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EDITORIAL

Tearing Down The Ivory Tower

Let's put all the cards on the table. We know that in the past (and possibly in the present), *Hamevaser* has been regarded with a certain amount of hesitation on the part of most YC and SCW students. As you nod your head vigorously, we will tell you that we know why: our image has been one of, shall we say, fierce and unapproachable intellectualism, tempered with the even more obnoxious trait of condescension. Evidence of this phenomenon is the experience of asking a fellow student to write for our humble publication. (The response is almost always a very emphatic chuckle, like we weren't serious or something.)

Let us end the myth. *Hamevaser* is not about biting criticism of the vulgar masses. It is a forum for Torah scholarship and thought for the general readership of our University and Yeshiva.

While it is true that our approach toward Torah subjects is of a more intellectual, open, and analytic nature, it is untrue that we snobbishly regard the greater student body as unfit for the task of writing or reading these types of articles. Anyone who can appreciate a topic with sophistication and depth, and is willing to do some research, is encouraged to write an article for *Hamevaser*.

The readership of this publication and its "writership" should overlap a good deal more than they do. We need your articles, and we'd love to see the circle of our regular writers expand. The fact is, the only place we're looking down from is the computer room in Belfer.

HAMEVASER

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The Lesson of the Menorah

by Reuven Spolter

We often find ourselves performing *mitzvot* by rote, lacking a deeper understanding of the rationale behind them. Nevertheless, on Channukah the basis for the lights of the *menorah* seems clear: to commemorate the miracle that occurred after the reconquest of the *Beit haMikdash*, primarily in a spiritual but also in a historical sense. If we probe deeper, however, this ritual, too, is enigmatic as several basic questions remain unanswered.

As we know, Channukah is often compared to Purim, as both are considered to be "minor" holidays, instituted by *Chazal*. If this is the case, though understandable that each has its distinctive *mitzvot*, it is nevertheless peculiar that Channukah should be so much more protracted: Why was it necessary to establish Channukah as an eight-day celebration, when one day is sufficient for Purim?

Despite the multi-faceted argument regarding the criteria for *mehadrin* and *mehadrin min haMehadrin* in the *mitzvah* of lighting the candles, all *posekim* agree that any form of *hiddur* requires more than one light, generally assumed to be lit on a *menorah*. What is the underlying significance of the *menorah*, and why has this aspect of the fulfillment of the lighting become so widely accepted? The *gemara* in *Shabbat* (21b), discussing the holiday and *mitzvot* of Channukah mentions only the miracle of the candles, and not the military victory. It seems that this *gemara* associates the *menorah* primarily with the spiritual facet of the holiday, as opposed to the miracle of the military victory. While the historical aspect of the candle lighting is clear, how does it relate to this spiritual role developed in the *gemara*?

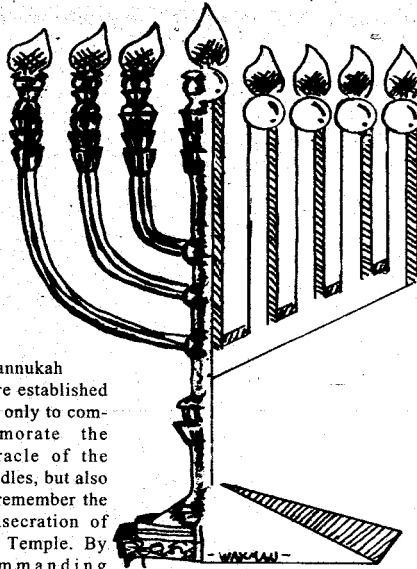
Finally, a perplexing *gemara* in *Shabbat* (23b) maintains that one who is careful in the lighting of the Channukah candles will merit righteous children. What significance of Channukah lighting compelled *Chazal* to construct this curious correlation?

Three Types of Light

Halakha relates to light and candles in three basic areas: *Shabbat*, *havdalah*, and *ner Channukah*. These three areas have specific but different requirements and restrictions. While the Channukah candles may not be bunched closely together for fear of creating a "torch", the *havdalah* candle must be a torch, comprised of more than one wick. Clearly, each of these *mitzvot* was established to accomplish a unique goal. The candles of *Shabbat* are present primarily for one reason, a practical one: to enhance the joy of *Shabbat* by allowing people to see what they're doing Friday night. Similarly, the candle of *havdalah* represents the departure of *Shabbat* and the arrival of *chol* and is itself the physical manifestation of *mela'kha*. The candles of Channukah symbolize exactly the opposite idea. They represent the utilization of a physical entity for purely spiritual purposes. We take a candle, which we use to enjoy the *Shabbat*, and make it *assur behana'ah*, completely forbidden for personal benefit. That which was material is now

transformed into *kodesh*, an instrument of *avodat Hashem*. Indeed, the entire holiday of Channukah is an extension of this idea. *Chazal* demand that we take regular days normally reserved for mundane physical activity and transform them into a holiday of the triumph of the spiritual over the physical.

Now we can understand why *Chazal* established Channukah as an eight-days commemoration. That the candle burned eight days was especially significant because eight days was the amount of time established for the sanctification of the *Mikdash*, and the subsequent resanctification after the reconquest of the *Chashmona'im*. Thus, the eight days of



Channukah were established not only to commemorate the miracle of the candles, but also to remember the consecration of the Temple. By commanding each Jewish home to light its own *menorah*, *Chazal* instituted an individual "channukat haBayit" for every household throughout the Jewish nation. Every house must undergo a yearly resanctification, rededicating that which is normally assumed to be physical in nature to the spiritual in an effort to revitalize religious fervor.

This understanding may explain why the base *mitzvah* of the Channukah lighting is "ner ish uveito," with a special emphasis on both the house and the family. Just as the *Chashmona'im* felt that the *Beit haMikdash* required resanctification after the Greek presence, so too each member of *Benei Yisrael* requires constant resanctification from materialistic, hellenistic influences that exist in every society. The light of the candles calls on all Jews to resanctify themselves and to rededicate themselves to spiritual pursuits. Just as candles normally used for practical purposes are designated for a purely spiritual role, so too we, who are often diverted from the primary purpose of our existence, must resanctify ourselves and reassess our personal status from a religious standpoint.

The Role of the Menorah

Still, while it is clear that our lighting of the candles both affirms our commitment to spirituality and acclaims the miracle of the *menorah* in the *Beit haMikdash*, this fails to reveal why the *menorah* was chosen to convey this important lesson. To understand the special significance of the *menorah*, we must look at the beginning of *parashat Beha'alotkha*, where the Torah relates to Aharon the *mitzvah* of lighting the *menorah*. Many commentators ask the obvious question: why does the Torah relate this *mitzvah* in the middle of *sefer Bamidbar* while most other laws pertaining to the *mishkan* are found in *sefer Vayikra*? *Rashi* explains that after all the leaders of the twelve tribes brought their gifts to God, Aharon was upset that he had not offered anything to Hashem. Therefore, God gave Aharon the *mitzvah* of the *menorah* to fulfill in order to console him. Notwithstanding, perhaps we can offer another explanation for the enigmatic presence of this passage by looking not earlier, but later in the same *parshah*.

Rav Soloveitchik, in an extensive explanation of *Beha'alotkha* describes the first sections of the *parshah*, after Aharon's *tzivuy*, as the final preparations that were being made for *Benei Yisrael* to enter *Eretz Yisrael*. These necessary arrangements included the appointment of the *Leviyim* as the official "work force" of the *mikdash*, the transmission of the *mitzvot* of *Pesach* and the logistical workings of the camp.

Immediately following these preparations, just before the final approach to *Eretz Yisrael*, *Benei Yisrael* complained to Moshe, "mi ya'akhilenu basar," "who will feed us meat?" To this complaint, Moshe responded especially harshly, ultimately complaining to God that he was unable to bear alone the load of carrying *Benei Yisrael*. What prompted such a harsh reaction from Moshe in this instance? Moshe had calmly dealt with complaints from *Benei Yisrael* on previous occasions! Rav Soloveitchik explains that from the complaint of "who will feed us meat?", Moshe realized that *Benei Yisrael* were not on the proper spiritual level to enter into *Eretz Yisrael*; their display of such a complete lack of focus made it clear to Moshe that they were unable to continue on their journey and would eventually falter catastrophically, as they ultimately did.

If this interpretation is correct, then in light of our explanation of the significance of the *menorah*, we can explain the presence of the commandment of the daily lighting of the *menorah* at the beginning of the *parshah*. As it often does, the Torah here is offering the cure for an illness before it actually happens. The remedy for "who will feed us meat?" is the lighting of the *menorah*, as it calls for the abandonment of the physical in deference to the more important spiritual concerns. If the message of the *menorah* is received, a complaint about the physical

Continued on page 7

Mazel Tov to our former Editor-In-Chief and Executive Editor Michael and Aliza Segal on their recent marriage.

David Brofsky Torah Shebe'al Peh: A Novel Approach

Traditionally, the first *mishnah* in *Avot* has been the model for Jewish intellectual and religious history. "Moshe received the Torah from Sinai and transmitted it to Yehoshua..." This schema, which asserts that God revealed the entire halakhic system to Moshe, views all subsequent Jewish learning as second-best, a degeneration from the apex reached at *mattan Torah*.

It is with this backdrop that the *Yerushalmi* in *Pe'ah* can insist, "All that a mature disciple would in the future innovate in Torah has already been revealed to Moshe at Sinai (2:6)." Sharing this mentality, Rabbi Yochanan would note (*Eruvin* 53a), "if the intellectual powers of the earlier generations can be likened to the entrance to the *ulam*, and those of the later ones to that of the *heikhal*, ours are as the eye of a fine needle." Each generation pales in comparison to previous ones. If anything, the maintenance and actual restoration of those details lost during transmission necessitates constant immersion in the study of *Torah Shebe'al Peh*. [The Talmud, for example, relates that Othniel ben Kenaz restored those *halakhot* lost during the period of mourning over Moshe's death through *pilpul* (*Temurah* 15b-16a).]

Many difficulties, however, both from Biblical and Talmudic perspectives, arise from this understanding. Is it really clear that our Biblical ancestors immersed themselves so fully in the study of the Oral Law? What was the relationship between the prophet and the scholar in Biblical times? Why is there a wealth of tannaitic halakhic material and legislation and no such record from previous generations? And what exactly generated the plethora of disagreements found in the Talmud?

Some have pointed to the Amora'im for a solution. The Talmud (*Sotah* 47b) attributes tannaitic disputes to arrogance and a lack of "service" to Torah scholars. Other sources (*Avodah Zarah* 8a) point to the absence of a central authority created by the exile of the Sanhedrin. The halakhic principle, "words [transmitted] orally you may not write" (*Gittin* 60b) and its eventual abolishment, "*et la'asot laHashem heferu toratekha*," may also resolve this dilemma.

Nevertheless, this stance is still somewhat unsatisfying. Beyond the textual difficulties, it remains ironic that this "traditional" view not only downplays the creative aspects of the halakhic process, but also appears to view man's participation in *Torah Shebe'al Peh* as a feeble attempt to reconstruct the Torah as given at Sinai. The search for *derashot*, for example, becomes merely a means of attaching verses to previously known *halakhot*, motivated by the fear that the Torah may become forgotten.

The Beginnings of a New Approach

A new position, one which both emphasizes the creative nature of *Torah Shebe'al Peh* and its progressive revelation, and downplays the degeneration mentioned above, is adopted by Rambam. In his introduction to the Mishnah, Rambam outlines the different components which comprise the Oral Law. He divides *Torah Shebe'al Peh* into three categories (excluding rabbinic additions and accepted customs). The first includes the explanations given at Sinai of those *mitzvot* recorded in the Torah, such as the precise definition of "*peri'etz hadar*". The second, which also accompanied the Written Law, consists of additional laws with no written counterpart, such as the measurements and the laws of *sta'm*. While the Talmud records numerous attempts at finding "*asmakhtot*" for these *halakhot*, there is no disagreement regarding the laws themselves. It is the Rambam's third category, however, which is of special interest to us. Those laws which the sages of each generation extrapolate through the thirteen hermeneutical principles and other logical means, he explains, are also an integral part of the Oral Law. When there is disagreement regarding these laws, resulting from deterioration of scholarship, not from arrogance or sin, the majority opinion is accepted.

Regarding the prophets, Rambam stresses that they may not use their prophetic abilities to decide halakhic matters.

They may contend with scholars as peers, but as prophets they bear no authority (except in extreme circumstances, as alluded to above). The Torah (*Devarim* 17:9) states, "and you shall go

to the *kohanim*...and to the judge..." and not, "to the prophet."

Rav Zadok: A Historical Analysis

Rabbi Zadok haKohen (1823-1900) of Lublin, a child prodigy who rejected his *mitnagdish* upbringing and eventually succeeded the Izhbitzer rebbe, furthered this theory of Rambam throughout his own writings. He develops a comprehensive theory which explains the historical relationship between the Jewish people, prophecy, and the Oral Law. This conception of the halakhic process is in many ways more appealing to the *lamdan* as well as to the creative religious thinker.

Historically, Rav Zadok explains, until the eventual *silluk shekhinah* and cessation of prophecy during the Second Temple period, prophets, and not scholars, held the religious leadership. "...Intellectual means of perception were considered as naught in comparison with the overwhelming plenitude of prophecy and revelation which existed at this time... guidance was in accordance with the [command] of the prophets. For there were twice 600,000 prophets aside for those without number who were divinely inspired... All decisions for that time (*lesha'ah*) were made by the prophets (*Resisei Laylah*(RL) 161a)." The first *mishnah* in *Avot*, in fact, enumerates those entrusted with the authority and leadership of the Jewish people, and not, as traditionally understood, those charged with the transmission of the Oral Law.

