LEHRHAUS

Over Shabbos and Shavuos 5778

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Announcement May 2018

Lehrhaus editors

The period of Sefirat ha-Omer is one of transition, as *Am Yisrael* grows from one experience into another. In the spirit of the season, we are excited to announce some new steps forward that *The Lehrhaus* is poised to commence, as well.

We have been astounded by *Lehrhaus*'s staggering growth since we went live in October 2016. When we originally conceived of a forum to generate thoughtful and dynamic discourse on Jewish ideas over two years ago, we had no inkling of what reaction to expect from the community of readers and thinkers we hoped to engage. All we had as precedent were our respective experiences on social media, which indicated a very small, if still robust and edifying level of engagement. Little did we imagine the tens of thousands of hits we would receive upon our launch, and the hundreds of thousands that would follow.

More important than the numbers has been the atmosphere and culture. As we explained in our introduction to the site, we hoped to draw together an eclectic group of writers and thinkers who would judge each other's intentions charitably and engage each other's ideas with equanimity and curiosity. We hoped to cultivate a space in which people of all sorts could engage even sensitive or controversial issues with grace and rigor, and which would be suffused by a tone at times bookish, at times whimsical, and always respectful. We have been very pleased, even humbled, by the results.

But most important of all, we have aimed for *Lehrhaus* to be a dynamic, exciting project constantly building further momentum. To embody this, we set for ourselves the aggressive goal of publishing two brand new essays every single week, usually on Monday and Thursday. From week one, we have consistently reached and often exceeded that target. This has kept *Lehrhaus* fresh as our readers can consistently look forward to fresh, engaging content.

Several months ago, we launched a new phase of The *Lehrhaus*'s existence by completely redesigning our website, adding many new features. We have been pleased by the positive feedback. And today, on the eve of Shavuot, we are pleased to announce the next exciting phase in *Lehrhaus*'s progression.

With the goal of ensuring not only fresh content but a vigorous editorial energy, we are integrating new editorial perspectives, beginning a gradual shift of our editorial team that will take place over the next few months.

Zev Eleff and Michael (Avi) Helfand are cycling off of our editorial team today. We thank them deeply for their many and sustained contributions to the *Lehrhaus* enterprise. *Lehrhaus* would not be what it is today – if it would exist at all! – absent their efforts, and we are sad to see them go.

At the same time, we are very excited to bring on board four new editors who will bring their talents, energy, and ideas to *The Lehrhaus* enterprise. We are certain that Davida Kollmar, Tuvy Miller, Tzvi Sinensky, and Mindy Schwartz will each be invaluable additions to our editorial team.

Davida Kollmar, GPATS graduate and employee at the Center for Modern Torah Leadership

Tuvy Miller, RIETS student and Rebbi at SAR High School

Rabbi Tzvi Sinensky, Rosh Beit Midrash at Kohelet Yeshiva

Mindy Schwartz, Editor-in-Chief of Kol Hamevaser and the Observer, incoming GPATS student.

For full bios of the incoming editors, please see our Editor's page.

Thank you all for your sustained interest in *Lehrhaus*, and we look forward to continuing to grow in new and exciting directions while maintaining our core identity.

With wishes of a very happy, rejuvenating, and Torah-filled Shavuot,

The Lehrhaus Editors

First Fruits (*Bikkurim*) and the Talmudic View of Capital: An *Essai* in the Philosophy of *Halakhah*

Bezalel Naor

The Torah commanded that the first fruits (*bikkurim*) be placed in a basket and brought to the site of the future Temple. There, the basket is presented to the *kohen* or priest and the owner recites a lengthy narrative (*mikra bikkurim*) which recounts the collective history of the People of Israel. The narrative commences with the tribulations of Jacob in Laban's house, continues with the descent to and bondage in Egypt, proceeds to the wondrous Exodus from Egypt, and concludes with the arrival in this "land flowing with milk and honey" (Deuteronomy 26:9). The last line, in an abrupt update, switches to first person singular: "And now, behold, I have brought the first fruit of the land that You have given me, O Lord" (Deuteronomy 26:10).

According to the Mishnah, the bringing of the first fruits to the Temple Mount in Jerusalem would commence on the festival of *Shavuot* and continue until *Sukkot*. (The actual bringing could continue until *Hanukkah*, as explained in *m. Bikkurim* 1:6, but after *Sukkot* the accompanying narrative would no longer be recited.)

If not transparent enough, the *Sefer ha-Hinnukh* spells out the rationale of this biblical commandment:

> When the Lord has been good to man and blessed him and his land to yield fruits, and he has merited to bring them to the House of our Lord, it is fitting for us to arouse our hearts with the words of our mouths, and to think that everything reached one from the Master of the World, and one should recount His kindnesses to us and to all the People of Israel in general (*Sefer ha-Hinnukh*, No. 606).

Hoping not to sound clichéd, this is a lesson in humility. In fact, Maimonides, in an interesting twist of language, refers to this narrative as *"viddui,"* or confession.[1]

With this introduction in mind, my aim is to examine one unit of the many laws of *bikkurim* as laid out in the Talmud. This single *halakhah* may very well serve as a microcosm of a "philosophy" of *bikkurim*.

In Tractate *Gittin* 47b, we read:

[1] See Maimonides, *Mishneh Torah, Bikkurim* 4:1 and earlier 3:10. Cf. Rabbi Nissim ben Reuben of Gerona's commentary to Alfasi, *Megillah* (7a in foliation of Alfasi): *"Viddui Bikkurim."* Finally, see Rabbi Aryeh Leib Ginsburg, *Turei Even, Megillah* 20b; and Rabbi Joseph Babad, *Minhat Hinnukh*, commandment 606, para. 1.

> If a man was coming on the way [to Jerusalem] and the first fruits of his wife were in his hand, and he heard that his wife died—he brings [the first fruits] and recites [the narrative].
>
> Only if she died [does he recite the narrative]?[2]
>
> The law would be the same if she did not die, but it is necessary to stipulate that the law obtains even if she dies, for I might have assumed that in such a case we should decree [that the husband not recite the narrative] because of the principle enunciated by Rabbi Yosé bar Hanina, who said:
>
> [If the owner of the land] harvested them and sent them with an emissary, and the emissary died on the way [to Jerusalem]—the owner brings, but does not recite, for it says: "You shall take" (*ve-lakahta*) and "You shall bring" (*ve-heveta*).[3] [One does not recite] unless the taking (*lekihah*) and bringing (*hava'ah*) are done by one person.[4]
>
> [Therefore,] we are apprised [that there is no decree disqualifying the husband from reciting if his wife died].

Rabbi Yosé bar Hanina taught that when it comes to the recitation of *mikra bikkurim* there can be no division of labor. The "taking" and "bringing" of the first fruits can be done by two people, but in such a scenario, upon arrival at the Temple, the owner will not be able to recite the narrative. *Mikra bikkurim* is contingent upon the harvesting and conveyance being executed by one and the same person.

One is left wondering. Why would we have entertained the thought of comparing the two vastly different scenarios? Who would ever make an analogy between the case of the husband *en route* discovering that his wife died and Rabbi Yosé bar Hanina's case of the emissary dying *en route*?

Rashi explains that his wife's death has altered the husband's relation to her real estate. While yet she lived he had merely the usufruct (*kinyan perot*).[5] With her death, as her heir, he now has full possession of the land (*kinyan ha-guf*). One might have thought that his new

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[2] In Talmud Yerushalmi, Rabbi Shim'on ben Lakish is truly of the opinion that only after the wife's death may her husband, as heir, recite *mikra bikkurim*. See *y. Bikkurim* 1:5 and *Ketubot* 8:5; and Rabbi Samson of Sens, *Bikkurim* 1:5.

[3] The exact word *"ve-heveta"* does not occur in Scripture. See Rashbam, *Bava Batra* 81b, s.v. *ve-lakahta ve-heveta*.

[4] The two brothers Rabbi Samuel ben Meir (Rashbam) and Rabbi Jacob ben Meir (Rabbenu Tam) disagreed as to the definition of *lekihah*. Rashbam equated it with *"betsirah"* or harvesting, and Rabbenu Tam understood it as "removal from the house." See Tosafot, *Gittin* 47b, s.v. *betsaran*.

[5] The land entered the marriage as *"nikhsei melug."*

socioeconomic status has transformed the husband into a new man, so to speak. Whereas previously, in a sense he was bringing his wife's *bikkurim* as her surrogate or *shali'ah*, he is now transformed into the owner or *be'alim*.

By outer appearances, it is as if the emissary died *en route* and has been replaced with the owner himself. Thus, one might have deemed this case analogous to that of Rabbi Yosé bar Hanina, where the emissary actually, physically died *en route* and the bringing of the *bikkurim* was completed by the owner.

For some reason not made explicit in the Talmud, the analogy breaks down. Therefore, no *gezerah* or decree precluding the husband from reciting *mikra bikkurim* was ever issued. Where does the analogy founder? Perhaps the point is that it beggars belief that an upward turn in financial status would turn one into another person altogether; that the original version and the wealthier version would be for all intents and purposes "two bodies" (*trei gufei*).[6]

Mikra bikkurim requires continuity from the harvesting of the fruits until their arrival at the Temple. The *lekihah* and *hava'ah* must be done by one and the same person. The physical death of the *shali'ah* shatters the unity. An uptick in terms of ownership of the parcel of land does not.

A talmudic genius who delved deeply into the relation between personhood and capital was Rabbi Joseph Rosen (1858-1936), the famed Rogatchover Gaon.[7] One of his points of departure is the statement that occurs several times in the Talmud: "Since if one should desire to relinquish ownership of his possessions and become a poor man, it would be fitting for him, now too it is fitting for him."[8]

One context where this principle of potentiality is applied is that of *demai*. *Demai* is produce which may or may not have been tithed. Most common folk do tithe, but then there is the minority who do not. The ruling is that only the poor are allowed to consume *demai*; the wealthy may not (*m. Demai* 3:1). Now what is the *halakhah* if the first night of Passover a rich man eats *matzah* of *demai*? Does he fulfill the commandment of eating *matzah*? The answer is affirmative. Though in actuality he is a wealthy man, in potential he is a poor man, for he can always divest himself of his assets.[9]

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[6] See Rashi, *Temurah* 20a, s.v. *trei gufei ninhu*, and Tosafot, ibid., s.v. *hanei trei gufei*.

