



Metzora

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Amidst the war unfolding in Israel, we have decided to go forward and continue publishing a variety of articles to provide meaningful opportunities for our readership to engage in Torah during these difficult times.

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PUT A MIRROR ON YOUR SEDER TABLE

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This is the year to tell the stories of enslaved Jewish women.

Every year, Jews around the world sit around their seder tables and tell stories of our slavery in Egypt. The Haggadah describes the point of these gatherings: “a person is obligated to see himself as if he left Egypt.” We tell these stories in order to weave ourselves into them – women too, for we were also part of the miracle.

But what was slavery like for those women? The Haggadah and even the Exodus narrative itself only provide hints. In previous years I didn’t notice the absence.

This year we all know better. We know that women on October 7th were treated differently from male victims, subjected to rape and sexual exploitation. Even the United Nations envoy focusing on sexual violence has confirmed that there are reasonable grounds to believe that Hamas continues to inflict rape and sexualized torture against the remaining female hostages.

The Torah’s story provides scant detail about the female experience. We know that mothers had their boys ripped from their arms and thrown into the Nile. We also know that those bereft mothers were then available as wet nurses. Pharaoh’s daughter does not think twice about giving her new son to a Hebrew wet nurse.

The Haggadah contains more: wives and husbands, forcibly separated – *perishut derech erez*. The Midrash adds another level of color. It

notes that only baby boys were thrown into the river, and asks: “Why did Pharaoh need to keep the females alive?” Here is the response: “This is what they would say: ‘We will kill the males and take the females as wives,’ because the Egyptians were engulfed with lewdness” (Shemot Rabbah 1:18).

Because the Egyptians were engulfed with lewdness.

Three non-conflicting stories begin to emerge. One: Jewish women and Jewish men were forcibly separated, perhaps so that Jewish women would be sexually available to Egyptian men. When they birthed daughters, the Egyptian enslavers permitted the girls to live so that they too might grow up into sexual slavery. The Midrash records that the Israelite women fought against Egyptian lechery with success, saying that “the Lord will testify” that they defended themselves from adultery (Bamidbar Rabbah 9:14). But they had to fight for it, and their success is astonishing. That same *midrash* puts this surprise into the voice of “the nations,” who claim about the Israelites in the desert: “Are they not the children of the Egyptians? Were not the women enslaved in Egypt just as the males were enslaved?” These “nations” assume that slavery for women meant rape – making their children “the children of the Egyptians.” The *midrash* refutes this claim, but by raising the question even only in the voice of “the nations,” the midrashic authors express how unusual, even miraculous, it is that the Jewish women were able to evade the Egyptian men. The Torah only names one Jewish woman who conceived with an Egyptian man: Shelomit bat

Divri. Rashi (Vayikra 24:11) spells out the implication: she was the only victim. Every other child born to an Israelite woman in Egypt had an Israelite father.

Two: When the enslaved Jewish women birthed sons, the sons were killed, and the postpartum mothers, without babies of their own to nurse, were available in ready supply as wet nurses to Egyptian babies.

And what were these women doing with the rest of their time? Three: The Midrash also tells us (Shemot Rabbah 1:11) that “they would exchange the labor of men for women and the labor of women for men.” Those women were working in hard physical labor.

Over and above the details of their enslavement, our *midrashim* are awash with stories about Jewish women in Egypt fighting to create Jewish babies. Rabbi Akiva says that the Israelites were redeemed from Egypt on the merit of these righteous women, the *nashim tzidkaniyot* (Shemot Rabbah 1:12). The wives crept out to the fields where their husbands were forced to sleep. They brought them food to eat, and then used mirrors to seduce them. The Midrash tells the details of this seduction (*Tanhuma, Pekudei* 9:1): “The women would say: ‘I am more attractive than you,’ and the men would reply: ‘I am handsomer than you.’”

In light of the above, the heroism of this story is even more apparent. These exhausted and terrified women looked in their mirrors and tried their hardest to feel beautiful, even after they had

been threatened and terrorized by their Egyptian oppressors. They could look at themselves in these mirrors, find healing in their reflection, and initiate sex with autonomy, control, and a joyful tease of “I am more attractive than you!” Once freed, the women donated those mirrors to the Tabernacle, which became a part of the laver for washing (Exodus 38:8) – because the mirrors were *already* a source of purity. These mirrors had purified these heroic women of the traumas of Egyptian lechery, allowing them to take charge of their own sexuality for long enough to copulate with their husbands and ensure the perpetuation of the Jewish people.

For our female hostages, today’s reality is worse than what our foremothers faced in Egypt. In Egypt, nearly all of the Jewish women could (perhaps miraculously) avoid the sexual advances of their enslavers. The *nashim tzidkaniyot* in Egypt were, in a way, the lucky ones. In nearly every other instance of Jewish oppression since those times, including today’s, this has not been the case.

