Torah knowledge should be on equal footing with their secular studies.

<sup>xxxiv</sup> *Ketsot ha-Hoshen*, Introduction, s.v. "*U-ba-Zeh yuvan*," and "*U-be-Midrash*;" qtd. in *Ginat Egoz*, p. 7.

## An Interview with Rabbi Hershel Schachter

BY: Staff

**W**ho is qualified to give a *pesak* Halakhah (halakhic ruling)? What makes his ruling binding upon a large group of people?

To give an original *pesak* on a new *she'eilah* (halachic question) or a *hachra'ah* (decision) on an old *machalokes* is not easy. A person has to have a strong tradition in Torah logic. Common sense has its own system of logic and so does Halachah. And to know Talmudic, halachic logic, you have to be learned in all areas of Torah. A *posek* cannot "specialize" in one area of Halachah alone. In order to be an expert in medical Halachah, you have to know *Nashim*, *Nezikin*, *Kodashim*, and *Tohoros*, because everything in Halachah is interconnected and interrelated.

Most *rabbanim* who have *semichah* are not qualified to issue an original *pesak* – not just on a new *she'eilah* that comes up, but even an old one where there are different opinions. If a person does not have the tradition of how to navigate and decide, he is simply not eligible to do so. The Gemara in *Avodah Zarah* (5a) says that you have to be 40 years old to *paskn* a halachic question, unless there is no other *talmid chacham* over the age of forty who is available.<sup>1</sup> I once taught this in public, and Dr. Lamm got very upset with me, saying that we are not going to withhold every *musmach's* *semichah* until he is forty. I responded, though, that if a *musmach* is going to lead a community where there is no one else over the age of forty who is qualified to *paskn*, you have no *bereirah* (choice) and should grant him *semichah*. Otherwise, if he is going to live in New York, there are plenty of other *talmidei chachamim* over 40 available by telephone. In such a case, it is inappropriate for such a young *musmach* to *paskn*.

Sometimes, of course, it is an open-and-shut *she'eilah*. In such a situation of *mar'eh makom ani lach* (I am simply pointing you to a source), it would be appropriate for a person under 40 to *paskn*.<sup>2</sup> However, in a lot of instances, it might, when looked at from a circumscribed, focused perspective, seem to be the exact same *she'eilah*, but because of some outside factors it in fact is not and you have to apply a different *se'if* (paragraph) when *paskening*. Oftentimes, because the world is changing so quickly, a question that once received one answer will today require a different one.

In terms of authority in *pesak*, the *Chumash* tells us that the *pesakim* of the *Beis Din ha-Gadol* (Great Court) are binding on everybody.<sup>3</sup> I think the reason that they are binding is that the *Beis Din ha-Gadol* is not a political body, but is rather composed of the *gedolei hador* (greatest men of the generation). As a result, its members have the status of *rav muvhak*

(primary teacher) for the entirety of *Kelal Yisrael*, even if they have never met their *talmidim*, and the *din* is that the *pesak* of a *rav muvhak* is binding on his students.<sup>4</sup> Similarly, the *mara de-asra* (local rabbinic authority) of a particular area is considered the *rav muvhak* of all of his *balabatim*, which gives his *pesak* a level of authority over them. If a person *davens* in a few *shuls*, he should listen to the *pesakim* of the person he considers his *rav muvhak*, who made him into a *talmid chacham* and a Torah personality.

*Which characteristics should a person look for when choosing a personal/family posek? Is it appropriate to choose one posek for one area of Halakhah and another for a different area? Is it problematic, halakhically or otherwise, for someone to ask she'eilot to a rabbi other than the leader of his or her shul/kehillah?*



The Mishnah says "*aseh lecha rav*"<sup>5</sup> – you have to pick a *rav* to *paskn* all of your *she'eilos*. He has to first and foremost be very knowledgeable. If I know that my rabbi is not so learned, even if he is a very nice person, I simply cannot rely on him to *paskn*.

Second, he has to be humble. The Gemara says that we *paskn* like the *Beis Hillel* against the *Beis Shammai*, because, among other reasons, the *Beis Hillel* were more humble than the *Beis Shammai*, and one who is more humble stands a better chance of succeeding in *pesak*.<sup>6</sup> If one lacks humility, he will make up his mind in advance that he is going to stick to his opinion and will not be willing to listen to the facts or be open to changing his view. Conversely, a person who is humble is not going to insist that his *muskal rishon* (first impression) is correct, but will rather consider every-

thing before him.

He also has to be an honest person. Sometimes you have a rabbi who is a politician and says one thing to one person and another thing to a different person, giving everyone the answer that he wants to hear. That is obviously inappropriate.

Finally, he must be a *yere Shamayim* (God-fearer). The Gemara talks about why the *pesakim* of *talmidei chachamim* are binding and says that it is because "*sod Hashem li-yere'av*"<sup>7</sup> – God gives the secrets of understanding the Torah to those who fear Him.<sup>8</sup> Usually, we assume that the more learned one is, the more *yir'as Shamayim* he has. If, however, the rabbi of my choice is very learned but seems, unfortunately, to lack *yir'as Shamayim*, he is not *ra'ui* (worthy) to receive divine assistance in figuring out what the *dinim* are.

In picking a rabbi, then, you have to make sure he is very learned, humble, honest, and God-fearing, and then we assume that God will assist him and prevent him from making a mistake in *pesak*.

In terms of seeking out multiple *posekim*, the Chazon Ish writes that years ago there was one rabbi in each community who was an expert on everything; he was able to *paskn*, give a *pilpul shi'ur*, and decipher difficult statements of the Rambam. The *Noda bi-Yehudah* [Rav Yechezkel Landau] is a good example of this model: he gave *shi'urim* to his *talmidim*, wrote *teshuvos* and *paskened she'eilos*, and delivered *derashos* (sermons) to *balabatim*. Then, after the Industrial Revolution, when everything began to run according to a division of labor – this person made the right sleeves on the suit, the other one the left sleeves, and a third one the pockets – the same thing happened in the world of learning: one person became an expert in one area of Halachah and another an expert in a different area. We, too, have developed a division of labor. In fact, Rav Chayyim Ozer Grodzenski, when Rabbi Elie Munk asked him about the *eruv* in Paris, sent the *she'eilah* to the Chazon Ish in Bnei Brak, because he considered him an expert in *eruvin*. Similarly, when he had a question in *Hilchos Mikva'os*, he sent it to the Chazon Ish's brother, who was considered an expert in that area. In every yeshiva today, you encounter the same thing: you have the Rosh Yeshiva who says the *pilpul shi'ur* and explains difficult statements of the Rambam, the *posek* who *paskens* the *she'eilos*, and the *mashgiach* who gives *shi'urim* on Hashkafah and *emunah* (faith).

This trend, however, is somewhat problematic, because each person has a different style and *mahalach* (method) in his *machshavah* and mode of *pesak*. No two people are exactly the same. Rav Chayyim Soloveitchik's and Rav Velvel's *sefarim* share much in common but are, in fact, very different

stylistically. So if you are going to follow one person's *pesakim* in *mikva'os* and another's in *eruvim*, there may be contradictions in style that you do not notice as an outsider. Ideally, then, it is more correct to ask all of one's *she'eilos* of the same person. But we live in a generation where we have divided up these roles among different religious figures. As a result, you should try to pick experts in each field of Halachah who have approximately the same style of learning so that you maintain some level of consistency.

Can you pick someone other than your local *shul* rabbi? Sometimes, you do not have a choice. The local rabbi is often a nice person who succeeds in maintaining peace and order in the *shul*. That, perhaps, is the main function of a rabbi today. The *Avnei Nezer* has a *teshuvah* in which he quotes the *pasuk* in *Mishlei* (29:4), "*Melech be-mishpat ya'amid erets*" (A king sustains the land through justice), and ex-

In the works of the Acharonim, though, this expression has changed and is used when a *posek* thinks that the *tsad hetter* (lenient side) in a case is stronger than the *tsad issur* (prohibited side). A lot of times, a *she'eilah* that comes up is not so straightforward and easy, because there are different opinions on the matter. So when a *moreh hora'ah* (halachic decisor) wants to be *meikel* in a particular case, he will use that expression to justify doing so. But it is still just an expression; I do not think it is a halachah or a *din*. It is a *din*, though, that you are not allowed to be *machamir* unnecessarily, because doing so causes a *hefsed mamon Yisrael* (a financial loss to a Jew). Why should you tell someone to throw out something which is perfectly kosher? If it is *muttar*, it is *muttar*. In the *Viddui* (Confessional) quoted from Rabbeinu Nissim Gaon which is recited on Yom Kippur, we say that we made mistakes in both directions – things that were

sics, it does not make sense to be *machamir* like the *Mishnah Berurah*. We simply do not recommend *chumros* for anybody and everybody. They were known as *Chasidei Ashkenaz* for a reason – they were *tsaddikim* who tried to observe all the *dinim* and then some.

I have heard that Rabbi Yehuda Amital would often comment that when he learned in yeshivah as a teenager, they would study *Mishnah Berurah*, and whenever they would arrive at the words "*ba'al nefesh yachamir*" (an ambitious person should be stringent), they would say that that phrase refers to someone else – not them. But now, he observed, every *bachur* in the yeshivah thinks that he is the *ba'al nefesh*. Who says that you are on the *madregah* (level) of a *yere Shamayim*? Maybe after you get married and become known as a *medakdek be-mitsvos* (scrupulous person in mitzvah observance) – maybe then you will fall under that category. A lot of times, people accept upon

*Does Halakhah change over time and, if so, in what ways? When, if ever, are halakhic innovations acceptable?*

Halachah does not change over time. We believe "*ani Hashem lo shanisi*" (I am Hashem, I have not changed).<sup>xvi</sup> Because the essence of God does not change, and we assume that the Torah is a description of *E-lohus* (Godliness), Halachah cannot change either. However, the world around us is ever-changing, and because of that, the way Halachah is practiced today is not exactly the same as it was one hundred years ago, fifty years ago, or even yesterday. There are so many changes taking place and the slightest one makes for a new *she'eilah*. In almost every *siman* in *Shulchan Aruch*, you have many *se'ifim*, not just one, so that under different conditions, you follow a different *se'if*. Every *she'eilah* has to be taken within the historical context in which it comes up and with the proper perspective. So the *application* of Halachah changes, even as Halachah itself does not.

In my introduction to *Erets ha-Tsevi*, I give the *meshal* (example) that Avraham Avinu, when there was a famine, left Erets Yisrael for Mitsrayim. Then, in the days of Yitschak, there was another famine, so he thought to go to Mitsrayim also. Yitschak was known for following the traditions of his father – he dug the same wells as his father had and gave them the same names, etc.<sup>xvii</sup> So the *Zohar*, quoted by *Ha-Kesav ve-ha-Kabbalah*, comments that Yitschak followed the whole *masorah* (tradition) of his father, and wanted to continue doing so by leaving for Egypt, but then the *Ribbono shel Olam* told him no – you are an *olah temimah* (a perfect offering) brought on the *mizbeach* (altar); you are not allowed to leave for *Chuts la-Aretz*. He thought he was doing exactly the same thing as his father by deciding to leave, but Hashem informed him that the circumstances had changed.

Similarly, the Gemara tells us that Moshe Rabbeinu made many *charamim* (bans) on cities *Benei Yisrael* fought against,<sup>xviii</sup> so Yehoshua bin Nun made a *cherem* on Yericho thinking that he was doing the exact same thing as his *rebbe* had. The *Ribbono shel Olam* got angry with him for having done so, though, because the circumstances had changed: Moshe Rabbeinu made his *charamim* before *Benei Yisrael* crossed the *Yarden*, so there was no *din* of *kol Yisrael arevim zeh ba-zeh* (every Jew is mutually responsible for the next); Yehoshua, though, made his *cherem* after that *din* took effect, so all of *Benei Yisrael* would be responsible for the sins of those like Achan who violated the *cherem*, potentially endangering them all. He simply did not realize that he was living in a different generation and the *she'eilah* was a different *she'eilah*.