[7] See Rabbi Menahem Mendel Kasher, *Mef'ane'ah Tzefunot* (New York, 1959), 6:6, *"'Ani ve-'Ashir"* (pp. 147-149); and Rabbi Moshe Shelomo Kasher, *Ha-Ga'on ha-Rogatchovi ve-Talmudo* (Jerusalem, 1958), 49-52 (*"'Ani ve-'Ashir"*).

[8] In *b. Bava Metzi'a* 9b, in regard to *Pe'ah*, this is typified as a *"mi-go."* In regard to *Demai*, the *terminus technicus "mi-go"* interchanges with *"keivan."* See the following note.

[9] *B. Pesahim* 35b. See also *Berakhot* 47a; *Shabbat* 127b; *'Eruvin* 31a; and *Sukkah* 35b.

There is continuity of personality. Rich and poor are not two bodies (*trei gufei*). Loss of possessions does not transform one into a different person. Essentially, one remains the same person. This is the opposite of the scenario of *bikkurim* discussed earlier. There the individual's financial status improved. The principle remains the same. Altered economic status does not result in discontinuity of personality. The integrity of personhood is uncompromised.

The Rogatchover is well-known for applying to the study of Talmud philosophic categories of thought gleaned from Maimonides' *Guide of the Perplexed*. In regard to the potential transformation "from riches to rags," the Rogatchover writes: "The issue is whether this is an attribute of the body or an external cause … And so wrote *Rabbenu* [i.e., Maimonides] in the *Moreh* that every change comes from elsewhere, not from the essence … Perforce, this is not an essential change."[10]

The method by which this East European rabbi harnesses Aristotelian modalities obtained by way of Maimonides' *Guide* to the study of Talmudic jurisprudence might bring a smirk to the face of a cynic. Nonetheless, the Rogatchover's point is well taken. Capital is not the essence of the human being but rather external; it belongs to the realm of the material (*homer*) as opposed to the formal (*tzurah*).

A talmudic genius in the same league as the Rogatchover, of the generation preceding him, was Rabbi Zadok Hakohen Rabinowitz of Lublin (1823-1900).[11] In the eighty-sixth chapter of his seminal work *Tzidkat ha-Tzaddik*, he wrote: "Whatever is a possession (*kinyan*) of man—his wife and children, manservant and maid, ox and donkey, tent and silver and gold, and all that is his—all is from the root of his soul."

This is a mystical vision of the interconnectedness of the various elements of reality. Such empathic thinking could lead to enhanced concern for ecology and the environment. It could sensitize one to social justice and animal welfare.

But the key word in Rabbi Zadok's pronouncement is "*kinyan*." Rabbi Zadok came to the Hasidic court of Izhbitsa (Polish, Izbica) from the Talmudic stronghold of *Lita*. It is as if he

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[10] *Tzofnat P'ane'ah*, *Mahadura Tinyana* (Dvinsk, 1930), 73c (p. 146). Though in this particular instance the Rogatchover did not provide the exact reference in Maimonides' *Guide*, by cross-referencing to other passages in the Gaon's writings, Rabbi Kasher was able to find the Rogatchover's two sources in the *Guide*: "All bodies subject to generation and corruption are attained by corruption only because of their matter; with regards to form and with respect to the latter's essence, they are not attained by corruption, but are permanent." Maimonides, *Guide of the Perplexed* III, 8 (Pines trans. p. 430); "Everything that passes from potentiality to actuality has something other than itself that causes it to pass, and this cause is of necessity outside that thing." *Guide* II, eighteenth premise (Pines trans. p. 238). See *Mef'ane'ah Tzefunot* (New York, 1959), 6:6:5 (p. 148) and 14:4:1,2 (p. 221). The exact references to the *Guide* are supplied in *Tzofnat P'ane'ah*, *Kuntres Hashlamah* (Warsaw, 1909), pp. 3 and 26.

[11] See the account of the meeting of Rabbi Joseph Rosen of Denenburg (later Dvinsk, today Daugavpils, Latvia) and Rabbi Zadok, in the short biographical sketch that prefaces *Sihat Mal'akhei ha-Sharet* (Lublin, 1927).

brought with him the Talmudic terminology. Thus, the *"torat ha-kinyanim"* (theory of possessions or acquisitions) of Talmudic analysis was married to the mysticism of the Ba'al Shem Tov.

Rabbi Zadok is fascinated by the way in which a man's moral standing impacts upon that of his children, his wife, and even his beast (as is the case regarding the donkey of Rabbi Pinhas ben Yair in *b. Hullin* 7a). All are "from the root of his soul" (*mi-shoresh nafsho*). Once again, we have an accomplished Talmudist (albeit turned Hasidic master) exploring the borders of selfhood, probing the relation between man and his acquisitions, and arriving at a notion of possessions as extensions of one's personality.

Is it pure coincidence that Rabbi Zadok penned those lines in 1848, the very year in which Karl Marx issued his *Communist Manifesto*?[12] Did the same *Zeitgeist* waft into the Hasidic study hall of Izhbitsa and the secret society of The League of the Just in Brussels? The sound waves of the *"bat kol"* certainly registered differently in the consciousness of the two men.[13]

Marx would go on to publish these lines: "The mode of production of material life determines the social, political and intellectual life process in general. It is not the consciousness of men that determines their being, but, on the contrary, their social being that determines their consciousness.[14]

Marx observed how in the Industrial Era the alienation of the laborers from their products resulted in their alienation (*Entfremdung*).

Rabbi Zadok's stance is diametrically opposed to that of Marx. Where Marx has capital defining personality, Rabbi Zadok has a romantic notion of the "root of the soul" impacting upon *"kinyanim."*

The moral lesson of *Bikkurim* is that one's material bounty is a divine gift. Material possessions are not essential to, nor do they define one's personality. This assertion was buttressed by the Rogatchover with proofs from the *Guide*. Two contemporaries, Rabbi Zadok Hakohen of Lublin and Karl Marx, expressed opposite ideas concerning the relation of man to his possessions. Whereas for Rabbi Zadok they may be extensions (but never the essence of self), for Marx, capital defines man.

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[12] See Rabbi Gershon Kitsis' bibliography of the writings of Rabbi Zadok in *Me'at la-Zaddik*, ed. Kitsis (Jerusalem, 2000), 346.

[13] Rabbi Zadok expounded his theory of the *bat kol* or *"kala de-hadra"* (*Zohar*), whereby a divine idea enters the world and is immediately refracted through the consciousness of various people and individuals, yielding some astonishingly different interpretations. See *Dover Zedek* (Piotrków, 1911), 71d-72c; English translation in Bezalel Naor, *Lights of Prophecy* (New York: Union of Orthodox Jewish Congregations of America, 1990), 38-41.

[14] *The Portable Karl Marx*, ed. Eugene Kamenka (New York: Penguin, 1983), 159-60.

Bezalel Naor is the author of several works of Jewish thought with concentration upon Kabbalah, Sabbateanism, and Hasidism. Recently, his annotated English translation of Rav Kook's seminal work Orot *was published by Koren/Maggid (2015). Naor is presently at work on a kabbalistic novel and collection of poems.*

Pesah and Shavuot, Or: Emancipation and Freedom

Jerome Marcus

When the Jewish nation was released from Egypt, it attained the status of freed slaves, a feat we celebrate on Pesah. Upon receipt of the Torah, marked on Shavuot, they took on another, more elevated status. *Halakhah* offers a useful way to understand these two different conditions and the relationship between them, in a discussion of two different ways in which a slave can be released by his master.

The Talmud, in a lengthy discussion at *Gittin* 37b-40b, raises the question: By what process is a slave emancipated? Simply by the master's oral declaration or other circumstances triggering his freedom? Or is it also necessary for the master to issue a document proclaiming the slave free? The Gemara suggests that there can be two different kinds of release, with different halakhic consequences: one that merely removes the slave from his duty to obey his master, while giving the slave the right to dispose of his own physical assets; and an alternative release that also permits the slave to marry a Jew and to be fully subject to all of the Torah's commandments.

The relevant discussion is elliptical, but the Talmud offers the statement that in certain instances "a slave is released but the slave [still] requires a *get shihrur."* But if the slave is already "released" why is the document needed, and what is its effect?

The Ran, in his comments to 39a, explains that the first form of release is effective "with respect to the work of the slave's hands" (*le-inyan ma'aseh yadav*), while the *get shihrur* is needed to permit him to marry a Jewish woman (*lehattiro le-vat yisrael*).

The Tosafot Rid (at 38b), among others, makes the same point. A free Jew cannot marry a slave, who is bound by a mere subset of the Torah's commands; a free Jewish woman can only marry a free Jewish man — a man bound by all of the Torah's commandments. The Tosafot Rid distinguishes between the master's abandonment of the slave, which gives the slave ownership of his own body, and a *get shihrur*. Only this document of manumission allows the former slave to fully escape from the legal status binding a slave, which prominently includes the inability to marry a free person and to accept upon oneself the full set of obligations imposed by the Torah through conversion. Similarly, the *Minhat Hinnukh* (*mitzvah* 42) explains that "a slave is subject to two different statuses (*kinyanim*): one a property interest to the product of his labor, and one similar to the status of marriage, "which determines both whether he may marry a Jew or a non-Jew and whether he is fully obligated by all of the Torah's commandments."

These two halakhic categories of release from slavery are properly understood as two kinds of freedom. Verbal or situational release removes the physical and legal constraints that strip a slave of control over his own body and time. But the existence of a second kind of release, with different consequences, suggests that the first does not complete the job. As the *halakhah* indicates, the person who been released based merely on words or the situation at hand has not been entirely freed.

What is this second kind of freedom? It goes beyond the mere power to control one's physical and financial existence: it is the power, or legal status, necessary to enter into a covenant with someone else. The link of marriage to halakhic obligation expresses the idea that the same full measure of freedom is needed to enable one to enter into either of these relationships.