One focus of the Seder night is that Jewish history repeats itself. But that does not mean that Egyptian slavery was the singularly worst thing that has ever befallen the Jewish people. At many junctures in Jewish history, Jews have had it worse than we did in Egypt. The Israelites in Egypt were neither hungry, thirsty, nor homeless. They had medical care. From the perspective of the newly-freed slaves, life as free wandering nomads in the desert could well be worse than their

slavery. They couldn’t even imagine what horrors would befall their descendants. In a prayer composed to commemorate the Warsaw Ghetto Uprising at the Seder, the authors describe the Nazi oppressors as “seventy times worse than Pharaoh.”

In the middle of telling the story on the Seder night, we raise our glasses in a toast, commemorating that “in each generation, they stand against us to destroy us, but the Holy One, blessed be He, rescues us from their hand.” Hamas, and their global sympathizers, are only the latest iteration. With hostages still held and enslaved in Gaza, and with Israel still at war, this year, as we give thanks for the past, we will also re-cast this statement as a demand: *rescue us now, again.*

The real story of the *nashim tzidkaniyot* past and present is not a child-friendly story, but it is one that all adults in our community must know and internalize as a co-equal part of our Passover story, as we remember past redemptions and pray for a current one. Even if you cannot tell this story at your Seder, I want to recommend that you put a mirror on your table. When you look at it, remember the suffering of our righteous female ancestors, and remember that, through these mirrors, their autonomy was miraculously returned to them. Recall the historic suffering and endurance of Jewish women past and present, and let us hope and pray that that same healing will someday be found by our brothers – and especially sisters – in Gaza being tortured today.

BUYING JEWISH WHISKEY

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Introduction by Chaim Saiman

In his classic 1941 law review article, "[Consideration and Form](#)," the legal theorist Lon Fuller explained that the need for contractual formalities is inversely related to the substantive grounds of the transaction. "Where life has already organized itself effectively," argued Fuller, "there is no need for the law to intervene." But when the business rationale is less apparent, formalities become necessary to draw attention to the legal implications of the undertaking.

Reading this article as a first-year law student, I recall excitedly scribbling "mechiras chametz" on the margins of the page. Indeed, the annual ritualized sale perfectly encapsulates Fuller's thesis. Few of us bother to reflect on the halakhic status of transactions undertaken in the course of daily life. Jewish law willingly incorporates commonplace practices such as handshakes, signing contracts, or simply paying by credit card or Venmo in order to validate a transaction or sale. But when economic logic is absent, formalities arise. The sale of hametz transforms into a ritual act where virtually every formality known to both Halakhah and American law is invoked. In recent years, rabbis have even added a ceremonial component, inviting their communities to witness the transaction, using it as an educational opportunity to explain the laws of Pesah as they relate to the sale of hametz.

I met professor Nate Oman many years ago, and we quickly bonded over our mutual love of contract law, legal theory, detailed points of legal analysis, religion, and the joys and complexities of living a religious life in the modern world. Nate is one the nation's leading contract law theorists and commercial law scholars. He is also a committed Latter-day Saint (Mormon), and a keen observer of religious life who has written on Mormon history and theology. [In his review](#) of my book, [Halakhah](#), Nate admitted to some "holy envy" over the fact that, for Jews, the study of Talmudic contract law is a spiritual endeavor that brings us closer to God. Ashreinu mah tov helkenu.

Nate would have loved and excelled in yeshiva, but it might have gotten tricky when it came time for shidduchim—though in truth, Nate came pretty close to the kollel life when he spent a semester living in Ma'alot Dafna during his position as a visiting professor at Hebrew University. But since yeshiva was not an option, I thought of the next best thing—Nate would serve as the gentile designated to purchase our hametz.

Nate visited my family last Erev Pesah and was amazed that all my children were industriously cleaning and vacuuming the house after the hametz breakfast. (I assured him that this occurs exactly once a year). I then brought him over to my friend, Rabbi Itamar Rosensweig, a Maggid Shiur at YU, Haver of the Beth Din of America, and legal philosopher who has written extensively on modern applications of commercial Halakhah. R. Rosensweig acted as the agent for his kehillah in

Lower Merion, PA, to sell hametz to Nate. We then went off to the communal hametz-burning which, per recent custom, included music and dancing—all overseen by the local fire department.

Nate’s reflections showcase cross-faith interactions at their best. Just as Alexis de Tocqueville in his famous 19th-century [Democracy in America](#) used his outsider status to help Americans better understand themselves, Nate’s sensitive reflections draw on jurisprudence and comparative theology to offer a deeper understanding of our own practices. Nate helps us to see that, more than merely a ritual or a sanctioned loophole, the sale of hametz teaches us something important about the nature of Halakhah and Jewish life.

– Chaim Saiman

In a lovely spring garden in suburban Philadelphia, I handed cash and a handkerchief to my friend’s rabbi. It was the first time that I, an observant Latter-day Saint (Mormon), had ever purchased whiskey. (Latter-day Saints are prohibited from consuming alcohol, although they are permitted to own it.) For the next two weeks, however, I would own a large store of booze, along with a number of half-used boxes of breakfast cereal, and a lease on a very nice apartment in Jerusalem. At the suggestion of my friend Chaim Saiman, I had agreed to act as a friendly gentile, purchasing the unused *hametz* (leavened foodstuffs) and its storage locations that the members of his synagogue were prohibited from owning during

Passover. At the conclusion of the holiday, I could—if I so chose—sell the whiskey back to its original owners.