The intellectual study of Torah, however, did not begin until the Second Temple period. As the *Pirkei Heikhalot* (ch. 27) teaches, "even though the Divine Presence did not rest on the Second Temple, nevertheless, the basic manifestations of Torah and its glory occurred only during the Second Temple Period. They would not agree to build [the Temple] again without God's promise to reveal the secrets of the Torah to them." It is from this historical divide, Rav Zadok writes in *Machshevei Haruz*(MH) (as well as in *Resisei Laylah* and other works), that *Torah Shebe'al Peh* as we recognize it arose.

"The basic founding of the Oral Law began then with the men of the Great Assembly ... who established all the *gezerot* and *takkanot* of the Sages, and the *derashot* and the teachings derived from the Torah, for the whole chain of tradition of teaching the Oral Law is from them...(MH, 139a)." Elsewhere he asserts that "the beginning of the Oral Law, was during the Second Temple from the Great Assembly...who also founded (*yasdu*) the Oral Law...(RL, 158b)."

This would account for the lack of evidence of pre-tannaitic disputes. While the prophets responded to specific halakhic inquiries on a temporary basis (in sharp contrast to the view of Rambam), the sages were now faced with the task of organizing the law into usable categories and setting binding precedents for the future.

The Continuous Revelation of the Oral Law

Clearly, as he notes elsewhere, Rav Zadok does not reject the belief in the transmission of an oral law from Sinai. We can assume that the Oral Law given at Sinai, according to Rav Zadok, consisted of at least a "*peirush haMitzvot*", if not more. However, it is the ever expanding and increasing *Torah Shebe'al Peh* that we recognize.

This radical understanding of the Oral Law clearly requires further understanding. Traditionally, the transmission and development of Torah is viewed as the opposite of the development of Western knowl-

edge. While each generation furthers the research and understanding of secular knowledge, the *ben Torah* strives to understand the Torah as it was given at Sinai.

Rav Zadok, however, maintains that God presented the entire Torah 'in potentia' to Moshe at Sinai. "Even though 'no prophet like him arose,' that is from the point of view of intuitive understanding (*hassagah derekh re'iyah*), not intellectual comprehension (*hassagah sikhilit*), such as those who can innovate [in Torah have] (RL, 158b)." The Midrash (*Midrash Rabbah, Chukkat* 4) maintains that "words not revealed to Moshe were revealed to Rabbi Akiva and his colleagues, [as it is written] "for all glory has his eye seen (Job 28:10)." "For all comprehension which is of lesser quality," Rav Zadok explains, "is greater in quantity (*Peri Tzaddik* I pg. 376)." [It should be noted that Rav Kook, who proposed a similar yet more Kabbalistic understanding of the development of Torah, still affirmed that Moshe himself was aware of the entire Torah. After all, "all that a mature disciple ... was already revealed to Moshe at Sinai."]

The Sages, however, constantly develop and reveal what was previously concealed. The words of the Torah, including the halakhic *midrashim*, are "in hidden form...and only in the course of time do they see the light of day through the sages of each generation...this is called the Oral Law which is what the sages innovate... (and is what the Talmud refers to as 'all that a mature disciple in the future will innovate [in Torah] was revealed to Moses at Sinai...' (RL 158b).)" Rav Zadok alludes to the words of certain Medieval philosophers, already quoted by the *Megillat Esther* in his introduction to the *Sefer haMitzvot* as well as by others, in defense of his theory. "...Therefore, even though later generations are inferior [to earlier ones], they nevertheless maintain their awareness [of knowledge] as dwarfs [on the shoulders] of giants ... and they themselves continue the process of this opening of new Gates. Even though they themselves are greatly inferior [in comparison to their ancestors, their insights] are more profound, for they have passed through the Gates opened for the earlier generations... (RL 14b-15a)"

Rav Zadok's theory is based largely on his understanding of the age-old struggle between prophecy and the Oral Law. While, as explained above, the Oral Law (in its expanded sense) did not come into being until the Second Temple period, this was not necessarily the original or ideal schema. "As long as they did not accept [Oral Law] willingly," he explains, "it was not yet handed over to them entirely, and they conducted themselves through prophets... (RL 158)." This reluctance to accept the Oral Law dates back to *mattan Torah*. The *Tanchuma* (*parashat Noach* 3) explains that God "suspended the mount over their heads like a roof" in order to coerce them into accepting the Oral Law, which involves much effort and pain. "...The Torah was completely forgotten...to the extent that they had to discover anew the commandment to make *Sukkot* (*Nechemyah* 8:14-17). Even though their hearts were faithful to God, nevertheless the study of Torah was as though in hibernation (RL 139a)." In fact, only at the time of Purim, he suggests, did the Jews fully accept the Oral Law. "*Kiyemu vekibbelu*," the *Megillah* records; Purim is the first Rabbinic mitzvah.

Rav Zadok, at this point, invokes the Kabbalistic concept of "*zeh le'umat zeh*." Phenomena occurring in the Jewish world have repercussions throughout the rest of the world. While the era of witchcraft and magic coincided with Israel's period of prophecy, the growth and study of the Oral Law caused a parallel reaction in the Greek world: the

development of "*chokhmat yevanit*" and human knowledge.

In light of other Talmudic sources, this approach becomes increasingly convincing. The *gemara* in *Menachot* (29b) is justifiably famous for its recording of the following puzzling story: "[Moshe Rabbeinu] went and sat in the eighth row' (of Rabbi Akiva's study hall) and did not comprehend the discussion, and was weakened. When a student asked, 'Rebbe, from where do you know this?' and [Rabbi Akiva] replied '*halakhah leMoshe mi'sinai*' he was assuaged." Clearly, this *gemara* is referring to "*halakhah leMoshe mi'sinai*" as the hidden Torah, in *potentia*, waiting to be revealed. In addition, the



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gemara in the beginning of *Chagigah* (3b) is also very telling. There the Torah is likened to a sapling. "Just as a sapling expands and multiplies so do *divrei Torah*."

Elu Va'elu Divrei Elokim Chayyim and Lo' baShamayyim Hi'

Basing its exposition on a verse in *Kohelet*, the *gemara* continues: "The masters of assemblies' - these are the disciples of the wise who sit in manifold assemblies and occupy themselves with the Torah, some pronouncing *tamei*', some pronouncing *tahor*...should a man say, 'how in all these circumstances should I learn Torah?' we respond, 'all of them are given by one Shepherd...'"

How may we understand this phenomenon? Rabbi Aryeh Leib HaKohen, in the introduction to his *magnum opus*, the *Ketzot haChoshen*, writes, "even if it should be, in actuality, that this *safek* is *tahor*, and they say it is *tamei*', since the final decision is entrusted to the scholars...it must be *tamei*'...even if it is in opposition to the truth...and that is what is written, 'her mouth opens with wisdom and *torat chesed* is on her tongue,' because *Torah Shebe'al Peh* is given to the Sages to the sages to decide **even though it is not truth...**" In a similar vein, Rabbi Shimshon Bachrach, in his responsa, *Chut haShani*, writes to his son, the *Chavot Ya'ir*, that "*Torah Shebe'al Peh* can be forgotten...thus it can be interpreted forty-nine ways to purify, and forty-nine ways

to purify, and as a result of forgetfulness, one cannot arrive at the truth as it was given to Moshe...however it is not completely forgotten, for '*elu va'elu divrei Elokim chayyim*, one brings a proof from this scripture, and another from a different one, and the Torah has been entrusted to the sages..."

Rav Zadok's theory, however, allows for a more dynamic view of these divergent opinions. After all, had there been only one correct interpretation, why would God have entrusted this awesome responsibility in the hands of mere men? The eternal nature of the Torah by definition allows for different interpretations. Echoes of this formulation may be found in Ritva (*Eruvin* 13b). Commenting on the Talmudic statement, "*elu va'elu divrei Elokim chayyim*," he cites the words of the Rabbis of France. "How is it possible that both opinions are *divrei Elokim chayyim*? When Moshe descended to receive the Torah, he was shown that every matter was subject to forty-nine lenient and stringent approaches. When he queried about this, God responded that the scholars of each generation are given the authority to establish the *halakha*." Similarly, the *Tosafot Shantz*, in the beginning of *Eduyyot* explains that a later *heit din* may accept a previously rejected minority opinion, if a majority is attained, because "...the entire Torah was given to Moshe, forty-nine stringent and forty-nine lenient approaches."

"*Lo' baShamayyim hi'*" is not a concession to man, a sacrifice for the preservation of the halakhic system. It is, rather, a description of how these divergent opinions are arrived at. In other words, it is the Talmudic version of the Medieval "Double Truth Doctrine". The Talmud (*Sanhedrin* 34b) likens the Torah to "a hammer that breaks a rock in pieces": "Just as the rock is split into many pieces, so too may one Biblical verse convey many meanings." This is the destiny of *divrei Torah*, as the *Yerushalmi* (*Sanhedrin* 4:2) teaches, "in order that Torah may be interpreted in forty-nine stringent and lenient ways..."

This approach, affirming a constant development and revelation of the Torah, is also very appealing to the religious thinker. For the Kabbalist, it justifies the explosion of the mystical tradition in the Middle Ages. Consistent with Lurianic thought, it eventually led Rav Kook to accept the theory of evolution. Even for the rationalist, it allows one to reject certain midrashic and aggadic passages, as many Medieval Jewish philosophers actually did. This theory also may allow for a pluralistic approach even with respect to certain philosophical issues.

It should also be noted that other Jewish thinkers have suggested similar solutions. Whether it be Rav Avraham Yitzhak haKohen Kook's mystical approach, or his teacher Rabbi Naftali Tzvi Yehudah Berlin's (*Netziv*) historical understanding, or even the more halakhic conception adopted by Rabbi Moses Samuel Glasner, the great-grandson of the *Chatam Sofer* (in the introduction to his *chidushim* on *Chulin, Dor Revi'i*), an emphasis on the progressive revelation of the Oral Law may actually be the real 'traditional' understanding of *Torah Shebe'al Peh*.

Mordekhai and Haman: Similar Opposites

Hayyim Angel

One advantage of the education we receive as youngsters is that we absorb ideas without recognizing the undesirable theological perplexities contained in them. Contemplate two fundamental assumptions about the Purim story: First, the assimilated Jews partook of Achashverosh's affair, a diabolical deed which brought harsh punitive measures upon them. Secondly, Mordekhai was an infallible, dauntless leader who acted *'al kiddush Hashem* and saved his community through prayer and *teshuvah*.

Many commentaries learn that the Jews at the time of Mordekhai and Esther deserved to be destroyed, killed, and annihilated due to their participation in the gala at the outset of the Megillah. R. Shim'on b. Yochai (*Megillah* 12a), however, sees things differently. In a discussion with his students, he refutes this reason by stating that the Jewish population outside of Shushan had nothing to do with the first party. Accordingly, Mordekhai's generation was hardly blameworthy.

The other suggestion in this gemara why Mordekhai's generation deserved destruction is that the Jews in the time of Daniel prostrated themselves before Nebuchadnezzar's statue. This answer is also questionable, since we generally accept the premise that the statue was not an idol (cf. *Tosafot Pesachim* 53b, s.v. *mah ra'u*). The gemara shows hesitancy with this answer as well. (For a brilliant exposition of these points, see R. Hayyim David HaLevi, *Mekor Hayyim*, vol. 4, pp. 347-351.)

Hence, the gemara has eliminated the two instances of national corruption which were assumed to have brought about the Purim story. The first assumption harking back to our youth (not to mention the basis for countless Purim *derashot*) is shattered. So why did the Jews find themselves in such dire straits?

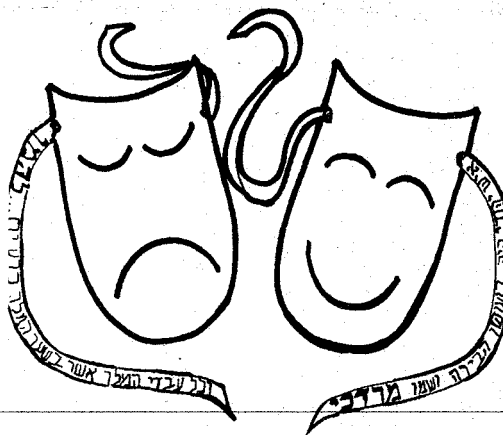
Equal Threats?

The reason from a textual standpoint is that Mordekhai did not bow to Haman, inordinately irking the wicked man. Haman's plot thus was a consequence of an individual's action, rather than a punishment for widespread corruption among the Jews.

Surprising as it seems, this explanation finds talmudic support: In *Megillah* 12b-13a, various Amora'im are puzzled by the description of Mordekhai as *'ish yehudi* and *'ish yemini* (Esther 2:5). From which tribe did Mordekhai hail? Following two responses favorable to Mordekhai, Rava suggests that the two tribes were blaming one another: Yehudah censured Binyamin for having produced Shaul, who blundered in his not executing Agag, Haman's ancestor (I Sam 15:8). Binyamin retorted by blaming Yehudah for having spawned David, who failed to kill Shim'i ben Gera (II Sam 16:11), the progenitor of Mordekhai.

In other words, the Jews (according to Rava) viewed Mordekhai and Haman as equal threats to their very existence. Such an accusation is intolerable to most religious individuals, who would not equate Mordekhai and Haman in any way at all. From an emotional standpoint, this linkage may be even worse than asserting that the party was not the cause of the Purim story.

Yet, instead of hastening to our homes in mourning (Esther 6:12), we must ask ourselves: Why



did Mordekhai stand out in the crowd? Why could he not have followed the rest of the *Sanhedrin* in fleeing *Shushan* in order to avoid both the party and bowing to Haman (see *Pirkei deRabbi Eli'ezer* 49)? Assuming that Mordekhai was in fact acting *'al kiddush Hashem*, why did none of his venerable colleagues on the *Sanhedrin* share his purportedly noble and idealistic outlook?

'Ish va'ish

In order to address these questions, we should consider the party at the beginning of the Megillah. Achashverosh displayed outstanding diplomacy by fulfilling the wishes of every person at the festivities (*la'usot kirtzon 'ish va'ish*, Esther 1:8). The gemara (*Megillah* 12a) explains that Achashverosh was trying to fulfill the wishes of both Mordekhai and Haman during the celebration (both of whom are referred to as *'ish* in the Megillah, see 2:5 and 7:6), although it does not specify what their wishes were.