This distinction is ripe with meaning. It calls our attention, on the one hand, to the fact that both marriage and halakhic commandedness are covenants, not mere contracts — they are agreements that define the status of the contracting parties, not simply one-off exchanges of value. And both require full control over one's very self, not merely over what one does, because only a person with such control has the ability to enter into an identity-governing agreement. Both marriage and the decision to be a Jew, subject to *mitzvot*, are such commitments: they are definitional to our being rather than a mere imposition of obligations to do or refrain from doing specific acts.

With this important distinction in mind, it may serve us well to turn to the taxonomy between negative and positive liberty proposed by Isaiah Berlin in his "Two Concepts of Liberty." The former, he suggested, was the absence of constraint, a state in which a person is unhindered in choosing what actions to engage in or refrain from. "Positive liberty," by contrast, Berlin suggested, is the status of being able to fulfill one's purpose and destiny as a human being.

Halakhah's positing of these two different kinds of release maps onto these two different ideas of liberty. A slave given only an oral release, who acquires control over his physical and financial existence, can be understood as having attained negative liberty. A slave who is given a *get shihrur,* by contrast, receives a veritable bill of rights; he has the freedom to choose to marry a Jew and to submit to the Torah's commandments. These two different statuses — in the Torah's eyes — allow a person to fully express his humanity, both in relation to other people and in relation to the world and to God.

The acceptance of the Torah at Sinai is not an independent stage; it builds upon the freedom gained following the Exodus from Egypt. While the Israelites didn't receive a literal writ of emancipation from Pharaoh, they gained it through their desert sojourn leading up to Sinai. As the name "Shavuot" implies, it takes weeks of growth and developing emancipation to move from Pesah to a higher level of freedom. With the perspective of a two-tiered approach to the acquisition of freedom learned from the *halakhot* of emancipation, we can better appreciate the full significance of accepting the Torah. Only a truly free people, not only physically but spiritually removed from their servitude, can enter a divine covenant and accept the Torah as their guiding document.

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The Nature of Halakhic Civil Law

Chaim N. Saiman

I. Introduction

The foundation of traditional halakhic thought is that the laws of the Torah are the revealed and eternal word of God. This includes not only the laws that might be classified as "religious," "natural," "ritual," or "spiritual," but emphatically includes the civil laws as well.

For many Christian theologies however, whether modern or medieval, the specific civil laws set forth in Exodus and Deuteronomy are viewed as regulations for a specific time; either during the desert sojourn and the land of Canaan, or at the latest, until the advent of the Christian messiah. So while the Torah's civil laws may have divine origin, they are bound to the past have little bearing in the post-biblical present. Thus, even for someone as interested in the content of the revealed word as Aquinas, when it comes to civil law, his discussion leads him to Aristotle rather than Exodus. (See *Summa Theologica,* Q.91 and 95-97.) Likewise, in discussing the civil laws John Calvin, wrote

> The allegation, that insult is offered to the law of God enacted by Moses, where it is abrogated, and other new laws are preferred to it, is most absurd. Others are not preferred when they are more approved, not absolutely, but from regard to time and place, and the condition of the people, or when those things are abrogated which were never enacted for us. The Lord did not deliver it by the hand of Moses to be promulgated in all countries, and to be everywhere enforced…." (*The Institutes of the Christian Religion*, 4:20 ¶16)

For the Talmudic rabbis, such an approach is sheer blasphemy. The specific mitzvot God gave Moshe in the desert – everything from the Ten Commandments, the instructions to build the *mishkan,* up to and including the rules of contract, bailment and tort, are divine and eternal. Hence Exodus 22:4, which states, "If anyone grazes their livestock in a field or vineyard and lets them stray and they graze in someone else's field, the offender must make restitution from the best of their own field or vineyard," or the next verse, "[i]f a fire breaks out and spreads into thorn bushes so that it burns shocks of grain or standing grain or the whole field, the one who started the fire must make restitution," are as part of the eternal divine law as any other section of the Torah.

To be sure, how these rules have been interpreted and applied over time is a far more complex matter. Nevertheless, on the essential premise – that such rules are part of the eternal covenant between God and the Jewish people – on this, there is little debate.

II. Foundations of the Law: Revelation at Sinai

To understand the nature of Jewish civil law, we start with the foundational moment of lawgiving, receiving the Torah at Sinai. As this synopsis of Exodus 19 indicates, the Torah

presents an extensive account that highlights the "theatrical staging" of this foundational moment.

> The LORD said to Moses, "I am going to come to you in a dense cloud, so that the people will hear me speaking with you and will always put their trust in you.". . . And the LORD said to Moses, "Go to the people and consecrate them today and tomorrow. Have them wash their clothes. . . Put limits for the people around the mountain and tell them, 'Be careful that you do not approach the mountain or touch the foot of it. Whoever touches the mountain is to be put to death. . .
>
> On the morning of the third day there was thunder and lightning, with a thick cloud over the mountain, and a very loud trumpet blast. Everyone in the camp trembled. . . Mount Sinai was covered with smoke, because the LORD descended on it in fire. The smoke billowed up from it like smoke from a furnace, and the whole mountain trembled violently. As the sound of the trumpet grew louder and louder, Moshe spoke and the voice of God answered him in thunder. . .
>
> And the LORD said to him, "Go down and warn the people so they do not force their way through to see the LORD and many of them perish.

Following the Ten Commandments, Exodus chapter 20 reads as follows:

> When the people saw the thunder and lightning and heard the trumpet and saw the mountain in smoke, *they trembled with fear. They stayed at a distance* and said to Moses "Speak to us yourself and we will listen. But do not have God speak to us or we will die." Moshe said to the people, "Do not be afraid. God has come to test you, so that the fear of God will be with you to keep you from sinning." The people remained at a distance, while Moshe approached the thick darkness where God was.

In Chapter 19, God reveals himself through thunder and lightning, billowing smoke, thick clouds, and blasting trumpets as the law comes booming down from heaven. Law is divine, transcendent, and beyond human experience and intellect; all who approach are consumed. Even Moshe gains access only by spending 40 days and 40 nights in an effectively inhuman existence. Limits, borders, fear; these are the preambles to the law. The Israelites, quite naturally, recoil in terror, and as Ex. 20:16 reports, this was more or less the point. Later on, we are informed of their response: "All that God has said we will ***obey*** and we will ***hear***" (Ex. 24:7).The order of the verbs is not lost on the Talmudic rabbis, who famously note the commitment to obey the law precedes even knowing what it requires.

Law here is presented as an act of pure divine will where God's word both creates and justifies the law's foundational norms and intuitions. There is no platform on which one can stand in judgment of the divine law. The very idea is as ridiculous as it is blasphemous. [This topic is extensively analyzed by Christine Hayes in her new book. What's Divine about Divine Law*: Early Perspectives* (Princeton U.P. 2015).]

This perspective is embodied in the strand of Jewish law that is concerned with punctilious observance. So palpable is the fear of sin – or breach – that we dare not even tread close. Thus, classic example is that in cases of doubt as to whether a piece of meat is the prohibited *ḥelev* (often translated as suet fat) or the permitted *shuman* (permitted fat) the halakhah

requires abstention since the status is in doubt. Likewise, on Friday evening, when Shabbat begins, we adopt one of the earlier possible definition of "night," while on Saturday night we adopt a later definition to make sure that all bases are covered. As the *Mesillat* Yesharim (11) describes the reason to be stringent in cases of doubt: "Anyone with a brain in their head should view prohibited foods as if they are foods that have been poisoned… Because if there is even the smallest doubt as to whether there is poison in a food, would one eat it?"

This view, rooted in the Bible and Talmud, and running through to the present sees all laws as commitments to God. Thus, even civil law is not fundamentally about the work of social governance but a form of obedience to the divine calling. This approach reaches its high-water mark in the hands of Rav Hayyim Soloveitchik and the Brisker school, as attested by the following articulation attributed to Rav Hayyim.

> One may think that the reason the Torah instituted [commandments such as charity and performing acts of kindness] is for society to function. But, in truth, it is the opposite. ***Because*** there is a commandment not to murder, ***that is the reason*** murder leads to destruction. Similarly, because the Torah commanded to give charity, such acts sustains the world . . . Thus the universe is created in accordance with the Torah, and Torah is the blueprint of creation. For in truth, a universe could be created where murder would sustain society and charitable acts would destroy it—is God's hand limited? Rather ***because*** the Torah commanded us to engage in charitable acts and refrain from murder, the universe was created such that charity sustains the world and murder destroys it. All is in accord with what is written in the Torah. Do not think that the Torah was given based on reality.
>
> (*Haggadah Shel Pesah MiBeit Levi*, ed. M.M. Gerlitz, (Oraysoh 1983) at 182-183, emphasis added)

One could hardly imagine a clearer expression of divine legal positivism. Our moral understandings of why charity is good and murder bad are simply irrelevant. For Rav Hayyim, Torah alone (including Talmud and its commentaries) determines right and wrong. Considering the law's functionality, purpose, efficacy, or morality is beyond the pale, the very question betrays a misunderstanding of the nature of law.

III. Exodus 18: An Alternate Conception

And yet, just one chapter prior to the revelation at Sinai described above, we find another, quite different, prelude to the giving of the Torah. Chapter 18 of Exodus tells of Yitro, the Midianite priest and Moshe's father in law, visiting the encampment in the desert and observing Moshe hard at work dealing with the people's legal disputes.

> The next day Moshe took his seat to serve as judge for the people, and they stood around him from morning till evening. When his father-in-law saw all that Moshe was doing for the people, he said, "What is this you are doing for the people? Why do you alone sit as judge, while all these people stand around you from morning till evening?"

> Moshe answered him, "Because the people come to me to seek God's will. Whenever they have a dispute, it is brought to me, and I decide between the parties and inform them of God's decrees and instructions."
>
> Moshe' father-in-law replied, "What you are doing is not good. You and these people who come to you will only wear yourselves out. The work is too heavy for you; you cannot handle it alone. Listen now to me and I will give you some advice, and may God be with you.
>
> You must be the people's representative before God and bring their disputes to him. Teach them his decrees and instructions, and show them the way they are to live and how they are to behave. But select capable men from all the people—men who fear God, trustworthy men who hate dishonest gain—and appoint them as officials over thousands, hundreds, fifties and tens. Have them serve as judges for the people at all times, but have them bring every difficult case to you; the simple cases they can decide themselves. That will make your load lighter, because they will share it with you. . .
>
> Moshe listened to his father-in-law and did everything he said… Then Moshe sent his father-in-law on his way.