As law professors, Chaim and I share an interest in jurisprudence, law and religion, and contracts. As observant believers, we are both fascinated by the place of religion in the secular world and the way that adherents manage the negotiation between tradition and modernity. The result has been a years-long running conversation on law, contemporary politics, faith and commerce, and—inevitably, given Chaim’s dual training in yeshiva and law school—Halakhah, the vast corpus of Jewish law. When Chaim explained to me that prior to Passover it was possible to avoid the need to dispose of one’s whiskey and other valuable *hametz* by selling it for the duration of the holiday to a gentile, I had a new ambition. Legal scholars have long studied how parties use contracts to bargain around troublesome rules. I was fascinated by the idea of contracting around divine law. When I explained to another friend and faculty colleague why I was driving from southern Virginia to Philadelphia in the middle of the week, he said, “Law, religion, and contracts. It’s like a religious ritual specifically designed for Nate Oman.”

As I understand it, the legal basis for my trip to the Pennsylvania garden begins with [Exodus 12](#), which describes the first Passover and sets forth the rules to be followed thereafter. In [verse 15](#), the text reads: “Seven days you shall eat unleavened bread. On the first day, you shall

remove leaven from your houses. For if anyone eats what is leavened, from the first day to the seventh day, that person shall be cut off from Israel.” The exposition of this rule in Jewish law begins with the earliest halakhic text, the second-century CE compilation known as the Mishnah. The rabbinic debates recorded there explore the contours of the rule in Exodus. To ensure compliance, the house must be scoured for *hametz* with a candle, and all leavened products must be burned. To deal with any residual *hametz*, one must go through the legal ritual of disclaiming ownership, declaring that the *hametz* is now dust and therefore owned by no one. The debates in the Mishnah were then subject to further commentary and debate in the Talmud. The Talmud in turn has been continuously analyzed and systematized, a process that continues unabated to the present. When must the ritual search for *hametz* begin? What constitutes *hametz*? (For example, alcohol distilled from grain is included in the prohibition, although it’s not necessarily apparent that this would be the case.) And the questions continue with countless debates on each issue over the centuries. As I understand it, the well-established consensus among Orthodox exegetes is that an observant Jew is not allowed to own any *hametz* during Passover, nor can *hametz* be stored on the property of a Jew. Centuries ago, however, a problem arose for Jewish distillers. They owned large amounts of *hametz*, but government regulations made it difficult to simply destroy their stock for Passover. Thus was the workaround of the sale to a friendly gentile born, a workaround gradually expanded to all of those

who wished to avoid burning valuable *hametz* every spring.

While seemingly baroque to a nonbeliever, the layering of these rules over the centuries illustrates a basic structure of the religious condition. To be a believer in the modern world is to live in a strange land. It is not that modernity is relentlessly hostile to faith. It is far easier for minority religious communities to live faithfully in contemporary liberal democracies than in any other kind of regime in human history. Our society, however, is not constructed around religious faith. As the Catholic philosopher Charles Taylor has pointed out, secularity isn’t so much a society from which faith has been extracted as much as one in which faith is optional. Within secularity, faith is contingent in a way that it wasn’t for previous generations both because of social pressure to religiously conform and because, in a real sense, a life without faith was unthinkable. Most people simply lacked the necessary conceptual machinery to consider a world without the God of their fathers. Secularity is the loss of that sense of necessity and the construction of a social world that aspires to be indifferent to religion. A believer, however, lives in a world where the reality of God continues to sit at the center of existence. The mismatch of the world of belief and the world of secularity constitutes the experience of faith in modernity.

Jewish law provides a marvelous example of this dynamic. Every legal system creates an imaginary world. The common law, for example, imagines a world divided by clear lines of property and

planted thick with the obligations of tort and contract. The world in which we actually live never quite corresponds to the law's imagined reality. Legal remedies strive mightily to bring the two into alignment, but good lawyers understand that this effort will always fail in the end. There will always be a gap between legal entitlement and what the legal system can actually deliver as a practical matter. For example, when a promisor breaches a contract, the law aims to give to the victim of breach a sum of money that will put the victim in as good a position as they would have been had the contract been performed. However, we know that there are some things for which money is never an adequate substitute, and courts will not award damages that cannot be fixed with certainty. The result is that the law cannot deliver in reality the imagined world of legal rules. Halakhah is a particularly extreme version of this dynamic. To study the Mishnah and the Talmud is to enter into an occasionally fantastical jurisprudential world. In this world, the Temple continues to stand in Jerusalem, and pious Jews bring their offerings to the priests to perform the sacrificial rituals. The land is dotted with sanctuary cities and other legal oddities. The Sanhedrin continues to sit, and the intricacies of its procedures mete out justice to Israel. All of these laws continue to be studied in exhaustive detail in modern *yeshivot*.

