

# The Meaning and Significance of New Talmudic Insights

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I vividly recall the day toward the beginning of my freshman year in high school year when our (very bright and learned, and sometimes irreverent) rebbe announced that “everyone should like learning (=lernen) because as we know, learning is fun.” Although at that point, I would not have been able on my own to formulate this sentiment in quite so bold a fashion, I resonated to my rebbe’s words because I believed them to be essentially correct. Serious Jewish learning, and the study of the Talmud and its interpretation in particular, can and should be great fun. Indeed, what my rebbe went on to say was that although the study of Torah is among the most venerated (and spiritually compensated) *mizvot*, it is perfectly acceptable to engage in Talmudic study (as part of the larger precept of Torah study) because one really likes to do so, and because it provides enjoyment.<sup>1</sup> In a more formal construct, the *simhah* that can be engendered through Torah study is precisely what leads to its prohibition during intense periods of mourning.<sup>2</sup>

This then is the very short and partial answer to the question of why I study the Talmud. What I should like to do in this essay is to try to quantify what in fact is so enjoyable about the study of the Talmud, at least to my own (idiosyncratic) way of thinking. As with certain puzzles or logic problems, much of the fun lies in figuring out or decoding the system and the meaning behind the material that is presented. This process begins by getting the individual or local Talmudic *sugyot* right. The challenge here, however, is to be able to decipher difficult words and texts from the linguistic and literary standpoints as well, and not only from the conceptual side. You don’t have a *sugya* right (and that part of the larger picture decoded) until you have interpreted and accounted for the specific words and phrases of the Talmudic text as vehicles

and representations of the reasoning and halakhic or rabbinic dicta that are at the *sugya's* core.

Adding to the challenge, *sugya* interpretation depends not only on uncovering or discovering the most logical or reasonable approach to the text at hand. Proper interpretation is achieved only by understanding both the text and the concepts behind it in accordance with or against the backdrop of the broader teachings of the Oral Law as a whole. As the late twelfth century Tosafist (and student of Rabbenu Tam) R. Hayyim *Kohen* noted, pure logic or rational thinking is not necessarily able to account for the specific parameters, requirements or penalties that each Torah precept generates.<sup>3</sup>

On the other hand, the Talmudic corpus allows for and encourages not only the raising of questions or problematics that emerge from new circumstances or developments over time within the history of human existence (e.g., “selling chametz,” using a “Shabbos clock,” employing breakthroughs in medical technology),<sup>4</sup> but also the development of new overarching methods of study, such as the “Brisker *derekh*” of R. Chaim Soloveitchik (d. 1918), or the different, but no less systematic approach of R. Chaim’s younger contemporary, R. Shimon Shkop (d. 1939).<sup>5</sup>

Tracing and appreciating the relationship (in terms of both the similarities and the changes) between the approaches of leading medieval Talmudic commentators (*rishonim*), and those of the commentators in the early modern and modern periods (*‘aharonim*), as well as the points of interface or engagement between them, sometimes has the quality of catching a chemical reaction or a biological phenomenon at the instant at which it actually occurs. These interactions are palpable and suggestive, and can be traced back to the original Talmudic or rabbinic text(s) under discussion as an integrated continuum or whole. Also, the ability to find something really new to say in the midst of so much that has come before, to put forward a real *hiddush*, is truly exciting. The process of locating and understanding a *hiddush* can be comparable (depending upon your taste) to a thrilling roller coaster ride, or to the various parts of an intricate symphony coming together.

## II

Rather than trying to continue to diagram these points of satisfaction or enjoyment in descriptive terms, I would like to present an example of a *sugya* and its development, a veritable Talmudic puzzle, that encapsulates much of what I have just described, and more. Although markedly more discursive than the remarkably apodictic Mishnah, the Gemara is similarly a work of

legal theory and illustrative cases, not a complete record of case law. Any established decisor of Jewish law or judge sitting on a *beit din* (rabbinic court) will encounter myriad cases or situations that are not described or even mentioned explicitly in the Talmud. Through application and reasoning, the decisor must be able to identify relevant Talmudic passages and constructs (as well as applicable post-Talmudic precedent).<sup>6</sup> On a more theoretical or preemptive level, it is also fascinating to consider the halakhic possibilities according to Talmudic law in larger (and more complex) kinds of cases that the Talmud does not specifically address. This is the type of situation that we will now proceed to discuss.

R. Aryeh Leib *ha-Kohen* Heller (d. 1813), author of the highly regarded *Qezot ha-Hoshen* commentary (published in Lemberg in 1788 and 1796) to *Shulhan 'Arukh, Hoshen Mishpat*,<sup>7</sup> zeroes in on just such a “missing” case, one that appears to have “fallen through the cracks” of the Talmud. Can an agent (*shaliah*) who was appointed to deliver a gift (*matanah*) appoint another agent to perform this task?<sup>8</sup> Jewish law very much recognizes the possibility of appointing an agent to execute or to perform the wishes of the one who sends him. In rabbinic parlance, *sheluh shel 'adam kemoto*, an agent is considered to be “just like the one who has appointed (or sent) him.”<sup>9</sup> Agency (*shelihut*) can be employed in a wide range of purposes, for example, to acquire or to sell objects, to effect an halakhic betrothal (*qiddushin*), to deliver a bill of divorce, to pay off a debt, to give charity, and so on. Indeed, one of the few limitations of the powers of an agent is that he cannot perform a religious obligation that is incumbent upon the individual (sender) himself, in a personal (or bodily) manner, such as the donning of phylacteries.<sup>10</sup>

The Talmud deals explicitly (in *Gittin* 29a) only with a related question to the one raised by the *Qezot ha-Hoshen*. Just as an agent who has been appointed to deliver a bill of divorce may appoint a second agent to complete this mission, so too an agent who was appointed to deliver a gift deed (i.e., a deed for a field that is being given as a gift) may appoint a second agent to do so. In discussing this issue, however, the Talmud notes an important distinction, which leads to a disagreement in interpretation between Abbaye and Rava (and between the earlier Amoraim Rav and Shmu'el). According to the Talmud, if the husband instructed an agent (or two agents) to first write the bill of divorce and then to give it in addition, they may not appoint someone else to do the writing. For Abbaye (and for Rav), the problem with this second appointment is that it would lead to additional embarrassment for the husband. The husband may not have been capable of writing the *get* himself (even though the Torah instructs him to do so), and so he appointed an agent (or agents) to do this. If that agent appoints someone else, an additional (outside) person now knows that the husband is incapable of writing the *get*.