Here, Moshe is presented in a far more human form. Rather than the prophet who transcends his mortal shell to reside on High, we find a leader lacking in administrative skill, who, to put it brashly, appears in over his head. And this very human Moshe then endures a prototypically human encounter – the visit from the father-in-law who comes bearing "advice" about how to perform better at work. But with God's apparent blessing, Moshe takes advice from a non-Jewish Midianite priest. Moshe then thanks his father-in-law for the tip and promptly "sends him on his way."

The story of chapter 18 offers at least two points of contrast. First, the same Moshe who stood up to Pharaoh, wrought the 10 plagues, and split the sea here gets schooled by his father-in-law. But second, and more relevant to our purpose, the Torah describes an entire legal (replete with overcrowded court dockets) as up and running *prior to* the revelation at Sinai.

This incongruity did not escape the rabbis of the Talmud or their medieval heirs. (See, for example, Rashi and Ḥizkuni to 18:13; and Ramban, Ibn Ezra and Seforno to 18:1.) In fact, *Zevaḥim* 116a records a debate as to whether Yitro arrived in the Israelite camp prior to the giving of the Torah or afterwards. The source of the controversy is easy to understand. Textually, the Yitro episode is presented in Exodus 18, just prior to revelation. Conceptually, however, the issue is more complicated: How could there be an intricate legal system before the Torah was given? How could Moshe have set up an entire administrative bureaucracy, taught the people the statutes and decisions to "*make them know the way in which they must walk and what they must do*" before Sinai?

Whether Yitro arrived before or after Sinai, the Torah chooses to present his story as taking place beforehand. In this way, Exodus 18 offers a rather different image of law than what we saw in Chapter 19. Rather than booming down from heaven, law is something that already exists within the human experience. In place of the harsh and transcendent imagery of smoke, fire, thunder, lighting, boundaries, and danger, we find the more immanent qualities

of prudence, judgment, reason, and virtue. Moshe is not an otherworldly figure who bridges the gap between heaven and earth, but himself is one who must be educated. In this image of the law, even an outsider like Yitro has much to contribute. In fact, this might be what the Midrash alludes to when it asks why Moshe's father in law, who is known by seven names, came to be memorialized in the Torah as Yitro? The answer, according to the Tanḥuma (Yitro §4), is that "he added, יתר, a chapter to the Torah."

The Bible thus offers two introductions to the giving of the Torah, and hence two understandings of the law's foundation and purpose. The "official" introduction of chapter 19 depicts that law as a pure expression of the divine will – where man's only contribution is obedience. But spending no more than five moments with the Talmud reveals that, at best, this is half the story. The Talmud brims with debates, disputes, arguments and reasons where the rabbis take an active (some might say dominant), role in constructing and creating the God's law. Here law is determined based on prudence, practical reasoning and the human ability to judge what is right, what is just, and what conforms to reason. To signal this aspect of the law, the Torah provides an alternate introduction to the giving of the Torah— the introduction of Yitro.

The question, which has occupied rabbinic thinkers from the Talmud to date, is how do these two modes of thought interact. How can a system premised on divine absolutes govern the contingent affairs of man? Nowhere is this more acute that in the case of civil law, where ever-changing economic and social circumstances impact how legal principles are administered and applied.

IV. Rav Shimon Shkop's Account of Jewish Civil Law

Above, we noted how Rav Hayyim adhered to a strong version of the divine positivistic account where even the civil law is hard-wired into creation. However, one of his primary students, Rav Shimon Shkop, the leader of what can be called the Telshe strand/competitor to the Brisker school, offered a rather different perspective on halakhic civil law.

Like his mentor, Rav Shimon was primarily a talmudic legalist, rather than a philosopher. His jurisprudence does not proceed in the language of Aristotle, Aquinas, Arendt, or Ackerman, but in traditional rabbinic fashion: by showcasing an analytic or legal inconsistency in the halakhic corpus followed by a proposed resolution.

Rav Shimon's entry point is as follows: Above we noted that if one confronts a piece of meat of unknown status, halakhah requires abstaining from it to avoid even the possibility of prohibition. This principle is known as "*safek de-oraita le-ḥumra*," meaning, that in cases of doubt concerning a Torah-grade prohibition, one must act stringently. This rule carries echoes of Exodus 19. The fear of transgression leads to abstention, even as the fact of prohibition remains uncertain.

Rav Shimon notes however, that theft is also a biblical prohibition. The logic of stringency in the case of doubt would therefore counsel that when there is factual or legal doubt as to whether A or B owns an asset, (as in any litigation between A and B), the holder should refrain from possessing or using the asset for fear of violating the biblical prohibition against theft.

Rav Shimon notes however, that this is emphatically NOT the halakhic rule. The baseline of halakhic civil law, like its secular counterparts, assumes that the plaintiff bears the burden of proof, or as the Talmudic phrases it, "one who wishes to extract an asset must supply convincing evidence." Unless and until the plaintiff proves his burden, the defendant is permitted to retain and use the disputed asset. This causes Rav Shimon to wonder: why is this different than the piece of meat of uncertain kosher status?

Standing behind this traditionally framed halakhic question are some of the ideas discussed above. The rule mandating stringency in cases of doubt draws its inspiration from the image of law generated in Exodus 19. Law comes from on high, and man cowers in submissive fear. "Can't touch this," as a colorful entertainer from the '90s put it. In face of the potential of sin, the only sensible response is to cautiously back away.

This idea, however, is much harder to apply to a system of civil justice were law must pragmatically order human affairs. Possession creates a presumptive claim of right, and it falls on the plaintiff to sustain the burden of proof. Here, we hear echoes of Exodus 18, where the law is less focused on the awesomeness of the Divine, and more concerned with effective administrative governance.

But how do these two systems of reside within the same halakhic rubric? Rav Shimon responds to this challenge by proposing a novel understanding of halakhic civil law. The rules of private law, claims Rav Shimon, ***are not*** primarily established by divine mandate. Instead, rational reasons and institutions that create the system of property, ownership, contract, and tort. He calls this sub-biblical system of law "*torat ha-mishpatim*," probably best translated as "civil law." While some of these rules are indeed determined by Torah verses, the bulk are generated by human reason rather than Torah (narrowly defined).

Rav Shimon's own words present a striking intervention into rabbinic discourse.

> Answering this question requires a general introduction to the commandments (*mitsvot*) of civil law that govern the interactions between people. These laws are not like the other *mitsvot* of the Torah. Regarding all other *mitsvot*, the central issue is the fulfillment of God's command incumbent upon us. But this is not the case regarding the civil laws. Because, before there is *mitsvah* to pay certain monies or return a certain asset, there must be a duty arising from civil law" mandating payment....
>
> A related principle is as follows: When we seek to determine the rights or liabilities with respect to assets, we are not engaged in a question relating to the observance of a *mitsvah*. Instead, we are asking a question regarding ownership based on the rules established by the civil law. Thus, the Talmud declares that plaintiff bears the burden of proof, because the rules of private law presume that one who possesses an asset is entitled to its use.

According to Rav Shimon, because the rules serve different purposes, there is no contradiction between the civil law rule requiring the plaintiff to bear the burden of proof and the religious prohibition against theft. At the initial stage, the law must determine who has ownership over a given asset. This is accomplished via the civil law rules which assume that an asset belongs to its holder (A) until a challenger (B) offers compelling proof

otherwise. Rav Shimon's innovation is that the theological stakes, and the correlated concept of *issur* (religious prohibition), only kick in once ownership has been determined via the civil law. Hence, if the civil law determines that B rather than A owns the asset, A violates the religious prohibition against theft by keeping it. However, when the civil law merely results in doubt over A's ownership status, no religious prohibition prevents A's retention of the asset in question.

Rav Shimon's discussion of the "*torat ha-mishpatim*" encompasses many pages of dense halakhic writing (not a genre known for its philosophical clarity), and his account has been the subject of several competing interpretations. Thus, Avi Sagi has argued that Rav Shimon's "*torat ha-mishpatim*" is a form of "halakhic natural law" based on human conceptions of justice that are conceptually prior to many divine positive commandments. By contrast, Shai Wozner has argued, more convincingly in my view, that Rav Shimon is not interested in determining whether halakhic civil law reflects natural law, human positive law, or divine positive law, but instead intends to distinguish between rules that create legal status (whether formulated by human convention, rabbinic legislation, or Torah mandate) and *mitsvot* that call on humans to act in accord with divine will.

No matter which understanding of Rav Shimon we follow, his view of civil law contrasts sharply with that of his teacher. Reb Hayyim, and his strand of Brisker thought more generally, could not envision a foundational norm predating or conceptually prior to God's express command. The divine commandment is what establishes the normative universe, and all subsequent norms necessarily derive from the primal set of divine laws. However, as Elisha Friedman recently wrote, Rav Shimon "rejects the Brisker claim that reasons are irrelevant to halakhic study because the [d]ivine wisdom is unfathomable." Rather, Rav Shimon maintains that "[d]ivine wisdom at its core, must reflect the human experience" such that "only through offering reasons in halakhic study can one hope to arrive at the truth of Torah." Rav Shimon thus posits a normative order of "civil law" that includes humanly ordained norms which create legal rights and obligations conceptually prior to the divine command. What the *mitsvah* adds, per Rav Shimon, is the divinely-mandated requirement to act justly and in accord with one's legal rights and responsibilities.

These two perspectives on the purpose and foundations of law resonate with the dual introductions presented for the acceptance of the Torah. Chapter 19 presents a model of law where the idea that man has standing to formulate the law's primary norms seems blasphemous. Chapter 18, by contrast, offers a different prelude to revealed law where legal relationships are sorted out through reason prior to the divine command coming into play.

In Rav Shimon's account, the civil law allows for human intuition and reason to establish legal entitlements and liabilities. But it is the transcendent divine call, a call still heard echoing from Sinai, that calls upon us to live up to these obligations.