In *Esther Rabbah* 2:14, we find sharp criticism of Achashverosh's excessive tact: God, upset that Achashverosh intended to please everyone, said to the king, "Two ships will lie in a harbor, one waiting for a north wind, the other for a south. Can the same wind carry them both together?"

Although this *midrash* focuses on Achashverosh, one cannot help but notice the words, "two ships will lie in a harbor..." The *nimshal* of this segment of the parable is to Mordekhai and Haman, they both are found in the same port. Although one may argue that their symbolic proximity is rooted in the fact that they were both physically at the party, it may be asserted that this *midrash* points to a far

stronger statement concerning Mordekhai and Haman: They are in fact similar people.

One need not search from *Hodu* until *Kush* to provide examples in support of this assertion. Both men were characterized by a powerful singleminded determination. Mordekhai did so by standing out and not bowing to Haman, and also in his remaining in politics even after the salvation (see *Megillah* 16b). Likewise, Haman asserted himself most distinctively in the persona of Memukhan, who jumped ahead of his superior colleagues (*Megillah* 12b). Additionally, he offered an exorbitant sum of money for the privilege of destroying the Jews, and he would not rest until he had built the gallows upon which to hang Mordekhai.

Moreover, they both were powerful and brought much resentment upon themselves from those envious of their authority and initiative. Rava (*Megillah* 16a) states that this disaffection was manifest among Gentiles as well as Jews. In Esther 6:3, Achashverosh asks his attendants if Mordekhai had been honored, to which they respond that nothing had been done. Rava comments that the attendants told the truth not out of love for Mordekhai, but out of spite towards Haman. Consider also the court officials who turned Mordekhai over to Haman (3:4), for no better reason than to see if Mordekhai truly believed in his own ideals.

So Mordekhai, like Haman, followed his beliefs to an extreme, alienating himself from both Jews and Gentiles. Even the *Sanhedrin* did not appear to accept Mordekhai's decisions (*Pirkei deRabbi Eli'ezer* 49, quoted above), thereby leaving him completely on his own. Moreover, Mordekhai was acting in a manner not dissimilar from Haman himself, as we have seen. Should we still accept Mordekhai's idiosyncratic stances as legitimate?

Barley and Silver: Polar Opposites

The truth is that even Mordekhai recognized an immense danger in his actions: He was vulnerable to the arrogance which often accompanies leadership and individualistic behavior. In *Esther Rabbah* 8:6, we find a remarkable statement: "Mordekhai prayed... It was not from pride of heart that I acted in not bowing to Haman... For who am I that I should not bow down to Haman for the salvation of Your people Israel?" From the fact that he had to say this, one may deduce that he recognized the peril of becoming conceited, and therefore had to stress the fact that he had withstood the temptation.

This declaration of Mordekhai calls for further reflection on the *midrash* cited earlier concerning the boats leaving from the same port while heading in different directions. Mordekhai and Haman may have shared some behavioral attributes; motivationally, however, their paths were diametrically opposed to one another. We see this most clearly in their two major confrontations.

The Talmud states that Haman considered himself a deity (*Megillah* 10b, 19a). The gemara clearly sees Haman moving in the direction of egotistical self-worship. When, in the first engagement, Mordekhai would not bow to Haman, Mordekhai served as a reminder to Haman that the wicked one was merely a person. Confronted with this reality,

Haman could think of nothing else, even after Esther invited him to her party (Esther 5:13). Haman also would tremble in *Megillah* 16a, after Mordekhai reminded him that the former had been a barber before his rise to power. Mordekhai, on the other hand, moved in a direction purely for the sake of Heaven, as he stated in his prayer. He therefore could stand out without personal motivations.

The second confrontation, as recorded in *Vayikra Rabbah* 28:6, proves particularly fascinating. After Haman was commanded to parade Mordekhai in royal clothing (Esther 6:10), he found Mordekhai with his students studying the laws of the 'omer offering. The *midrash* continues: "Mordekhai...remarked: '...Rise and flee, lest you be scorched by my coal!' They answered him, 'Whether to be killed or to remain alive, we are with you, and will not desert you!' What did he do? He enveloped himself with his *tallit* and stood before the Holy One, blessed be He, in prayer, while his disciples sat and learned. Haman said to them, 'What are you studying?' They answered him, 'The commandment of the sheaf which Israel used to offer in the Temple on this day.' He asked them, 'What was this sheaf made of, gold or silver?' They replied, 'Of barley.'...He said to them, 'Arise, for your ten *manot* (the value of the offering) have conquered the ten thousand talents (each talent is equal to 3000 *manot*) of silver' (i.e., the merit of the sacrifice overturned the decree to annihilate the Jews. Cf. *Megillah* 16a)." By the conclusion of this dialogue, Haman had realized that his egotistical offering of silver could not compare to Mordekhai's barley.

A vast quantity of silver is obviously a sign of gaudiness and arrogance; what, however, is the significance of barley? Rabbi Y.L. Ginzburg, in his *Musar haNevi'im* (vol. I, pp. 196-197), writes that barley is a lesser grain as compared to wheat (cf. *Gittin* 56a), yet Jews are still grateful. This notion is similar to that found in *Berachot* 20b, that Jews thank God (with *Birkat haMazon*) even for an amount of food too small to satisfy themselves. In other words, Jews fulfil this commandment not out of self-interest, but solely for the love of God. Such a trait was readily found in Mordekhai and his students.

The Perils of Leadership

So why did the *Sanhedrin* still disapprove, even at the end of the Purim story (*Ierov' echav* [Esther 10:3]-- *Megillah* 16b)? Perhaps because they sensed the difficulty, even for Mordekhai himself, to be a Mordekhai personality. Therefore, they shied away from him, worried about the possible arrogance which could arise from his singleminded determination and his conspicuous profile. Mordekhai, however, knowing that he was acting purely *leshem shamayim*, was able to remain a staunch role model to his fellow Jews.

The above discussion has important relevance to contemporary Jews considering public leadership roles: Some may shy away from positions of authority, due to the concerns of the *Sanhedrin*. Those who do pursue communal leadership, however, must recognize the fact that the same behaviors may be sparked from drastically disparate motivations, ranging from pure *leshem shamayim* to self-worship. Each person has an internal Mordekhai and Haman to be identified. Once we pinpoint the true differences between Mordekhai and Haman (preferably while sober), then we may begin to grapple with the issue of humility while in positions of leadership. Until then, however, one must be quite careful about cursing Haman and blessing Mordekhai (no matter what state of sobriety).

Chanukah

continued from page 3

is impossible, as the physical becomes simply another tool for the worship of God.

The Lesson of Lights

It was exactly this notion of an emphasis on the physical that the Greeks were promoting. Consequently, the miracle of Channukah manifested itself specifically through the *menorah*, to combat this lack of spiritual focus. The *menorah* of Channukah serves to not only to commemorate the *menorah* of the *Beit haMikdash*, but also to transform the entire household into a symbolic *Beit haMikdash*, and purge ourselves of the Greece inside all of us.

This explanation also sheds light on why we recite a full *hallel* on all eight days of Channukah, while on Purim, the *megillah* serves as the praise we offer to God, without an additional *hallel*. On Purim, we celebrate the physical saving of the Jewish na-

tion, the story of which the *megillah* relates comprehensively. On Channukah, in addition to the physical salvation of the nation, there is an element of rejuvenation and rededication to Jewish spiritual goals which cannot be related in a simple reiteration of the events of Channukah. In addition to "*hodu laShem ki tov*," we must also say, "*ana Hashem hoshi'ah na*." We must thank God for the good He has done for us, and at the same time, commit ourselves to the goals and ideals of the Torah.

Finally, we can understand the perplexing *gemara* in *Shabbat*. Adherence to the *mitzvah* of lighting Channukah candles in itself does not imply righteous children. Rather, the implications of that adherence, the commitment to spirituality and to Torah, imply an orientation that can only result in the raising of true "*talmide chakhamim*."

YESHIVA UNIVERSITY'S TORAH U-MADDA PROJECT



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Stern College for Women, Room 501, 2:30 P.M.

Thursday, March 11, 1993

"THE DAY THE TALMUD WAS TRANSLATED: AS OMINOUS AS THE MAKING OF THE GOLDEN CALF"

Rabbi Adam Mintz, Associate Rabbi, Congregation Kchilath Jeshurun, New York City;
Faculty Member, Ramaz Upper School
Joel Jablonski Campus, Rubin Shul, 2:45 P.M.

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"YOM HASHOAH AND DAAS TORAH: TYPOLOGIES OF HISTORY AND MEMORY"

Rabbi Jacob J. Schacter, Editor, *The Torah U-Madda Journal*; Rabbi,
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Rabbi Moshe Taragin, Adjunct Lecturer, Isaac Breuer College of Hebraic Studies and James Striar School of General Jewish Studies; Faculty Member,
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Making No Sense of Kohelet

by Eitan Mayer

Like all great "wisdom literature," *Kohelet* answers fundamental questions; like all great "wisdom literature," *Kohelet* solves nothing. What I'm about to do here will be a good deal like *Kohelet*, though it really won't be the same at all. I'm going to present problems and solve them and suggest they can't be solved. I will claim to reveal deep insights but decide I cannot. At this point neither you nor I can be sure of much: do I have a goal? As I write, am I progressing toward it, or toward anything? As we explore *Kohelet*, I leave it to you to consider whether *Kohelet*-- or any other literature-- allows us to determine meaning unequivocally.

Kohelet is an ambiguphile's paradise. For at least two thousand years, seekers of univocal meaning (especially seekers of univocal moral guidance) have puzzled over the *sefer*. In their attempts to tame it, most previous commentators have relegated the book to chaotic disjointedness or adopted tortuous interpretive strategies in order to create sense where they see none:

"The first reported discussion of *Kohelet* dealt with the book's internal contradictions. These are said to have troubled the Tannaim and brought the book's sacred status into dispute (Fox, 19):

R. Judah b. R. Samuel b. Shilath said in Rav's name: The sages sought to withdraw the book of *Kohelet* because its words are mutually contradictory (*Talmud Bavli*, Shabbat 30b)."

What is *Kohelet*'s message? Can we, should we, resolve the many contradictions and illuminate the even more numerous ambiguities of this book? Some commentators think it's pretty simple-- Michael Fox, for example, summarizes *Kohelet* in three clipped sentences:

"Everything in life is vanity. There is no point in striving too hard for anything, whether wealth or wisdom. It is best simply to enjoy what you have when you have and to fear God (Fox, 9)."

On the same page, Fox casually points out that the interpretation summarized above may seem obvious, as indeed it should. For *Kohelet*'s position, described by the epilogue as teacher of wisdom to "the people" (12:9), required him to formulate and reiterate clear, sharply etched teachings (Fox, 9).

Fox argues that if *Kohelet* were a complex book, "[it] would be either esoteric or a failure, especially in its role as a work of popular instruction" (Fox, 9). These notions sound strange even out of context; the fact that they introduce the 370 pages he spends explaining *Kohelet* contradicts them resoundingly. *Kohelet* simply does not reduce itself to a few short lines.

Most commentators have chosen to resolve *Kohelet*'s contradictions in one of three ways: by constructing artificial contexts², by suggesting that later additions have corrupted the text's original univocality, or by surrounding whatever seems contradictory with quotation marks, thereby marking these statements as targets of the "Preacher's" scorn.

None of these approaches yields a satisfying reading of the *sefer*. Besides lacking convincing proof for their readings, these approaches straightjacket *Kohelet* into the docility which readers (and these interpreters, apparently) expect. Ironically, Fox, author of the violent microparaphrase cited above, defends *Kohelet* from the meaning-smoothers:

"...there is a tremendous interpretive pressure to raise the valleys and lower the hills, to make the way straight and level before the reader. But a reading faithful to this book, at least, should try to describe the territory with all its bumps and clefts, for they are not

mere flaws, but the essence of the landscape (Fox, 28)."

As promised, Fox goes on to "describe the territory," preserving the imperfections instead of interpreting them away. But "describing" is a far cry from demonstrating how *Kohelet*'s deformities constitute "the essence of the landscape," a claim which Fox leaves unsupported. What transforms the snarl of contradictions and ambiguities into the essence of meaning itself?

The "No Sense" Approach

"I, *Kohelet*, was king over *Yisrael* in *Yerushalayim*. And I gave my heart to seek and search out by wisdom concerning all the things that are done under the heaven: it is a sore task that God has given to the sons of man to be exercised with (1:12-13)."

"*Kohelet* seeks and searches. Qualifying this statement would inevitably eliminate some of "the things that are done under the heaven." We can only generalize: *Kohelet* seeks meaning for all things. But does *Kohelet* chart his progress or only his frustration? Even the most careful reading cannot escape the entanglements of *Kohelet*'s obscuring structures (or anti-structures): contradiction, ambiguity, and self-consuming artifacts (which I will explain in a moment).

These meaning-veils serve a dual purpose. On the simplest level, a contradiction is just that-- a contradiction. In the example cited above (note 4), the implications of "...and *simchah*-- what does it accomplish" (2:2) and "So I praised *simchah*..." (8:15) clearly clash. However, *Kohelet* contains more than just a few contradictions. Relative to its brevity, *Kohelet* challenges readers with a disproportionate number of contradictions: I believe that this serves *Kohelet*'s purpose on a deeper level.

Kohelet is more than just a book-- it was built to be an experience. How can we identify with *Kohelet*'s maddening frustration, how can we feel his bitterness at the arbitrary, illogical nature of the world around him, unless we are made to experience the same feelings in searching for meaning in *Kohelet* as *Kohelet* experiences in searching for meaning in life? The antithesis of blandly smooth logical progression, *Kohelet* attacks its audience

with combative instability, eliciting the same anxiety and frustration in readers as the author feels himself.