Oftentimes, people will say, "My father belonged to the Agudah, so I belong to the Agudah; my father belonged to the Mizrachi, so I belong to the Mizrachi," without taking into consideration that today everything is totally different: that was before *Hakkamas ha-Medinah* (the establishment of the State) and

## “You do not have to be so knowledgeable to be *machamir*, but to be *meikel*, you really need to know how to learn in order to ensure that your *kulla* is correct.”

plains that just as the role of the government is to keep law and order, so, too, the role of the rabbi is not so much to *paskn she'eilos* – the majority of which have been worked out already in *Shulchan Aruch* – but rather to maintain peace in his community.<sup>xix</sup> So sometimes your local Orthodox rabbi does an excellent job of leading his *kehillah* but is not so strong in Halachah, and in that case it does not make sense to ask your *she'eilos* of him, since that is not really his expertise. In Europe, they used to have a *rav* and a *dayyan* (judge); the *balabatim* asked their *she'eilos* to the *dayyan* and the *rav* had other responsibilities.

*What does it mean that koah de-hetteira adif (the power of permissibility is greater) and how does one apply that rule? How does this principle accord with concepts like ha-machamir, tavo alav berachah (blessing should descend upon the stringent) and yere Shamayim yetse yedei sheneihem (a God-fearer tries to fulfill both)? When, if ever, is it a good idea to take upon oneself a personal humra (stringency)?*

*Koach de-hetteira adif* in the original context in the beginning of *Beitsah* (2b) only means that if you are a Tanna composing *Mishnayos* or *Beraisos* and you can present a *din* or *machalokes ha-Tanna'im* in two ways, one of which will emphasize a *chiddush lehachamir* (a novel stringency) and the other of which will emphasize a *chiddush lehakel* (a novel leniency), it is preferable to do the latter, because, Rashi explains, anyone can be *machamir*.<sup>x</sup> You do not have to be so knowledgeable to be *machamir*, but to be *meikel*, you really need to know how to learn in order to ensure that your *kulla* is correct.

*asur* we treated as *muttar*, and things that were *muttar* we treated as *asur*.

The concept of *ha-machamir, tavo alav berachah* appears in *Tosafos*.<sup>xi</sup> It was also a policy of the *Chasidei Ashkenaz* that developed over the course of many years. The attitude was that while *me-ikkar ha-din* (strictly speaking), we know that we *paskn* according to the *meikel* opinion in a particular *machalokes*, we should really treat every *machalokes* as if it were a *safek* what the *din* should be. That attitude was then combined with the teaching of the Midrash, based on the *pasuk* in *Kohel* 7:18, that "*yere E-lohim yetse es kullam*" – *zeh Rabbi Abbahu be-Kisrei* ("a God-fearer fulfills them all" – this refers to Rabbi Abbahu in Caesarea).<sup>xii</sup> Rabbi Abbahu was the one who made the *takkanah* (edict) to blow all the possible combinations of *shofar* blasts on Rosh ha-Shanah – *tasha"t, tara"t, and tashra"t*<sup>xiii</sup> – because he was not sure what the correct *teru'ah* sound should be, and so the *Chasidei Ashkenaz* towards the end of the period of the *Ba'alei ha-Tosafos* adopted the view that everyone should try to be *machamir* and satisfy the opinions of all the *posekim* on a given topic.

The *Mishnah Berurah* then picked up on that idea and took it further. The truth is that the *Mishnah Berurah* is really more appropriate for *benei ha-yeshivah* and not for *balabatim*, since *yeshivah bachurim* usually have the luxury of being *machamir*, whereas *balabatim* generally do not. They used to quote in the name of Rav Henkin that the *Mishnah Berurah* is meant for *yeshivah bachurim* while the *Aruch ha-Shulchan* is more for *balabatim*, because the *Aruch ha-Shulchan* is often *noteh lehakel* (tends more to be lenient).

Still, if a *ben yeshivah* is lacking in the ba-

themselves *chumros* when they are not on the *madregah* to observe them. *Chumros* are like jewelry, something extra that you take on in order to enhance your *avodas Hashem* (service of God). If you are not yet keeping the basic *dinim*, adopting a *chumra* is like a woman who is wearing pajamas putting on a piece of jewelry – it does not enhance her good looks. If she is wearing a nice dress or suit and puts on jewelry, that is one thing; otherwise, the jewelry is out of place.

It should be noted that one who is in a position of leadership is supposed to be *machamir*. The Rambam in the end of *Hilchos Melachim* (5:9) says that you are not allowed to leave Erets Yisrael unless there is a real famine there. However, he notes, even in that situation it is a *middas chasidus* (sign of piety) not to do so, as we learn from *Megillas Rus*, in which Elimelech, Machlon, and Kilyon were punished, the Gemara says, for having left the land, even though there was a famine at the time. The reason is that they were the *gedolei ha-dor* – Rashi translates the word "*Efrasim*" to mean "*chashuvim*" (important people)<sup>xiv</sup> – and should have been *machamir* to stay.<sup>xv</sup> They were looked up to and were the leaders of the community, so we learn from them that the *rabbanim* are supposed to be *machamir* whenever possible. *Balabatim* generally think they can observe ten levels lower than the rabbi does, so if the rabbi is just following the *ikkar ha-din*, it will turn out to be a problem. The rabbi has to grow into his position and act like a *ba'al nefesh* and a *yere Shamayim*, even if he is not fully on that level yet. The phrase "*adam chashuv shanei*" (an important person is different) appears throughout the Gemara precisely for this reason.



before *Milchemet Sheshet ha-Yamim* (the Six Day War)! The Agudah today is not necessarily the same as the Agudah of 50 years ago. Everything is changing in the world. Halachah does not change but its application does.

In terms of innovation, Halachah always has room for *chiddush*. The *Yalkut Shim'oni* comments on the *pasuk* in *Shiras Devorah*, “*Yivchar E-lohim chadashim*” (Hashem chooses new things), that Hashem cherishes *chiddushei Torah* (Torah novella).<sup>xix</sup> However, we do not allow *shinnuyim* (changes). You need to be a big *talmid chacham* to know what is considered a *shinnui* and what is considered a *chiddush*. Rav Moshe Feinstein is *kullo chiddush* (completely novel) – every *teshuvah* has a *chiddush*, and there is what to argue on in each case. But he is still working within the system of Halachah: he is using principles in the Gemara in order to change the application of Halachah, because he thinks that is what is necessary in our changing circumstances.

*What effect, if any, does scholarly research and manuscript use have on Halakhah? What effect, if any, does the discovery of new commentaries and hiddushim by Rishonim have on the halakhic process?*

Manuscript use is very important. We have to find out what the proper text is supposed to be. The Rema usually follows the opinions of Tosafos for Ashkenazim, but a lot of times there are gaps in Tosafos' comments with words or even whole sentences missing that change the meaning entirely. In *Avodah Zarah*, for example, it is obvious that there are four whole lines missing in one Tosafos. Only if you look in the *kisvei yad* (manuscripts) and parallel sources, like the *Or Zarua*, *Tosafos Rabbeinu Elchanan*, and *Tosefei ha-Rosh*, do you realize that they got lost in transmission. We live in a generation when we have the original versions of all of these texts and that helps a lot.

“You have to give a *pesak* that people can live with and so the entire social and historical context of the *she'eilah* must be taken into consideration.”

The *Seridei Esh* has an essay in which he encourages everyone to use the *Tosefei ha-Rosh* and *Tosafos Rabbeinu Elchanan* because doing so helps a person understand the comments of Tosafos. Today, that goes without saying, but if you lived 60 years ago, it was a big *chiddush* for him to have said that, because the attitude was that these sources were irrelevant. For example, Rav Moshe has a couple of *teshuvos* in which he says his own *peshat* in Tosafos and notes that even though the *Tosefei ha-Rosh* explains differently, we do not have follow it.<sup>xx</sup> What do you mean? *Tosefei ha-Rosh* gives you the *peshat* in Tosafos! It is all very strange. So at the time that the *Seridei Esh* was writing, he was revolutionary and his contemporaries did not go along with him. Today, though, it is a *davar pashut* that one should

look at the original set of the *Ba'alei ha-Tosafos* to make sure that one understands Tosafos properly.

Similarly, it is very important to know what scholarly research has to say about the words of the Gemara. A lot of times scholars can help explain what the *metsei'us* (realia) was at the time of the Gemara. If you do not know the *metsei'us*, you will be misapplying the *dinim* or misunderstanding the Halachah. This rule applies both *lehachamir* and *lehakel* – if we find out that the way we have been understanding the text all along is incorrect, it can change how we practice Halachah.

The discovery of new commentaries and Rishonim, however, is more complicated. The *Mishnah Berurah* used to always take these into consideration and, by doing so, reversed the *pesak ha-mekubbal* (accepted ruling) on almost every page of *Shulchan Aruch* (like the Vilna Gaon, he largely disregarded historic precedent). The reason he got away with it is that he was a holy *tsaddik* and a humble person. But the Chazon Ish was not happy about what the *Mishnah Berurah* had done – he thought Halachah had already been worked out. He felt that if you discover that there is a misprint in the Tosafos, that is one thing, but if you find new Rishonim besides Tosafos who say otherwise, that should not affect halachic practice – we have already decided to follow the Rishonim with which we have been familiar all these years.

*Is it valid for modern societal values and movements, like freedom of speech, rationalism, egalitarianism, and nationalism, to affect halakhic decision-making and practice?*

Of course they affect *pesak*. A *posek* cannot give a *pesak ha-tamuah al ha-rabbim* (a ruling which surprises the masses).<sup>xxi</sup> You have to give a *pesak* that people can live with and take all of these things into consideration when doing so. Everything going on in the genera-

tion is part of the *she'eilah*. A *she'eilah* has to be considered from all of its perspectives and one of the many perspectives is how the *pesak* will be accepted by the public.<sup>xxii</sup> So a *posek* has to be attuned to the needs and attitudes of his community.

A *posek* also has to be aware of the personal needs of the *sho'el*. If the *posek* knows that the person asking will not be able to follow a *machamir pesak* and will get frustrated and give up on his Jewish observance, he cannot say that what he is asking for is absolutely *asur*. He has to show him that there are different positions in Halachah on the issue and remind him that by following the more lenient opinion he is still acting within the halachic framework. We believe that *eilu va-eilu divrei E-lohim Chayyim* (these and those are the

words of the Living God) is a halachic principle and that *bi-she'as ha-dechak* (in extremis) you can rely on the *shittah ha-mekilah* (lenient opinion). You have to give a *pesak* that people can live with and so the entire social and historical context of the *she'eilah* must be taken into consideration.

*How important is historical precedent in determining normative halakhic practice? When do we honor popular practice as halakhically justified?*

“You need to be a big *talmid chacham* to know what is considered a *shinnui* and what is considered a *chiddush*.”

Most *posekim* usually follow a tradition in *pesak*. If you find that a community follows a certain practice against what you think to be normative, it is nevertheless valid, as long as you can establish that the practice was properly instituted by *rabbanim* in earlier generations. If, however, you find that the community's *posek* said something that does not make sense, you may not follow it, even if it has become the basis for traditional practice there.

Tosafos quotes the opinion of the *Halachos Gedolos* [*Beha*]g that if you forget to count *sefirah* for one day, you should no longer continue to count with a *berachah*, but rejects it as completely incorrect.<sup>xxiii</sup> Nonetheless, because the *Halachos Gedolos* was from the *tekufas ha-Ge'onim* (Geonic period), we are *choshesh* (concerned) for his opinion and we continue counting on successive nights but

without a *berachah*.<sup>xxiv</sup> Similarly, the *Halachos Gedolos* rules that a woman may not be *motsi* (cause to fulfill) a man in *keri'as ha-megillah* (the reading of the *megillah*). So even though it seems that Tosafos disagrees with that position,<sup>xxv</sup> the *Shulchan Aruch* says that out of deference for the *Beha*]g, we do not allow a woman to be *motsi* a man.<sup>xxvi</sup> If a person is stuck and no one else is around to help him fulfill his *chiyyuv* (obligation) other than a woman, then bottom line we *paskn* that a woman can be *motsi* him. But if someone in our generation decides that a woman can read the *megillah* for men even when men are available to read, that is considered a *chutspah gedolah* (an extreme form of audacity) – unless it is someone, like Rav Moshe, who is very humble and is so convinced that the *pesak ha-*

*mekubbal* is wrong and will be *mevi li-yedei kilkul* (lead to mistakes) if it continues to be followed. In a lot of instances, Rav Moshe felt that way and actually reversed normative practice quite a bit, as did the *Mishnah Berurah*. But to do that, you have to be a humble person steeped in learning and so convinced that the *din* is with you that you cannot allow Halachah to be followed in any other way.