To call the world of Jewish law imaginary or fantastical is not, I hope, to insult or belittle it in any way. It is only to point out the way that Halakhah creates an entire world whose existence would not be guessed by a foreigner to the legal

texts. However, after a lifetime of devotional Talmud study, it is a world that lawyers and hedge fund managers in suburban Philadelphia—members in good standing of America's technocratic elite—can enter with ease.

The life of Orthodox Judaism in part seems to be an effort to inhabit the world of Halakhah in the face of a social world that is very different from the one envisioned by the law. Part of how one does this is simply by studying, discussing, and debating the law. Indeed, there is a real sense in which much of Halakhah exists in order to be studied. For anyone who has even a passing familiarity with a functioning legal system, it is clear that much of Jewish law exists as a vehicle for jurisprudential discussion rather than as a system of operative rules. But the halakhic world isn't inhabited purely through classroom debate. One also enters that world by following those rules of Jewish law that have been blessed by tradition and experience with concrete practical significance. Indeed, as I understand it, much of the work of response and commentary over the two millennia since the Mishnah was first written has been an effort to mediate and manage the tension of living simultaneously in both the world of Halakhah and the concrete world of any particular historical moment. In other words, as a living practice, Halakhah is a way of being a Jew in a world where being Jewish is optional. There is thus a sense in which Orthodox Judaism, far from being an insular or reactionary retreat from secularity, represents a kind of virtuoso performance of faith in a secular world. Indeed, Jews have been living in a secular world, in

Taylor's sense, for far longer than Christians. They are better at it. They have more experience.

I think that this kind of performance is on display in the effort to bargain around God's law. There is a temptation for both believers and critics to imagine faithfulness in fundamentalist terms. There is some pristine original template for living the faithful life, and "real" religion consists of unbending adherence to its strictures. Such fundamentalism, however, is an illusion. The pristine template never actually existed; it is always a past constructed after the fact with the troublesome bits excised from memory. More importantly, fidelity is always dynamic, a matter of managing allegiance to an evolving tradition that is continually both resisting and accommodating the world. Even those who purport to be following a fundamentalist path are doing this. The question for a believer is thus always this: how does one adapt a tradition while accepting its authority and maintaining fidelity to it?

One can think about this question by analogy to the process of legal change. The great 19th-century jurist and historian Henry Sumner Maine claimed that legal systems change in one of three ways: by legislation, by equity, or by fiction. Legislation is an idea familiar to laypersons, but equity and fiction in the legal context have specific meanings. Equity refers to a loose interpretation of a rule in order to achieve substantial justice. Fiction refers to the process of adapting legal rules by agreeing to pretend that their conditions have been met when in fact they have not. Good Victorian that he was, Maine thought in terms of

progress, with fiction being the most primitive form of legal change and legislation representing the most advanced stage. Like most Victorian narratives of progress, this one doesn't hold up terribly well to scrutiny, but Maine was onto something in his taxonomy. These are, in fact, the ways in which legal systems change in practice. Applied to divine law, however, the tool kit can become fraught.

Christians are generally fond of equity. They purport to look beyond the surface of rules to see their inner spirit, a spirit that can be applied with considerable flexibility. Hence, Christians read the Hebrew Bible through the lens of Paul's hyper-abstraction in which the true "spirit" of the rule can be its negation. To take an extreme example, Paul argues in his epistles that the true spirit of circumcision consists in not being circumcised. This allows for flexibility, to be sure, but one can understand the skepticism of a Jewish reader as to whether Paul is in fact being true to the law revealed on Mount Sinai. Indeed, one of the vices of Christian spirituality is its tendency to abstract from tradition. All historical contingency falls away in the search for a transcendent and universal spirit. This creates a constant risk of self-negation. I suspect that this is especially true for the kind of Evangelical Protestantism that dominates much of American Christianity. Essentially Calvinist in its theology, American Evangelicalism often emphasizes spirit over law and the personal, subjective experience of being saved over the demands of liturgy or strict behavioral codes. This subjective focus can risk a drift toward a stance of "spiritual but not religious." A certain numinous psychology can

replace theology, and the language of therapy and self-help can eclipse the drama of sin and repentance.

Mormonism presents a similar danger of self-negation, but it does so through religious legislation rather than equity—the first of Maine’s mechanisms for change. Latter-day Saints are marked as heretics from Christian orthodoxy in part by their belief in living prophets and continuing revelation. They affirm that the President of the Church—currently a man named Russell M. Nelson—is a “prophet, seer, and revelator.” In theory, he can receive revelations from God that would rank in equal authority with scripture, and at various points in their history, the Latter-day Saints have accepted additions to their canon from modern prophets. The idea of a hierarchy that can speak with God and speak for God opens up the possibility of religious legislation in a way that doesn’t exist, I suspect, for most Christians and Jews. To be sure, the hierarchy’s claim to such expansive authority risks abuse, and a god who replaces one revealed law with another revealed law may be puzzling. If one risks the paradox of an eternal God whose demands can change, however, the mechanics of religious accommodation, even religious revolution, become easier.