Abbaye's line of reasoning here would not apply, however, to the writing of a gift deed, since there is no requirement that the giver of the gift write his own document. Hence, if he assigns this task to one agent and that agent then assigns this task to another, the giver incurs no embarrassment whatsoever.

Rava, however, holds (as does the Amora Samuel) that an agent who was assigned to write (and then to give) a *get* may not appoint another agent to write the *get* because of a larger limitation of agency. An agent can be charged by his sender directly to make a particular statement or verbal declaration. But this agent cannot be properly authorized to issue an instruction (alone) to another agent, on behalf of the one who had appointed him initially. Literally, "words [alone] cannot be given over to an(other) agent" (*milei lo mimseran le-shaliah*).<sup>11</sup> If the second agent's assignment is to give the *get*, his appointment by the first agent is for more than just words. (As Rashi notes, '*it beh meshasha*, "there is substance to his appointment.") If, however, the second agent is charged by the first agent to initially write the bill of divorce, such an appointment is "for words" (*le-milei*, a verbal instruction) alone. There is no palpable object at this point, such as an existing *get*, over which (or through which) the agency assignment can be properly transferred from the first agent to the second.

Moreover, this larger principle concerning agency would apply equally to an agent who was assigned to write a gift deed, as it would for the writing of a bill of divorce; the assignment to write a gift deed (as opposed to the giving of an already written deed) is also considered *milei*, and cannot be transferred by one agent to another. The Talmud typically rules that the law is decided according to the position of Samuel when he disagrees with Rav in cases of monetary and related laws (*dinei*, which includes agency; the law is like Rav, on the other hand, in matters of ritual law, *issur ve-heter*).<sup>12</sup> Thus, the conclusion that agency may not be assigned, for either the writing of a *get* or for the writing of a gift document, is codified by both R. Jacob b. Asher in his *Arba'ah Turim*, and by R. Yosef Caro in the *Shulhan 'Arukh*.<sup>13</sup> All would agree, however, that where a *get* or gift document already exists, and the husband or the gift giver assigns an agent only for its delivery (*shaliah le-holakhah*) and not for its writing, that agent may appoint another agent in turn, since this is not an instance of *milei*.

As mentioned above, the point of inquiry of the *Qezot ha-Hoshen* (*Hoshen Mishpat* 244, comment 2) is about how this *sugya* and these rulings would apply to an agent appointed not to deliver a gift deed, but rather to an agent appointed to deliver the gift itself. At first blush, we would think that there should be no question (or point of contention) whatsoever. The first agent who appoints a second agent to deliver an actual gift is authorizing him to deliver an existing object (such as a *get*); this is surely not a case of *milei* at all.

R. Aryeh Leib Heller, however, begins his inquiry with a suggestive observation. Although the Talmud derives that an agent for the husband (a *shaliah le-holakhah*) who was appointed to deliver a bill of divorce to the wife (or her agent), may appoint a second agent to do this (since there is no problem of *milei* here, as we have seen), one of the Tosafists, R. Solomon b. Judah of Dreux (known as *ha-Qadosh mi-Dreux*),<sup>14</sup> maintains that this would not be the case for an agent who was appointed to give a ring for betrothal (*qiddushin*) to a woman. Even if this agent cannot continue his mission due to an accident or another unavoidable occurrence ('*ones*, and not owing to any malfeasance or mistake on his part), he is unable to appoint another agent in his stead.

Although this agent was appointed to deliver an existing object, a ring, which should be akin to an agent appointed to deliver a *get* (that is certainly not considered to be mere *milei*), *ha-Qadosh mi-Dreux* holds that the assignment of delivering a ring for betrothal is nonetheless considered to be akin to *milei*, based on the following distinction that emerges from the relevant Talmudic *sugyot*. Once the husband hands a *get* to his agent for delivery, the agent, like the husband himself, can put forward the bill of divorce even against the will of the woman (or more precisely, without requiring her acquiescence at that point).<sup>15</sup>

If the woman refuses to (extend her *da'at* and to) accept a ring of *qiddushin*, however, the *qiddushin* is not valid. As such, the ring, unlike the *get*, has (or should be assigned) the status of *milei*, and therefore cannot be transferred from one agent to another. The initial agent received the ring from the potential bridegroom himself and he was authorized directly to attempt to effect the *qiddushin*; the validity of his appointment is beyond question (even if the woman does not accept the ring from him in the end). The second agent, however, is not authorized as directly by the bridegroom, and the object in question, the ring, also does not convey full authorization in this situation, since the woman may reject it. In the case of a *get*, however, the second agent is just as powerful (and as authorized) as the first since he, like the first agent (and like the husband himself), can present the *get* (and complete the mission of the *shelihut* by accomplishing the divorce), regardless of the intention of the person receiving it.