*What qualifies a minhag as a minhag shetut (a foolish practice)?*

The first Mishnah in *Bava Basra* discusses the required width of different types of walls built between neighboring properties and then concludes by saying “*ha-kol ke-minhag ha-medinah*” (everything follows local practice). Tosafos there quotes Rabbeinu Tam as saying that from the fact that the Mishnah had to specify widths of different types of walls and not just say “*ha-kol ke-minhag ha-medinah*,” we see that there are certain minhagim, *minhagei shetus*, that one is not supposed to observe.<sup>xxvii</sup> Similarly, in Rabbeinu Tam's *teshuvah*, quoted by the *Shiltei ha-Gibborim* on the bottom of the *Mordechai* in *Gittin*, he says that the word “minhag” has the same letters as “*Gehinnom*,” showing that sometimes minhagim are ridiculous and lead you to *Gehinnom*. So a *minhag shetus* is any practice which has no *kiyyum* (fulfillment) in Halachah whatsoever.

In order for a minhag to be considered valid, it must be a *minhag vasikin* (a minhag established or approved generations ago by *talmidei chachamim*). That is how the *Magen Avraham* explains the minhag to *klap* (make noise) when you hear Haman's name during the *keri'as ha-megillah*. Even though it interferes with the *megillah* reading, he says, the minhag is apparently a *minhag vasikin* and so we should follow it.<sup>xxviii</sup> On the other hand, the Rambam writes that making a *kinyan suddar* (symbolic act of acquisition) when appointing a *shaliach* (messenger) for *mechiras chamets* (selling of the *chamets*) makes no sense because you do not need a *kinyan* at all. As a result, the Chazon Ish thought it was a *minhag shetus* and never made such a *kinyan*. In every generation, you have to reassess whether the minhagim are proper or improper.

*Is there a concept of minhag ha-makom (local practice) and lo titgodedu (do not create groups with different halakhic practices) in today's Diaspora and Israeli Jewish communities?*

We still have a concept of *minhag ha-*

makom today. There are certainly places where they have long-standing minhagim that must be honored. The question that comes up, though, is how long does the minhag have to have been practiced for it to be considered *minhag ha-makom*? Rav Moshe has a *teshuvah* in which he recommends, like Rabbi Akiva Eiger, that one first recite the *berachah of kores haberis* (Who seals the covenant), drink the wine, and then say “*kayyem es ha-yeled ha-zeh...*” (sustain this child...), even though the common minhag is to wait until the end to drink.<sup>xxix</sup> His son asked him why he was changing the min-

different community, he is subject to that community’s minhagim, unless he intends to return home.

Usually, when a couple gets married, we assume that they become part of the same *tsibbur*. But who enters whose community? It depends. If the husband is a *ba'al teshuvah* (recently became religious) and the wife has a long-standing tradition of observance, we would assume that the husband enters the *reshus* (domain) of the wife. But if they are both observant and each has a strong family tradition, we usually say that the wife enters

## “You should enjoy the learning on an intellectual level, but it should also be done in such a way that it enhances your *yir’as Shamayim* and *shemiras ha-mitsvos*.”

hag, so Rav Moshe responded that every 50 years the practice switches back and forth and there really is no established *minhag ha-makom*. The truth is, though, that this answer is a bit surprising – would Rav Moshe require that a community be settled for a hundred years before it could establish a *minhag ha-makom*? The *pashtus* (simple understanding) is that *minhag ha-makom*, both in a *shul* and in a community, can be established in a couple years. I do not know why Rav Moshe does not think that 50 years is enough.

Regarding *lo sisgodedu*, Rav Ovadiah Yosef thinks that, regarding any halachic issue about which it is well known that there is a difference of opinion, there is no problem of *lo sisgodedu*.<sup>xxx</sup> However, the *pashtus* in the *Mishnah Berurah* is not so. Everyone knows that half of the Jews in the world wear *tefillin* on *Chol ha-Mo'ed* and half do not. Nevertheless, the *Mishnah Berurah* quotes from the *Artos ha-Chayyim* that you should not allow these two groups to *davn* together in the same *shul*; they should *davn* in different rooms.<sup>xxxi</sup> Otherwise, he notes, it looks like there are *shtei Toros* (two Torahs). I think most do not assume like Rav Ovadiah, and they hold that there is an issue of *lo sisgodedu* even nowadays.

*How important is it for an individual to take on the minhagim of his/her spouse? Is it acceptable for a man to take on his wife’s minhagim?*

The *Shulchan Aruch* writes in *Yoreh De'ah* 214, quoting the Ran to *Nedarim* 80b, that a minhag is binding *mi-ta'am neder mide-Rabbanan* (because it is Rabbinically considered a vow). In other words, aside from being bound by any *nidrei ha-yachid* (individual vows) a person makes, he is subject to the *nedarim* of the *tsibbur* (community) as well. But this latter category depends on which *tsibbur* he belongs to. Once a person moves to a

the husband’s *reshus*. Rav Moshe thinks that in such a case the wife does not even need a *hattaras nedarim* (annulment of vows), because she is no longer a member of the *tsibbur* in which she grew up.

How far, though, does that extend? If the husband *davens Nusach Ashkenaz* and the wife *Nusach Sefarad*, or if the husband waits six hours and the wife three hours before eating dairy after eating meat, is that a problem? Or does the rule of taking on the same minhagim only apply to things that they do together – like the minhag of refraining from *gebros* (foods made with *matsah* meal) or *kitniyos* (legumes) on Pesach, which affects the meals they eat together? One might argue that they do not have to share private practices, like which *nusach* they use. At the same time, though, it is a little strange to say that with regard to eating *kitniyos* the wife belongs to one *tsibbur* and for *davening* to another. I would assume that she probably has to join the husband’s *tsibbur* completely and accept all of his minhagim.

The issue of minhagim is very murky and has not been clarified well. Rav Dovidl Karliner, in *She'eilas David*, has a long *kunteres* (exposition) on minhagim. I was once very eager to read it because it is such a major issue today, but afterward I came out unsatisfied; he did not really make anything clearer for me than it was before. Rav Moshe also does not tackle the whole issue systematically.

*As students or community members who do not have the time or ability to fully devote to learning every area of Halakhah in-depth, should we focus on learning Halakhah from its biblical and Talmudic sources and study how it developed into modern practice or focus on practical Halakhah le-ma'aseh?*

A person should first learn *Halachah le-ma'aseh* to know how to keep the *mitsvos* properly – *ha-ma'aseh asher ya'asun*<sup>xxxii</sup> – and

only then focus on Gemaras like *Bava Kamma* and *Eruvin* and others which typically are not as relevant for day-to-day practice. In my opinion, learning the *Kitsur Shulchan Aruch* is the best way to get a grasp on *Halachah le-ma'aseh*. Unfortunately, it is a little bit out of style now. Years ago, it was one of the most popular *sefarim* in the Jewish community, especially among *balabatim*, and was reprinted many times over. I think there was a period of time in which it was printed more often than the *Chummas*!

It is important to ensure that the *sefarim* you are using for *Halachah le-ma'aseh* learning are up-to-date. Rav Benny Lau put out a *Kitsur Shulchan Aruch* for modern times with all the *piskei Halachah* that are relevant for Jews today. It is an important resource.

*Is there any one area of halakhic observance that you think could be improved in the YU community? in the broader Modern Orthodox community?*

We believe that learning Torah is supposed to lead to *yir'as Shamayim* because we believe that the Torah is a description of God, a “*mashal ha-Kadmoni*” (a parable for the Ancient One).<sup>xxxiii</sup> Sometimes, boys in Yeshiva enjoy learning because it is fun and an intellectual delight. There is nothing wrong, of course, with enjoying one’s learning – the *Eglei Tal* writes that it is part of the *mitsvah* and even enhances the *mitsvah* if you enjoy the learning. But still, a person should realize that learning is not a game. The Torah is very serious and should not be studied purely as an intellectual pursuit. We have to realize that the Torah is supposed to have an influence on us and change us. We should not make up our minds about Judaism before looking at what it has to say. Rather, we should have a blank mind and let the Torah influence our views and *hashkofos* on issues. I feel that that attitude toward learning is a bit lacking in our yeshivah and should be worked on. You should enjoy the learning on an intellectual level, but it should also be done in such a way that it enhances your *yir'as Shamayim* and *shemiras ha-mitsvos*.

With regard to the rest of the community, the Gemara in *Avodah Zarah* (20b) quotes the *Beraisa* of Rabbi Pinchas ben Ya'ir that Torah learning leads to successive levels of heightened spirituality, even up to *techiyyas hamesim* (the ability to resuscitate the dead). Everything starts with *limmud ha-Torah*. I think we should encourage the broader Modern Orthodox community to try to set aside more time for learning. A person should make sure he goes through the *Kitsur Shulchan Aruch* to learn *Halachah le-ma'aseh* and when he graduates that, he can go on to learn *Chayyei Adam*. I would also suggest that people be *ma'avir sidrah* (go over the weekly Torah portion) every week with *Chummas* and Rashi and make sure to have a *kevi'us* (set time) of learning every day. The Modern Orthodox community is not interested in learning as much as it should be, I feel, and has to work to improve that.

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<sup>i</sup> The Gemara’s language is: “*lo ka'ei inish ada'ateih de-rabbeih ad arbe'in shenin*” (a person cannot understand the opinion of his teacher until the age of forty). See also Rema to *Shulchan Aruch, Yoreh De'ah* 242:31.

<sup>ii</sup> Rema to *ibid.* 242:8.

<sup>iii</sup> *Devarim* 17:10-11.

<sup>iv</sup> Rema to *ibid.* 242:4.

<sup>v</sup> *Avot* 1:6,16.

<sup>vi</sup> *Eruvin* 13b.

<sup>vii</sup> *Tehillim* 25:14.

<sup>viii</sup> *Sotah* 4b, *Nasheedrin* 48b, and *Niddah* 20b.

<sup>ix</sup> *Responsa Avnei Nezer, Yoreh De'ah* 312.

<sup>x</sup> Rashi to *Beitsah* 2b, s.v. “*De-Hetteira adif leih.*”

<sup>xi</sup> E.g. Tosafot to *Gittin* 78b, s.v. “*Im yakhol.*”

<sup>xii</sup> *Kohelet Rabbah* 7:18, *Midrash Zuta to Kohelet* 7:18, and *Yalkut Shim'oni to Kohelet* 976.

<sup>xiii</sup> *Rosh ha-Shanah* 34a.

<sup>xiv</sup> Rashi to *Rut* 1:2, s.v. “*Efratim.*”

<sup>xv</sup> *Bava Batra* 91a.

<sup>xvi</sup> *Mal'akhi* 3:6.

<sup>xvii</sup> *Be-Reshit* 26:18.

<sup>xviii</sup> *Nasheedrin* 43b and Rashi ad loc., s.v. “*Shenayim bi-yemei Moshe.*”

<sup>xix</sup> *Yalkut Shim'oni to Shofetim* 49.

<sup>xx</sup> *Iggerot Moshe, Even ha-Ezer* 1:63,64.

<sup>xxi</sup> *Shulchan Aruch, Yoreh De'ah* 242:10.

<sup>xxii</sup> See Rashi to *Hullin* 6a, s.v. “*Ve-Kibbelu min-naihu,*” who comments that the Tannaitic *gezeirah* rendering *Kutim* as having the halakhic status of non-Jews was only passed in a generation that was able to accept it.

<sup>xxiii</sup> Tosafot to *Menahot* 66a, s.v. “*Zekher le-Mikdash hu.*”

<sup>xxiv</sup> *Shulchan Aruch, Orach Hayyim* 489:8.

<sup>xxv</sup> Tosafot to *Arakhin* 3a, s.v. “*La-Atuyei nashim.*”

<sup>xxvi</sup> *Shulchan Aruch, ibid.* 689:2.

<sup>xxvii</sup> Tosafot to *Bava Batra* 2a, s.v. “*Be-gevil, zeh noten gimel tefahim, etc.,*” use the term “*minhag hedyot*” (lit., a commoner’s practice), not “*minhag shetut,*” but the meaning is the same.

<sup>xxviii</sup> *Magen Avraham to Shulchan Aruch, Orach Hayyim* 690:22.