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God, Torah, Self: Accepting the Yoke of Heaven in the Writings of Rav Shagar

LEVI MORROW

Introduction

Rabbi Shimon Gershon Rosenberg (1949-2007), more popularly known as Rav Shagar (henceforth Shagar), was a somewhat revolutionary thinker within the *Dati Le'umi* community in Israel. His public presence has increased substantially in the wake of his death in 2007, due to the posthumous publication of his writings by the Institute for the Writings of Rav Shagar (מכון כתבי הרב שג"ר). Nevertheless, his teachings are still not widely known within Israel, and are all but completely unknown among Diaspora Jews. It is my hope that this essay, and more that I plan to write in the future, may help make some of the various aspects of Shagar's writings more accessible to the English-speaking world.

The phrase "accepting the yoke of heaven" (קבלת עול מלכות שמים) is a weighty one in the Jewish tradition. The Mishnah (*m. Berakhot* 2:2) connects the term with the twice daily recitation of the Shema, a biblical obligation (*b. Berakhot* 2a). As Shagar says, accepting the yoke of heaven is "that act around which the life of a Jew is organized."[15] This central role that accepting the yoke of heaven plays in Jewish life makes the exact meaning of the phrase incredibly important, and different thinkers have interpreted it in different manners. In this essay I would like to examine the two different, and seemingly contradictory, ways that Shagar uses the phrase in his writings, compare them, and look at three different ways of resolving the contradiction. I then will conclude by looking at what this discussion means for Shagar's writings more generally.

The Classical Approach: Self-Construction

In a discussion of freedom and slavery in a sermon for the holiday of *Pesaḥ*, Shagar discusses the meaning of "accepting the yoke of heaven," taking what might be considered the classical approach of consciously submitting to the Torah. In this sermon, Shagar argues that accepting the yoke of heaven by submitting to the Torah and mitzvot is actually a necessary step in enabling freedom, rather than its own form of enslavement.

> קבלת עול היא ברית ויצירת זהות היוצרת טבע, ורק מתוכה החירות אפשרית. בכך הברית נעשית תנאי לחירות. הסיבה לדבר ברורה: חירות כפי שהגדירוה כמה מחשובי ההוגים היהודים וכמה מהפילוסופים הגדולים, היא פעילות לפי טבע עצמי - להיות מה שאני באמת. אך הבעיה כאן היא, שחירות זו מחייבת 'אני' וטבע עצמי שמכוחם האדם פועל. ואכן ההגות הפוסטמודרנית רואה את האדם כנטול 'אני', ולפיכך החירות שלה היא למעשה שעבוד, היות שהיא אינה מכירה בזהות עצמית ואף לא באפשרות ליצירת זהות יציבה שכזאת. [...] לכן יש צורך בברית ובקבלת עול מקדימות כדי לכונן עצמיות ו'אני' מובהק. [...] הברית היא יצירה של זהות עצמית וטבע, היות שמשמעותה היא עזיבה מוחלטת, החלטה המפקיעה את הדבר ממשא ומתן. זו לא רק החלטה על הדבר, אלא החלטה לא להעלותו שוב לדיון;

[15] *LeHa'ir Et HaPetaḥim* (Hebrew), Ed. Y. Mevorach, Alon Shevut 2014, p.205. All translations are my own.

הפיכתו לאקסיומה ולמובן מאליו שאינני שואל עליו. בכך נפתח האדם לאפשרות ליצור ולאפשרות לחירות של פעילות על פי טבע שכעת הוא פנימי אצלו.

"Accepting the yoke" is a covenant, it is the creation of an identity that creates a person's nature, and only from amidst this is freedom possible. As such, the covenant is a necessary condition for freedom. The reason for this is obvious: freedom, as defined by many important Jewish thinkers and many great philosophers, is acting according to my inner nature - being what I truly am. The problem with this is that this sort of freedom requires an "I" and an inner nature based on which I act. Postmodern thought, in contrast, sees a person as lacking any "I." This freedom is therefore actually enslavement, as Postmodernism does not recognize any personal identity, nor even the possibility of creating any sort of stable identity. [...] This is why there is a need for covenant and accepting a yoke, in order to engender a self and a strong "I." [...] The covenant is the creation of personal identity and nature, as its practical meaning is absolute abandonment, a decision that removes the issue from the realm of discussion. This is not just making a decision about something, rather it is a decision not to even bring the issue back up for discussion; turning it into an axiom and into a self-evident fact that I do not question. In this a person opens up to the possibility to create and the possibility of freedom as acting according to a personal nature that is currently within him.[16]

Accepting the yoke of heaven, in this context, means binding oneself so tightly and strongly to Torah and mitzvot that they cannot be questioned. This approach echoes alongside understandings of accepting the yoke of heaven that connect it to being martyred for the sake of Judaism or Torah.[17] The Torah is elevated to the point of absolute supremacy in a person's life, worth more than her life itself. Such a person has accepted the burden of divine authority absolutely.

Despite its obvious affinities with the classical approach, much of Shagar's discussion is, I suspect, rather unique. Shagar's starting point is the tension that exists between defining freedom as a person's actions flowing solely from her inner self and the postmodern claim that there neither is, nor can be, such a thing as the self. Shagar responds to this claim by accepting that there is no such thing as an inherent self, but argues that such a self can be created by the individual. He then goes on to describe accepting the yoke of heaven as this creation of the self. Accepting the yoke of heaven, he says, is the creation of the basic axioms of an identity, upon which the rest of a person's decisions can be based. Instead of just becoming a supreme value, dominant in a person's life over any other concern and worthy of martyrdom, the Torah becomes the very core of the person. Accepting the yoke of heaven is therefore a process where a person takes the external Torah and internalizes it, constructing her identity around it.

A Novel Approach: Self-Acceptance

In stark contrast to this internalizing approach, Shagar also describes accepting the yoke of heaven not as the individual internalizing an external law or value, such as the Torah, but as

[16] *Zeman Shel Ḥerut* (Hebrew), Ed. Y. Mevorach, Alon Shevut 2010, pp.175-176.
[17] See, for example, *b. Berakhot* 61b.

the individual accepting herself, as he states in context of the integration of faith and academia.

> הדברים האמורים מנהירים מהי 'קבלת עול מלכות שמים': אותו אקט שחייו של היהודי מתארגנים סביבו, איננו אלא מחויבות ממשית; קבלה הנעשית מתוך חירות ובאופן מודע: כך אני, כך קיבלתי על עצמי, כך אני רוצה להיות - זאת היא הווייתי. [...] הדתיות הממשית אין לה מה להיות מאוימת, היות שאמונתה הנה תולדה של קבלת עול שאיננה אלא **קבלה עצמי** שדבר לא יערער אותה, ממילא היא פתוחה לכל התרחשות ולכל הוויה.
>
> These ideas illuminate the meaning of "accepting the yoke of heaven": that act that the life of a Jew is organized around, which is nothing other than substantial commitment; acceptance that is done out of freedom and in a conscious manner: this is what I am, this is what I took upon myself, this is how I want to be - this is my existence. [...] real religiosity has nothing to feel threatened by, since its faith is a result of an "accepting the yoke" that is an unshakeable **self-acceptance**, and which is therefore open to every occurrence and every existence.[18]

Acceptance of the yoke of heaven is here explicitly understood as self-acceptance, as the individual's acceptance of who she is, as opposed to the classical approach which focuses on the acceptance of an external, heteronomous, element.

Self-acceptance is an idea that pops up throughout numerous areas in Shagar's writings, and in order to look more closely at its meaning, I want to turn to a passage discussing self-acceptance as a model of belief.

> מתוך כך ניתן להציג לדעתי שני מסלולים מנוגדים המובילים לאמונה הדתית. האחד הוא חזרה לתמימות, שהיא קבלת עצמי. 'אני מה שאני'. האמונה נמצאת במקום שבו האדם מקבל את זהותו. בלשון החסידות מכונה תנועה נפשית זו התבטלות. את הצדקתה תמצא, כמאמר הפילוספים האקזיסטוציאליסטים, בהכרה שהושלכנו לעולם, לא בראנו את עצמנו, ורק קבלת עצמנו מאפשרת קיום אותנטי ומפגש עם הממשי.
>
> הכלב הנו כלב, הוא לא יכול היה להיות אחרת, לכן הוא (במובן מסוים) 'מחויב המציאות': מציאותו היא כפי שאלוקים ברא אותו. [...] האמונה במובן זה היא קבלת עצמי, כלומר קבלת חיי כחלק מהממשות, מרצון ה'.
>
> In my opinion, this enables the presentation of two different and opposing paths that lead to religious faith. The first is a return to innocence, meaning self-acceptance. "I am what I am." Faith is found in the place where an individual accepts his identity. In the language of Hasidut this psycho-spiritual process is called "self-nullification." Its justification is found, as the existentialists said, in the recognition that we were thrown into the world, that we did not create ourselves, and only accepting ourselves enables authentic living and encounter with reality.
>
> A dog is a dog, it cannot be otherwise, and therefore it is (in a certain sense) "a necessary existent": its existence is as God created it. [...] Faith in this sense

[18] *LeHa'ir Et HaPetaḥim*, pp.205-206. Emphasis in original. See also *Luḥot U'Shivrei HaLuḥot* pp.44, 438.

> is self-acceptance, meaning accepting my life as part of reality, of the will of God.[19]

Without going into what it means for faith, this passage lays out a clear vision for self-acceptance more generally. Self-acceptance means that a person accepts herself exactly as she is. She is who she is, and she does not want or need to be different.[20] Moreover, she recognizes that her self is a manifestation not of her choices, but of the will of God. Not only does she not want to be different, she could not be different even if she did so desire. The identification of the individual's present state with the will of God also eliminates any concept of an ideal that she should be striving to meet; her reality is inherently the ideal. Self-acceptance means recognizing that how you are is exactly how God wants you to be, and you therefore could not and should not be otherwise.

Based on this, it is eminently clear how different self-acceptance is from Shagar's version of the classical approach of accepting the yoke of heaven, which, for the purpose of contrasting the two approaches, I will call "self-construction." Self-acceptance assumes a preexisting self that is taken to be representative of the will of God, whereas self-construction is a response to the lack of a preexisting self. Self-acceptance focuses on the self, whereas self-construction focuses on an (initially) external element. Perhaps most importantly, self-acceptance is a passive process, based on the individual "stepping back from agency"[21] over who she is, recognizing that she could not be otherwise. Self-construction, in contrast, is an active process that the individual consciously chooses to enact, building herself from the ground up. The two processes, each referred to as "accepting the yoke of heaven," could not be more opposite.