The approach taken by my tradition has its own risks and pitfalls. On one hand, it can tend toward a dysfunctionally expansive fundamentalism in which every statement of the ecclesiastical hierarchy or institutional church becomes freighted with the authority of divine revelation. The result is that a belief that would seem to

promise an unusually dynamic form of religion can, in practice, become rigidly conservative and sclerotic. Ironically, however, an opposite danger also exists. Continuing revelation locates the present between a past filled with revelations that have been superseded and a future filled with revelations that have yet to be given. This creates a dynamic that has a tendency to dissolve all religious claims in the present, particularly religious claims embedded with the concrete experience of the Latter-day Saints themselves. In effect, any revelation can in theory be superseded by a future revelation. Indeed, Latter-day Saint history provides examples of such superseding revelations, most spectacularly in the 1890 revelation ending polygamy, which superseded revelations from the 1830s and 1840s commanding its practice. In effect, all claims to authority in the present can be treated as provisional because they could be reversed by a yet-to-be-received revelation in the future. Thus what begins as an apparently extreme claim to authority can ironically turn on itself with the authority of the future claimed against the authority of the present by invoking the example of the past.

Armed with an appreciation for the dangers of equity and legislation, legal fiction looks more attractive. The rabbi to whom I conveyed the cash in exchange for the *hametz* insisted on the juridical reality of our transactions. The moment was embedded in a series of legal formalities designed to emphasize the complete transfer of the *hametz* to my ownership. I was assured that I had every right to take and consume the whiskey if I wished to do so. He made it clear, for example,

that I had the right to enter the Jewish homes whose pantries I had leased and make off with my cheerios and booze. The exchange was structured as both a cash sale and a bartered exchange (handkerchief for whiskey) to eliminate any difficulties under Jewish law as to my ownership. It turns out there is some doubt as to how to make a binding contract with a gentile, and the redundant contractual structures were a response to that ambiguity.

I was also told that for the transactions to be valid as a matter of Halakhah, they must also be valid under the governing non-Jewish law. Accordingly, I signed a document that purported to be a sale of goods under Pennsylvania law. On this latter point, I will admit to some skepticism. Despite Chaim's diligent lawyering, title to the *hametz* may have remained with the original owners under Pennsylvania law. Our mutual understanding of the deal looked much more like a lease or a secured loan than a sale. While we were careful not to say so, it was understood by all present that I would be selling the *hametz* back at the end of Passover. There is a long legal tradition of using dummy sales for transactional purposes other than the transfer of property. Perhaps I was really just renting the *hametz* for a short period or, alternatively, making a small cash loan with future advances secured by the *hametz* as collateral. Both are real possibilities under American commercial law, which tends to treat transactions according to their economic reality rather than according to the labels that parties give them. This is a potential problem, as with both a lease and a secured loan my Jewish friends

would retain title to their *hametz* during Passover.

To be sure, there are enough doctrinal complications in the contract Chaim drafted that it might survive the acid wash of the American law's functionalism. Under the so-called parol evidence rule, courts have a limited ability to consider the context in which a contract was negotiated if the agreement was reduced to a written document. Thus, the messy reality of our transaction might elude an American court that would otherwise be tempted to treat our sale as a loan. Certainly, one could argue in good faith that the contract has enough validity under the secular law to be valid under Jewish law. Still, the entire transaction had more than a whiff of the legal fiction about it, a mass of formality designed to say that we are doing one thing while actually doing something very different.

In my mind, it is the double-mindedness of the legal fiction that is brilliant. Sitting in the suburban garden in Philadelphia, it was impossible not to feel the authority of Jewish law. Indeed, several members of the synagogue were there to witness the transaction with their children for precisely that reason. The forms and signatures literally had no other purpose than to comply with the demands laid down in Exodus. The dynamics of equity and legislation that tend to erase the very traditions from which they spring were wholly absent from the transaction. If anything, the very particularity of the legal formalities mitigated against the Christian danger of dissolving religion into spirituality. Legal formalities work precisely

because they are strange and serve no purpose outside of the law. The purpose of a formality is to clearly differentiate to participants between actions that have a legal significance and those that do not. No one, for example, accidentally files a real estate deed in their local circuit court without understanding that they are performing a legal act. There is always a risk, however, of legal formalities becoming too familiar. As a legal formality becomes widely used outside of the legal context, it decays, losing the ability to differentiate between legally significant action and legally irrelevant action. In order to work, a formality must be weird. When the law at issue is divine, properly functioning legal formalities will be oddities that make it impossible to forget the claims of God. They are ritual acts that exist only to comply with divine law. At the same time, there is a sense in which the entire transaction of selling the *hametz* existed to avoid the harsh requirements of that law. The continuity of the suburban whiskey collections were maintained. The fiction manages the problems of fidelity and evolution, allowing the tradition to change without negating itself.