<sup>xxix</sup> *Iggerot Moshe, Yoreh De'ah* 1:161.

<sup>xxx</sup> *Responsa Yehavveh Da'at* 4:36.

<sup>xxxi</sup> *Mishnah Berurah to Shulchan Aruch, ibid.* 31:8.

<sup>xxxii</sup> *Shemot* 18:20.

<sup>xxxiii</sup> *I Shemuel* 24:13.



## Creativity, Not Formalism:

## Towards a Survey of Rav Yoel Bin-Nun's Halakhic Methodology

BY: Shlomo Zuckier

Rav Yoel Bin-Nun is known as one of the most creative minds of the past generation in the Orthodox world. His most acknowledged accomplishments are in the world of Tanakh, where he has been one of the leading revivers of Orthodox literary Tanakh scholarship in Israel over the last 30 years, presiding over the Tanakh revolution.<sup>i</sup> He has lectured extensively in Talmud, serving as a Rosh Yeshivah at Yeshivat ha-Kibbutz ha-Dati for several years, until his retirement in 2006. He has spent significant time and energy in the realm of Mahashavah (philosophy) as well, recently finishing his dissertation on R. Abraham Isaac ha-Kohen Kook.<sup>ii</sup>

This article, however, will ignore all of those accomplishments and focus on the halakhic output of this *ish eshkolot* (Renaissance man). Over the last couple of years, R. Yoel has published a collection of halakhic works (*Me-Heyyon Oz*<sup>iii</sup>). A different book he recently published also contains some halakhic material,<sup>iv</sup> and he has also lectured on his halakhic opinions, some of which are well known. While this article will present a preliminary thesis of his halakhic methodology and principles, it will not serve as a true critique of the validity of his positions, though it will note cases where he diverges from standard positions.

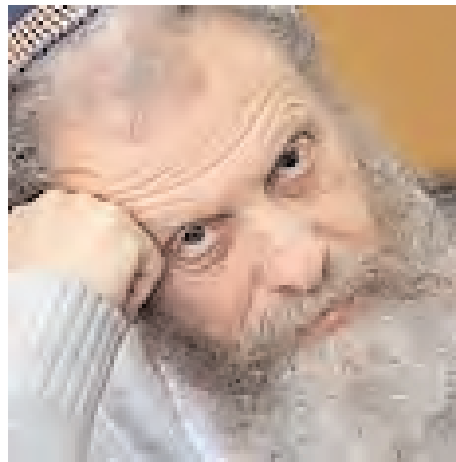
I will note at the outset that this article's purpose is to attempt to outline R. Yoel's approach to *pesak Halakhah* based on principles that are reflected in his halakhic positions. Due to limitations of space and the author's limited assertiveness, it will not attempt to locate where this position falls among the gamut of approaches to Halakhah (though follow-up articles on the matter are welcome).

R. Yoel is a creative and maverick thinker, in all areas of his Jewish oeuvre, including his halakhic *pesakim*. One notices this approach immediately upon meeting R. Yoel, as he usually is found wearing his *tsitsit* on his suit jacket, an extremely rare halakhic practice.<sup>v</sup> The sources that he utilizes as the bases for his *pesak* are the traditional halakhic works of the *Shulhan Arukh* and its commentaries, as they follow the track laid out for them by the Gemara and Rishonim. However, there is a certain distinctive nature in the methodology of how he reaches his decisions, which this article will attempt to spell out.

An important preliminary note to make is that R. Yoel's positions are neither consistently *meikel* (lenient) nor *mahamir* (stringent), but are certainly often distinct from the norm. If he feels that a certain position is right, he will argue powerfully for it, regardless of how it squares with mainstream contemporary practice.

Probably the most important and basic

principle of R. Yoel's halakhic methodology is the idea of returning to the original sources and principles and ensuring that they are being followed in current-day reality,<sup>vi</sup> as opposed to certain other approaches that favor traditional interpretation and development. As explained above, this can make his opinion fall out on the *meikel* or the *mahamir* side of things, and



sometimes on both sides within the same issue. A particularly good representative case of this ideology is R. Yoel's opinion concerning the prohibition (for some) against eating *kitniyot* (legumes) on Pesah. The original prohibition was on legumes, such as beans, and on rice, with the idea that they resembled *hamets* and might present problems if *hamets* and *kitniyot* were confused. R. Yoel's approach to this law, which he maintains for the general public as well,<sup>vii</sup> diverges in two major practical senses from the standard *pesak Halakhah*. R. Yoel's first contravention of mainstream current practice is his claim that processed legumes (e.g. corn oil) are permissible. He argues this based on the fact that the original reason for the law does not apply since such processed foods cannot possibly be mistaken for *hamets*, and also that the formal Rabbinic institution against such foods was only said about them in their solid forms, not their processed versions.<sup>viii</sup> This is obviously a significant *kulla* (leniency), and it makes R. Yoel's following point more surprising. His other argument is that, since the original reason of the *takkanah* (decree) is to prevent people from confusing *hamets* with non-*hamets*, one should refrain from consuming cakes and the like which closely resemble *hamets*, even if they do not contain rice or legumes. (These foods have a major market, both in Israel and in *huts la-arets*.) In other words, R. Yoel ignores the formal categories usually made of *kitniyot* and non-*kitniyot* foods, focusing instead on the practical categories used when the law was instituted in the

first place: food that can be confused with *hamets* and food that cannot be confused with *hamets* – and applying it to today's reality. Thus, the original intention behind the law is preferred to its practical application.<sup>ix</sup>

This reliance on the original reason for the law and not the technical details that developed over time, especially when they do not fit the original purpose, is part of a broader idea in R. Yoel's halakhic philosophy that values making Halakhah applicable and realistic to our generation. One particularly striking application of this philosophy is how he views the law of *sofzeman kerit'at Shema* (the latest time to recite the *Shema*). The Mishnah says that those who are obligated in reading *Shema* daily can do so until the third hour of the day because that is when princes, the latest risers, awake.<sup>x</sup> R. Yoel claims (it is unclear if he is claiming what the halakhah should be or what it is and whether he advises this in practice) that in our day, when it is standard for people to awake even later, the time period for saying *Shema* should be later. He sees the law as not mandating specifically the third hour, but as representing the realistic time when people tend to awake.

Another significant example of this approach appears in R. Yoel's suggested valuation of a *ketubbah* agreement. In an article he wrote on this topic,<sup>xi</sup> he presents several different monetary sums at which the *ketubbah* is generally valued. They are based on the value of silver in our time and compared to the Gemara's value of *ketubbah* (200 *zuz* plus *tosefet ketubbah* [additional and technically optional though universally given *ketubbah* money]), and are mostly in the range of 2,500 shekel. He rejects these positions (favoring the last, though) on the basis of several conceptual errors he claims were made in calculating these

**“R. Yoel's positions are neither consistently *meikel* nor *mahamir*, but are certainly often distinct from the norm. If he feels that a certain position is right, he will argue powerfully for it, regardless of how it squares with mainstream contemporary practice.”**

values. His primary argument is that these sums are not sufficient to accomplish the purpose of *ketubbah*, which is to provide financial stability for the *kallah* (bride) in the event of divorce or her husband's death, and he therefore proposes a vastly different model. R. Yoel connects the 200 *zuz* necessary for a *ketubbah* to the Mishnah in *Pe'ah* (8:8) that defines 200 *zuz* as the average yearly income, and he calculates, including *tosefet* and *nedunya* (stan-

dard dowry), that a standard contemporary *ketubbah* should be about 50,000 shekel today. In other words, he ignores the formalistic method of calculating and instead relies on the principle of supplying the *kallah* with a livelihood in the event of divorce or her husband's death. Interestingly, in a response to this piece, R. Gideon Binyamin argues:

“It is important to remember in general that even though this or that *takkanah* of Hazal has a specific reason, once Hazal instituted and defined (*higdiru*) it, we do not any longer consider the reason of the institution, but we relate to it as it was defined by Hazal.”<sup>xii</sup>

This comment fairly represents the consensus view of most *posekim*, but it is on this very principle that R. Yoel argues. He does not see the halakhic system as based on Hazal-mandated details, but rather on the principles that motivated them, and thus he feels comfortable not following the standard practice and going instead in directions of his own.

In keeping with his view that the halakhic system has to be relevant to any time, R. Yoel not only has different halakhic positions on classic halakhic issues (such as the ones discussed above), but at times he also creates novel halakhic categories.

One example of R. Yoel's preference for reality-based and non-formalistic understandings of halakhot manifests itself in his article, “The Obligation of *Aliyyah* to Erets Yisrael and the Prohibition against Leaving *Erets Yisrael* in Our Time.”<sup>xiii</sup> While many who approach this case argue for a formal rule – that one must live within certain borders formally recognized as Erets Yisrael from some period of previous conquest or historical return, or that one is prohibited from leaving Israel under any circumstance, R. Yoel takes a decidedly real-world

stance. Based on Rambam's formulation,<sup>xiv</sup> he considers the Land of Israel (at least for these purposes) to be land under “Jewish sovereignty within the borders of historical Erets Yisrael.”<sup>xv</sup> This formulation is reflective of the current reality because, at least in our time, it only includes the state of Israel and is not based upon conquests from thousands of years ago.<sup>xvi</sup> R. Yoel takes this realistic approach a step further and says that exceptions can be made in multi-

ple circumstances, given that the law of leaving Erets Yisrael is not a formalistic one. For R. Yoel, the most important thing is that one hold an Israeli passport and leaves Israel as a tourist,<sup>xvii</sup> demonstrating identification with the Jewish state, and, if that is the case, then he may travel wherever he wishes for whatever (temporary) period of time. Aside from the shocking application of passports as a halakhic category, this opinion is significant because it fits with the reality of the time. The law against leaving Israel is not technical, but it is rather one of identity, that one should identify oneself with the Jewish state<sup>xviii</sup> and not ignore the charge of being a citizen of the Jewish people and its nation, Israel. In this regard, R. Yoel connects this fact with the point that some

“While calling for a pragmatic Halakhah that people will be able to observe, R. Yoel simultaneously strives, as much as possible, to preserve the values and spirit of the original law, despite the constraints against fulfilling it in its classical sense.”

characters in Tanakh are punished and/or reprimanded while others are unscathed in their different departures from Erets Yisrael, based on whether they viewed themselves as citizens of Israel or not.<sup>xix</sup> This reflects R. Yoel’s affinity for using Tanakh in the context of Halakhah, which is a significant factor in his *pesak*, but it is one that must be further explored.

In concert with the above discussion, a clear principle that is reflected in R. Yoel’s work, as in the works of many Israeli *posekim*, is the goal of making Halakhah practical for contemporary society. For instance, *posekim* such as R. Shlomo Goren and R. Shaul Yisraeli attempted to establish a pragmatic halakhic system for a newly-independent Jewish society in Israel where no such society with its own halakhic system had existed for hundreds of years. However, R. Yoel, while party to this approach, has by no means limited himself in adopting this accommodationist approach. While calling for a pragmatic Halakhah that people will be able to observe, R. Yoel simultaneously strives, as much as possible, to preserve the values and spirit of the original law, despite the constraints against fulfilling it in its classical sense. His dual goal concerning Halakhah in general is apparent in some of his opinions on the nexus between public policy and Halakhah. For example, he advances leaving movie theatres open on Shabbat in Israel, not only because alternate approaches would never pass in the Knesset and Israeli society as a whole, but also because he feels that the spirit of Shabbat is not impinged by having *hillonim* (secular Israelis) watch movies, and, in fact, such a phenomenon could even promote an ex-

perience of relaxation that is in the spirit of Shabbat, despite the fact that it might technically oppose Halakhah. For similar reasons, he supports (after using the *hetter mekhirah* [a halakhic loophole involving selling the land of Israel so that *shemittah* laws do not apply] to circumvent technical halakhic problems during the *shemittah* year) a reworked *shemittah* where, instead of having one year in which all farmers do not work their fields, each farmer, as well as every worker, takes his own year of sabbatical from work for the purposes of some spiritual endeavor every seven years. This not only allows the Israeli economy to function without shutting down every seven years (and gets around technical problems with *hetter mekhirah*), but it also provides each farmer

with an experience similar to that of *shemittah*. Thus, R. Yoel both follows the standard Israeli approach of using *ha’aramot* (circumvention through legal fictions) to make Halakhah relevant to contemporary Israeli society, while at the same time preserving the spirit of the law as much as possible under mitigating circumstances.