An important aspect in understanding self-acceptance is bound up in the meaning of the term "self" in this context. Throughout most of Shagar's discussions of self-acceptance, the self is to be understood as the individual as she experiences herself in her daily life. The self is a person's thoughts and beliefs, feelings and concerns, as they are evident to that person. This is in contrast to the "self" as discussed by thinkers like Rav Avraham Yitzchak HaKohen Kook [22] or Rav Mordechai Yosef Leiner of Izbica[23] which is the inner truth of a person, discovered only after peeling away the more superficial layers of her personality. But for this difference, these thinkers would serve as excellent precedent for Shagar's concept of self-acceptance, and he does support his opinion based on their writings.[24]

A further wrinkle in Shagar's concept of the "self" in self-acceptance lies in the psychoanalytic turn that occurs in his later writings, under the influence of the thought of Jacque Lacan and his interpreters. Self-acceptance, after this turn, becomes acceptance not of the existence of the individual as she is, but of the symptomatic existence of the lacanian subject. Practically speaking, this self is experienced as bearing within it a strong sense of alienation and otherness. In this understanding, the "self" is not the conscious mind that thinks and feels and

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[19] *Luḥot U'Shivrei HaLuḥot*; Edd. Z. Maor, A. Brenner, N. Samet, A. Abramovich; Tel Aviv and Alon Shevut 2013, pp.419-420.
[20] *LeHa'ir Et HaPetaḥim*, pp.184-185.
[21] Translated from the Hebrew "התנערות." *Shuvi Nafshi*, 3rd Edition, Ed. Y. Dreyfus, Efrat 2007, p.128.
[22] For example, see *Orot HaKodesh*, vol.3, Jerusalem 1985, pp.140-141.
[23] For example, see *Mei HaShiloaḥ*, vol.1, Bnei Brak 1995, p.164.
[24] *Shuvi Nafshi*, pp.125-150. This is probably Shagar's most thorough working through of the various aspects of self-acceptance.

believes, it is the unconscious mind that is known only through its eruptions into the normal functioning of consciousness.[25]

Similar and Dissimilar in the Approaches

Looking at the shared aspects of these two understandings can help highlight the ways in which they are different. In a separate passage, Shagar gives a general definition of "accepting the yoke of heaven" that fits both of the understandings. To accept the yoke of heaven, he says, is "to submit to, and to absolutely obey, God."[26] On the face of it, self-acceptance would seem to have little to do with submission to God. However, if we locate the will of God as revealed within the person as they are, then taking that idea seriously means that accepting the self, instead of trying to shape it, is submitting to the will of God. Self-construction on the other hand, means submitting to the will of God as revealed in the Torah and mitzvot.

That both approaches can be seen as forms of submission to God's will highlights the different locations of God's will in the two approaches. Shagar explicitly states that self-acceptance is based on a Hasidic theology of divine immanence, where the divine is to be found in all locations.[27] But even without taking this specific theological stance, the basic idea underlying self-acceptance is that the individual's self is a direct expression of the divine will. It is this idea that enables the individual to consider herself an expression of the "sovereignty of heaven" ("מלכות שמים"). Self-construction, on the other hand, locates the divine will within the Torah and the mitzvot. Absolute submission to the divine will is therefore expressed as the individual taking the Torah and mitzvot to be axiomatic, the unquestionable foundations of the new identity she constructs.

On a practical level, these differences lead to a split where we can categorize self-construction as heteronomous and self-acceptance as autonomous. Heteronomy, in this context, means that an individual's behavior is expected to conform to an external standard, such as the Torah. Autonomy means that an individual's behavior flows only from her own will. Self-construction means consciously and intentionally living according to the external standard of the Torah, while Shagar explicitly says that self-acceptance leads to non-conformism[28] and the sort of individualism that is simply unworkable as a community-wide policy.[29] Self-acceptance might be a wonderful tool for the individual in pursuit of religiosity and attachment to the Divine, but its cost is the individual's connection to her community. Self-construction, on the other hand, enables a process of identifying with the norms of the community. No matter what their theological underpinnings, the two different understandings of "accepting the yoke of heaven" orient the individual in entirely opposite ways regarding the guiding principles of her life, and potentially her community. Given these contradictions, we must ask how Shagar understood the phrase "accepting the yoke of heaven"? When a Jew accepts the yoke of heaven, what is it that she is doing? What is her intention when she recites the Shema each day? I now want to lay out three possible resolutions from within the corpus of Shagar's writings.

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[25] *LeHa'ir Et HaPetaḥim*, pp.206-207.
[26] *LeHa'ir Et HaPetaḥim*, p.129.
[27] *Shuvi Nafshi,* p.128.
[28] *LeHa'ir Et HaPetaḥim*, p.207.
[29] *Luḥot U'Shivrei HaLuḥot*, p.184. Interestingly, Shagar indicates that this unworkability is a function of the nature of the *Dati Le'umi* community as opposed to more haredi communities, but that is a topic for another essay.

Resolution #1: A Dialectic Relationship

In a sermon discussing repentance in advance of the high holidays, Shagar explores the process of self-improvement. In the course of the discussion, Shagar uses "accepting the yoke of heaven" with a clear meaning of self-construction.

> המלכות הינה יכולתו של האדם להחליט, להתחייב ולעמוד בהתחייבותו. באופן פרדוכסלי, התחייבות שהינה קבלת עול, תלויה במלכות. רק מי ששולט בעצמו יכול להתחייב - דהיינו לקבל עול. קבלת עול מלכות שמים שהינה המלכת ד׳ תלויה במלכות האדם. ומלכות האדם - השליטה העצמית שלו - איננה אלא יכולתו לקבל עול, להתחייב.
>
> Sovereignty (*malkhut*) is the ability of a person to decide, to commit and to persist in his commitment. Paradoxically, commitment, the accepting of a yoke, is dependent on sovereignty (*malkhut*). Only a person who is in control of themselves is capable of committing, of accepting a yoke. Accepting the yoke of heaven, making God sovereign, is dependent on human sovereignty. A person's sovereignty, his self-control, is none other than his ability to accept a yoke, to commit.[30]

The idea of a person taking control of themselves and committing to something, in this case the Torah, is both accepting the yoke of heaven and a necessary part of the process of self-construction. However, in the course of discussing this process of deciding to, and committing to, follow the Torah, Shagar discusses the necessity of self-acceptance.

> אחת הבעיות העיקריות שלנו הינה חוסר היכולת להתמיד ולהתרכז. אנו מפחדים - ואף לא מסוגלים - להחליט, ולא מסוגלים להתמיד בהחלטה. מדוע? בעיות הריכוז וההתמקדות, שהן כה שכיחות, נתפסות לפעמים כבעיות של חוסר רצון וכדומה. אך למעשה הן כלל אינן שוליות אלא מבטאות ענין מרכזי. זהו הקושי לקבץ את הניצוצות שנתפזרו בנפש - בלשון אדמו"ר האמצעי. הריכוז הוא תוצאה של מליאות עצמית. היכולת של אדם לשהות בתוך עצמו לאורך זמן בלי לאבד סבלנות, תלויה במידת שלמותו עם עצמו, קבלת עצמו ואף אהבת עצמו.
>
> One of our primary problems is an inability to persist and to focus. We are afraid, and perhaps even incapable, of deciding, and we cannot persist in our decisions. Why? Problems of focus, which are all too common, are sometimes understood to be caused by a lack of desire or the like. But in practice, they are not incidental but express a primary issue. This is the difficulty of gathering the sparks scattered throughout the soul, in the language of the Mittler Rebbe. Focus is an outgrowth of fullness of the self. The ability of a person to pause within himself for a length of time without losing patience, is dependent on the degree to which he is in harmony with himself, on self-acceptance, and even on self-love.[31]
>
> הקושי להתחייב למשהו באופן אמין ולטווח רחוק נובע מזה עצמו. קשה לאדם להצטמצם ולומר לעצמו: ׳אני בטוח שזה מה שעלי לעשות׳, ותמיד משאיר את עצמו

[30] *Al Kapot HaManoul*, Edd. E. Nir and O. Tsurieli, Efrat 2004, p.18.
[31] *Al Kapot HaManoul*, p.19.

במרחב נפשי-קיומי של אפשרויות. למשל: הקושי להחליט להתחתן עם פלונית. כדי להחליט החלטה ממשית צריך להימצא במצב של 'ככות' - ככה זה ולא יתכן אחרת, וזו האשה שאיתה אחיה ואי אפשר שתהיה אשה אחרת. בדרך כלל ישנה חרדה מעמדה כזו, ואדם מעדיף תמיד 'לשבת על הגדר' ולשמור על מרחב לא-מוחלט של אינסוף אפשרויות.

The difficulty of committing to something in a steadfast way and for the long-term flows directly from this. It is difficult for a person to withdraw and say to himself: "I am certain that this is what I have to do." He constantly leaves himself in a spiritual-existential realm of options. For example: The difficulty of deciding to marry Jane Doe. In order to make a real decision, he needs to be in a state of "like-so-ness"; like so, and not possibly otherwise, for this is the woman with whom I will live, and there is no other woman possible. There is a general fear of this sort of stance, and people usually prefer "to sit on the fence," thereby preserving a non-absolute realm of infinite options.[32]

In these passages, Shagar zeroes in a critical issue involved in self-construction, one that arises both before and after the decisive moment of commitment. Before committing, the individual is confronted by an inability to decide who or what she wants to be. Before she can commit to the Torah, she has to recognize that this is what she wants to do. This requires a person to be in touch with herself to a degree that can only be achieved by way of self-acceptance. There are so many different things a person could be, so many ways she could change herself. Only once a person can accept her current state long enough to decide that she wants to follow the Torah can she really commit to doing so.