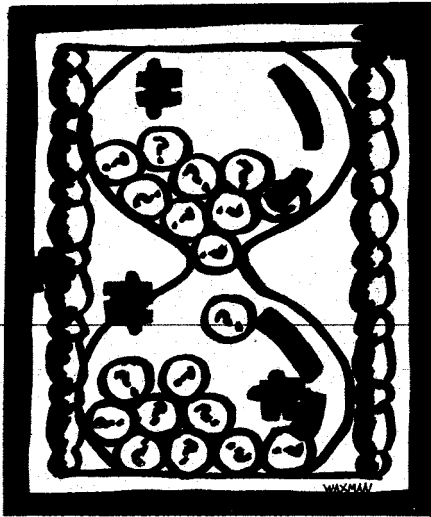
What is wisdom worth? "For in much wisdom is much grief; and he that increases knowledge increases sorrow" (1:18). But "then I saw that wisdom excels folly, as far as light excels darkness. The wise man's eyes are in his head; but the fool walks in darkness" (2:13-14). However, *Kohelet* switches from this viewpoint to the opposite perspective again without signalling a transition until he has already begun questioning wisdom. The same *pasuk* continues: "...and I myself perceived also that one event happens to them all. Then I said in my heart, As it happens to the fool, so it happens even to me; and why was I then more wise?" (2:14-15). *Pasuk* 6:8 accords with this latter skeptical view: "For what advantage has the wise man over the fool?" Lest we think that *Kohelet* has decided wisdom is worthless, he contradicts himself again in 7:11, 7:12, and 7:19:

"Wisdom is good with an inheritance; and by it there is profit to them that see the sun. For wisdom is a defence: but the excellency of knowledge is, that wisdom gives life to those who have it...Wisdom strengthens the wise more than ten rulers who are in a city."

Pesukim 9:16-18 develop this inconsistency further:

"Wisdom is better than strength; nevertheless the poor man's wisdom is despised, and his words are not heard....Wisdom is better than weapons of war."

The internal conflict rages in *Kohelet* and the reader, each futile in attempting to draw conclusions, each emerging with a tangled mass of indeterminacy.



What does *Kohelet* think of hedonistic consumption? "There is nothing better for a man, than that he should eat and drink..." (2:24). "...It is the gift of God that every man should eat and drink..." (3:13). "...It is good and comely for one to eat and to drink..." (5:17). But "all the labor of a man is for his mouth, and yet the appetite is not filled" (6:7).

Kohelet counsels us to promise prudently: "Better is it that thou shouldst not vow, than that thou shouldst vow and not pay" (5:4). Several chapters later, however, he challenges his own advice: "All things come alike to all: there is one event to the righteous, and to the wicked...he who swears, as he who fears an oath" (9:2).

The righteous live long, the righteous die with the wicked; the oppressed endure eternal tyranny, the oppressed get justice; toil and labor are commendable, toil and labor are vanity; wisdom is attainable, wisdom is beyond man's reach; life is meaningful, life is a cruel God's experiment.

Tone-Deaf Text

The instability of tone further obfuscates meaning and muddles the opposing sides of contradictory oppositions. Unlike speech, writing lacks the vital clues to meaning provided by voice tone and other forms of communication, such as facial expressions (especially eye movements). Particularly in a book like *Kohelet*, where the narrator expresses bitter frustration, we may expect sarcasm and irony. However, *Kohelet* often denies access to the clues which many works provide to tone. Which of *Kohelet's* declarations and prescriptions are sincere and which sarcastic?

Kohelet knows that text can be tone-deaf. One of his techniques (somewhat reminiscent of the self-consuming "surprised by sin" artifacts of *Paradise Lost*, *vehaMeivin yavin*), draws the reader in by setting an ostensibly sincere tone. At the end of the passage, however, the tone becomes clearly sarcastic. Does sarcasm then infiltrate the whole passage, seeping also into the "sincere" section, or does the opening maintain its sincerity? In this example, the beginning seems straightforward:

Go thy way, eat thy bread with joy, and drink thy wine with a merry heart; for God has already accepted thy works. Let thy garments be always white; and let thy head lack no oil. (9:7-8). However, the middle of the next *pasuk* shifts the tone radically:

"Live joyfully with the wife whom thou lovest all the days of the life of thy vanity, which He has given thee under the sun, all the days of thy vanity (9:9, italics mine)." In retrospect, has the tone been sarcastic throughout, or has *Kohelet* become embittered only as he approaches the end of the passage?

More fundamentally, does "*hevel*" mean "vanity" in *pasuk* 9:9 ("*Havel havalim amar Kohelet havel havalim hakol havel*"), as it does in the rest of *Kohelet*, or do the preceding "sincere" *pesukim* pressure us to interpret "*hevel*" to mean "breath," a homonym of *hevel*-vanity, which would yield a consistently sincere passage: "Live joyfully with the wife...all the days of thy breath (life)...under the sun, all the days of thy breath (life)." Of course, if the passage maintains sincerity to the end, it contradicts 7:26, "And I find more bitter than the death the woman, whose heart is snares and nets, and her hands are fetters; he who pleases God shall escape from her, but the sinner shall be caught by her."

Kohelet also employs self-consuming structures on a small scale, with predictably unpredictable results. The following exposition draws the reader into *Kohelet's* critique of justice:

"There is an evil which I have seen under the sun, when an error proceeds from the ruler: folly is set in great dignity, and the rich sit in low place. I have seen servants upon horses, and princes walking as servants upon the earth (10:5-7)."

On the heels of this disruption of traditional justice and established roles, we find a series of "eye for an eye" structures, succinct expressions of the most traditional concepts of justice:

"He who digs a pit shall fall into it; and whoever breaks through a hedge, a snake shall bite him. He who removes stones shall be hurt by them; and he who chops wood will be endangered by that (10:8-9)."

Linguistic ambiguity further disrupts the passage by under-

mining the parallelism of these structures as well: the word "*yisakhen*," translated here as "will be endangered," might mean "will be warmed," so that the sense of the *pasuk* would be, "He who chops wood will be warmed by it." Thus, while the preceding structures imply punishments for misdeeds, the final structure implies a reward for hard work.

Till The Bitter End?

The end of *Kohelet* seems to relax the insistent illogic of the rest of the book. By now, we have struggled through twelve chapters of some of the strangest, most troubling, least "accessible" prose and poetry in *Tanakh*. *Kohelet* recalls that he must leave his audience with some message, even if he cannot explain, guru-like, the "meaning of life." Even as he closes, though, his tone remains ambiguous: what motivates him to counsel submission to Divine authority?

"The end of the matter, when all is said and done: fear God, and keep His commandments, for that is the whole duty of man (12:13)." Has *Kohelet* concluded that serving God fulfills man's loftiest potential, or does the final *pasuk* imply that God rules only by dint of His omnipotence?

"For God shall bring every work into judgment, with every secret thing, whether it be good, or whether it be evil (12:14)." Has *Kohelet* reconciled himself to God wholeheartedly, or has he simply surrendered to a stronger arsenal? Has he recanted his claims of vanity, futility, and absurdity, somehow possessed of a deeper knowledge which the book does not reveal, or has he called upon his fellow mortals to adopt his fatalism?

Attempting to resolve the contradictions of *Kohelet* is not just doomed to failure, it eviscerates the book of its affective power. *Kohelet* resists the "steamroller" mentality due to its internal structure (or, more accurately, its lack thereof)-- its disjointedness, exceptional ambiguity, and numerous contradictions-- and due to the text's calculated techniques for communicating meaning to readers by denying them conventional, simple patterns of meaning.

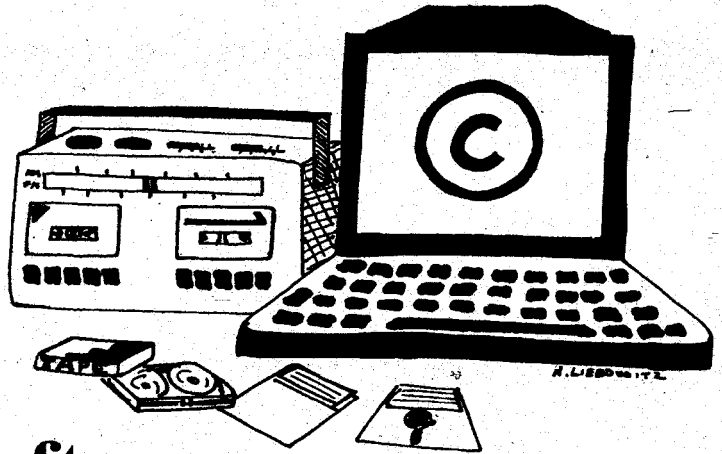
Kohelet's obstinate resistance to conventional expectations of consistency does not relegate the book to the musty stacks for "further consideration" by subsequent generations of interpreters. Its contradictions, tortuous twists, and ambiguity all demonstrate how obscuring univocal meaning can yield meaning. *Kohelet's* indeterminacy and constant self-undermining deny local meaning but create a web of controlled indeterminacy, stretched over the text as a whole, for the reader to experience.

¹From: Fox, Michael V. *Kohelet and His Contradictions*. Sheffield: Almond Press, 1989.

²For example, many medieval *mefarshim* cite the *Gemara's* resolution of the contradiction between 8:15, "So I praised *simchah*," and 2:2, "and *simchah*--what does it accomplish?" Despite the apparent lack of contextual clues, the *Gemara* explains that 8:15 refers to the happiness derived from fulfilling *mitzvot*, while 2:2 refers to hedonistic pleasure.

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Computers and Halakhah: Invisible Theft



by Yitzchak Hollander

Modern technology has made photocopying printed material and the replication of cassette tapes and computer disks commonplace. Aside from the secular legal copyrights which prohibit most duplication, halakhic issues such as *hasagat gevul*, overstepping the bounds of proprietary rights; *dina' deMalkhuta'*, the concept that certain secular laws are halakhically binding; and theft, must be considered when engaging in such activities.

Rashba (*She'elot uTeshuvot, chelek 6, siman 286*), quotes Rif's decision regarding a man who stole Torah commentaries and swore not to return them

until he had copied them. In his ruling, Rif criticized his contemporaries who were lenient toward the thief. Sedei Chemed (*ma'arekhet 3, siman 5*) quotes a *tosefta'* (*Bava' Kamma' 7:3*) which appears to contradict Rif's opinion, stating that one who sneaks behind a scholar to hear him study, though considered a thief, brings merit upon the public. To resolve the contradiction, Sedei Chemed explains that the cases differ. The *tosefta'* deals with a plagiarist who hears an oral lecture but fails to attribute his new knowledge to its originator. In contrast, Rif rules in a case of outright theft of manuscripts. Both sources, however, consider the copier to be a thief.

A well-known copyright case involved the publication of Rambam's *Mishneh Torah* with the new commentary of Rabbi Meir of Padua. The edition was first published in 1550 by a gentile, Aloisius Bragadin, of Venice. A second gentile, Marco Antonio Ashtinian, also of Venice, published a competing edition of the *Mishneh Torah* with the

same commentary, undercutting Bragadin's price. Rama (*She'elot uTeshuvot haRama', siman 10*) prohibited the purchase of the competitive edition, ensuring the profitability of Bragadin's venture.

Competition or Cherem?

Another precedent-setting case involved the German-translated *machzorim* published by Rabbi Wolf Heidenheim in the early 1800's. To preserve his rights to the new edition, Heidenheim obtained an injunction from his contemporary Rabbinical authorities prohibiting others from reprinting the *machzorim* for twenty-five years. Nevertheless, they were reprinted without authorization. Rabbi Mordechai Benet of Nickelsburg (*She'elot uTeshuvot Parashat Mordechai, siman 7-8*) initially banned the new edition. Later, he changed his position, reasoning that competition would both decrease the price and increase the availability of the *machzorim*. Benet expressed doubt as to whether a ban instituted by Rabbis in one locale applied to other communities as well, since no current rabbinic tribunal could legislate for the entire Jewish nation as the *Sanhedrin* had once done. However, Benet did agree, that, unlike the ban on the *machzor*, a ban on republishing new material was proper in order to preserve the author's proprietary rights. Benet, then, agreed with Rama's ruling on the *Mishneh Torah* with the commentary of Rabbi Meir of Padua, since a new commentary had been added to the standard work.

Rabbi Moshe Sofer, however, disagreed with Benet's final ruling, supporting bans designed to prevent all unauthorized republication, even of material without an original component. A major dispute erupted in his day, between two publishers of competing editions of the Talmud, from Vilna and Slavita. In *She'elot uTeshuvot Chatam Sofer* (6:57), he argued that, with the advent of printing and the decline of the scribe trade, publishers would not release new books without an assurance of recouping their initial investment. Unregulated competition would discourage publishers from investing their capital and could potentially end all publishing activity.

In 1861, another dispute arose, regarding the publication of the *Shulchan Arukh* with Rabbi Tzvi Hirsch Eisenstat's commentary, the *Pitchei Teshuvah*. Eisenstat had sold his commentary's publication rights

to a particular printer. Following the sale of the entire stock from the first printing, a second entrepreneur republished the book. When the first printer objected, Rabbi Shemu'el Waldberg of Zholkva ruled against him, explaining that his rights had ended upon the sale of his entire stock, since no stipulation against republication had been specified. Rabbi Yosef Sha'ul Nathanson (*She'elot uTeshuvot Sho'el uMeshiv, mahadura' kamma', Siman 44*) disagreed, arguing that the publisher of a new book should logically retain permanent rights to it, unless the author expressly states otherwise. Rabbi Yitzchak Shmelkish, (*She'elot uTeshuvot Beit Yitzchak, Yoreh De'ah, siman 75*), however, maintained that republication by a second publisher is halakhically permissible when the original rights expire. Nevertheless, Shmelkish wrote that the issue of *dina' deMalkhuta'* still precluded the republication of books. Since secular law includes copyright laws, and the principle of *dina' deMalkhuta'* prohibits the violation of secular law, republication is halakhically prohibited. In *Iggerot Moshe* (*Orach Chayyim, chelek 4, siman 40*), Rabbi Moshe Feinstein prohibits the duplication of cassette tapes containing Torah lectures. He neither cites *Chatam Sofer's* ban nor the issue of *dina' deMalkhuta'*, but rather reasons that "there is much [material] that may not be proper to publicize to the entire world...and sometimes the Rabbi is not sure if his words are correct." The speaker may feel that his ideas require further consideration, and may wish to restrict their dissemination.