Another principle inherent in R. Yoel’s approach is that of halakhic self-determination. One area where this applies is to minority subgroups within *Kelal Yisrael*. R. Yoel, though he does have specific opinions about women’s issues (which are controversial),<sup>xx</sup> has stated that he feels that women’s halakhic issues should be decided by women. I believe this attitude is related to a story he likes to tell about the first time he got *tsitsit* custom-made for his suit, which is colored. He relates that he was asked whether he would like to have the non-*tekhelet* strings be white, like the opinion of Rema,<sup>xxi</sup> or the color of his suit, as Rambam rules.<sup>xxii</sup> (There is no accepted minhag on the issue because wearing *tsitsit* on clothes is a rare practice.) Upon telling this story (he chose white), he marveled at the fact that this was a situation where he could choose what he wanted and the halakhah was not dictated for him by earlier decisors and traditions, as is usually the case. Thus, R. Yoel, both for women and for halakhic situations with no clear mandate, reveals a certain preference for situations where one has the leeway to choose his or her own halakhic observance (within the traditional halakhic system), or halakhic self-determination.

This preliminary piece has explored some of R. Yoel’s views on Halakhah, most signifi-

cantly his focus on the original reasons for the laws and their applications in our society, and not on some formalistic system of Halakhah. This principle can be applied in different areas of Halakhah, and the manifestations of this principle can be intriguing, to say the least. At times, he creates new halakhic categories (carrying a passport) as a result of this approach. [He also has an affinity for self-determination of halakhic rules, when applicable, and also returns to Tanakh texts in the deciding of Halakhah.] Though this anti-formalistic understanding of Halakhah does not have too many adherents and it is, to some degree, a departure from standard *pesak*, R. Yoel’s presentation of the halakhic system definitely raises the profile of original reasons within the halakhic process, raising questions for us about how Halakhah truly works.

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<sup>i</sup> This revolution saw the literary-theological study of Bible become mainstream and significant at many *yeshivot hesder*, including and especially Yeshivat Har Etzion, which started a school for educators, Machon Herzog, with a certain emphasis on Bible. R. Yoel was the original editor of *Megadim*, a Tanakh journal associated with the school, wrote many articles for that journal, published the books *Pirkei ha-Avot* and *Erets ha-Moriyyah* (partially from his father’s writings), and has lectured widely on Tanakh.

<sup>ii</sup> This is an entirely separate and large discussion in its own right, but R. Yoel (and possibly his *talmid-haver* R. Yaaqov Medan, as well) exhibits several tendencies that make him similar to a prophet (minus the claims to individual audiences with God). His Torah study focuses more on Tanakh and the *nevi'im* than most rabbis, he feels it is his position to preach to the masses on sociological and/or political issues, and, most importantly, he speaks with a sense of purpose and certainty that reflects someone who feels he has a religious, nay divine, calling.

<sup>iii</sup> R. Yoel Bin-Nun, *Me-Hevyon Oz: Pirkei Halakhah u-Musar* (Ein Tsurim: Yeshivat ha-Kibbutz ha-Dati, 2006).

<sup>iv</sup> Idem, *Nes Kibbutz Galuyot: Mi-Yetsi'at Mitsrayim ad Medinat Yisrael: Halakhot u-Ma'amarim le-Pesah, Mikra'ah ye-Shir le-Yom ha-Atsma'ut* (Shonim Press, 2008), which interestingly combines articles about Pesah and Yom ha-Atsma'ut, and includes some halakhic articles regarding Pesah.

<sup>v</sup> He believes that wearing *tsitsit* on an item of clothing one would not wear otherwise may very well not count for fulfilling the *mitsvah*.

<sup>vi</sup> R. Yoel discusses this theme in his article in *Me-Hevyon Oz* that raises the profile of the realistic approach at the expense of the nominalistic one, especially in cases of *bein adam la-haveiro*. See “Bakkashat ha-Emet Mul For-

malizm Hilkhati,” in *Me-Hevyon Oz*, pp. 6-18.

<sup>vii</sup> See his article “Disallow Foods Similar to *Hamets*, Allow *Kitniyot* Derivatives,” YNet, 4/14/09 (Hebrew). Available at: <http://www.ynet.co.il/articles/0,7340,L-3701377,00.html>.

<sup>viii</sup> How to reconcile this point, which appears formalistic and in opposition to R. Yoel’s approach, though it does serve his goal, is a complicated but no doubt important endeavor. It is possible that he is shrouding his approach in more mainstream terms in order to garner support, or that he does agree in some degree of halakhic formalism.

<sup>ix</sup> This example is admittedly easier to work with, because we are talking about a rabbinic decree, but it is still indicative of a certain attitude followed by R. Yoel but not by other *posekim*.

<sup>x</sup> *Berakhot* 9b.

<sup>xi</sup> R. Yoel Bin-Nun, “Hishuv Sekhum ha-Ke-tubbah be-Yameinu,” originally printed in *Tsohar: Ketav Et Torani* 4, reprinted in *Me-Hevyon Oz*, pp. 73-75.

<sup>xii</sup> Translation mine. This article appeared in *Tsohar: Ketav Et Torani* 5 and in *Me-Hevyon Oz*, pp. 76-7.

<sup>xiii</sup> *Me-Hevyon Oz*, pp. 37-50, originally published in *Or Hamizrah* 49:1-2.

<sup>xiv</sup> Rambam, *Mishneh Torah, Hilkhot Terumot* 1:2.

<sup>xv</sup> “The Obligation of *Aliyyah* to Erets Yisrael,” p. 38.

<sup>xvi</sup> Aside from reflecting his pragmatic leanings, this position also connects strongly to his understanding that the state of Israel has religious value, which is not a view accepted throughout the halakhic community.

<sup>xvii</sup> “The Obligation of *Aliyyah* to Erets Yisrael,” pp. 44-5.

<sup>xviii</sup> This is in the event that a Jewish state exists. R. Yoel addresses differences in the law when there is no Jewish state.

<sup>xix</sup> “The Obligation of *Aliyyah* to Erets Yisrael,” p. 37.

<sup>xx</sup> In a stated but non-implemented position championed by feminists, R. Yoel claims that single women no longer living in their father’s house have the status of *benot horin* and can accept *mitsvot* upon themselves as binding. If ten women have done this, then they can recite *devarim she-bi-kedushah*. Notably, R. Yoel does not allow a *minyana* (quorum) of men with women, for reasons of *tzeni'ut* (modesty).

<sup>xxi</sup> Rema to *Shulhan Arukh, Hilkhot Tsitsit* 9:5.

<sup>xxii</sup> Rambam, *Mishneh Torah, Hilkhot Tsitsit* 2:8.



# General Jewish Thought

## An Interview with Chief Rabbi Lord Jonathan Sacks

BY: Shlomo Zuckier

**A**s Chief Rabbi of the United Hebrew Congregations of the Commonwealth, how is your role different from that of an ordinary rabbi?

It means that I have to look after the welfare of all the congregations under my aegis in Britain, and it means that I have to be there for other rabbis. And, of course, to some extent throughout the Commonwealth in general there are *she'eilos* that come to our *beis din*. As such, I try to look after the pastoral concerns of our rabbis as they would look after those of their congregations. So it is a more global, policy-shaping role, and it takes me a little way away from direct encounter with individual congregants, which is the kind of work that ordinary rabbis do and is at least as important.

Could you tell us more about how you became the person you are today? Who are some of your role models?

I had the enormous privilege, as a 20-year-old student in 1968, of having two life-changing meetings, one with the Lubavitcher Rebbe, of blessed memory, and one with Rabbi Joseph B. Soloveitchik, of blessed memory. The Lubavitcher Rebbe challenged me to be a leader, and Rav Soloveitchik challenged me to be a thinker. Those two moments, long, long ago, shaped my life.

What do you think are the largest issues facing Diaspora Jewry today? Do you envision any possible solutions?

I think it is fairly clear that assimilation and anti-Semitism are the key issues. We have now reached the point at which people understand that education in Jewish day schools is the only effective way of combating assimilation, and those sections of the community that have adopted that belief have, by and large, cut intermarriage by a large margin.

Anti-Semitism remains a big problem in Europe, though, and we must have allies in combating it. Jews cannot fight anti-Semitism alone; the victim cannot cure the crime, the hated cannot cure the hate. So we have worked on this problem in Britain, and succeeded at being the first country where the fight against anti-Semitism is led by non-Jews.

As Jews living in a secular world, how should we balance or harmonize our religious and secular values?

I prefer integration to compartmentalization. I see a huge number of Jewish doctors fighting disease, economists fighting poverty,

lawyers fighting injustice. I wrote a book called *To Heal a Fractured World* because a Jewish lawyer once asked me, "I know perfectly well how to serve God at home or in the *beit midrash*, but how do I serve God for the 12 or 16 hours a day when I'm being a



lawyer?" So I wrote that book for him, and I hope it answered at least some parts, if not all, of his question. But I do believe that we need to bring our Jewishness into everything we do, whatever we do. I once met a Jewish bus conductor who took it upon himself to cheer up all his passengers. This was a beautiful *ruchani* (spiritual) act, and it was clear that he had done it throughout his life – and this man was already in his 80s! He was larger than life. He had found a way to serve Hashem as a bus conductor. And every role any of us has can be turned into a mode of serving Hashem.

While living in the Diaspora, how can we best support our brethren in Israel?

Through constant *hasbarah* (public diplomacy). Many people do not understand the existential threat that Israelis live with every single day that began with the moment of Israel's birth and that has continued to intensify ever since. We have to explain that Israel is the last great bastion of hope in the Middle East for democracy, with both an independent judiciary and a free press – in essence, a liberal democracy. If we lose Israel and that last best hope, God forbid, the Middle East will be impoverished, the world will be impoverished; freedom will have suffered one of its greatest

defeats ever. That is why I ask not only pro-Israelis to support Israel, but pro-Palestinians and those who are pro-Arab to support Israel as well, because Israel really has shown how a small country can achieve greatness in an area where a full-fledged democracy and open society had never been achieved before. I have defined Judaism (in my latest book, *Future Tense*) as "the voice of hope in the conversation of humankind," and Israel is the home of that hope. It has significance far beyond the Jewish people as a testimony of the power of faith in life after the Holocaust, and we must do all we can to defend it against its enemies, who are, in truth, enemies of freedom itself.

How should fully observant Jews relate to their nominally Orthodox but at times heterodox (and/or heteroprax) brethren?

With total friendship. Stand firm by your principles and do not compromise one syllable of Halachah, but go and make friends with all the people who do not believe as you believe. Friendship can achieve much that intellectual argument cannot.

Do you think that we should be involved as individuals or as communities in interfaith dialogue?

I have written about this in a book of mine called *The Home We Build Together*, and there I contrast, using a famous idea of R. Soloveitchik's, *zts"l*, the ideas of being "face-to-face" and "side-by-side." I call dialogue an interaction that is "face-to-face" but characterize it as being not at the very heart of the problem. It is, by its nature, an elite undertaking, conducted by people at the mountaintop of their respective faiths. It does not always filter down to the grassroots, where the problems lie. Of course, I do not criticize dialogue – it has,

community relations, what we call in halachic terms "*darchei shalom*" (ways of peace). In that vein, I played a part in encouraging Jews and Muslims in Britain to fight anti-Semitism and Islamophobia together. Both problems affect both of us, so we should fight them together, and that is what I call "side-by-side." It does not involve sharing our theologies; it simply involves recognizing that we both have people out there who do not like us very much. And that distinction between open religious dialogue and communal cooperation is made by Rav Soloveitchik both in his essay "Confrontation" and in *The Lonely Man of Faith*.

You recently received the inaugural Norman Lamm Prize recognizing your scholarship and commitment to Rabbi Dr. Lamm's ideals. Could you tell us what you think R. Lamm's greatest achievements were in his over 50 years of leadership in the American Jewish community?

First, he saved Yeshiva from closure, from one of its most severe financial crises. Second, he built up an immense educational institution, and those elements of it that I have seen in my week's stay here have been truly impressive. There is no other institution like Yeshiva University in the Jewish world. It is an astonishing achievement, and it owes an enormous amount to Rabbi Lamm. And third, he has shown tremendous courage and tenacity in carrying Torah u-Madda forward without any deviation whatsoever. At times when it was quite difficult to do so, he had the *koach* (power) to build and the *gevurah* (strength) to stay true to his principles.