This issue, the issue of options, arises following the act of committing to the Torah as well. The decision to commit is a momentary event, and maintaining that commitment is in no way guaranteed. The secret to maintaining a commitment, Shagar argues, is to see the decision as inevitable. What at first seemed as a decision between a variety of options is now recognized as the unavoidable embrace of a singular path. To maintain a commitment is to live with the awareness that you could not be otherwise, and to accept that fact.

The decisive act of accepting the yoke of heaven via self-construction, wherein a person takes the Torah as the fundamental axiom of her life and builds her identity upon it, is thus bounded on both sides by self-acceptance. Before the decision, self-acceptance grants a person the ability to focus and decide what she really wants. After the decision, it enables her to accept her choice and not feel pulled by other possibilities. Self-construction is therefore really a process of acceptance, construction, acceptance, with further oscillating between construction and acceptance necessary if the individual wishes to change herself further.

Accepting of the yoke of heaven could therefore be seen as a dialectical process, wherein the individual goes back and forth between self-acceptance and self-construction. This resolution enables us to eliminate the tension between the two understandings of "accepting the yoke of heaven," but it is not without its cost, which we will return to after examining another possible resolution to the contradiction: mystical paradox.

[32] *Al Kapot HaManoul*, p.21.

Resolution #2: A Determinist Paradox

A second possible resolution emerges from an idea that Shagar mentions in his discussion of self-acceptance as a form of repentance. Discussing the ways that self-acceptance is built on axioms of divine omnipresence and omnipotence that essentially make human initiative meaningless, Shagar briefly demurs.

> אלא שמיצויה של תפיסה זו המלמדת שהכל בידי שמים, איננו מביא בהכרח למסקנה שאין לו לאדם אלא לקבל את עצמו ואת גורלו. הקביעה שכל מה שהאדם עושה נגזר מראש, עשויה גם לשחרר את האדם לפעילות חופשית המקבלת את עוצמתה מאמונה זו דווקא. המאמין בה יכול לפעול באופן חופשי, ולא עוד אלא שהוא סמוך ובטוח שהוא איננו יכול אחרת, ושכך הוא רצון השי״ת. היצירה האנושית חושפת למפרע את מה שהיה מונח בשורש. יש כאן מעגל קיברנטי לפיו העבר נקבע בעתיד.
>
> The result of this understanding, that teaches that everything is in the hands of heaven, does not necessarily lead to the conclusion that a person has nothing to do but accept himself and his fate. The idea that everything a person does is predetermined can also liberate a person to free action that receives its independent power from exactly this faith. A believer in this faith can act freely, and he can feel supported and secure in his inability to act otherwise, for this is the Will of God. The human creation retroactively reveals what was already in the root. This is a cybernetic circle according to which the past is determined in the future.[33]

Shagar argues that determinism is not tightly bound to fatalism. The idea that we must give up on the ability to choose our destiny and simply accept our predetermined fate is built upon an opposition between choice and fate, or the divine will, that need not compel us. Instead, we might argue that choice itself falls within scope of predetermination; our choices, whatever they may be, will inevitably reflect the divine will.

If accepting our fate does not necessarily lead to passivity regarding our destiny, then accepting ourselves does not necessarily lead away from self-construction. We can consciously choose the axioms around which we want to construct our identities and we can choose to live in accordance with them, all the while confident in the knowledge that we could not have chosen otherwise. This leads to the paradoxical possibility of a process where we create what was always already there to begin with.

According to this resolution, accepting the yoke of heaven means to construct the self around the axiom of the Torah, while aware of, and bolstered by, the knowledge that this process is predetermined by the divine will. We create ourselves as what we were always predetermined to be, individuals dedicated to the Torah.

We have seen two possible resolutions to Shagar's two contradictory understandings of accepting the yoke of heaven, but each has its downside. The dialectical resolution absorbs self-acceptance within self-construction. Self-acceptance is reduced to a handmaiden of self-construction, functioning only as a necessary ingredient in the process of remaking the self. It lacks the robust, independent, existence as a form of accepting the yoke of heaven that we saw above. The paradoxical approach extends the determinist theology of self-acceptance until it includes self-construction, allowing us to apply the name "self-acceptance" to

[33] *Shuvi Nafshi,* p.132. It is possible that this idea should be understood in terms of the lacanian concept of "retroaction," but I will not explore that here.

self-construction, but at the cost of the actual process of self-acceptance. Thus these are possible resolutions, but they are far from ideal. In resolving the two different ideas, we have been unfaithful to one of them. It is perhaps more desirable, then, that we seek out a resolution that does not compromise on either approach.

Resolution #3: Embracing the Contradiction

Shagar understood the postmodern condition, a state we all live in now, as being marked by contradiction and plurality.[34] We no longer believe in broad, all-inclusive, narratives that can explain every element of our lives. Instead, we have "local truths," ideas and understandings that do not pretend to apply universally. Basing himself on Rav Kook and Rebbe Naḥman of Bratslav, Shagar argued that this fragmented approach to truth and reality is actually a great religious opportunity.[35] We should embrace this multiplicity of truths, recognizing each as a manifestation of the divine truth. The correct resolution might therefore be to acknowledge that there is no resolution. Maybe Shagar simply contradicted himself in his definition of "accepting the yoke of heaven," leaving two live options open for himself and his audience. Each understanding could then be chosen as appropriate for a given individual or situation.

This is what is going on in the passage about self-acceptance and faith quoted above. The passage starts out by saying "In my opinion, this enables the presentation of two different and opposing paths that lead to religious faith," and then after describing self-accept picks up again by describing self-construction.

> המסלול השני הפוך. זהו מסלול של הכרעה, של יכולת יצירה. הוא אינו מתחיל מהמקום של הזהות אלא מהמקום של החירות, דוגמת החירות המוסרית שאיננה נשענת על העובדות אלא מכוננת אותן. פועלת היא, כפי שלימד קאנט, על פי הרצוי ולא על פי המצוי. בניגוד לדרך הביטול של להיות מה שאתה, כאן יש לדעתי דרך גבוהה יותר: היא איננה זקוקה להשראה שבביטול, אלא יכולה ליצור את הכלי באמצעות מסירות נפש, בחינת יש מאין. זו תודעה פוסטמודרנית המתכחשת לעצמיות ולאותנטיות שמציגים האקזיסטנציאליסטים. כאן האמונה היא הכרעה במובן הגבוה של המושג; לא קבלת כללי המשחק אלא קביעתם.
>
> The second path is the reverse. This is a path of decision, of capacity to create. It does not start from a place of identity but from a place of freedom, like the moral freedom that does not rely on facts but rather creates them. As per Kant, it functions on the level of the ideal and not of the real. As opposed to the path of nullification to be what you are, in my opinion this is a higher level: it does not require inspiration, like nullification does, but rather it creates its vessel by way of passionate commitment, creating Aught (יש) from Naught (אין). This is a postmodern mindset that rejects essentialism and authenticity such as presented by the existentialists. Faith here is a decision in the highest meaning of the term; not the acceptance of the rules of the game but rather their creation.

Shagar in this passage presents self-acceptance and self-construction as models of faith side by side. In doing so he emphasizes their contradictory natures and makes no move to resolve the tension between them. Shagar does clearly value one over the other, but he still maintains

[34] *Luḥot U'Shivrei HaLuḥot*, p.39-45.
[35] *Luḥot U'Shivrei HaLuḥot*, p.74-84.

them both as valid approaches to belief, despite how they contradict each other on both theoretical and practical levels.

A similar approach may be the best way of understanding Shagar's contradictory usage of the phrase "accepting the yoke of heaven." In accepting the yoke of heaven, a Jew submits entirely to the divine will and organizes her life around it, but whether that will is found in the Torah or in the self is not a tension Shagar feels the need to resolve. The individual will have to resolve it for herself in each instance, deciding at that moment where the divine will is to be found, and consequently how exactly she will accept the yoke of heaven.

Conclusion

In this essay, I have examined two different understandings of "accepting the yoke of heaven" within the writings of Rav Shagar. The first is self-construction, wherein the individual takes the Torah as an unquestionable axiom upon which she builds her identity. This approach is similar to classical understandings of accepting the yoke of heaven which involve elevation of the Torah to the ultimate value in a person's life, but Shagar's presentation involves the internalization of the Torah, rather than simply submission to it. The second, more novel, understanding is self-acceptance, where the individual accepts herself exactly as she is. I explored the tension between these two understandings, looking at how self-acceptance is based on a hasidic theology of divine immanence while self-construction locates God's will in the Torah, and how, consequently, self-acceptance emphasizes autonomy and non-conformism while self-construction is about conforming to, and internalizing, a heteronomous law. I looked at the possibility of resolving the tension and creating a single definition of "accepting the yoke of heaven" by making self-acceptance a part of a dialectic self-construction process, or by extending a determinist theology to include the process of self-construction within the self that is to be accepted. Ultimately, however, I concluded that the most likely resolution is no resolution at all, and that we ought to leave the contradiction in its place, in line with the larger theme of contradiction in Shagar's writings. In the course of all of these different steps, a variety of themes and concepts arose that are worth dealing with directly in light of their significance in Shagar's writings more generally.

First, Shagar discusses God in a direct and refreshing, if not necessarily innovative, manner. Drawing on hasidic sources, he brings to the fore an immanent and determinist theology wherein God is present in every aspect of existence, including in the beliefs and choices of the individual. He then integrates this theology in his explanation of religious terms like "accepting the yoke of heaven," breathing new life into old language. In doing so, he also enables the individual to identify herself as an expression of God's will, leading to self-affirmation and, potentially, non-conformism.

Second, the place of the Torah, or perhaps, halakhah, in Shagar's discussion is, I think, rather unique. Halakhah is often discussed as a heteronomous law, something that exists outside a Jew that she must obey. In Shagar's presentation, on the other hand, the Torah and the halakhah start outside the person but become the very basis of her identity. In a sense, this approach transforms heteronomy into autonomy. The Torah becomes the basis of who we are, and our freedom to express ourselves becomes our freedom to live according to the Torah. This holds true throughout Shagar's writings, where Judaism, halakhah, the Torah, and the like are not things to be proven or related to, but are part of a person's identity.

Third, Shagar has a particular focus on the self that is striking. This is most obvious in his emphasis on self-acceptance, an idea that he applies to accepting the yoke of heaven, but also to faith, providence, the meaning of life, and more. However, the emphasis is perhaps even more powerful in self-construction, where the classical understanding of accepting the yoke of heaven has been transformed from submission to an external element to the internalization thereof.