*Qezot ha-Hoshen* further refers to the gloss of R. Moses Isserles (Ramo, d. 1572) to *Shulhan 'Arukh, Even ha-'Ezer* 35:6, which cites two views on this question: the view just discussed (held by *ha-Qadosh mi-Dreux*), that a second agent cannot be appointed for (the) marriage (ring), and another view (which originated with a German Tosafist contemporary of R. Solomon of Dreux, R. Barukh b. Samuel of Mainz, d. 1221), that as long as the potential bridegroom actually gives the first agent the ring or the money to be used for the *qiddushin* (so that an object for transference exists), and does not

instruct the agent to lay out his own money in order to betroth the woman on the groom's behalf, a second agent can be appointed by the first agent and there is no problem of *milei*.<sup>16</sup> *Qezot ha-Hoshen* reasons that since according to the position of *ha-Qadosh mi-Dreux*, the person who is meant to receive a gift from another surely has the prerogative to reject the gift and to refuse to receive it, a second agent in that case is comparable to the *qiddushin* case (where the woman can reject the *qiddushin*), rather than to the case of a *get* (where the *get* is not subject to her will). As such, there is also a *milei* problem or aspect in the instance of giving an actual gift via an agent, which effectively undermines the appointment of a second agent, providing a (somewhat unexpected) resolution to the original query of the *Qezot ha-Hoshen*.

In presenting his analysis, the *ba'al Qezot ha-Hoshen* notes that his approach also resolves a significant question that had been posed by R. Jacob Joshua Falk (d. 1756) in his *Pnei Yehoshua*. R. Falk was best known for formulating penetrating, large-scale questions, of the sort that had not been in evidence since medieval times (with the possible exception of R. Samuel Eidels, the Maharsha, d. 1631). This line of questioning sought to get to the heart of the *sugya* in a fundamentally meaningful way, in order to open new avenues of discussion.<sup>17</sup>

*Pnei Yehoshua* had raised just such a question with regard to the related *sugya* in *Gittin* 29a. According to the Talmudic discussion, a certain man appointed an agent to deliver a bill of divorce to his wife. The agent reported that he could not identify her; he simply did not know who she was. The husband then instructed the agent to give the *get* to a rabbinic scholar named Abba bar Manyomi, who did know the woman in question. The agent could not locate Abba bar Manyomi, and instead desposited the *get* with a group of Amoraim that included R. Abuhu, R. Haninah bar Pappa, and R. Yizhaq Nafha. The Amora R. Safra was sitting near them. This group asked R. Safra to let them know when R. Abba bar Manyomi arrived, so that they could give him the *get* (and R. Abba would then give it to the woman in question). R. Safra objected, on the grounds that the agent in this case was not authorized to do what he did.

Rashi understands R. Safra's point of objection to mean that this agent had last been instructed by the husband to give the *get* to R. Abba bar Manyomi (rather than to give it himself to the woman). As such, since the agent was no longer fully in the place of the husband with respect to giving the *get* (by virtue of the fact that he could not complete the divorce by delivering the *get* to the woman), he was not authorized to give it to anyone other than R. Abba bar Manyomi. *Pnei Yehoshua*, however, questions why this is so. Although this agent was indeed no longer responsible for giving the *get* itself, why could he not appoint another agent to give it

to R. Abba (which was his current mission), just as any *shaliah* instructed to deliver a *get* typically can? *Qezot ha-Hoshen* explains, in accordance with the reasoning of *ha-Qadosh mi-Dreux*, that since Abba bar Manyomi could theoretically refuse to take on this assignment to deliver the *get* when and if the husband's agent ultimately presented it to him, the situation becomes akin to one of *milei* even though a *get* is involved. In a word, this is a case of *get* that takes on the characteristics of *qiddushin/matanah*, since the authority of the agent (who seeks to appoint another agent) cannot guarantee that the final goal (or transaction) will be accomplished.

*Qezot ha-Hoshen* has additional discussions about the implications of the position of *ha-Qadosh mi-Dreux* in other unusual cases involving the transference of a *get*. Nonetheless, his initial line of inquiry has borne fruit. According to the view of *ha-Qadosh mi-Dreux*, an agent for the delivery of a gift is akin to an agent for *qiddushin*, rather than to an agent for the delivery a *get* (the fact that he has the gift in his hand notwithstanding). Therefore, any attempt on the part of an agent appointed for the delivery of a gift to appoint another agent in his place raises the problem of *milei*, which is not (typically) a problem in the case of an agent appointed to deliver a *get*, according to an explicit Talmudic ruling. A new point of Jewish law has been made by the *ba'al Qezot ha-Hoshen*, owing to his ability to isolate and productively analyze a suggestive view of one of the Tosafists, that initially appears only in a different *sugya* and realm.

### III

If we step back in order to assess the accomplishment of the *Qezot ha-Hoshen* against the backdrop of the development of Jewish law through the Talmudic and medieval periods (which can also, in and of itself, be a source of great satisfaction, at least to me), we note that at the base of R. Aryeh Leib Heller's analysis is a dispute between two contemporary Tosafists, one from Rhineland Germany (R. Barukh of Mainz) and the other from northern France (R. Solomon *ha-Qadosh* of Dreux). This dispute, however, is not found anywhere within the standard *Tosafot* to the Babylonian Talmud, nor is it found in any variant *Tosafot* texts.<sup>18</sup> Rather, the respective positions appear as two disparate formulations, in two different places within the *Sefer Mordekhai* (and its glosses), which were first brought together by R. Moses Isserles. Although *Qezot ha-Hoshen* does not explicitly discuss R. Barukh of Mainz's position, it is clear that R. Barukh's view would allow an agent assigned to deliver a gift the ability to authorize another agent to undertake this task. Simply put, R. Barukh holds that any case of agency in which the transfer of an object is

involved (be it a *get* or a gift, or be it a wedding ring or the money of *qiddushin*) obviates the problem of *milei*. Moreover, matters of agency in *qiddushin* are derived and learned from those in *gittin* (as per *Qiddushin* 41a), and these two institutions should generally not be separated or split.<sup>19</sup>

*Qezot ha-Hoshen* preferred to focus instead on the more nuanced view of *ha-Qadosh mi-Dreux*, precisely because it singles out the giving of a *get* and its agency in this instance, in accordance with specific parameters of Talmudic law. Agency for a *get* does have some unique properties and prerogatives as we have seen, owing mostly to the relatively one-sided giving of the *get*, which does not require the ongoing acquiescence of the women (*mi-da'atah*). A gift object, however, no less than the ring or money of *qiddushin*, can be rejected, and these items cannot be transferred to a second agent, because of the *milei* problem. This is the essential appeal of the position of *ha-Qadosh mi-Dreux* that *Qezot ha-Hoshen* develops further and presents in a new light, in order to answer his initial query.