What would you say should be the intellectual goals of a committed Orthodox college student?

**“We need to bring our Jewishness into everything we do, whatever we do.”**

for example, transformed the relationship between Jews and the Catholic Church. But it is not, in and of itself, sufficient. Liberal voices – the voices that tend to be the most prominent in dialogue – do not always succeed, especially in an age like ours where the extremists tend to prevail in conflict zones.

So I prefer the "side-by-side" approach of

Well, one should learn at least as much about *Yahadus* as about one's specialization, and there should be integration between the two. I call them, metaphorically, the right and left hemispheres of the brain. So, to put it more generally, science is a left-brain activity, religion a right-brained one. Science takes things apart to see how they work. Religion puts

things together to see what they mean. That is a fundamental distinction which I hope to write more about in the near future.

In general, we must be Jewishly literate. We have to understand the multi-faceted nature of the canonical texts of our tradition. We have to be able to think as Jews – halachically, ag-gadically, and with a sense of Jewish history, philosophy, poetry and mysticism. The rich-

“The richness of our heritage is beyond measure. It played a deeply significant part in the unfolding of Western civilization, and it still speaks to the dilemmas of the 21<sup>st</sup> century with undiminished power.”

ness of our heritage is beyond measure. It played a deeply significant part in the unfolding of Western civilization, and it still speaks to the dilemmas of the 21<sup>st</sup> century with undiminished power.

Ideally, every Jew, in whatever sphere of life he or she chooses to have an influence, should be an ambassador for Judaism and the Jewish people, and that means having internalized the four-thousand-year conversation between Heaven and Earth that is, in the deepest sense, our *Torah she-bi-Kesav* and *Torah she-be-Al Peh*, our written and oral heritages.

*Do you have any other advice for the students of Yeshiva University?*

Learn as much as you can while you are here, and when you leave, never stop learning. The most important thing is to learn how to learn and to discover the passion for doing so. That will bring blessing to your life and blessing to the lives of others. So enjoy this unique and totally wonderful institution. I feel very envious of American Jewry for having it in a way that in Britain, because of the relatively small size of the Jewish community, we never could.

*Rabbi Dr. Lord Jonathan Sacks is the Chief Rabbi of the United Hebrew Congregations of the Commonwealth, a position he has held since 1991. He was the recent recipient of the Norman Lamm Prize, warranted by his “lifetime of dedication to the cause of Torah u-Madda in all of its facets,” and lectured in a number of settings throughout his recent stay at Yeshiva University.*

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<sup>i</sup> Rabbi Dr. Lord Jonathan Sacks, *To Heal a Fractured World: The Ethics of Responsibility* (New York: Schocken Books, 2005).

<sup>ii</sup> Idem, *Future Tense* (New York: Schocken Books, 2009).

<sup>iii</sup> Idem, *The Home We Build Together: Recreating Society* (New York; London: Continuum, 2007). Chapter 12 is entitled “Face-to-Face, Side-by-Side.”

<sup>iv</sup> Rabbi Joseph B. Soloveitchik, “Confrontation,” *Tradition: A Journal of Orthodox Thought* 6,2 (1964): 5-29. Available at: <http://www.traditiononline.org/news/originals/Volume%206/No.%202/Confrontation.pdf>.

<sup>v</sup> *The Lonely Man of Faith*, by Rabbi Joseph B. Soloveitchik, first appeared in *Tradition: A Journal of Orthodox Thought* 7,2 (1965): 5-67, and later as a book, in both 1992 and 2006 (Doubleday). Available at: <http://www.traditiononline.org/news/article.cfm?id=105067>.

## A Yid iz Geglichn tzu a Seyfer Toyre

BY: Rabbi Joseph B. Soloveitchik

*Translator’s Note: The following is a translation from the Yiddish of the sixth section of R. Soloveitchik’s yortzayt shi’ur entitled “A Yid iz Geglichn tzu a Seyfer Toyre” – “A Jew is Compared to a Torah Scroll.” (Previous sections appeared in prior issues of this paper.) Dr. Hillel Zeidman transcribed and published the shi’ur, with an introduction, in R. Elchanan Asher Adler (ed.), Beit Yosef Shaul, vol. 4 (New York: Rabbi Isaac Elchanan Theological Seminary, 1994), pp. 17-67. A Hebrew translation by R. Shalom Carmy appeared in the same volume (pp. 68-103).*

*The present translation – the first rendition of this shi’ur into English – was prepared by Shaul Seidler-Feller, utilizing Dr. Zeidman’s original Yiddish transcription and R. Carmy’s helpful Hebrew equivalent. Thanks go to R. Elchanan Adler and R. Jacob J. Schacter for their assistance in refining and editing this work.*

### Section VI

Generally, the Master of the Universe requires of us, small people, only modesty – a little control and self-discipline in eating and drinking, in sexual life, and so on. From the leaders of the nation, however, the Master of the Universe strongly de-

“You yourself, Moshe, can have anything you want, [but] you will not be able to pass those gifts on to your children. Do not approach here! You will not establish any dynasties – neither a dynasty of priesthood, nor a dynasty of kingship.”

manded [that] the processing (*ibbud*) of the hide on the flesh side [be] of the highest level.<sup>i</sup>

We all know of Avraham’s “And he bound,”<sup>ii</sup> but we are completely unaware of the fact that Moshe also went through a binding. Moshe’s binding was, perhaps, more terrifying and heroic than Avraham’s. When Avraham brought Yitshak as a sacrifice, the angel ultimately called out, “Do not send your hand against the lad and do nothing to him,”<sup>iii</sup> and the two of them turned back from *Har ha-Moriyyah* with great joy. Such a kindness did not happen to Moshe, [though]. The Master of the Universe demanded and then took his sacrifice. Why? [He did so] because with regard to the Master of All Prophets [Moshe], the Master of the Universe required *ibbud* of the hide on the flesh side on such a scale as He had not required of any other person.

On the verse[s], “God called out to him from the bush and said, ‘Moshe, Moshe,’ and he responded, ‘Here I am.’ He said, ‘Remove

your shoes from your feet because the place upon which you stand is holy ground,”<sup>iv</sup> the Midrash quotes a striking conversation which took place at that point between the Master of the Universe and Moshe:

“He [Moshe] said, ‘Here I am, ready for priesthood and for kingship.’ Moshe wanted priests and kings to descend from him. But the Holy One Who is Blessed told him, ‘Do not approach here [*halom*],’ in other words, ‘You will not have any children who will offer sacrifices as priests, since the priesthood is already prepared for your brother, Aharon.’ ‘*Halom*’ [also] means ‘kingship.’ The Holy One Who is Blessed told him, ‘The kingship is already set aside for David.’ Nevertheless, Moshe merited both of them: priesthood, since he served [in the Mishkan] during the Seven Days of Initiation, [and] kingship, as it says, ‘He [Moshe] was a king over Yeshurun.’”<sup>v</sup>

Let us properly understand the Midrash. Moshe requested of the Master of the Universe two things: first, priesthood and kingship for himself; second, priesthood and kingship for his descendants. God fulfilled the first request and bestowed upon him both the Crown of Priesthood and the Crown of Kingship, as the Midrash says: “Nevertheless, Moshe merited both of them.” [However,] God turned

down the second request, that the priesthood and kingship pass by way of inheritance to his descendants: “You yourself, Moshe, can have anything you want, [but] you will not be able to pass those gifts on to your children. Do not approach here! You will not establish any dynasties – neither a dynasty of priesthood, nor a dynasty of kingship.”

### Moshe’s Binding

Let us, nonetheless, ask a simple question: Was Moshe only incapable of transferring to his children the priesthood and kingship, or could he not bestow upon them anything which he possessed? Did Moshe as a father leave behind children upon whom he had lain his hands and said with pride, “These will continue my work; these will carry on the Masorah, forge the Chain of Tradition; these will take my place and become leaders of the community,” like Ya’akov said: “And Ya’akov commanded his children”<sup>vii</sup>? No! Not only was the right of



passing on the priesthood and kingship to his sons denied him, but even the simple privilege of a normal father to leave an ethical will (*tsavva'ah*), to die on a bed surrounded by his children, was taken away from him.

Moshe died lonely and alone on Har ha-Avarim, and before his death he did not lay his hands upon Gershom's or Eliezer's head but instead on Yehoshua bin Nun's. His splendor

**“Moshe’s Torah scroll must be transmitted as an inheritance to everyone uniformly [so that] no one person may say that he is Moshe’s heir. Not only is the Torah treated like a wilderness, ownerless for everyone [to claim for himself], as Hazal interpreted [based] on the verse ‘And from a wilderness, a gift,’ but so is the one who accepted the Torah treated like a wilderness, as everyone’s possession.”**

was made to emanate [*ne'etsal*] onto a foreigner, Yehoshua, and not onto his offspring.

Moshe's fate was [actually] even more tragic, [though]. The sons of Moshe are not even recorded in the Jewish Book of Genealogy [*Sefer ha-Yohasin*]. Moshe counted the Jews twice and also calculated [the number of members in] his tribe, the Children of Levi, [yet] no one dwells upon the silent tragedy which envelops the verses that tell of the calculation of the Children of Levi. The Torah begins: “These are the descendants of Aharon and Moshe on the day Hashem spoke to Moshe on Har Sinai.”<sup>viii</sup> At first glance, the Torah should, obviously, [continue on to] mention both Moshe's descendants, his children, and Aharon's descendants, his children. However, the verses go on to forget Moshe completely and concentrate on Aharon: “And these are the names of the children of Aharon: the firstborn Nadav, and Avihu, Elazar, and Itamar”<sup>ix</sup>! Where are the children of Moshe? The Torah is silent. Where are the descendants of Moshe? The Torah does not mention them. Moshe did not merit the normal pleasure to which every human being has a right: to see himself reborn in his child[ren], to live again through [them]. [He did not merit] the great joy of being able to feel that not everything withers away with death, even in this world – that something, his offspring, would remain.

Moshe had two sons; he certainly loved them, exactly as Avraham had loved Yitshak. The Creator of the World commanded him to give them away, to sacrifice them on the altar, but no angel cried out to Moshe: “Do not send your hand against the lads and do nothing to them.” The slaughtering knife mercilessly severed the bond between Moshe and Gershom and Eliezer. Instead of “Gershom ben Moshe,” Tanakh uses a new form [in referring to him], “Gershom ben Menasheh.”<sup>x</sup>

The feeling soul (*nefesh ha-margishah*) on Moshe's flesh side had to undergo an *ibbud*-process with respect to the most elevated and best part of human existence – continuity through one's children.

Why? Because the one who accepted the Torah, the Teacher of *Kelal Yisrael*, could not be bound to one family [alone]. He is the father

of all of Israel; all Jews must have an equal share in him. No one person may relate to him more than the next. Moshe's Torah scroll must be transmitted as an inheritance to everyone uniformly [so that] no one person may say that he is Moshe's heir. Not only is the Torah treated like a wilderness, ownerless for everyone [to claim for himself], as Hazal interpreted [based] on the verse “And from a wilderness,

a gift,”<sup>xi</sup> but so is the one who accepted the Torah treated like a wilderness, as everyone's possession.<sup>xii</sup>

“Do not approach here” – Moshe, the pleasure of children is not for you. “Remove your shoes from your feet” – dispense with your private interests, your personal human necessities. “Because the place upon which you stand is holy ground” – for your place in Jewish history is full of pure sanctity. Perforce, you should not constrict yourself to the private domain of family life.

The highest aspiration of the Men of Flesh (*Benei Basar*) – the loveliest [form of] pleasure seeking, [namely] being happy through one's children – Moshe sacrificed. “Do not approach here...”

**“Moshe did not merit the normal pleasure to which every human being has a right: to see himself reborn in his child[ren], to live again through [them]. [He did not merit] the great joy of being able to feel that not everything withers away with death, even in this world – that something, his offspring, would remain.”**

### The Generation of the Flood and the Generation of the Dispersion

The *ibbud* of the hide on the hair side, the *kelaf*, is meant to mend another sin, callousness (*rish'ut*). This sin is symbolically represented by the Generation of the Dispersion. While the *Benei Basar* possess a spark of the Generation of the Flood, the Wicked of the World (*Rish'ei Arets*) have within them a glimmer of the Generation of the Dispersion.