Modern Cases

In 1984, the Jerusalem District Rabbinical Court heard the case of the republication of Rabbi Yissakhar Dov Teichtel's *Em haBanim Semechah*. Teichtel's son had sued a publisher who had reprinted his late father's work without permission, demanding all of the illicit profits, as well as an injunction against further republication. The Court's opinion, written by its chief Judge, Rabbi Ezra' Batzri (*Techumin*, vol.

Continued on the next page

6, pp. 169-184), outlines the precedents for this decision, as well as other relevant halakhic issues. Ruling in favor of the plaintiff, Batzri writes, "Although there is a dispute regarding the [idea of copyrights in] *halakhah*, all will agree that because of [generally accepted business practices] and *dina' deMalkhuta*, the author, his heirs, and his authorized representatives possess the rights to the books which were published, and no one else may violate them." The Court's ruling prohibited the defendant from using the books or the printing plates for any purpose. In a separate letter published along with the Court's opinion, Batzri extended his reasoning from copying religious texts to duplication of all books and cassette tapes, even for personal use. Since all such activity violates the secular copyright law, *dina' deMalkhuta* gives this prohibition halakhic weight.

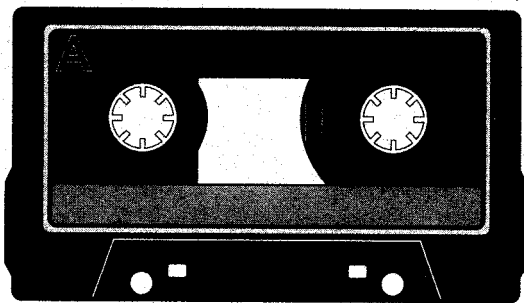
The same volume of *Techumin* contains a *teshuvah* by Rabbi Zalman Nechemyah Goldberg regarding the duplication of cassette tapes. Goldberg does not focus on bans or *dina' deMalkhuta*, but rather analyzes the laws of sales and theft. He differentiates between two types of halakhic sales. If a vendor sells a tape with the stipulation that it will not be duplicated, a purchaser who nonetheless copies the tape is not considered a thief, but has transgressed the word of the vendor, a prohibition delineated in *Bava Metzi'a* 78a. If the duplication causes a monetary loss to the cassette's producer (i.e. he was unable to profit from its sale), the copier may be financially liable for any benefit he obtains from the tape. Interestingly, Goldberg rules that if the seller is a gentile, no such liability exists.

In the second type of sale, a vendor sells a tape, but retains the right to duplicate it for himself. In this case, Goldberg is more stringent. According to

most Rishonim, he writes, a purchaser who illegally duplicates such a tape is considered a thief and is required to pay its retail value as well as the appraised monetary value of any benefit he obtained.

Goldberg, however, does not consider the copier of an unauthorized duplicate tape to be a thief. Although he prohibits purchasing a dubbed tape from the primary copier, Goldberg permits accepting one as a present.

Rabbi Eliezer Waldenberg (*She'elot uTeshuvot Tzitz Eli'ezer, chelek 18, siman 80*) permits copying pages from both religious and secular texts for private use. Authors and publishers release their product expecting that such duplication will occur. Even copyright notices which prohibit duplication of "any part of this book without the express consent of the author" implicitly condone copying individual pages for personal, non-commercial use.



New Horizons

Computer software packages present special, hitherto unexplored, halakhic issues. Often, a legal agreement — is printed on the

sealed envelope containing the disks. For example, the MS-DOS 5.0 package reads, "This is a legal agreement between you, the end user, and [the company]. By opening the sealed disk package, you are agreeing to be bound by the terms of this agreement. If you do not agree to the terms of this agreement, promptly return the **unopened** disk package and the accompanying items for a refund of the price paid." The agreement proceeds to stipulate that the software is to be used on only one computer, and that no more

than one copy may be made for archival purposes.

Several halakhic questions are raised by this legal agreement. At first glance, it would appear that the sale of the software package was completed upon transfer of funds. Can a seller append conditions that void a sale after its legal conclusion? Is the sale void if the purchaser neglected to read the agreement and ignorantly copied the disks? Even if the sale is halakhically problematic, does *dina' deMalkhuta* still apply, prohibiting its duplication? Additional *teshuvot* from eminent modern halakhists are necessary to clarify these questions.

Hamevaser offers its condolences to Rabbi Parness on the loss of his brother

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A Visit To The Schools of Shammai and Hillel

by Jennie Shapiro

When approaching the *halakhic* discussions recorded in the Talmud, we intuitively expect that the *Tana'im* and *Amora'im* did not erratically arrive at each decision in a vacuum. It is philosophically attractive to assume that they worked within methodological systems which molded their positions. Just as in the arena of *parshanut*, we know to

turn to Ramban for Kabbalistic interpretation, and we can count on Rashbam not to deviate from *peshat*, it is legitimate to expect that the views of *Tana'im* and *Amora'im* also reflect specific predispositions.

Beit Shammai and *Beit* Hillel, the schools of Shammai and Hillel, are mentioned frequently in the *gemara*, and scholars have tried to pin each school down to a specific guiding philosophy. The large number of cases in which *Beit* Shammai rules more strictly as compared to the large number of cases in which *Beit* Hillel holds the more lenient view lead some to assume that each school reflects the personality commonly attributed to its founder: unyielding Shammai and conciliatory Hillel.

However, as Dr. Louis Ginzberg, in *On Jewish Law and Lore* (pp. 77 - 124) points out, Hillel and Shammai personally disagree on only three issues, and in one of them, it is Shammai who rules more leniently! The founders of the schools themselves do not establish a clear pattern of allowing their personal temperaments to interfere with the *halakhic* process, so it is problematic to say that their students are thus influenced in reaching their decisions.

The Economic Factor

Ginzberg offers several alternate approaches to the differences between the two schools. His first theory, shared by Dr. Louis Finkelstein in *Jews: Their History, Culture and Religion*, (p. 133) suggests that *Beit* Shammai's strictness and *Beit* Hillel's leniencies reflect the opposing social and economic positions of their respective adherents: Hillel's school is the spokesman for the lower classes, and Shammai's school advances the concerns of the wealthier classes.

He points to the beginning of the third chapter of *Avot deRabbi Natan*, where Shammai asserts that Torah should be taught only to those who are wealthy, while Hillel believes that the Torah should be accessible to everyone. (Binyan Yehoshua, a commentary on *Avot deRabbi Natan*, explains Shammai to mean that the wealthy are able to learn without the distractions associated with earning a living. This interpretation does not automatically lead one to conclude that Shammai favors the wealthy.)

Ginzberg cites many cases which seem to demonstrate that *Beit* Shammai represents the wealthy and *Beit* Hillel, the poor. For example, in the eighth chapter of *Berakhot*, the Mishnah records that regarding the *kiddush* of *Shabbat*, *Beit* Shammai holds that one should first recite the blessing proclaiming the sanctity of the day, and then the blessing on the wine. The *gemara* advances two reasons for *Beit* Shammai's opinion: first, it is the sanctity of the occasion that gives rise to the obligation of *kiddush*. Second, the holiness of the day begins before the actual *kiddush* is recited. Ginzberg explains that for the wealthy, serving wine is the norm, and does not signify a special occasion; therefore, for *Beit* Shammai, the sanctity of the day must first be established and only then is the wine blessed in that context.

Beit Hillel holds that one should bless first on the wine and only then on the day. This opinion is also explained in the *gemara*: Hillel's students view the wine as that which gives rise to the saying of *kiddush*. Also, *halakha* dictates that when faced with a constant and something which is not constant, the constant takes precedence.

For the poor, interprets Ginzberg; the mere presence of wine marks a festivity, and no special proclamation of sanctity is necessary. Consequently, *Beit* Hillel are free to invoke the rule of a constant taking precedence. In this case, the blessing of *haGafen* on wine is said more frequently than the blessing of *Shabbat*, and therefore the blessing on the wine should be recited first.

In addition to this socioeconomic view of the disputes, Ginzberg suggests that this long-standing debate was also based on an ideological split between the right and left within the Pharisee camp. Both branches accepted the basic authority of Oral Law, and the rules of the exegesis of Torah. Yet issues such as the equality between Jews of the Diaspora and in Israel, the extent of the people's power in the Temple, and the relative importance of drawing Jews back to the land, divided the Conservatives, whose ranks included Shammai, and the Progressives, who were supported by Hillel.

Ginzberg's political theory behind this pattern of dispute, his socioeconomic theory, and the "opposing personality" theory which Ginzberg himself rejects, all lead to the same problem. It is true that

the principle of *lo bashamayim hi* dictates that the Torah was intended not for a divine and objective framework, but for the human domain, where it would be molded according to the subjective interpretation of its adherents. In fact, Rav Yisrael Salanter in *Or Yisrael*, distinguishes between "*kochot hanefesh*," the sum total of personal experiences which makes everyone's approach to Torah unique, and "*sechel*," pure intellect, which is unadulterated by the individuality of a person. He acknowledges, however, that it is nearly impossible to separate the two when trying to reach the truth of Torah.

And yet, it almost seems glib to assume that *halakha* is a function of such whimsical and capricious variables! Are we not detracting from the authoritative weight of *halakha* by attributing its content to such mundane influences?

Though absolute *halakhic* truth eludes us, "*lo bashamayim hi* licenses us to confidently decide issues of *halakha*. The human condition is indeed a legitimate factor; stories abound of compassionate Torah giants who found room within the system to rule intentionally one way or another in order to alleviate the burden of the poor. Yet the aforementioned theories seem to establish the entire system as one functioning on a *foundation* of subjectivity, instead of working subjectively *within* a more absolute framework.

This question is fundamental, but cannot be appropriately addressed in this context. Additionally, it is sufficiently uncomfortable that one is compelled to try and find a different answer. In order to interpret the situation without delving into this complex and controversial area, a second set of theories can be presented to address the conflict between the two schools. These theories categorize their debates based on factors within the *halakhic* system instead of based on social and personal variables.

Halakhic Distinctions

Rabbi Zecharya Frankel, in *Darkei haMishnah*, admits the inescapable truth that *Beit* Shammai usually rules more strictly, and *Beit* Hillel rules more leniently. The *mishnah* itself, in *Eduyot* chapter four, lists the few times that *Beit* Shammai is lenient and *Beit* Hillel is strict, thereby implying that these cases are not the norm. Rabbi Frankel operates with the assumption that we refer to the schools as "*Beit* Shammai" and "*Beit* Hillel" not only because their respective founders are so named, but because the schools' names represent a specific and intentional approach established by each teacher and followed by each group of students. He therefore struggles to understand why this pattern of strictness and leniency exists, and to understand why certain cases deviate from the pattern. No one seems to offer one single explanation which convincingly encompasses all instances of debate, and Rabbi Frankel, too, divides the cases into several distinct categories.

The first group, he argues, stems from *Beit* Shammai's tendency to understand *pesukim* very literally. Conversely, *Beit* Hillel does not lock itself into the restricted interpretation of the *pasuk* and relies heavily on broader forms of understanding the text. A classic example of this type of dispute is recorded in the third *mishna* of *Berakhot*: From the

Continued on the next page

pasuk in *Devarim* 6:7 which reads "when you retire and when you arise," *Beit Shammai* understands that "shema" must be recited in the reclining position at night and while standing during the day. *Beit Hillel* views these words as a more general guideline referring to the time of day during which "shema" should be read.

Rabbi Frankel's second category encompasses more cases than his first. *Beit Shammai*, he asserts, does not like to draw lines of distinction once a rule has been established. An *issur*, a prohibition, will therefore be taken to the extreme, resulting in a more stringent position. *Beit Hillel* seems less strict because its students will limit a prohibition by applying it only under certain conditions, thereby creating more situations of leniency, of "heiter."

As an example of this category, he cites *Pesachim* 4:5, where the *Mishnah* says that in the *Galil*, the northern section of Israel, *melakhah*, creative work, was prohibited on the day before *Pesach*. Concerning the night preceding this day, *Beit Shammai* says the entire night is included in this prohibition, comparing this case to *Shabbat* or *Yom Tov*, where the *issur* of *melakhah* extends to the eve of the holiday. *Beit Hillel* does allow the people of the *Galil* to do *melakhah* during the preceding night. Since *Beit Hillel* is prepared to draw lines of distinction within an *issur*, its students are willing to compare this case to a fast day, where the fast does not commence until morning, thus separating the night from the day.

Rabbi Frankel points out that *Beit Shammai's* tendency to apply a ruling without distinguishing between cases can, on certain exceptional occasions, ultimately result in it being lenient. The *Mishna* in *Eduyot* 1:12 says that if a couple travels overseas, and the woman returns and claims her husband has died, *Beit Shammai* allows her to remarry, even without proof of his death. *Hillel's* students distinguish between this case, in which they would prohibit the woman to remarry, and a case where she returned from a closer place, in which they would allow her to remarry, since her claim could more easily be verified. *Beit Shammai*, because of its policy of applying one ruling to all cases, is actually more lenient than *Beit Hillel* in this case.

In establishing yet another category, Rabbi Frankel clarifies his second category, and explains that once an *issur*, or less frequently, a *heiter*, has been established, *Beit Shammai* will take it to the extreme, and *Beit Hillel* will apply it more selectively. However, whether to prohibit or allow something initially is based on *sevara*, on logic. There are some instances in which it is only the unique *sevara* of each school which is the determinant, with no element of *issur* or *heiter* involved at all. In this third category, Rabbi Frankel includes questions relating to financial matters, prayers, and other areas, including the above-mentioned issue of the order of the blessings of *kiddush*, which Ginzberg attributes to socio-economic differences.