There are, of course, limits to bargaining around God's commands. A law that collapses completely into fiction is terminally ill, but judiciously used legal fictions create a suppleness that allows one to bend without breaking, change without forgetting. This is precisely the challenge of secularity. A world in which religion is optional is one in which it can be forgotten. The threat to

religious survival in secularity is less the polemics of the irreligious than the indifference of those who have forgotten how to be religious at all.

As a gentile and a Christian, I think that there is much to learn from Jewish law when it comes to negotiating evolution required by modernity. The danger of Protestant or Mormon strategies of evolution is that they lend themselves to forgetting. Protestantism can exalt a subjective encounter with the spirit in a way that can all too easily dissolve into subjectivism. The idea of continuing revelation, on the other hand, tends to render every Latter-day Saint claim to authority contingent, gnawing away at its own foundations in a way that risks the collapse of the entire tradition. There are virtues to ritual, formality, and fiction that both traditions would be wise to find ways of cultivating. The very oddity of selling Jewish whiskey to a Latter-day Saint makes the forgetting of tradition impossible. It's part of the genius for change without forgetting that has made the survival of Judaism possible in a world that for Jews has been secular since at least the destruction of the Second Temple in 70 CE. A healthy respect for and fascination with that success, along with my friendship with Chaim, led me to the garden in Pennsylvania and will, I hope, lead me to buy more Jewish whiskey in Passovers to come.

Next year in Philadelphia!

This essay is adapted from one originally published in [Wayfare Magazine](#).

PESAH AS ZEMAN SIMHATEINU: WHAT DOES IT MEAN TO REJOICE OVER VICTORY?

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The Last Days of Pesah: Zeman Simhateinu?

When praying the *Amidah* and saying *Kiddush* on Festival nights, we mention the name of the holiday and the character that the time represents. Pesah is *Zeman Heiruteinu*; Shavu'ot is *Zeman Matan Torateinu*; and Sukkot/Shemini Atzeret is *Zeman Simhateinu*. Each festival is characterized differently, and that characterization lasts throughout the entire holiday.

That, at least, is the common and contemporary practice.

In [Darkei Moshe](#), the Rema cites *Sefer Minhagim* of R. Isaac Tyrnau and *Minhagei Maharil* who say that for the entire Pesah festival we refer to Pesah as *Zeman Heiruteinu*, including the last days of Pesah. Rema endorses this practice. However, he mentions that there was another approach of *Sefer Minhagim* of R. Abraham Klausner, a teacher and predecessor of the aforementioned authorities, which was to refer to the last days of Pesah as *Zeman Simhateinu*, as we do on Sukkot and Shemini Atzeret.

Why switch to *Zeman Simhateinu* in the middle of the holiday? None of these sources explain why *Zeman Heiruteinu* is no longer the best expression, but one could surmise that the

moment of liberation was when Benei Yisrael left Egypt, and thus, the last days of Pesah are no longer *Zeman Heiruteinu*. However, according to R. Klausner, *Zeman Simhateinu* does fit the last days of Pesah because *we rejoiced when the Egyptians drowned*.

Several centuries later, R. Yaakov Reischer, in [Hok Yaakov](#), asks the glaring question: Many are aware that according to a *Midrash Harninu* quoted by *Shibbolei Ha-Leket* (§174), quoted by *Beit Yosef* ([Orach Hayyim 490:4](#)), the reason the full *Hallel* is not recited on the last days of Pesah (and, along with them, *Hol Hamo'eid*) is because our celebrating came at the expense of the drowning of the Egyptians. "When your enemy falls, do not rejoice; if he trips, let your heart not exult," warns [Proverbs 24:17](#). If we do not recite the full *Hallel* on the last days of Pesah because our joy is meant to be subdued, R. Reischer asks, how is it possible to refer to those days as *Zeman Simhateinu*?

While, in practice, we indeed do not refer to the last days of Pesah as *Zeman Simhateinu*, considering this question can guide us as to how we balance our victory with the tragic losses that take place on another side of a conflict.

Is It True that Our Joy is Subdued on the Last Days of Pesah?

While it is popular to suggest that the reason the full *Hallel* is not recited on the last days of Pesah is because of a prohibition of rejoicing at the demise of our enemies, there are both technical and theological challenges to be made against that claim.