Indeed, this was also the view of the Italian Tosafist, R. Isaiah di Trani, of which *Qezot ha-Hoshen* (and others in his day) were apparently unaware.<sup>20</sup> RID, who studied in the Rhineland at the turn of the twelfth century with R. Simhah of Speyer (and also became familiar with the teachings of Rabbenu Tam, via his German students),<sup>21</sup> writes in his *Tosafot RID* that when the Talmud (in *Qiddushin* 41b) equates the rules for an agent in both *get* and *qiddushin*, it does so only with respect to the first or initial agent. A second agent cannot be appointed by the first for *qiddushin* because of *milei*, even if an object is given for the *qiddushin*. The first agent can appoint a second agent to deliver a *get*, on the other hand, without any problem. In cases of divorce, the *get* is the *davar ha-megaresh*, the instrument of divorce. Thus, if a *get* is lost, the agent cannot do anything without it, and has no option but to return to his sender without having accomplished his mission.

If, however, the object of *qiddushin* is lost, an agent appointed for this purpose can take money out of his own pocket (if he wishes to do so) on behalf of the bridegroom who has sent him, and can thereby successfully complete his mission. As such, the main role for an agent for *qiddushin* is *milei*; he is given an instruction (that he can accomplish in different ways, with an object of worth or with funds provided by his sender, or with his own money). At the same time, he cannot transfer this instruction over to another agent, because it is quintessentially defined as *milei*. An agent for divorce, however, can accomplish his mission only by handing the woman the bill of divorce for her that was given to him by the husband. If this *get* is lost, the mission cannot be completed. On the other hand, a second agent who is designated by the first to give this *get* to the woman may do so, since this is the original (and only) instrument of divorce that can be effective.



Thus, the position of R. Isaiah di Trani is fundamentally the same as that of *ha-Qadosh mi-Dreux*.<sup>22</sup>

It should be noted that much of the halakhic jurisprudence in the centuries prior to the *Qezot ha-Hoshen* tended to favor the view of R. Barukh of Mainz over that of *ha-Qadosh mi-Dreux*. Although R. Yosef Caro (d. 1575) makes brief mention in his *Beit Yosef* only of the view of *ha-Qadosh mi-Dreux*,<sup>23</sup> Ramo, in his *Darkhei Mosheh* glosses to the *Arba'ah Turim*,<sup>24</sup> cites the view of R. Barukh of Mainz (without attribution, as a *yesh 'omrim*), and the somewhat more limiting view of the *Shiltei ha-Gibborim* (c. 1550, which Ramo refers to imply as “glosses to the Alfasi”).<sup>25</sup> *Shiltei ha-Gibborim* follows the view of R. Barukh for the most part, but makes a distinction between a situation in which the agent was authorized to give the woman an object or money for *qiddushin* that had been given to him by the bridegroom (in which case he can appoint another agent) and an instance in which the agent is instructed by the bridegroom to use his own money, in which case he cannot appoint another agent to accomplish this due to the problem of *milei*. Ramo does not refer at all here to the position of *ha-Qadosh mi-Dreux*.

In his *Mappah* glosses to the *Shulhan 'Arukh* (*Even ha-'Ezer* 35:6), Ramo, as noted above, again cites the (more lenient) position of R. Barukh of Mainz first as a *yesh 'omrim*, together with the caveat of the *Shiltei ha-Gibborim*, and then concludes with a second, more stringent *yesh 'omrim* that is the position of *ha-Qadosh mi-Dreux*. R. Yo'el Sirkes (d. 1640), in his *Bayit Hadash* (*Bah*) commentary to the *Arba'ah Turim* (in what also appears to be a response to the passage in the *Beit Yosef*) specifically critiques the view of *ha-Qadosh mi-Dreux* by name.<sup>26</sup> R. Solomon Luria (d. 1573) had also criticized the view of *ha-Qadosh mi-Dreux* in similar terms (and quite harshly), albeit without mentioning him by name.<sup>27</sup>

*Qezot ha-Hoshen* helps to shift the perception that was put forward by these leading Ashkenazic commentators to the *Arba'ah Turim* and *Shulhan 'Arukh* in the late sixteenth and early seventeenth centuries by forcefully, yet elegantly, bringing to the fore the Talmudic details and logic that stand behind and support the position of *ha-Qadosh mi-Dreux*. By raising the new scenario that he does with respect to the giving of a gift, *Qezot ha-Hoshen* has not simply proposed and addressed a situation that was not discussed by the Talmud. He has shown that *ha-Qadosh mi-Dreux* has logical staying power and attractiveness over the course of various Talmudic *sugyot*. The status of these acts that are assigned to a *shaliah* cannot be determined solely by looking at physical or structural categories (since it would seem, *prima facie*, that an actual gift is certainly comparable to a *get*). Rather, the purpose or function of the object in question is most crucial. Thus, the solution

proposed by *Qezot ha-Hoshen* is both new and old at the same time,<sup>28</sup> and it succeeds in answering the important question of the *Pnei Yehoshua* as well.<sup>29</sup>

Finally, R. Jacob Lorberbaum of Lissa (d. 1832), in his *Netivot ha-Mishpat* (published in Zolkiew, 1809–1816) argues, as is his wont, against the reasoning of the *Qezot ha-Hoshen* on the basis of another sharp distinction that emerges from both the logic and the details of the Talmudic system.<sup>30</sup> A gift does not, in fact, typically require a bona fide *shaliah* to effect its transfer. As long as the gift ends up in the hands of its designated recipient, the mode through which it is transferred is largely irrelevant.