A Unique Perspective

An entirely different proposal addressing the ideological difference between *Beit Shammai* and *Beit Hillel* is put forth by Rabbi Shlomo Yosef Zevin in his *Le'or haHalakhah*. Basing his theory on Kabbalistic differences between the two schools, Rabbi Zevin argues that a pattern can be seen in which *Beit Shammai* focuses on the potential situation of a case-- "bekoach"-- while *Beit Hillel* only consider what can actually be proven-- "befoal."

For example, *Beit Shammai* argues that the lights of Chanukah should be lit in descending order, beginning with eight on the first night. The Hasmonians poured oil into the *Menorah* assuming it was enough for only one day, but the potential was in that oil to burn for eight. On the second day, the

inherent potential was to burn for seven more, and so forth; for *Beit Shammai*, our lights should be commemorating this potential.

From *Beit Hillel's* perspective, on the first day, only one day's worth of oil was burned; on the second day, it was proven only that the oil was capable of burning for two days. According to this school, our lighting should celebrate what was proven in reality day by day. Therefore, *Beit Hillel* maintains that the lights should be lit in ascending order, building up to eight on the final night.

Similarly, in *Uktin* 3:11, the *Mishna* asks: at what point is honey susceptible to the level of ritual impurity which befalls a liquid? *Beit Shammai* says: from the time one begins to drive the bees out of the beehive (either by angering them or by heating up the honeycomb.) *Beit Hillel* says: from the time the honeycomb has been broken. From Rabbi Zevin's viewpoint, *Beit Shammai* is willing to consider the honey a liquid even while it is only potentially its own entity, while *Beit Hillel* will only classify it as honey once it has left the honeycomb and is clearly recog-

nizable. (Rabbi Ovadyah Bartenura, in his commentary on this *mishnah*, cites another version of the text, which records *Beit Shammai's* opinion to be "from the time he contemplates scraping the honey." This reading only bolsters Rabbi's Zevin's assertion.)

Many would disagree with our initial assumption that *Tana'im* and *Amora'im* reach their decisions by following a predetermined halakhic philosophy. These people argue that *posekim*, halakhic authorities, do not subscribe to one specific philosophy, but judge each case individually, analyzing it independent of unrelated issues. However, it does seem more logical to assume that *posekim* operate within unique methodological systems, it is also imperative to temper that with the assertion that the guidelines they favor are those which help them to come as close to absolute halakhic truth as possible, working within the framework of *halakhah*, rather than a subjective one.



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Uri
Cohen

To the Editor:

In his review of Eliezer Berkovits's z"l *Jewish Women in Time and Torah* (Hamevaser, Tishrei 5753), Uri Cohen writes: "To whom is it obvious that, say, women can now wear *tefillin*... Berkovits is a lone voice in the wilderness... his unacceptable understanding of the halakhic process will keep this book out of normative halakhic discourse." Perhaps, Mr. Cohen has overstated his case.

Rambam in *Hilkhot Tzitzit* 3:9 states: "Women, slaves and minors do not have a Torah obligation to wear *tzitzit*... Women and slaves who wish to wear *tzitzit* may wear them, but they do not make the blessing. And thus, with the rest of the positive commandments in which women are not obligated, if they wish to perform them without a blessing, one does not prevent them." The *Hagahot Maimoniyot* #40 comments: "And thus *Rashi* forbade them to bless. *Rabbeinu Tam* held that women may make the blessing on all time-bound commandments... and the *Sar Mekutzi* wrote also like *Rabbeinu Tam* that women may make the blessing on the lulav and on *tefillin* and similar things."

Rema (*Orach Chayyim* 38:3), however, does not permit women to lay *tefillin*. The *Magen Avraham* explains (based on a *Tosafot* discussing a *midrash* about King Saul's daughter) that this is because women are not careful about maintaining a clean body, which is necessary for wearing *tefillin*. He adds: "But if women were obligated by Biblical law to fulfill the *tefillin* commandment, they would be more careful about their bodily cleanliness." As Rabbi Berkovits points out (pp.73-4), this shows that women's lack of bodily cleanliness is not intrinsic in menstruation, but rather is avoidable.

All of these sources are cited by Rabbi Berkovits. I am sure Mr. Cohen is well versed in them. However, his glib summary of a serious halakhic issue does not befit *Hamevaser* and probably misled some readers:

Sincerely,

Alyssa Berger (BRGS '92)

(Women and *Tefillin*: A Response)

Uri Cohen responds:

I am grateful to Ms. Berger for her challenge, as it has forced me to examine the issue exhaustively, as well as provided an opportunity to elaborate on the problem with R. Berkovits's approach. Very few people have actually looked into whether women may wear *tefillin*, which explains why some well-meaning students at Ramaz recently signed a petition requesting that the school permit it on the grounds that it's "perfectly acceptable, just unconventional." It is unlikely that anyone familiar with the sources would make such a claim.

Let's start with my allegedly "misleading" sentence. Indeed, it could have been misleading - had I written it as Ms. Berger quotes it. In fact, the full quote was: "To whom is it obvious that, say, women can now wear *tefillin*? Even rabbis well-known for leniencies in women's issues deny this one." I apologize if any reader got the wrong impression, but I thought it was clear that the reference was to contem-

porary rabbis and not to Rishonim. I specifically had in mind R. Yehudah Herzl Henkin (*Benei Banim* 2:3) and R. Avi Weiss (*Women at Prayer*, p.94).

R. Berkovits is correct in stating that some Rishonim do permit women to wear *tefillin*. While the opinions of *Rashi* and *Rambam* are not entirely clear (see *Sha'agat Aryeh* 104 on *Rambam*), R. Berkovits accurately cites *Rabbeinu Tam* (*Rosh haShanah* 33a) and *Rashba* (*Teshuvot* 123) as being lenient. He could have also thrown in *Sefer haChinukh* (421). All of them follow the *Bavli* (*Eravin* 96a), which states the Sages did not object when *Mikhal* wore *tefillin*. Unfortunately for R. Berkovits, however, all other Rishonim and Acharonim dealing with the issue are stringent; they either follow the opinion of the *Yerushalmi* (*Berakhot* 12:3), where the Sages did object to the practice, or they assume *Mikhal* was an exception. This roster starts with *Tosafot* (*Eravin* 96a), continues with *Orchot Chayyim*, *Kol Bo*, and *Tashbatz* quoting *Maharam* of *Rothenberg*, and proceeds with *Beit Yosef*, *Rema*, *Taz*, *Magen Avraham* (38:3), *Mishnah Berurah*, and *Arukh haShulchan*. With the death of *Maharam* - exactly 700 years ago, all debate ceased. Although *Rema* codifies the stringency, he's only the most prominent link in a 700-year-long chain. Therefore, R. Moshe Meiselman's conclusion seems only logical: "In view of the fact that the *Rema*, the authoritative codifier of law for Ashkenazic Jewry, and virtually all other authorities, forbid the wearing of *tefillin* by women, there is very little basis for a contemporary to permit the wearing of *tefillin* by women" (*Jewish Woman in Jewish Law*, p.150).

Why Don't Women Wear *Tefillin*?

The question probably nagging you at this point is: why? Only one reason appears throughout the literature - *guf naki*. Literally "clean body," at first glance this looks insulting to women. However, a careful analysis of the sources reveals that not only is *guf naki* an egalitarian concept, it's not even meant to be taken literally. First mentioned in the *Gemara* (*Shabbat* 49a), *guf naki* refers to the absolute demand that one wearing *tefillin* refrain from flatulence, which would violate their sanctity. Because it is so difficult for humans to be careful about *guf naki*, we have a strong desire to avoid wearing *tefillin* whenever possible (*Radvaz* #1151).

This desire is reflected in several *halakhot* of *tefillin*. For example, we do not train a boy to wear *tefillin* until shortly before his thirteenth birthday (*Rema* 37:3), although we are thereby neglecting the *mitzvah* of *chinukh*. Men do not wear *tefillin* all day (*Tur* and *Shulchan Arukh* 37:2), even though the ideal *mitzvah* on a Torah level would be to do so, so that removing them nullifies this *mitzvah* (*Peri Megadim*, E.E. 37:2). Men take off their *tefillin* before *mussaf* on *rosh chodesh*, to avoid wearing them for even fifteen minutes unnecessarily (*Radvaz* op.cit.). A man with diarrhea is forbidden to wear *tefillin* beyond the time he's obligated to do so - i.e. the time it takes to recite *shema*' and the *'amidah* (*Magen Avraham* 38:1). Finally, women are never allowed to wear *tefillin* because they are never required to wear them. How are we to understand this last application of the *guf naki* stringency?

Let's turn to the quote from the *Magen*

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'Avraham which Ms. Berger cites. He remarks that if women were obligated to wear *tefillin*, they would force themselves to be careful about *guf naki*. 'Arukh *haShulchan*. (38:6) explains that because men have an obligation to wear *tefillin*, they have no choice but to be careful during *shema* and the *amidah* (but then remove the *tefillin*); since women are exempt from *tefillin*, how can they undertake this great risk? Rather, he says, the time of *shema* and the *amidah* for women is analogous to the rest of the day for men: because they're not obligated in *tefillin* then, they do not have the right to take it upon themselves (see also 'Iggerot Moshe, O.C. 4:49). In either case, it would be a *chumra* (stringency) which leads to a *kula* (leniency), and therefore it is unacceptable (*Beit Barukh* 14:135). This is the application of *guf naki* to women.

Berkovits's Blunder

Now back to R. Berkovits. *Hamevaser* is not the forum for a full-blown halakhic debate. Suffice it to say, however, that his analysis of the issue is rife with errors. For example, R. Berkovits reads that *Magen 'Avraham* as if the real reason is not *guf naki* but women's exemption from time-bound *mitzvot*. In fact, although the *'Olat Tamid* does suggest that, the *Magen 'Avraham* explicitly states, "not like the *'Olat Tamid*," and the *'Olat Tamid* later rejects his own suggestion. Furthermore, R. Berkovits makes the embarrassing mistake of reading *guf naki* as both literal ("bodily hygiene") and specific to women ("a serious insult to womankind"). Then he glibly knocks down this straw man by proclaiming, "We may completely disregard the opinion of the Rema in this matter." Disregard the Rema?! In favor of whom? Only a few, early Acharonim ever dare to go up against the authority of the Mechaber or Rema. But in this issue, as explained above, nobody challenges the Rema. Nobody. In the words of Monty Python, "Look, this isn't an argument. It's just contradiction."



Let's get to the crux of the matter: the danger in R. Berkovits's entire approach. Although there are Rishonim who permit women to wear *tefillin*, for R. Berkovits they're just the icing on the cake. The real source of his leniency is his own feelings. This is evident from his shocking position on actual *minyanim* for women with *kedushah* and *barekhu* (pp.81-83). Nobody in all of Jewish history ever considered

such a thing (save the infamous Conservative responsum of 1973; on second thought, don't save it). But complete lack of sources doesn't faze R. Berkovits a bit. It's just a matter of tinkering with the Gemara and conjuring *halakhot* in and out of existence based on what Chazal were "undoubtedly" thinking. That he calls obvious something which flies in the face of every halakhic source indicates that R. Berkovits subscribes to what Dr. Tamar Ross calls the instrumentalist approach to *halakhah*. In this approach, the Jew stands autonomous before the *halakhah* and molds it to his or her own values; as Dr. Ross correctly pointed out two weeks ago, such instrumentalism lacks a fundamental subjection to authority.

R. Berkovits's halakhic writing seems to have

less in common with normative *she'elot uteshuvot* than with those Conservative responsa which ignore the vast corpus of halakhic literature except to serve up a couple of sources and sprinkle liberally with that all-purpose, magical *matir*, "the need for change." You cannot play dice with the halakhic universe. Look what happened to the Conservatives: *halakhah* barely even gets lip service now. Without the halakhic process, heavily-researched sources, a deep respect for authority, and a humble awareness of one's own limits, there is no *halakhah*. There is only *hefkerut*.

To sum up, if any approach is "glib" and "misleading," it is that of R. Berkovits. For women who want to be *machmirot* and wear *tefillin*, I can only cite R. Henkin's gentle answer. It appears in the very same responsum (cited above) in which he permits a woman to wear *tzitzit* in private or under her clothes (a controversial view, as some Acharonim feel that *tzitzit* as well as *tefillin* are subject to the prohibition of a woman wearing *keli gever*, a man's clothing). R. Henkin concludes by noting: "But you should not wear *tefillin*, as the decisors have written (O.C. 38:3). [Although] they permitted a woman to learn Torah for a need, *tefillin* is not a need. You should strengthen your connection to the religion in other ways."

(Note: for creative hashkafic theories as to why women are exempt from *tefillin*, see R. Aryeh Kaplan, *Tefillin* pp.56-57, and Esther M. Shkop, "The Implications of Feminine Imagery in the Bible," *Tradition* Fall 1992, p.45.)

HAMEVASER welcomes the submissions of any articles from all areas of Jewish thought by the undergraduate students of Yeshiva University. Letters may be submitted to the Hamevaser mailbox in the RIETS office.

Sukkot and the Return to Nature

by Yakov Genack

On Sukkot, the Feast of Ingathering, "we commune with nature by sitting in the tabernacle, grasping the bundle of verdant plants, and celebrating the Water Rejoicing and the divine blessing of nature, whose course follows set laws. All of these we impress with the majesty of the holy that sublimates nature, and chastens our heart of flesh and earthbound body, the gross and the terrestrial, the blighted and divinely cursed earth." (*Iggerot haRa'ayah*, vol. 3, p. 58. Translated by Avner Tomaszoff in Zvi Yaron's, *The Philosophy of Rabbi Kook*, p. 96.)