First, while there are halakhic sources that attribute Proverbs 24:17 as the source for not reciting the full *Hallel* at the end of Pesah, that reason is not brought in the Talmud. In fact, the Talmud ([Arakhin 10a](#)) seems to indicate that *Hallel* is not said at all during the last six days of Pesah, but for a totally different reason. Namely, while the number of bulls offered as sacrifices changes daily on Sukkot, it does not change on Pesah. In order to generate an obligation to recite the full *Hallel* (or maybe *Hallel* at all, although that's not the view we follow), there has to be something novel on each day of the festival that elicits a new need to recite it. Apparently, this has nothing to do with our relationship to our enemies. R. Yehiel Mikhel Epstein, author of *Arukh Ha-Shulhan* ([490:2](#)), presents both the explanation of *Beit Yosef* and the Gemara in *Arakhin*, and while the approach of *Beit Yosef* may resonate homiletically, it is not the "*ikkar ta'am*," the essential reason. The main reason, argues R. Epstein, is that the sacrifices are distinguished on each day of Sukkot but not on Pesah. Interestingly, R. Epstein's son, R. Barukh Epstein, in *Torah Temimah* ([Exodus 14:20, fn. 9](#)), accepts his father's position and criticizes earlier *poskim* for bringing in a midrashic reason for this practice when there is a halakhic reason readily available in the Gemara.

However, R. Barukh Epstein makes another point, which brings us to the more theological reasons to question the *midrash* quoted by *Shibbolei Ha-Leket*. If it is really true that we do not recite the full *Hallel* on the last days of Pesah because we

refrain from rejoicing at the suffering of our enemies, why would we recite *Hallel* at all? If both are ultimately expressions of gratitude and praise, does it really make a difference if we omit two paragraphs?

If any expression whatsoever contradicts the dictum of "When your enemy falls, do not rejoice," then *Torah Temimah's* objection is very compelling. However, the premise itself has some difficulties.

The Fall of the Enemy: No Joy Whatsoever?

While the verse from Proverbs that says "When your enemy falls, do not rejoice" is frequently invoked, even "codified" in [Avot \(4:19\)](#), there seems to be a contradicting verse in Proverbs itself, which says, "With the perishing of the wicked, there are shouts of joy" ([11:10](#)). How do we reconcile these two verses in Proverbs?

Furthermore, an *aggadah* ([Sanhedrin 39b](#))¹ often marshaled to support *Shibbolei Ha-Leket's* explanation for the abbreviated *Hallel* on the last days of Pesah says as follows:

As R. Shemuel bar Nahman said in the name of R. Yonatan, "What is the meaning of the verse 'They did not come near each other the entire night?' At that moment, the ministering angels wished to sing before the Holy One Blessed be He. The Holy One Blessed be He said to them: 'My handiwork [the

¹ Also cited in [Megillah 10b](#).

Egyptians] are drowning in the sea,
and you are singing before me?”
R. Yosi said: “He does not rejoice,
but others rejoice.”

In this *gemara*, God objects to the angels’ singing at the defeat of the Egyptians, but seemingly only in His presence. Further, the *gemara* concludes that others—presumably people and angels—may rejoice. Not only *may* others rejoice, but *Arukh La-Ner* goes as far as to say that it is God’s *will* that people rejoice at the downfall of the wicked. God cannot rejoice at the downfall of His own creations, even when they are justifiably punished, but people perhaps have a *mitzvah* to do so. Alternatively, a passage in [Megillah 16b](#) describes a scene involving Haman and Mordechai when the former is instructed to treat the latter with royalty. Mordechai insists that Haman help him get on the horse he is meant to ride while Haman parades him. As Mordechai climbs on Haman’s back, Mordechai gives him a kick. Haman retorts, “Does not your Bible say “When your enemy falls do not rejoice?” Mordechai replies that this only applies to other Jews, but when it comes to wicked gentiles, the Torah says “You shall tread on their high places” (Deuteronomy 33:29). However sparingly one might apply Mordechai’s approach, it would seem that there is certainly a right to rejoice in the face of the Egyptians’ defeat.

² Yeruham Olshin, *Yerah La-Mo’adim: Pesah (Shiurim)* (Lakewood: Gilyon Publishing, 2013), 453-464, 470-473.

³ See also [Pesachim 117a](#), which indicates a requirement to recite *Hallel* on each *perek u-ferek*, each “occasion.” In this

Channeling the Joy Positively

In his monumental series on the festivals, *Yerah La-Mo’adim*, Rabbi Yerucham Olshin, a *rosh yeshiva* of Beth Medrash Govoha, suggests in two different essays that both values—recognizing the loss of God’s creations while rejoicing over our victory—can coexist. In discussing *Hallel*,² R. Olshin suggests, based on the teaching of his wife’s grandfather, Rabbi Aharon Kotler, that both reasons for not reciting the full *Hallel* on the last days of Pesah are necessary. If the only reason to not recite the full *Hallel* would be because of the sameness of the sacrifices each day, that would not be sufficient, because we also say *Hallel* for miracles (Hanukkah being the prime example). Does the splitting of the sea not constitute a miracle that would require the recitation of *Hallel* on its anniversary? Therefore, the Midrash teaches us that our celebration of the miracle is muted because of the drowning of God’s creations. But if the only operative factor in not reciting *Hallel* on the last days of Pesah is the Midrash, would we skip *Hallel* just because of this when, seemingly, a holiday should require *Hallel* regardless? Furthermore, maybe there is an obligation to recite *Hallel* not just because Pesah has the status of a *mo’eid*³ but because, according to Ramban, of the commandment to rejoice on a festival (*simhat Yom Tov*)! Therefore, the *gemara* in *Arakhin* needs to teach us that the last days of Pesah in fact do not warrant (the full) *Hallel*.

respect, perhaps *Hallel* would be required due to *simhat Yom Tov*, if not for the fact that the *Gemara* in *Arakhin* argues that the lack of distinction in *korbanot* negates the need or ability to recite *Hallel*.