Thus, for example, if a trained (or even an un-trained) animal was used to bring the gift from its original owner to the recipient (*ma'aseh qof*), no one would question the validity and propriety of the recipient now benefiting from the gift. This is not the case, of course, for *gittin* or *qiddushin*, where a new halakhic status is being assigned based on the transference of a *get* or of a ring of betrothal. In these situations, the manner in which the object gets from the husband or bridegroom to the woman in question is crucial. The will of the husband or bridegroom, together with the actions of a proper agent, come together to create the new status (or *halot*, in rabbinic parlance). The same holds true for a situation in which the deed for a gift is being transferred. There as well, the authorization and status of the agent are instrumental in helping to affect the *qinyan* that is at stake.

With regard to the actual giving of a gift, however, the manner in which a gift is transferred from the giver to the receiver is, as indicated, largely irrelevant (unless the giver had specified that his gift must be acquired by the receiver through a particular mode or *qinyan*), and there can be no doubt that one agent can assign this task to another. A *get* requires a formal act of giving (a *ma'aseh netinah*) and an authorized person to perform this act. The husband or the agent may be required, for example, to instruct the woman to pick the *get* up off the floor and to acquire it. Giving a gift, however, inherently requires no such formal authorization. Once the receiver has the gift in hand, it belongs to him, as long as it has been made clear that the giver truly wishes him to have it. Moreover, even if an agent was appointed to ensure that the gift reaches the receiver, the agent can also fulfill his mission via an “unauthorized” or improperly appointed agent, as long as the gift finds its mark. There is no problem of *milei* here whatsoever.

While *Qezot ha-Hoshen* worked hard to locate the giving of a gift via agency within the Talmudic categories of agency for a *get* and agency for *qiddushin* (and demonstrated that agency for a gift is much more akin to the latter), *Netivot ha-Mishpat* maintains that the giving of a gift is completely

removed from the Talmudic systems of *get* and *qiddushin*. Logic suggests that agency for the giving of a gift (as opposed to the giving of a gift deed) may well be in a category of its own. Although *Netivot ha-Mishpat* appears to be completely reactive here to the strategy of the *Qezot ha-Hoshen*, R. Jacob Lorberbaum rejects as unnecessary the structural and categorical extensions put forward by the *Qezot*.

The *ba'al Qezot ha-Hoshen* (who was able to respond in his lifetime to the critical observations of his good friend R. Lorberbaum on earlier sections in *Hoshen Mishpat*) might argue here that one cannot go “out of system” purely on the basis of a logical observation. The gist of the discussions from both the medieval and early modern periods certainly suggests that cases of agency of this type do in fact emerge from the Talmudic structures concerning *gittin* and *qiddushin*, even as there are disputes about the particular applications. In any case, both *Qezot ha-Hoshen* and *Netivot ha-Mishpat* have contributed startlingly new insights, which at the same time cause a review and rethinking of prior positions and approaches. To my mind, the identification and formulation of this kind of a new-old cycle is the goal and the hallmark of Talmud study at its best.<sup>31</sup>

#### IV

All of this textual and logical intrigue, together with the insights and implications for the textual history of the Oral Law, and topped off by the outright *hiddushim* that emerge, are why studying the Talmud and its interpretations is so enjoyable to me. The Talmud itself presumes that “there can be no house of study without innovation.”<sup>32</sup> Similarly, the Zohar remarks (in its idiom) that “at a moment when a word of Torah is made anew (*mithadesh*) in the mouth of man, the word ascends and stands before the Holy One blessed be He, who takes it and kisses it and crowns it with seventy decorated and engraved crowns.”<sup>33</sup> In our own day, Rav Yosef Dov *ha-Levi* Soloveitchik of blessed memory wrote that “halakhic man is a man who longs to create, to bring into being something new, something original. . . . The dream of creation is the central idea in the halakhic consciousness.”<sup>34</sup> The study of the Talmud may be compared to both a puzzle and a treasure map. It allows students to invest their time and creativity with the hope of glimpsing and ultimately mastering things that matter, both old and new, and perhaps even contributing to the ongoing mosaic of study, be it an insight or a full-fledged interpretation, that can be appreciated by fellow travelers on this always noble and uplifting journey.<sup>35</sup>

## ENDNOTES

1. In the introduction to his *Eglei Tal* (repr. New York, 1968), R. Abraham Bornstein of Sochaczew (d. 1910) strongly criticizes (as a *ta'ut mefursam*) the view that one who finds enjoyment in the study of Torah and in the setting forth of *hiddushim* is thereby diminishing the coveted goal of studying Torah *lishmah*, for its own sake. Quite to the contrary, according to R. Abraham, the enjoyment that is experienced actually reflects the essence of Torah study: תוצמ רקיצ אוה הז יכ אברדאו: הרות ירבדמ גנהנש רחאמו. ומדב ויעלבנ ירות ירבד זאו גנעתמו חמשו שש תויהלהרות דומלת המשל דומיל הז ירה ודומילב גדומילב גנעתמו הוצמ משל דמולה לבא...הרותל קובד השענ אוה המ יינב לארשל הבקה והל רמא לכ: See also *Seder Eliyyahu Rabbah*, ed. Meir Ish-Shalom (repr. Jerusalem, 1960), 92 (chap. 18, s.v. *tada lekha*); and cf. Norman Lamm, *Torah Lishmah in the Works of R. Hayyim of Volozhin and his Contemporaries* (New York, 1989), 84–85, 114–119. Note also the permissibility of writing down *hiddushei Torah* on *Hol ha-Mo'ed* as understood, e.g., by *Taz to Shulhan 'Arukh, Orah Hayyim* 545, sec. 13, and by *Birkei Yosef le-R. Hayyim Yosef David Azulai* [Hida] (repr. Jerusalem, 1969), *Orah Hayyim*, ad loc., sec. 3, citing *She'elot u-Teshuvot min ha-Shamayim le-R. Ya'aqov mi-Marvege*.