With this sweeping statement, Rav Kook connects the seemingly disparate components of Sukkot: the *sukkah*, the *'arba' minim*, the water libations and the *Simchat Beit haSho'evah*. He demonstrates that they combine to create the special character of Sukkot--coming close to and sanctifying nature. Before seeing how this ideal manifests itself in Sukkot, we will first study the significance of nature in *'avodat Hashem* in general.

Nature and the Unity of Existence

Rav Kook, in his essay "A Thirst for the Living God," calls for discovering God in nature:

"...It is necessary to show how one may enter the palace: by the way of the gate. The gate is the divine dimension disclosed in the world, in all its phenomena of beauty and grandeur, as manifested in every living thing, in every insect, in every blooming plant and flower, in every nation and state, in the panorama of the skies, in the talents of all creatures..." (*Orot* p. 119, translation by Ben Zion Bokser in *Classics of Western Spirituality: Abraham Isaac Kook*, p. 251).

The theological underpinnings of this approach can be best explained by the kabbalistic concept of "no place is devoid of Him" and by Rav Moshe Cordovero's famous dictum: "God is identical with all existence - not all existence is identical with God." Although God surely is transcendental, aspects of his divinity nevertheless permeate all elements of the world. (See *The Philosophy of Rav Kook*, pp. 48-49)

This view of the world is the key to Rav Kook's belief in the unity of the universe (see for example OK (2:391), "all of existence is encompassed in one point..."). Since God is unity, then existence, which his divinity encompasses, must also be unified. This is "...the great truth--that all the worlds with all that is in them only appear to us particular effulgences, but they are in truth manifestations of the higher light, and, seen in their essence, they make up one whole, a unitary manifestation in which is included all

beauty, all light, all truth and all good." (*Orot*, p. 120, translation *ibid.*) A major agenda of *Orot haKodesh(OK)* is thus exploring ways in which we can unite different elements of existence, whether they be different human qualities such as intellect and instinct, different genres of knowledge such as *halakhah* and *aggadah*, or different strata of society such as the intelligentsia and the masses.

As a result, the highest *kedushah* will be that which can uplift and unify the most elements of

need to harness its coarser physical elements (AT, page 82). Similarly, Rav Kook connects *Chassidut's* preoccupation with *taharah* to their ideal of sanctifying even the lower elements of life (AT, *ibid.*). Great care must be taken to avoid their perversion (see OK, 2:493)

The *pesukim* themselves indicate that the *Mikdash* represents a return to *Gan Eden*, the place in which Rav Kook saw Adam living in sanctity with his surroundings. Rav Menachem Leibtag points out that in *Bereishit perek 2*, man is enjoined "le'ovdah ulshomrah" with regards to *Gan Eden*; in the *Mikdash*, the *kohanim* do the *'avodah* and the *leviyim* the *shemirah*. The heart of the *Mikdash* is the *Aron*, containing the Torah which is "eitz chayyim," paralleling the *Eitz Chayyim* of *Gan Eden*. The cherubs standing over the *Aron* represent the cherubs guarding the way to the *Eitz Chayyim* of *Gan Eden*. In "Sanctuary Symbolism in the Garden of Eden Story" (*Proceedings of the World Congress of Jewish Studies 1985*, pp. 19-25), Gordon J. Wenham adds several additional proofs including the similar usage of the verb "hithalech" to describe the presence of God in both areas and the fact that both are entered from the east.

In *Megadim* (vol. 12, pp. 17-23), Na'avah Goodman suggests, based on literary parallels, that the *Akeidah* represents a *tikkun* of the sin of Adam. The conceptual linkage is that whereas Adam sinned by not restraining himself from the one thing from which he was forbidden, Avraham gave up the one thing he most loved. If we accept this analysis, this can explain why the *Mikdash* deserved to be the place in which the original *Gan Eden* ideal is first restored as it is located on the site where the *Akeidah* occurred. The *Pasukim* mention the *Akedah* as occurring in the land of Moriah (Beresis 22:2) and it is in Moriah that we find the site of the *Mikdash* (Divrei haYamim 2:3:1). Rabbi Carmy has pointed out that in fact these are the only two times in Tanach that this word appears. In *Zevachim* 62a the Gemora states that the site of the Mizbayach is the site of the "ashes of Yitzchak."

We began our discussion with Rav Kook's view of Sukkot as a time of communing with nature. We traced the significance of nature to *Gan Eden* and saw it revived in the *Mikdash*. The natural result of these equations is that there should be common denominators between Sukkot and *Mikdash* as they have similar objectives.

The Arba Minim: The Last Korban

"Anyone who takes the *lulav* with its binding and the *hadass* with its wreathing is considered by the Torah as having built an altar and brought upon it a korban (Sukkah 45a)." Study of the *pesukim*, *halakhot*, and *'aggadot* associated with the *'arba' minim* demonstrate that this statement captures the essence of this *mitzvah*.

1) Purpose--Ta'anit 2b, "Rabbi Eli'ezer says that the four *minim* come only 'leratzot', (to help us find favor in Hashem's eyes) for water; just as these four *minim* can't exist without water, the world can't exist without water." The *pesukim* often mention that achieving *ritzui* is an objective of the *korbanot*.



existence. One's identification with the world can be perceived in concentric circles beginning with individuality, moving through nationality and humanity towards a final unity with the cosmos in its entirety. (See OK, 2:444-5) Rav Kook believes that this final level is achieved by linking with nature; therefore, he writes that the highest form of *'avodat Hashem* is that which directly connects with nature (OK, 2:493).

Thus, Adam before the sin, who existed in harmony with all life in *Gan Eden*, achieved an even higher spiritual state than *Moshe Rabbeinu* (*ibid.*). One indication of this is, whereas Moshe had to separate from his wife before communicating with God, Adam's "zehira" *'ila'ah*" uplifts all of the physical (OK, 1:279).

The Mikdash and Nature

In Rav Kook's philosophy, the realization of this ideal is found in the *Beit haMikdash*. The purpose of *korbanot* is to uplift even the lower elements of existence and unite them with the Divine (*Arpalei Tohar(AT)*, pp. 10-11). Rav Kook views the emphasis on *taharah* in the *Mikdash* as resulting not out of any great concern for its sublime components, but from a

In the Thought of Rav Kook

2) "Mitzvah haba'ah ba'veirah"--Several of the Ba'alei Tosafot believe that this *pesul* applies on a *de'ora'ita* level to only two items: *korbanot* and 'arba' minim. Rabbeinu David Bonfils (*Pesachim* 35b), a student of the Ramban, explains that these Tosafot limit this problem exclusively to *korbanot*. The *Lulav* also belongs to this category because it serves a parallel function as a *meratzeh* (see above) and is, therefore, "ke' ein korban".

3) Measurement--*Ammot* are generally considered to be six *tefachim* with only two exceptions: in measuring certain critical objects in the *Mikdash* (*Menachot* 97a) and in the measurement of 'arba' minim (*Sukkah* 32b). Since the 'arba' minim are "ke' ein korban," one can understand why in this case the standard of the *Mikdash* would be adopted.

4) Form of performance--*Sukkah* 37b implies that the method and purpose of the waving of the *lulav* is identical to that of the *she'et haLechem* and the *shenei kivsei Atzeret*.

5) "Lulav haYavesh"--The Ba'al haMaor extends the invalidation of dry *lulavim* even beyond the first day of Sukkot, citing the *pasuk* in Mal'akhi 1:8 which discusses the inefficacy of lame, sick, or blind animals for *korbanot*.

6) Overrides Shabbat--Despite the general severity of Shabbat, it is overridden by the 'avodah of the *Beit haMikdash*. Rabbi Eli'ezer believes that in addition, the preparations necessary for the 'arba' minim, as well as those of several other *mitzvot*, override Shabbat (*Shabbat* 131b). This ability to override Shabbat could indicate a common denominator among these items. (See my article in *Enayim L'Torah* (vol. 7, no. 21))

7) *Simchah*--the *pasuk* introducing the 'arba' minim states: "And you shall take for yourselves on the first day the fruit of the tree *hadar*, branches of palm trees, and the boughs of thick leaved trees, and the willows of the brook; and you shall rejoice before God seven days." The expression of rejoicing before God is generally used in the context of the bringing and eating of *korbanot* (see *Devarim* 12:12).

covering performed by God.

4) The *Gemara* (*Sukka* 4b-5a) reads "From where do we see that a *sukkah* less than ten *tefachim* is invalid? The *Aron* is nine and the *Kapporet* one, making a total of ten *tefachim*. It is written, 'I will meet you there and I will speak to you from above the *Kapporet*.'" The *Gemara* then goes on to defend the view that the *Shekhinah* never descended below ten *tefachim*.

The simple reading of the *Gemara* would indicate that the *sukkah*, like the *Aron*, must meet the requirement of ten *tefachim* to achieve the objective of reaching the *Shekhinah*. This is an understandable goal only if a *sukkah* is trying to resemble the *sukkah* of "annanei haKavod."

5) The *Gemara* (*Sukkah* 5b) asks how we know that a *sukkah* must have ten *tefachim* even without the *sekhakh*. It answers by learning from the *keruvim* that the word "sekhakh" includes a space of ten *tefachim*.

6) The Yerushalmi *Sukkah* 1:6 "And You should hang (*Sakosa*) the *Parochet* over the *Aron* (*Shemot* 40:3) from here that walls are called *Sekhakh*, from here that you can make walls with something that can receive *Tum'ah*."

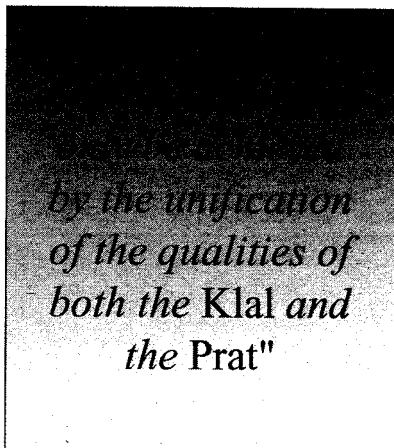
6) I have heard that there are kabbalistic sources that view the *Sukkah* as being the ideal place to perform the *mitzvah* of the *Arba Minim*. This makes our *Korban-Mikdash to Arba Minim-Sukkah* analogy complete.

levels can be found. In the splendor of the return to the ideal of the "Zehera ila'a" of Adam, of unification with everything, we do not forget the uniqueness of mankind, and we bring the seventy *Parot* for the seventy nations of the world (*Sukkah* 55b). Within humanity we do not forget the uniqueness of the Jewish people and we bring the one *Par* on *Shmini Atzeret*. The *Gemara* compares this to

a king who after having a large feast made for him, requests a small feast from those he loves (ibid). Our feelings of unity with *Klal Yisrael* are strengthened by the coming together "of every citizen of Israel." The *pasuk* "all citizens of Israel will dwell in Sukkot," which teaches us that all of Israel can join into one *Sukkah*, and one need not own a private *Sukkah* (*Sukkah* 27b) strengthens this identity. But the individual must be pre-

served; from the word "*lachen*" we learn that each Jew must own his own *Arba Minim* to perform this *mitzvah*.

I am grateful to Rav Hillel Rachmoni who has guided me in Rav Kook's philosophy and who has taught me many of the passages of Rav Kook quoted here.



The Sukkah and the Sanctuary

Man directly encountered God's presence in the paradigmatic *sukka* of the *midbar* which was formed from the *ananei kavod* (*Sukkah* 11b). Even in the present *sukkah*, we consider ourselves as coming before God. This communion is enhanced by its performance outdoors with nature. Similarities between the *mikdash* and *sukkah* highlight the significance of the theme of in this *mitzvah*:

1) The word "sukkah" is used in *Tanakh* and in *kinot* to refer to the *Beit haMikdash* (see, for example, *Amos* 9:11 "On that day I will lift up *sukkat David* that is fallen..."). This connection is not only linguistic, as this phrase makes up the added *haRachaman* in *birkat haMazon* for Sukkot, in which we request the rebuilding of the *Beit haMikdash*.

2) The first *mikdash* was dedicated on Sukkot (*Melakhim* 1, 8:2), as was the dedication of the *mizbeach* in the second (*Ezra* 3:3-4). Many have pointed out that *Chanukah*, the day the *mizbeach* was rededicated, is compared to Sukkot in the Book of Maccabees (Book 2, 10:5-7). Echoes of this analogy can be seen in *Bett Shammai's* view that the *nerot Chanukah* daily descend in number, paralleling the *korbanot* of Sukkot, which also daily descend in number. (*Shabbat* 21b)

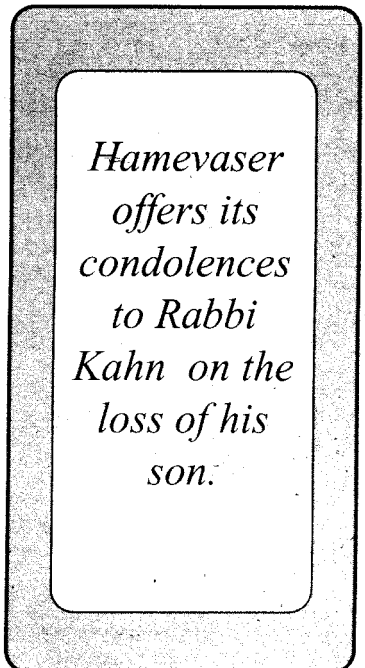
3) Eighteen of the nineteen places the word "sekhakh" is used in *Tanakh* refer to the *keruvim* or a

Sukkot and Gan Eden

The Ramban (*Vayikra* 23:40) believes that the fruit of Adam's sin was an *Erog* and that the taking of the *Arba Minim* helps rectify this sin. The *Gemara* also teaches us about the *Erog* that "the taste of the tree is like the taste of the fruit" (*Sukkah* 35a). There is a Midrash which says that this state was the original ideal of all of creation, indicating that when we take the *Erog* we attempt a return to the pristine state of the world. In fact, all the *mitzvot* of Sukkot encourage a return to pre-sin ideals. Allusions to this can be found in the statement that the pit from which the water for *Nisukh Ha-Mayyim* was drawn was created during the six days of creation (*Sukkah* 49a) and by the derivation of certain *halachot* of *Sukkah* from the nature of the initial mist that went up and watered the world (*Sukkah* 11b).