At this point, we can understand the phenomenon of the abbreviated Hallel on Pesah. The full *Hallel* cannot be recited because there is no change to the sacrifices throughout Pesah—to this, we would say that *simhat Yom Tov* still justifies at least some form of *Hallel*. Even for Ramban, who sees reciting *Hallel* as part of *simhat Yom Tov*, a partial *Hallel* suffices. Additionally, and more importantly for our considerations, the injunction against rejoicing at the downfall of our enemies precludes the full *Hallel*; but, after all, God saved us, and therefore some form of *Hallel* is warranted, even if not the full *Hallel*. Even though it was at the expense of the lives of the Egyptian oppressors, our salvation in and of itself warrants joy and gratitude.

R. Olshin provides a similar approach when it comes to the possibility of referring to the last days of Pesah as *Zeman Simhateinu*. While as a matter of practice, we do not use this term on Pesah, it is not because there is no room for celebration in the context of the miracle of *Yam Suf*. When the verse tells us to not rejoice at the downfall of our enemies, it does not mean that we should not have any gladness whatsoever; it is just that it is not *full* joy. While we do not celebrate the drowning of the Egyptians, we certainly can and should celebrate the fact that God rescued and redeemed us.

R. Olshin, and his son R. Isser Zalman Olshin, suggest a difference between reciting *Hallel* in its entirety—which may be problematic—and the expression of *Zeman Simhateinu*—which may be less problematic—on the last days of Pesah. R. Hayim Soloveitchik asserted that *Hallel* requires

“*simhah sheleimah*,” full joy. Thus, *Hallel* is not recited on Rosh Hashanah and Yom Kippur because even though there is an element of *simhah* on those days, it cannot be *simhah sheleimah*—“the book of life and the book of death are open, and you sing before me?!” Yet, not all *shirah* is problematic; there is a *Shir shel Yom* for these days. *Shir shel Yom* does not require *simhah sheleimah*, while *Hallel* does. Likewise, the full *Hallel* cannot be recited on the last days of Pesah because our joy is mitigated by the death of some of God’s creations. Yet, a partial *Hallel* can be recited, and the opinion that one should use the expression *Zeman Simhateinu* is legitimate (even if we do not follow it) because there is still an element of joy, even if not complete joy. Our joy is just limited to focusing on our own survival and salvation.

R. Hershel Schachter makes a similar point in his *haggadah* with regard to the recitation of the ten plagues. It is customary to spill out wine from our cups as we mention each plague. While there are a variety of reasons for this, R. Schachter gives credence to the approach that spilling wine is an expression of our acknowledgement of the suffering of our enemies:

We do not rejoice on this night because HaKadosh Baruch Hu punished the Mitzrim (Egyptians). Rather, we rejoice over the fact that when they received their punishments, our servitude ended. We drink a *lecha'im*, a toast, to the fact that we are *b'nei chorin* (free people), but we spill out that part

of the wine over which we said the *eser makkos*. We are not interested in drinking a toast to the suffering of our enemies.⁴

Ba-Yamim Ha-Heim, Ba-Zeman Ha-Zeh – Then and Now

This model for the celebration of Pesah, and specifically celebrating *keri'at Yam Suf*, provides a model for us in our current circumstances. The death of any and all human beings is tragic before God—yes, even those who oppress us. Our aim in engaging in war is not about what we inflict on the other side per se, but on our self-preservation and survival. Two things can be true at one time. We can appreciate God's pain over the death of our enemies, especially those individuals on the other side who are not oppressors. Yet, it is incumbent upon us to show our gratitude to God for our successes in war and for any life that is saved through the efforts of the IDF. If only Israel's

detractors would understand the nuanced approach of Jewish tradition. We are not a war-mongering nation. We are not a nation that worships power. We even have ways in our tradition of holding space for the losses of the other side of a war. Yet, self-defense is a must, and when we emerge from a precarious situation into one of security and stability, it is only natural to be thankful and to display gratitude when and where it is due—to the Holy One, Blessed be He, who saves us in every generation from those who conspire against us.

This year, as hard of a year as it has been, we will recite an abbreviated *Hallel* for the last six days of Pesah as usual, with acknowledgment that our enemies have suffered, but also with gratitude to God, “whose kindness endures forever.” And, even if we do not verbalize it this way in our prayer, we will indeed experience a *Zeman Simhateinu* because of this gratitude we have to God.

⁴ Hershel Schachter, *Rav Schachter on the Haggadah*, adapted by Dr. Allan Weissman (New York: Feldheim, 2019), 157.

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Wishing you a Chag Kasher V'Sameah