2. See, e.g., *Ta'anit* 30a, where the prohibition of Torah study on the ninth of Av is based on Psalms 19:6, “the orders of the Almighty are upright and gladden the heart” (בל יחשמ מרשי יה ידוקפ). Although the Talmud in *Mo'ed Qatan* 15a derives the prohibition of Torah study for a mourner during the *shiv'ah* period from a different verse (Ezekiel 24:17), *Tosafot to Mo'ed Qatan* 21a, s.v. *'asur* rectifies these verses and presumes that the “gladness” that is generated by Torah study is the cause of the prohibition for one who is mourning a personal loss as well. Related to this discussion are whether mourners (personal or national) may study *devarim ha-ra'im*, works or sections within the *Tanakh* (and the Talmud) that are of a sad or somber nature (such as the book of Job or that discuss the destruction of the *Beit ha-Miqdash*; the extent to which the mourner may delve into these subjects (and potentially reach new or deeper understandings within them); and the possibility of the mourner teaching these materials to others. See, e.g., *Beit Yosef, Arba'ah Turim to Orah Hayyim*, at the beginning of 554 (esp. [זירוקש] בחכ [ז'ר] פ'רהו. esp. אל לבא הכיא 'פב [זירוקש] בחכ [ז'ר] פ'רהו. esp. (ל'כע רוסא ארבס לבא אקוד יירוק 'רמאו יפט קומע יהד מושמ בויא 'אב loc cit. secs.1–2, and *Taz*, sec. 2; *Shakh to Yoreh De'ah* 384, sec. 1; and *Shi'urei ha-Rav [Yosef Dov ha-Levi Soloveitchik] 'al 'Inyanei Avelut ve-Tish'ah ba-Av*, ed. Elyakim Koenigsberg (New York, 1999), pt. 1, 71 (sec. 23), and pt. 2, 39–40 (sec. 20), and 44–46 (sec. 22).

3. See ms. Florence (Laurenziana), Plut. II.20, fol. 251v, and cf. my “Torah Study and Truth in Medieval Ashkenazic Literature and Thought,” in *Study and Knowledge in Jewish Thought*, ed. Howard Kreisel (Beer Sheva, 2006), 101–120 (and esp. 111, n. 18). Note also the statement of Maimonides in his *Guide for the Perplexed*, 3:26, that any attempt to understand or to account philosophically for the specific (halakhic)

details or requirements of the precepts will lead to “prolonged delusion” (*shigga'on arokh*). Cf. Jacob Katz, *Halakhah ve-Qabbalah* (Jerusalem, 1986), 52–55.

4. See, e.g., I. M. Ta-Shma, *Creativity and Tradition* (Cambridge, Mass., 2006), 87–101, and my “Halakhah and *Mezi'ut* (Realia) in Medieval Ashkenaz: Surveying the Parameters and Defining the Limits,” *Jewish Law Annual* 14 (2003), 193–224. Cf. R. Moses Feinstein, *Igrot Mosheh, Yoreh De'ah*, vol. 1 (New York, 1959), #101, sec. 5 (p. 186, cols. 1–2).

5. See, e.g., S. Y. Zevin, *Ishim ve-Shitot* (Jerusalem, 1958), 39–85; Elyakim Krumbein, “Me-R. Chaim Brisk veh-R. Yosef Dov Solovetichik ve-'ad Shiurei R. Aharon Lichtenstein: 'al Gilgulehah shel Mesoret Limmud,” *Netu'im* 9 (2002), 51–94; and Shai Wozner, “Hashivah Mishpatit bi-Yeshivot Lita bi-Re'i Mishnato shel ha-Rav Shim'on Shkop,” Ph.D. dissertation (The Hebrew University of Jerusalem, 2005).

6. See, e.g., *Teshuvot R. Avraham ben ha-Rambam*, ed. A. H. Freimann (Jerusalem, 1937), #97, and cf. my “Progress and Tradition in Medieval Ashkenaz,” *Jewish History* 14 (2000), 287–316.

7. R. Aryeh Leib's two other seminal works are *Shev Shemateta* (Lemberg, 1804) and *Avnei Millu'im to Even ha-'Ezer* (Lemberg, 1816).

8. See *Qezot ha-Hoshen to Hoshen Mishpat* 244, comment 2.

9. See, e.g., *Berakhot* 34b, *Hagigah* 10b, *Qiddushin* 41b, *Nedarim* 72b, *Nazir* 12b, *Bava Mezi'a* 96a, *Menahot* 93b; and cf. Rashi's Torah commentary to Exodus 12:6. Whether an agent is considered to be an extension (a “third hand,” lit., *mishum yad*) of the one who has activated him, or whether the agent is considered to be a fully authorized yet distinct representative of his sender (יָד לַעֲבֹד הַשֶּׁנִּי) is a matter of intensive discussion. See, e.g., *Qezot ha-Hoshen to Hoshen Mishpat* 105, comment 1, and to *Hoshen Mishpat* 188, comment 2.

10. See, e.g., *Tosafot Rid to Qiddushin* 42b, s.v. *shani hatam* (Jerusalem, 1968), fol. 10b, and cf. *Qezot ha-Hoshen to Hoshen Mishpat* 182, comment 1. Note that Gershon Hundert, “On the Problem of Agency in 18th Century Jewish Society,” in *Studies in the History of the Jews in Old Poland in Honor of Jacob Goldberg*, [=Scripta Hierosolymitana, vol. 38], ed. Adam Teller (Jerusalem, 1998), 82–89, deals with agency in the context of cultural transformation, and has nothing to do with the concept of agency being discussed here.

11. See also *Gittin* 66b, 71b, 72b. There is discussion as to whether the authorizer can say initially, “I want your *shelihut* to be to tell another person to do something on my behalf,” but this cannot be presumed. Cf. below, n. 22.