The Unity of the Klal and the Prat

Rav Kook believes that true unity can only be achieved by the unification of the qualities of both the *Klal* and the *Prat*. Thus the ultimate goal is to preserve the individuality of yourself, your nation and of humanity while nevertheless uniting with the whole. (OK 2:444-445). On Sukkot all four of these



Debate Over Dorm Talks

To the Editor:

I found *Hamevaser's* editorial "Too Much Talk in the Dorm..." (December, 1992) greatly disturbing, both in terms of its content and in terms of the general editorial policy it portends.

As a member of the educational planning committee for "Dorm Talks" and as the author of the Talks' scenarios for the past five semesters, I believe *Hamevaser* misrepresents the essential purpose of "Dorm Talks."

Hamevaser writes, "We take an early leave of the *Beit Midrash* or library one night each season, *hoping to widen our horizons and escape the mundanity and triviality of our every-day affairs.* Until now, we've been sorely disappointed." (emphasis mine). The purpose of "Dorm Talks," however, is not to provide an escape from "the mundanity and triviality of our every-day affairs." Rather, its purpose is to help us learn to clarify our Jewish values precisely in the context of our daily affairs. "Dorm Talks" are value clarification sessions in which Yeshiva students and RIETS' *roshei yeshiva* examine the grey areas of a halakhic life in a predominately non-Jewish society. "Dorm Talks" endeavors to confront our Orthodox Jewish lives' mundane complexities head-on, to deepen our understanding of the persistent challenges which we face, and to hone our decision-making skills so that we can live our every-day lives more

fully, in accordance with our Jewish values. It is unfortunate, as *Hamevaser* duly notes, that "spirit of halakhic dogmatism" has infiltrated the Talks; it itself is a "Dorm Talks" dilemma with which the Talks' organizers continually struggle.

Hamevaser, however, apparently disapproves of all of the dilemmas on the "Dorm Talks" agenda. What *Hamevaser* begins to refer to as "some of the sensitive area that have been discussed," quickly degenerates into "But what really shakes us to the core is the laundry list of regrettable phenomena that each new Dorm Talks question-sheet brings up for discussion, unfurled with relish for all to see ... The rest of the year probably holds similar gems in store." What exactly constitutes this "laundry list of regrettable phenomena?" This past Fall semester, "Dorm Talks" concentrated on Jewish sexual values, dating, and marriage. The scenarios dealt with universal, perennial dilemmas which consistently plague Yeshiva students as attested to by consulted *roshei yeshiva*, deans, faculty counselors, social workers and psychologists, rresident advisors, and fellow students. In the past, in order to help facilitate students' transition into the work-world, "Dorm Talks" has discussed the Orthodox Jew in the work-place and business ethics. Confronting issues of political activism and dual loyalty, "Dorm Talks" has helped students become better Jewish Americans and religious Zionists. The list goes on. These important issues hardly deserve the condemnation the received in *Hamevaser's* editorial.

In terms of editorial policy, responsible editorializing aims to critique and advise, not to indulge in nonconstructive taunts. *Hamevaser* would best serve the interests of the Yeshiva community if, in the future, it suggested substantive ways to improve the "Dorm Talks" program, rather than denigrate it.

Benjamin Samuels
YC '91; BRGS '93; RIETS '94

To the Editor:

I was surprised and quite disturbed to read the editorial "Too Much Talk in the Dorm" in the *Kislev* edition of *Hamevaser*, in which the editors charged the organizers and speakers involved with Dorm Talks with "halakhic dogmatism."

Firstly, I find it interesting that the editors consider themselves more authoritative than Rabbi Schachter, Rabbi Willig and other *talmidei chakhamim* in determining the halakhic and hashkafic parameters of the issues discussed in Dorm Talks.

Secondly, it is difficult to believe that *Hamevaser* can deny the solid halakhic and hashkafic ramifications of the sources in question. Statements such as "a man must distance himself from women very, very much," coupled with the rigorous *halakhot* of gender-intermingling which are found in *siman 21* of *Even haEzer* provide definite halakhic parameters for the issues raised at the most recent Dorm Talks. These and other related *halakhot* have been quoted and utilized by *posekim* throughout history, and it is incredulous to believe that our residence in a secular society, which doesn't enforce these halakhic and hashkafic norms, may thereby dilute their validity or cause us to reinterpret as general that which is clearly specific. Had the editors complained of a failure on the part of the Dorm Talks organizers or speakers to address, more specifically, certain sensitive issues, I may not have written this letter; however, the denial on the part of the editorial of the authoritativeness of the *halakhot* which were presented warrants a response.

I apologize if my words are sharp, but they

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correspond to the caustic tone of the editorial. Additionally, although I have singled out only one category of discussion, I am fully aware that it is, for a major part, the object of *Hamevaser's* dispute, and it is my intent that it serve to illustrate the significance and ramifications of other such relevant issues regarding which *posekim* have rendered decisions grounded in solid source material.

Avrohom Gordimer
YC '89, RIETS '93

Elusive Memorials

Continued From Page 20

scribes the *Reish Galuta's* daily regimen. He was in the habit of going to sleep and waking up to music. However, he was informed that this practice violated the prohibition against music.

The other two *gemarot* in *Sotah* and the *Yerushalmi Megillah* serve as a basis for the Rishonim's commentaries on the initial *gemara* in *Gittin*. Rashi explains the prohibition of music to be "in party-houses," apparently basing himself on the *mishnah* in *Sotah*. Tosafot limits the prohibition against music to cases where one listens in a way comparable to the *Reish Galuta*. Furthermore, song for the purpose of *mitzvah*, such as at a wedding, is certainly permitted. Alfasi in *Berachot* (21b in Alfasi's folios) quotes the *gemara* in *Gittin* but adds, in the name of the Gaon, that the prohibition of singing only applies to love songs, not songs of praise and thanks to God (Rosh, ad loc, is nearly identical).

Rambam's position regarding the prohibition of music is unclear. In *Hilkhot Ta'anit* (5:14), he implies that musical instruments are always forbidden, but singing is only forbidden over wine. The Tur (*Orach Chayyim* 560) understands Rambam this way; however, he adds that, in a responsum, Rambam contradicts himself by stating that singing is always forbidden. (The only responsum that the author was able to find that implies this is 224 in the Blau edition which does indeed say that singing is forbidden, but doesn't base it on a remembrance of the

Temple's destruction, but rather because this type of desire is very strong and needs to be overcome).

Music Today

The prohibition against music is the most controversial of all these *halakhot*, in terms of its contemporary application. The position of the Mechaber (560:3) is identical to Rambam in the *Yad*, namely, while playing instruments is always prohibited, singing is forbidden only when over wine. The Magen Avraham, in accordance with the Mechaber and Rambam, feels that singing is always prohibited as well, based on the prohibition against the song of weavers, mentioned in *Sotah*. Rama, however, limits this entire *halakha* to one who listens to music at festive meals or to one who listens to music on an overly regular basis. Unfortunately, he does not define what is an "overly regular basis." Rav Moshe Feinstein, in a famous responsa (*Orach Chayyim*, vol. 1, no. 166), refutes the Magen Avraham's proof from *Sotah* by saying that such a case falls within the rubric of listening on an overly regular basis. However, he still feels that it's worthwhile to follow the practice of the Magen Avraham. As far as musical instruments go, he disagrees with the Rama and believes that they are always prohibited, unless for the purpose of a *mitzvah*.

Unfortunately, there doesn't appear to be a definite conclusion regarding the applicability of most of these laws. Even if one assumes that none of the above *halakhot* need to be kept, the principle underlying their initial inception remains pertinent. Our lack of the *Beit haMikdash* should be felt, regardless of how exactly we express our feelings.

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Perspective of a Russian Experience

by Ari Blech

Camp. The cramped coexistence of overeager campers and overworked counselors. The definition amused me. A smile quickly passed my lips -- and I relaxed. Nursing this meaningless musing, and a bottle of Smirnoffs courtesy the stewardess, I settled back in the coach section of a plane to Estonia, preparing to get a good *schluff*. (Not my first Baltic foray, excitement rapidly yielded to the demands of a tired torpor). But my plans altered quicker than you can say *Pzychtkovhjk* (or any other Russian word with no vowels). It wasn't a nosy neighbor who kept me awake any more than it was a fascinating article in the airline's magazine. No, I have no one to blame but myself -- unless you count my mother, that is. When I was younger, Mamma, to out-mameleh her friends, I suppose, asked me no fewer than three times a day (conveniently coordinated

with Services) what I would do with my life. I've forgiven her since, convinced that she did this to remove any doubts of *Yiddishkeit* occasioned by her Waspish looks (Nu, Yettie the *Yente* will talk). But on this Tuesday evening her words came back to haunt me; I was arrested with angst. How was I spending my summers? Was my work really meaningful? Self-doubt gnawed away. At times the question was personal: was I the right man for the job? At others, the query took broader form, skeptical about the task itself: could centuries of assimilation be reversed? I was accosted by a lethal dose of doubt. Yup, I had the existential blues. Feeling as isolated as a Kafkaesque creature -- and as frustrated as Captain Hook with an itch -- I wallowed in my Wasteland. I was raising serious questions, questions that I knew best not be handled on two hours of sleep and a bumpy flight. And so, like any serious philosopher, I *chapped* a quick snooze. Alas, Elijah neglected to appear in my dream (some problem with time lines, *mistama*) and I woke groggy and

disgruntled, no closer to a solution. But Time (apparently happier with its role than I was with mine) soon healed me of this ill -- dressed up as a fourteen year old girl named Deena. It was the first Friday night of camp when she approached, in tears. Misery may love company, but I don't, I thought to myself, saying instead, in the most patient voice I could muster, "*davai*" (Go ahead). I was mistaken. Deena was bringing good news, the antidote to my metaphysical moping. The details are unimportant, nor do I remember them. Something about how glad she was that I had come back to Riga. In fact, I don't recall much of what happened that night, or the next. My friends have filled me in. It seems that at havdala, I caused quite a stir, availing myself of the flame to burn Sartre's books. And then I smiled. Again.

Elusive Memorials

by Yaakov Blau

Do we feel the loss of the *Beit haMikdash*? We often mention our hope for its return in our daily prayers, but are we required to do more than pay a mere lip-service? There are many *gemarot* where *Chazal* discuss *halakhot* intended to serve as a reminder of our loss. However, today many of these *halakhot* seem to be disregarded. To what extent do these institutions apply today?

Mourn the Loss

The *Gemara* in *Bava' Batra*' 60b records the famous discourse between Rav Yehoshua and the *Perushim*. The *Perushim* wouldn't eat meat or drink wine, because both had served important functions in the *Beit haMikdash*. Rav Yehoshua responded with a *reductio ad absurdum*: by the same reasoning, they shouldn't eat bread and fruits nor drink water, since these things also served functions in the *Beit haMikdash*. The *Perushim*, realizing that their position was untenable, were silenced by this argument. However, Rav Yehoshua conceded that their basic premise was indeed correct: it is proper to mourn at some level over the Temple's destruction. The level of mourning that the *Perushim* insisted upon placed unrealistically high expectations on the people. The proper level of mourning involves upholding only what *Chazal* mandated.

Following Rav Yehoshua's statement, the *Gemara* cites several examples of *halakhot* designed to be constant reminders of the *churban*. When a person makes a meal he should leave out something, such as *kasa' deHarsana*' (some type of fish dish). A woman should leave off some her jewelry and a bridegroom should place ashes where he normally wears his *tefillin*. When a person plasters his house, he should leave unplastered a square *ammah* facing the door. The *Gemara* notes that there are two exceptions to this *halakhah*. One may buy a preplastered house without having to un plaster the *ammah* opposite the door, and

if one mixes sand and straw into the plaster he is permitted thereby to plaster his entire house, including the *ammah* opposite the door. Rashi explains that the exemption arising from mixing straw and sand is because such a mixture dulls the plaster's whiteness.

The Posekim Speak on Plastering

Alfasi (in *Ta'anit* 10b in Alfasi's folios) records the list of aforementioned *halakhot* with a notable exception. He ignores the two cases when one is exempt from leaving an unplastered *ammah*; however, Ran, ad loc, notices this omission and inserts the missing *halakhot*. The *Mechaber*, in 560:1, agrees

halakhah. He stipulates that all modern plasters are diluted. Therefore, the exemption of diluted plasters mentioned in the *gemara*, although disregarded by earlier *posekim* (the Alfasi and the *Shulchan Arukh*), applies unilaterally today. Furthermore, he justifies dispensing with the *halakhah* of leaving out *kasa' deHarsana*' from a meal by cryptically explaining "now we don't know of such a thing, and it's hard to imagine what it means to leave an open space."

Limiting Music

While the aforementioned list of prohibitions might seem rather extensive, it is incomplete.

Another significant prohibition is found in *Gittin* 7a. The *Gemara* states that listening to music is prohibited, based on the verse "Do not rejoice O Israel in the celebration of the nations" (*Hosea* 9:1). When asked why the verse "don't drink wine to the accompaniment of song" (*Isaiah* 24:9) is not used, the *Gemara* replies that from the verse in *Isaiah* one might have thought that only music from instruments is forbidden, however, from the verse in *Hosea*, we infer that actual singing is prohibited as well.

There are two other significant sources that relate to this topic. The first, a *mishnah* in *Sotah* 48a, informs us that when the *Sanhedrin* was annulled, song was banned from party-houses. In the following *gemara*, Rav Huna says that the songs of sailors and herders are nonetheless permitted whereas weavers' songs are prohibited. Rashi explains this distinction as stemming from the different nature of the songs in question. Sailors and herders use their songs to enhance their work and therefore it is permitted; weavers' songs are purely gratuitous and, accordingly, are prohibited. The second source is *Yerushalmi Megillah* 3:2 which de-

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