Of what does the sin of the *Rish'ei Arets* consist? Of giving in to the voice of hot blood [and granting one's body] the desires of the flesh, the raw cravings of the brazen animal within human beings? No! Who are the *Rish'ei Arets*? How did the Generation of the Dispersion sin? Through pleasures, promiscuity, drunkenness, and self-gratification? No! The *Rish'ei Arets* of the Generation of the Dispersion were the exact opposites of the *Benei*

*Basar* of the Generation of the Flood, who were guided by the slogan “Whomsoever they chose.”<sup>xiii</sup> In the Generation of the Dispersion, people controlled themselves with an iron discipline, an inflexible order. The Generation of the Flood had no ideology; all it sought was to enjoy life in the spirit of “Eat and drink, for tomorrow we die.”<sup>xiv</sup> The Generation of the Dispersion, [however,] did have an idolatrous ideology, an atheistic, brazen deity: “They said, ‘Come, let us build a city and a tower with its head in the heavens, and let us make a name for ourselves, lest we be scattered over the face of the earth.’”<sup>xv</sup> We must alter the world order; we must institute a new social system. We must control the cosmos and annihilate the Kingdom of Heaven.

In order to bring this very ideology to fruition, they lorded over and enslaved everyone, commanding each person what to do and how to live, destroying families, shattering individual freedom, and rendering everyone worthless. “The entire earth was of one language and of one speech.”<sup>xvi</sup> They assessed the worth of a man not by the measure of his spiritual esteem, but rather by the number of bricks he could carry up to the heights of the Tower. “The entire earth was of one language and of one speech.”

The *Rish'ei Arets*, the people of the Generation of the Dispersion, the Mao Tse-tungs, or the Khrushchevs – in contrast to the people of the Generation of the Flood – displayed, and still exhibit today [in 1959], a superhuman power of self-discipline in the ability to control the flesh. They can sacrifice everything if such is desired by their idolatry.

Their sin is not on the flesh side, but

in its own hair and ceases to feel the hair of the next person; when kindness disappears from the world; and when the individual thinks only of himself or of an idolatry which he serves. The *Benei Basar* sin mostly against God (*bein adam la-Makom*), [while] the *Rish'ei Arets* commit interpersonal sins (*bein adam la-havero*).

*Rabbi Joseph B. Soloveitchik (1903-1993), z"l, was Rosh HaYeshiva at YU/RIETS, was active in the Boston Jewish community, and is widely recognized as one of the leading Jewish thinkers of the 20<sup>th</sup> century.*

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<sup>i</sup> See the previous installment of this *derashah* in *Kol Hamevaser* 3,6 (March 2010): 21-22 for R. Soloveitchik's development of the processing of parchment in preparation for *tefillin* and *mezuzot* as a metaphor for the refinement of the human being through Torah education and training. There, he draws the distinction between processing the “flesh side” of a hide, i.e. the side facing inward, and processing the “hair side,” i.e. the side facing outward.

<sup>ii</sup> *Be-Reshit* 22:9.

<sup>iii</sup> *Ibid.* 22:12.

<sup>iv</sup> *Shemot* 3:4-5.

<sup>v</sup> *Devarim* 33:5.

<sup>vi</sup> *Shemot Rabbah* 2:6.

<sup>vii</sup> This is a paraphrase of *Be-Reshit* 49:29,33.

<sup>viii</sup> *Be-Midbar* 3:1.

<sup>ix</sup> *Ibid.*, 3:2.

<sup>x</sup> *Shofetim* 18:30. See Rashi ad loc., s.v. “*Ben Menasheh*,” who explains that the “*nun*” of *Menasheh* is suspended in the Masoretic Text order to indicate that this Gershom was in fact Moshe's son.

<sup>xi</sup> *Be-Midbar* 21:18.

<sup>xii</sup> See *Nedarim* 55a.

<sup>xiii</sup> *Be-Reshit* 6:2.

<sup>xiv</sup> *Yesha'yahu* 22:13.

<sup>xv</sup> *Be-Reshit* 11:4.

<sup>xvi</sup> *Ibid.* 11:1.

<sup>xvii</sup> *Ibid.* 27:11.

<sup>xviii</sup> See *Pirkei de-Rabbi Eliezer* 24.

rather on the hair side. That which hair symbolizes, in the sense of “Behold, my brother Esav is a hirsute man,”<sup>xvii</sup> is a lack of sensitivity – a deficiency of compassion towards one's fellow, [as well as] cruelty and emotional numbness. Their hands, their hearts, and their consciences were overgrown with long, barbed hair, and they themselves were transformed into insensitive, rigid creatures who had no empathy for the weak, nor any love for the poor. Basic sensitivity, clemency, kindness, and gentility were foreign to them. In order to place a couple of bricks onto that ridiculous tower, they could sacrifice thousands of people, their happiness, and their freedom. The Midrash reports: “When a brick would fall and break, all of them would cry over it; when a person would fall and die, no one would look around for him.”<sup>xviii</sup>

The sin of the *Rish'ei Arets* is committed by the *nefesh ha-margishah* when it is wrapped

# The Forgotten Torah

BY: Periel Shapiro

Kabbalah is part of your life. Even if you are an only nominally observant Jew, you have likely partaken in Kabbalistic prayers and customs or studied works inspired by Jewish mystical concepts. If you have ever been to a Jewish wedding, you must have seen the bride circle the groom three or seven times, a custom based on interpretations of *Hoshea* and *Yirmeyahu* and the mystical implications of the number seven.<sup>1</sup> It is a virtually universal custom in synagogues to sing “*Lekhah Dodi*,” a beautiful hymn written by 16<sup>th</sup>-century Safed Kabbalist Rabbi Shelomoh ha-Levi Alkabetz, on Friday night, and much of the Shabbat liturgy and many of its customs are based on Jewish mysticism. A large number of the classic Jewish ethical texts studied

“Jewish mysticism cannot be divorced from a Torah lifestyle and is, in fact, the ultimate purpose of Torah observance.”

throughout the world bear the stamp of Kabbalistic influence, and indeed the very Halakhah by which religious Jews live their daily lives was authoritatively codified by the renowned Kabbalist R. Yosef Karo in his *Shulhan Arukh*.<sup>2</sup> R. Karo regularly cites Kabbalistic sources and mystical aggadot when they are relevant to halakhic practice,<sup>3</sup> and commentaries such as the Hafetz Hayyim’s *Mishnah Berurah* include substantial discussions of fundamental Jewish mystical concepts.<sup>4</sup> When perhaps the authority on Jewish law was very much a mystic, a man who wrote a diary describing detailed conversations he had with an angelic being, it is certainly proper for a Jew to at least understand what Kabbalah is.<sup>5</sup>

The term “Kabbalah” in its wider sense signifies all the mystical movements within Judaism that have evolved over the past two millennia.<sup>6</sup> Historically speaking, the origins and development of Jewish mysticism are uncertain and can only be traced as far back as the Jewish esoteric traditions being transmitted in the Roman provinces of Egypt and Palestine in the 1<sup>st</sup> century CE.<sup>7</sup> Some scholars argue that Kabbalah was heavily influenced by Persian and Greek culture, while others, such as Gershom Scholem, emphasize the uniqueness and dynamism of 1<sup>st</sup>- and 2<sup>nd</sup>-century Jewish mysticism.<sup>8</sup> Either way, the relationship between Kabbalah and various other mystical traditions beyond Judaism was certainly never one-directional, and indeed Scholem points out that the

theologies of some of the most important non-Jewish Gnostic groups were based largely on Jewish Aggadah and esotericism.<sup>9</sup> However, Scholem denies the efforts of some to demonstrate the existence of mystical trends in biblical times, vaguely dismissing the identified ideologies as unfit for the label “mysticism.” “Organized closed societies of mystics have been proved to exist only since the end of the Second Temple era.”<sup>10</sup>

One cannot historically prove Kabbalah to be an original, indigenous part of Judaism any more than one can do so for all of our Oral Torah. And so, scholars like Scholem have long developed theories to help explain how the mysticism accepted by the rabbis of the Mishnah and Talmud came to be. However, as is the case with much of ancient history, there is also no proof that there was *not* an ancient

mystical tradition, one that was given to Moshe at Mount Sinai along with the *halakhot le-Moshe mi-Sinai* and the exegetical principles through which the Talmud and Mishnah were later formed. So while a believing Jew can, generally speaking, learn a great deal from historical research regarding Jewish mysticism and how the Oral Torah evolves, he does not have to decipher clues and piece together evidence to explain where it all came from. He can simply trust the testimony of the Mishnah in Tractate *Avot* that states: “Moshe received the Torah from Sinai, and transmitted it to Yehoshua, and Yehoshua to the elders, the elders to the prophets, and the prophets to the members of the Great Assembly.”<sup>11</sup>

With that background, we find evidence of mystical thought in many traditional, canonical writings. Talmudic sources and early Jewish esoteric literature, such as the *Hekhalot* texts, are connected at many points and often explain each other.<sup>12</sup> Even the *Shi’ur Komah*, an obscure and heavily anthropomorphic mystical teaching,<sup>13</sup> “was an early and genuine part of mystic teachings in the days of the *tannaim*,” and at one point, even Maimonides accepted it as authoritative, suggesting that perhaps one of the father figures of rationalist Judaism was not as one-dimensional as many portray him to have been.<sup>14</sup> In addition, Scholem describes how the “striking halakhic character of [Jewish mystical] literature shows that its authors were well rooted in the halakhic

tradition and far from holding heterodox opinions.”<sup>15</sup> Indeed, Jewish mysticism, “an immediate spiritual intuition of truths believed to transcend ordinary understanding; a direct, intimate union of the soul with God,”<sup>16</sup> or *deveikut*, is the ultimate purpose of the entire Torah.<sup>17</sup>

Therefore, it is remarkable that many strains of Judaism virtually ignore Jewish mysticism and deny its legitimacy, even in its most basic and universally applicable forms. Some may be justifiably concerned that Kabbalah was influenced by external forces, a concern equally applicable to all of our Oral Law (although, that may be the point – as a Living Torah, it evolves in different times and places within the boundaries of halakhic and Talmudic principles). Still, evidence seems to suggest the remarkable originality of many strands of Jewish mysticism. The enormously influential *Sefer Yetsirah*, a text expounding the mysticism of *Ma’aseh Be-Reshit*, is one shining example. Scholem writes that “its brevity, allied to its obscure and at the same time laconic and enigmatic style, as well as its terminology, have no parallel,” and that even modern scientific investigations into the text have not succeeded in arriving at unambiguous results.<sup>18</sup> Similarly, the *Hasidei Ashkenaz*, a group of mystical ascetics who, some scholars contend, simply adapted Christian asceticism to Jewish categories, had actually “developed [their religious philosophy] mainly within the framework of a clear Talmudic tradition and the basic principles were often identical with the principles of this tradition.”<sup>19</sup>

Some might reject Jewish mysticism in its current form because they believe that the *Zohar*, the most influential work of Kabbalah in today’s world, was created by R. Moshe de Leon of 13<sup>th</sup>-century Spain, as most scholars have argued, not by the Tanna R. Shimon bar

sand years, evolving, like all of our Oral Torah, before being committed to writing by R. De Leon. For some, it is enough that almost every major Torah scholar since the appearance of R. De Leon’s *Zohar* has accepted its authenticity and even debated whether and in what context it can be used to determine Halakhah, concluding that we determine law based on Kabbalah, but only when it does not contradict a Talmudic source.<sup>20</sup> This ruling can perhaps be understood based on the concept “*Lo ba-Shamayim hi*” ([the Torah] is not in Heaven).<sup>21</sup>

In addition, some Jews are wary of the field of esoterica as a whole because mysticism without Torah, an existence of longing for something beyond this world, is essentially antithetical to Judaism, as Rav Soloveitchik suggests in *Halakhic Man*.<sup>22</sup> Still, mysticism is part-and-parcel of Jewish life. As mentioned, in Judaism, mysticism aims at *deveikut*, cleaving to God through Torah and mitzvot, concrete acts.<sup>23</sup> Thus, we see that Jewish mysticism cannot be divorced from a Torah lifestyle and is, in fact, the ultimate purpose of Torah observance, as many Torah leaders have pointed out.<sup>24</sup> The system of Kabbalah represents perhaps the only practical ethical application of mysticism to society in existence. The beauty of Judaism is that “meditation and deed suffused one another, so that the mystic was enabled to live concretely, and the halachist mystically.”<sup>25</sup>

Another reason people are unwilling to explore mysticism is out of concern for the dangers it poses and the prohibitions against its improper use as expressed in *Devarim* 18:10-14 and Tractate *Hagigah*.<sup>26</sup> Nevertheless, not all Kabbalah is dangerous and there are appropriate avenues for accessing a direct mystical experience of the Divine, as the *perek* in *Devarim* goes on to say, “And I will raise a prophet unto you.”<sup>27</sup> Those avenues were

“The system of Kabbalah represents perhaps the only practical ethical application of mysticism to society in existence.”