12. See, e.g., *Bekhorot* 49b, *Niddah* 24b, and cf. *Tosafot Gittin* 60b, s.v. *ve-hashta*.

13. See *Hoshen Mishpat* 244.

14. R. Solomon b. Judah of Dreux was a student of R. Isaac b. Samuel (Ri) of Dampierre (d. 1189). On R. Solomon (including his designation as *ha-Qadosh*) and his teachings, see E. E. Urbach, *Ba'alei ha-Tosafot* (Jerusalem, 1980), 1:337–340, 515–516, and Norman Golb, *The Jews in Medieval Normandy* (Cambridge, 1998), 399–410. R. Solomon's position with respect to agency for *qiddushin* is cited

in (a marginal gloss to) *Sefer Mordekhai 'al le-Massekhet Qiddushin*, sec. 504 (to *Qiddushin* 41b) [=ed. H. Z. Dimitrovsky and J. Roth (Jerusalem, 1990), 179–180]. On *Sefer Mordekhai* (and the marginal notes and glosses to it) as a repository of little-known or otherwise unknown Tosafist positions from both northern France and Germany, see, e.g., Urbach, *Ba'alei ha-Tosafot*, 2:556–561, and Simcha Emanuel, *Shivrei Luhot* (Jerusalem, 2007), 9–12, 321–323. Indeed, like R. Shabbetai b. Meir *ha-Kohen* (d. 1662, author of the *Shakh* commentary to the *Shulhan 'Arukh*), *Qezot ha-Hoshen* mined the *Sefer Mordekhai* in order to locate the fullest range of positions of Tosafists and other Ashkenazic rabbinic figures available, a technique not always practiced by other 'aharonim. I hope to return to this theme in a separate study.

15. In his *Gilyonei ha-Shas* (Vienna, 1924) to *Gittin* 29a (s.v. *u-milei*), R. Yosef Engel (d. 1920) discusses how the *herem de-Rabbenu Gershom* (d. 1028), an enactment which mandates that a woman cannot be forced to accept a bill of divorce against her will, might impact the approach of *ha-Qadosh mi-Dreux*. His conclusion is that while (overall) a woman cannot be divorced against her will, the process does not require her assent or acquiescence at each point (אל החרב לע שרגל אלש קר רוסיאהד) (*החעדמ אלא שרגל אלש*). *Qiddushin*, on the other hand, requires her *da'at* and her positive will throughout. As such the halakhic approach and reasoning of *ha-Qadosh mi-Dreux* need not be adjusted in any way.

16. This second view is found in *Sefer Mordekhai le-Massekhet Gittin*, sec. 420 (to *Gittin* 66b) [=ed. H. Z. Dimitrovsky and M. A. Rabinowitz (Jerusalem, 1990), 684–685], in the name of R. Barukh and his no longer extant *Sefer ha-Hokhmah*. On R. Barukh and his work, see Urbach, *Ba'alei ha-Tosafot*, 1:425–29; Emanuel, *Shivrei Luhot*, 104–146; and my “The Development and Diffusion of Unanimous Agreement in Medieval Ashkenaz,” in *Studies in Medieval Jewish History and Literature*, vol. 3, ed. I. Twersky and J. Harris (Cambridge, Mass., 2000), 26–28, 39–40.

17. See Ta-Shma, *Creativity and Tradition*, 166–174, and idem., “Devarim Ahadim 'al Sefer Pnei Yehoshua ve'al Mehabreo,” in *Mehqarim be-Toledot Yehudei Ashkenaz [Sefer Yovel li-Khvod Yizhaq Zimmer]*, ed. G. Bacon et al. (Ramat Gan, 2008), 277–285.

18. Indeed, R. Barukh b. Samuel's name does not appear at all in the standard *Tosafot* (although some suggest that he was the compiler of *Tosafot Sotah*; see Urbach, *Ba'alei ha-Tosafot*, 1:428–29, 2:637–639), while R. Solomon of Dreux's name is mentioned a total of twelve times. See Urbach, *Ba'alei ha-Tosafot* (above, n. 14, and cf. 1:344), and see also Peretz Tarshish, *Ishim u-Sefarim ba-'Tosafot*, ed. Simon Neuhausen (New York, 1942), 67 (#254), and 69 (#261).

19. Cf. R. Isaac bar Sheshet, *She'elot u-Teshuvot ha-Rivash* (repr. Jerusalem, 1968), #228.

20. *Qezot ha-Hoshen* does not cite *Tosafot ha-RID* as far as I can tell. It does cite *Pisqei ha-RID* on a number of occasions, although always from another source, especially *Arba'ah Turim* (or from commentaries associated with this work). See, e.g., *Hoshen Mishpat*, 49, comment 5; *H. M.* 70, comment 6; *H. M.* 92, comment 10; *H. M.* 121, comment 3; and *H. M.* 351, comment 2. Cf. I. Ta-Shma, *Knesset Mehqarim*, vol. 3 (Jerusalem, 2005), 24–26, and above, n. 10.

21. See, e.g., Ta-Shma, *ibid.*, 20–21, 24, 40–43.

22. See *Tosafot RID le-Masskhet Qiddushin* 41a, s.v. ‘*ashkehan be-gerushin*: יפאו חכ ניא טנה דבאנ אאש שרנגמה רגד אוה טנהש טגל ימד אל [נישודיקל] זפח סוש ול רסמ סא נבלהו ילימ תוחילשה רקיעש אעמנ ולשמ השדקל לוכי דבאנאם נישודיקה זפח לבא השגל חלשל אל. A point of difference between RID and *ha-Qadosh mi-Dreux* might be seen in the case of an agent who was given a document by the bridegroom through which to betrothe the woman, a specific *shetar qiddushin*. That assignment is perhaps akin to an agent assigned to deliver a *get*, and it might therefore be possible, according to RID, for the first agent to appoint a second in this limited instance of *qiddushin bi-shetar*. Cf. the similar view of (the Italian work) *Shiltei ha-Gibborim* that follows (at n. 25), as well as *Beit Shemu’el, Even ha’Ezer* 35:15.

23. See *Beit Yosef to Arba’ah Turim, Even ha’Ezer* 35 (end), s.v. *katav ha-Mordekhai*. R. Yosef Caro does not mention any of this in the body of the *Shulhan ‘Arukh* in *Even ha’Ezer* 35. He does, however, cite in the name of an uncontested *yesh mi she-’omer* in 36:5 (in the following unit, which deals with a women’s ability to appoint an agent to receive *qiddushin* for her), that her agent cannot appoint a second agent because this would be a case of *milei*, which cannot be given over to a *shaliah*. Cf. *Hiddushei ha-Rashba to Qiddushin* 41a, s.v. *melammed*, and *Tosafot Rid*, ad loc., s.v. *ha’ish meqaddesh*.

24. *Even ha’Ezer* 35:10. *Darkhei Mosheh* was composed prior to Ramo’s glosses on *Shulhan ‘Arukh (Mappah)*, and are generally a bit lengthier than the *Shulhan ‘Arukh* glosses. Cf. I. Twersky, “The *Shulhan ‘Arukh*: Enduring Code of Jewish Law,” *Judaism* 16 (1967), 141–158.

25. These glosses on Rif’s *Halakhot Rabbati* known by the title *Shiltei ha-Gibborim* were composed by the sixteenth-century Italian rabbinic scholar, R. Joshua Boaz b. Simeon Barukh. See Hida, *Shem ha-Gedolim* (Warsaw, 1876), *ma’arekhet sefarim*, fol. 51a, sec. 76.

26. See *Bah to Arba’ah Turim, Even ha’Ezer*, 35, s.v. *katav ha-Mordekhai*. R. Yo’el wonders where *ha-Qadosh mi-Dreux* came up with this distinction, since it is not found in the Talmud. R. Yo’el is thus more comfortable with the view of R. Barukh of Mainz, since the Talmud derives agency in *qiddushin* (completely) from the parameters of agency in *gittin* (אל נחכשא אז דירעו תוחילש זעל האיעיל היוהנשקמ רינגלד שקיהה טשפ סגו דומלתב הז רגד נחכשא אל.).

27. See *Yam shel Shelomoh to Qiddushin*, ch. 2, sec. 1 (end): ימד ינח רמואו: זילש השוע חילשהש דמלמד החלשו חלשוד אחיירב אהד הל זניתייע אל אבר ארנגד היופמקפנד קסמו. זלגמ נישודיק נישוריג נחכשאר אתלים הלוכא יודמאו נישודיק זעל אכחד אינוסב יחיים אל השעמה רמגנ ותוחילש רמגכו השעמ תושעל וחלשש אכיה לכד ט”ה ויכו הכלהו ארק רמאו זיה לבקתה קרפ זוס יכדרמ בחכ ותמיתחו טנה תביתכב כ”אשמ זלימ זיה. On Maharshah’s use of the phrase *lo zeitinan leh* (‘we do not listen to him’), cf. Twersky, “The *Shulhan ‘Arukh*,” 114–115, n. 13, and my “Progress and Tradition,” 290.

28. Two *Shulhan ‘Arukh* commentaries appear to go in same direction as the *Qezot ha-Hoshen* in highlighting the significance of the view of *ha-Qadosh mi-Dreux* (albeit in much more muted terms). They are R. Moses of Vilna/Brisk in his *Helgat Mehoqeq (Even ha’Ezer* 35, n. 16), who briefly notes that R. Yosef Caro seems to

favor this view (above, n. 23), and R. Yo'el Sirkus' son-in-law, R. David *ha-Levi*, in his *Turei Zahav (Taz)*, ad loc., sec. 8.

29. *Pnei Yehoshua (Qiddushin 41a, s.v. de-tanya ve-shilah)* also analyzes the question (and dispute) of whether an agent appointed by the women to receive a *get* for her may appoint another agent, or whether this is considered to be *milei*. Cf. above, n. 22. For a somewhat less creative approach to many of the issues discussed by *Qezot ha-Hoshen*, see the responsa collection of R. Jacob Reischer (d. 1733), *Shevut Ya'akov*, pt. 2 (Offenbach, 1711), sec. 139.

30. *Netivot ha-Mishpat*, 244:1 (*mishpat ha-'urim/be'urim*).

31. For a brief assessment of R. Jacob Lorberbaum's penetrating style of reasoning, see Ta-Shma, *Creativity and Tradition*, 174. The *ba'al ha-Netivot* finds support for his view based on *Shulhan 'Arukh, Even ha-'Ezer* 141:35; even in the *get* process, some opinions allow a non-Jew to be relied upon to transfer a *get* between the husband and his properly designated agent, who will then actually give the *get* to the woman. See also *Shakh to Hoshen Mishpat*, 358:1, who speaks to the fact that a gift can be given without any formal statement by the giver to the receiver, as long as it is known by convention or by sign that this is the will of the giver of the gift, and cf. *Taz*, above, n. 28.

32. *Hagigah* 3a, שו"ח אלב שרדמה תבל רפא יא.

33. *Zohar*, vol. 1 (repr. Jerusalem, 1984), fol. 4b (introduction).

34. R. Joseph Soloveitchik, *Halakhic Man* (Philadelphia, 1983), 99. For these citations in fuller context, cf. Jonathan Sacks, "Creativity and Innovation in Halakhah," in *Rabbinic Authority and Personal Autonomy*, ed. M. Sokol (Northvale, 1992), 146–147.

35. Cf. Michael Rosenzweig, "Personal Initiative and Creativity in 'Avodat ha-Shem," *The Torah u-Madda Journal* 1 (1989), 77–83.



# Why Study Talmud in the Twenty-first Century?

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