Yohai, as tradition contends. I would not claim that R. Shimon bar Yohai sat in a cave and wrote word-for-word the *Zohar* that we have today. I would only state that he likely meditated on the concepts found in the *Zohar* and expounded them to his students. These ideas were then transferred orally for over a thou-

taken by our prophets, some of whom reached the highest levels of Jewish mystical achievement: the practical, or magical, Kabbalah. The prophet Eliyahu, for example, had the ability to manipulate the forces of Creation and thereby bring about changes to the physical world through a *nes*, or miracle. Such mystical



powers are inaccessible and incomprehensible to the vast majority of Jews.

However, the great physicist and Kabbalist R. Aryeh Kaplan, *zts"l*, outlines two other forms of Jewish mysticism that can be practiced and studied by all Jews, especially through *Hasidut*.<sup>xxxix</sup> These two categories are “meditative Kabbalah” and “theoretical Kabbalah,” both of which are extensively discussed in many major Kabbalistic works, including the *Zohar*. Meditative Kabbalah, accomplished through *hitbodedut* (reflective isolation) and *hitbonenut* (meditation), allows a person to quiet his mind and achieve a direct experience of God, which is a major part of *Hasidut*. Theoretical Kabbalah contains the “mechanics of the divine realm,” explaining the other branches of Kabbalah and providing an underlying philosophy of Judaism.<sup>xxx</sup>

Perhaps the most fundamental reason for the rejection of Kabbalah by many Jews today is that they see rationalism and mysticism as antithetical schools of thought. This seems to be especially so for Modern Orthodox Ashkenazim, a community that does not seem able to shake its philosophically-outdated Enlightenment insecurity about the non-rational elements of Jewish tradition. Ironically, this

both divine and not mutually exclusive. Rationality allows one to cognize reality and develop ways of relating to and measuring it – *asiyyat ha-mitsvah* – while mysticism gives one the ability to experience reality directly, *kavvanat ha-mitsvah*. We were given commandments by God and an intellect to decipher those commandments and determine how to carry them out and apply them to our lives. However, without at least a basic awareness that one is performing a commandment of God, one does not fulfill his or her obligation.<sup>xxxii</sup> This awareness is the simplest level of mysticism needed for one to fulfill his halakhic obligations. The more we intuitively understand the nature of existence and our place in it, the closer we come to a union with God, for “God knows the world as the truth of His own existence” and thus “man and God are united in knowledge of the world.”<sup>xxxiv</sup> However, what makes this mystical union *Jewish* is the understanding that “knowledge without action serves no purpose.”<sup>xxxv</sup> We express this union in concrete acts and halakhic behaviors that emphasize individuality rather than nullify it.

Whatever the explanation may be for our neglect of our mystical tradition, the fact is that

## “Instead of putting them in conflict, Judaism teaches that mysticism and rationality should play complementary roles as two distinct ways of approaching existence that are both divine and not mutually exclusive.”

anxiety creates strange double standards within Modern Orthodoxy; for instance, the *Zohar* has been dated to the 13<sup>th</sup> century using the same academic methods by which scholars date all of Jewish Oral Law to the post-Second Temple period. Yet, many Jews who claim that the *Zohar* is late would never consider doing so with regard to the Talmud.

In truth, though, it may be that the question of rationality is itself irrelevant. “The mystic, the halachist, as well as the pure scientist live in an ideal world. Given their own criteria, the structures are perfectly logical in themselves.”<sup>xxxix</sup> I have long heard the silly argument, “It is not scientific,” as if science ever claimed to understand reality in its totality, as if the spirit of man is governed by scientific canons. Even the atheist believes: he believes that the sun will rise tomorrow or that the traffic light will change to green, though he has no purely rational grounds for doing so. Do pure rationalists “circumscribe themselves ‘scientifically’ in anything but their refusal to be men in the fullest sense of the word?”<sup>xxxix</sup>

Instead of putting them in conflict, Judaism teaches that mysticism and rationality should play complementary roles as two distinct ways of approaching existence that are

many Jews are being lost in the legalism of today’s Judaism. Jewish youth are spiritually starved and seek to quench their thirst for meaning with Buddhism, Hinduism, or music. We have gone so far in denying and burying Kabbalah that Judaism is the last place where some Jews look for spirituality, further boosting ever-rising assimilation rates. In addition, due to the neglect of Jewish mysticism in traditional circles, Kabbalah has sadly become the domain of Madonna and the Los Angeles Kabbalah Center. I once heard someone say that Judaism gave away the Land of Israel to the secular Zionists, Hebrew to the *Maskilim*, and Tanakh to the Christians. Now, we are abandoning our ancient spiritual tradition to Hollywood.

It is time that modern Judaism face *Torat ha-Sod* rather than ignore it or flee from it. Even many scholars of the 20<sup>th</sup> century, including Scholem, acknowledge the enriching impact that Kabbalah has had on Jewish existence, strengthening the inner life of the individual Jew and Jewry as a whole with its wealth of symbolism and imagery.<sup>xxxvi</sup> Kabbalah, our *tradition*, is essential for our spiritual redemption and the emergence of a united society in perfect harmony with the *Eyber-*

*shter*, God, the Eternal One, *existence* itself. As Rav Kook, *zts"l*, writes:

“Due to the alienation from the ‘secret of God’ [Hidden Torah], the higher qualities of the depths of godly life are reduced to trivia that do not penetrate the depth of the soul. When this happens, the most mighty force is missing from the soul of the nation and individual [...] We should not negate any conception based on rectitude and awe of Heaven of any form – only the aspect of such an approach that desires to negate the mysteries and their *great* influence on the spirit of the nation. This is a tragedy that we must combat with counsel and understanding, with holiness and courage.”<sup>xxxvii</sup>

We should all merit to witness the day when we realize the fullest expression of our ancient tradition and incorporate every dimension of our humanity as both rational and spiritual beings.

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<sup>i</sup> *Hoshea* 2:21-22, and *Yirmeyahu* 31:21

<sup>ii</sup> Gershom Scholem, *Kabbalah* (New York: Quadrangle/New York Times Book Co., 1974), p. 196.

<sup>iii</sup> See, for example, in regards to the laws of washing hands, where the *Zohar* is cited three times (*Shulhan Arukh, Orach Hayyim* 4:8-9, 4:16).

<sup>iv</sup> *Mishnah Berurah* 1:1-4; see also *Din Kavvanat ha-Berachot (siman 5)*, where R. Karo’s wording has clear mystical intimations that are discussed explicitly by Gra and the Hafetz Hayyim.

<sup>v</sup> Based on: <http://www.britannica.com/EBchecked/topic/312602/Joseph-ben-Ephraim-Karo>. R. Karo’s mystical diary, the *Maggid Meisharim*, which recorded the nocturnal visits of an angelic being over the course of fifty years, was likely never intended for publication.

<sup>vi</sup> R. Karo’s pupil was R. Moshe ben Ya’akov Cordovero, the leading Jewish mystic in Safed, whose disciples included prominent Safed Kabbalists like R. Eliyahu de Vidas, the author of the *Reshit Hokhmah*, as well as R. Hayyim Vital.

<sup>vii</sup> Scholem, p. 1.

<sup>viii</sup> *Ibid.*, p. 8.

<sup>ix</sup> *Ibid.*, p. 10.

<sup>x</sup> *Ibid.*, p. 22.

<sup>xi</sup> *Ibid.*, p. 10.

<sup>xii</sup> *Avot* 1:1. *Pirkei Avot* is popularly known as “*Ethics of the Fathers*,” but it is probably better translated as “*Chapters of Fundamental Principles*,” considering that the Talmudic usage of the term “*avot*” often refers to principle categories. After all, these chapters are the defining principles of the Torah.

<sup>xiii</sup> Scholem, p. 14.

<sup>xiv</sup> The *Shi’ur Komah* is based on descriptions in the Song of Songs (5:11-16), Rabbinic aggadot, and the *Ma’aseh Be-Reshit* mysticism found in *Hekhalot Rabbati*.

<sup>xv</sup> Scholem, *ibid.* Rambam accepts the *Shi’ur Komah* in the original manuscript of his *Commentary to the Mishnah, Sanhedrin* 10. Scholem suggests that he only later rejected the *Shi’ur Komah* under the pressure of Karaite scorn regarding its anthropomorphic content.

<sup>xvi</sup> *Ibid.*, p. 14.

<sup>xvii</sup> Random House Dictionary 2010.

<sup>xviii</sup> See, for example, Ritva’s *Sefer ha-Zikkaron*, Ibn Ezra’s commentary to *Shemot* 31, the *Netivot Shalom*, and others.

<sup>xix</sup> *Ibid.*, p. 23.

<sup>xx</sup> *Ibid.*, p. 37.

<sup>xxi</sup> *Beit Yosef to Orach Hayyim* 141.

<sup>xxii</sup> *Devarim* 30:12. This is a fundamental concept in the philosophy of Halakhah, illustrated vividly in *Bava Metsi’a* 59b. It describes the idea that the human intellect and rational thought take precedence in determining Halakhah, even if the conclusions reached counter the objective truth of heaven. Halakhah creates its own reality, so to speak. The nature of Jewish mysticism and mystical exegesis is such that it is less a product of the logical deduction of the human intellect and more the result of a direct experience with God through meditation, visions, and oral traditions derived from Sinai. Such experiences would seem to fall under the category of “heavenly revelation,” so that although they are true and important parts of tradition, they cannot determine normative Halakhah if the human mind decides otherwise.

<sup>xxiii</sup> R. Joseph B. Soloveitchik, *Halakhic Man* (Jerusalem: Sefer ve-Sefel Publishing, 2005), p. 30: “Halakhic man’s relationship to transcendence differs from that of the universal *homo religiosus*. Halakhic man does not long for a transcendent world [...] It is this world which constitutes the stage for the Halakhah,” and the stage for Jewish mysticism as well.

<sup>xxiv</sup> Based on a discussion of Kabbalah by R. Aryeh Kaplan which originally aired on Dr. Russell Barber’s show “The First Estate,” broadcast on WNBC-TV in 1979. Available at: <http://www.youtube.com/watch?v=WAB19Jyp1BA>.

<sup>xxv</sup> See above, n. 18.

<sup>xxvi</sup> Abraham Hirsch Rabinowitz, *The Jewish Mind, in its Halachic Talmudic Expression* (Jerusalem: Hillel Press, 1978), p. xxii.

<sup>xxvii</sup> *Bavli* 14b and *Yerushalmi* 2a.

<sup>xxviii</sup> *Devarim* 18:15, quoted by Kaplan, *ibid.*

<sup>xxix</sup> Kaplan, *ibid.*

<sup>xxx</sup> *Ibid.*

<sup>xxxi</sup> Rabinowitz, p. xxi.

<sup>xxxii</sup> *Ibid.*, p. xxix.

<sup>xxxiii</sup> *Mishnah Berurah to Orach Hayyim* 8:19.

<sup>xxxiv</sup> R. Joseph B. Soloveitchik, *And From There You Shall Seek*, transl. by Naomi Goldblum (New York, NY: Ktav, 2009), p. 103.

<sup>xxxv</sup> *Ibid.*, p. 104.

<sup>xxxvi</sup> Scholem, p. 190.

<sup>xxxvii</sup> Rav Kook, *Orot* 2 (Beit El: Ha-Aguddah le-Hotsa’at Kitvei ha-Re’iyah Kuk, 2004). Qtd. in Carol Diamant (ed.), *Zionism: The Sequel* (New York, NY: Hadassah, the Women’s Zionist Organization of America, 1998), p. 421.

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