More than all of this, what arises from our discussion is Shagar's continued involvement in what might be called a linguistic project. He is attempting to shape a way of talking about Judaism, God, and the life of the individual that is simultaneously both the traditional language of Judaism and the language of postmodern life, as he saw it.[36] This leads to the analysis and reinterpretation of traditional terminology, such as his clear, everyday explanation of the kabbalistic term "*malkhut*," his relocation of the "self" from a mystical inner truth to the conscious thoughts, beliefs and feelings of the individual, and, of course the whole issue of "accepting the yoke of heaven" that I have examined here. Shagar connected this linguistic project to Rebbe Naḥman's idea of "*targum*," of translation as a religious practice involving the interplay of Judaism and the rest of the world.[37] This project challenges Shagar's audience, or any Jewish individual, to ask herself two important questions: 1. Can I explain my traditional religious terminology, to myself as much as anyone else, in the language that I live my life in every day? 2. Can I explain the events of my everyday life, and my place in them, in the language of the Jewish tradition?

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[36] See *Pur Hu HaGoral* (Hebrew), Ed. O. Tsurieli, Efrat 2007, p.8. I have discussed this passage on my blog.
[37] See, among other places, *Lekutei Moharan* I:12, 19, 29. Shagar's discussion thereof can be found in *Shiurim Al Lekutei Moharan* vol. 1(Hebrew), Ed. N. Lederberg, Alon Shevut 2013, as well as in *LeHa'ir Et HaPetaḥim*, pp.147-157, and in *She'arit HaEmunah* (Hebrew), Ed. Y. Mevorach, pp.87-107. I hope to dedicate a future essay to a more expansive explication of this theme.

On the Utility of Ambiguity

Dina Brawer

'Be patient for it is from doubt that knowledge is born'
— Khalil Gibran

While we are often driven to question and study in order to resolve or eradicate doubt, studying Torah and Talmud in particular can often leave us with more questions than answers. Rabbi Louis Jacobs addresses this issue in his book, *Teyku: The Unsolved Problem in the Babylonian Talmud* (Cornwall Books, London; 1982) where he reviews over three hundred talmudic debates that remain unresolved and close with the word *teyku* 'let it stand [unresolved].'

Doubt then is ubiquitous in Torah study, but what is its function? Francis Bacon, a seventeenth century english philosopher and scientist, advocated two specific roles for doubt in the pursuit of knowledge:

> The registering and proposing of doubts has a double use; first it guards philosophy against errors, when upon a point not clearly proved no decision or assertion is made (for so error might beget error) but judgement is suspended and not made positive; secondly, doubts once registered are so many suckers or sponges which continually draw and attract increase of knowledge; whence it comes that things which, if doubts had not preceded, would have been passed by lightly without observation, are through the suggestion of doubt attentively and carefully observed (Francis Bacon, The Advancement of Learning,1605, reprinted in *Francis Bacon: History, Politics and Science, 1561-1626* [Cambridge: Cambridge University Press, 1993], 356-57)

Teyku is one example of the suspended judgment that Bacon proposes as the first function of doubt. The second function, that of increasing knowledge, finds a striking parallel in the writings of the fifth Rebbe of Chabad, Rabbi Shalom DovBer of Lubavitch (1860-1920) who contrasts the study of Mishnah to that of Talmud. While the study of Mishnah is straightforward, that of Talmud is inherently complex. Yet paradoxically, the study of Mishnah does not generate novel ideas and perspectives in the way that Talmud does. Rabbi Shalom DovBer illustrates this with two models of light: direct light (אור ישר) and refracted light (אור חוזר). The direct light of *ohr yashar* represents inspiration that is manifest directly and clearly but which is inherently limited. The refracted light of *ohr hozer* represents the kind of novel inspiration that can only emerge through wrestling with a problem or struggling through opacity (*Sefer ha-Ma'amarim* [5666], 78-81).

This concept is aptly illustrated in a Talmudic vignette sketching Reish Lakish's personality as a student of Torah and Rabbi Yohanan's favored *havruta.* After Reish Lakish died however, Rabbi Yohanan seemed to be on the verge of losing his mind from grief. Worried, his colleagues nominated the bright Rabbi Elazar ben Pedat to take Reish Lakish's place as Rabbi Yohanan's study partner.

As Rabbi Yohanan espoused his opinion on a particular law, Rabbi Elazar ben Pedat would cite a *beraita* that supported Rabbi Yohanan's position. When this pattern repeated itself consistently, Rabbi Yohanan exploded in frustration shouting: "Are you like the son of Lakish? When I stated the law, the son of Lakish would raise twenty four objections and I would give twenty four answers, which would then lead to a fuller understanding of the law. But you say: "*A beraita has been taught which supports you"*—Don't I already know that my dicta are right?" (*Bava Metzia* 84a).

Rabbi Yohanan's ability to study Torah and creatively interpret the law was contingent on Reish Lakish's "doubt," provided in the form of counter-arguments and questions which then led to a better understanding.

A further insight into Reish Lakish's approach to Torah study can be gained from his positive interpretation of Moshe's breaking of the *luhot* (Exodus 34:1) suggesting that God says: "ישר כחך ששברת"—rather than berating Moshe, he congratulates him: "well done for breaking them" (*Shabbat* 87a).

How is that possible? Why would God approve?

Furthermore, Reish Lakish seems to be contradicting Rabbi Elazar's opinion that the use of the word "חרות"—"engraved" in the description of the *luchot* implies that, had the first tablets not been shattered: "Torah would not have been forgotten from Israel" (*Eruvin* 54a).

Rabbi Yitzchok Hutner (1906-1980), elegantly reconciles these two contradicting views of Reish Lakish and Rabbi Elazar in his work, *Pahad Yitzhak* (Shavuot 18:16). In his unique hassidic approach, Rav Hutner suggests that rather than reading Reish Lakish at odds with Rabbi Elazar, we should read Reish Lakish's assertion as encompassing that of Rabbi Elazar. God congratulates Moshe for shattering the *luhot* in full knowledge of the forgetting of Torah that this is causing.

The *Pahad Yitzhak*'s reading is consistent with the saying attributed to Reish Lakish:

> "פעמים שביטולה של תורה זהו יסודה"—"At times, the abolition of Torah is [indeed] its establishment" (*Menahot* 99a-b). Reish Lakish is not afraid of "forgetting" Torah, indeed he seems to be embracing it.

But how can 'abolition' and 'forgetting' play a part in the foundation of Torah?

We can understand forgetting as the opposite of certainty. Certainty might be comforting at first, but it precludes the need for further investigation, questioning, or indeed study. We saw how certainty and confirmation were stifling and limiting Rabbi Yohanan's study and how he desperately missed the expansion of Torah instigated by Reish Lakish's questions and doubt.

Rabbi Hutner is suggesting that for Torah to remain alive within us, a shattering is necessary. He contrasts the simplicity of the smooth *luhot* with their words of commandment clearly engraved with the scattered nature of the shards. The first is the embodiment of clarity, the latter the epitome of doubt. But Torah comes alive, not in the smooth certainty but in the

demanding yet captivating labor of reconstruction. Torah requires us to engage our minds in elucidation, interpretation, and resolution. It is precisely the doubt caused by the shattering that creates the *Kol Torah*, the sound of arguing and deliberating in the *Beit Midrash* that has resonated throughout the ages in Jewish communities around the world.

Dina Brawer holds degrees in Jewish Studies, Psychology and Education and is currently a third year student at Yeshivat Maharat. She is the founder of JOFA in the UK and has recently co-launched Mishkan: The Community Beyond Borders. The Jewish Chronicle listed Dina in its Power 100 List of individuals who are most influential in shaping the UK Jewish community.

Lehrhaus at Your House

Our Editorial Team's Shavuot Torah Teaching Exploits

Wendy Amsellem will be speaking twice at the Shavuot Retreat at Camp Berkshire Hills Emmanuel. Her topics will be "Vinegar Son of Wine: R' Eleazar b'Rabbi Shimon and the Paternity Paradox" and "Further Adventures of R. Eleazar b'Rabbi Shimon: Kidney Stones, Crying Cows and a Very Choosy Cave."

Zev Eleff will be speaking twice at K.I.N.S. of West Rogers Park in Chicago. His lecture topics are "How the Modern Beit Midrash and Library Changed the Mitzvah of Talmud Torah" and "Out of the Ghetto: Halakhah, Imitating 'Gentiles' and Embracing 'Secularism.'"

Elli Fischer will be speaking at Kehilat Shaarei Yonah Menachem in Modiin, on "They Didn't Change their Names, Language, and Dress: Why Everyone Knows a Midrash that Doesn't Exist."

Leslie Ginsparg Klein will be speaking at Congregation Ohel Moshe in Baltimore on "Standing Up With Strength: Learning Courage and Integrity From the Leaders of Tanach."

Ari Lamm is speaking at the RIETS Shavuot Yarchei Kallah on the following topics: "The Jews, The Greeks and the Battle for Western Civilization," "Alexandria - The Second Jewish Encounter With Egypt," "Idolatry in Shul - Reading Chazal with Archaeology," "The Wizard vs. The Prophet," "The Historic Debate That Shaped Shavuot Forever," and "Moderator, Armchair Conversation with Rabbi Ari Berman and Rabbi Jacob J. Schacter on The Future of Religious Zionism."

Tuvy Miller will be teaching at Congregation Kesher Israel (Washington, D.C,) on "Can We Really Have Faith in God?" and "Do They 'Bow to Nothingness and Emptiness'? Avodat Hashem for Non-Jews."

Sarah Rindner will be speaking on "S.Y. Agnon and the Female Voice in the Jewish Tradition" as part of the Young Israel of Monsey and Wesley Hills' women's learning program on Sunday afternoon at 5pm. Location is a private home in Wesley Hills, for more information email bookofbooksblog@gmail.com.

Tzvi Sinensky will be lecturing on Shavuot at Lower Merion Synagogue on the topic, "Will There Be Gender Differences in the Messianic Era? A Radical Suggestion from the Hasidic Masters."

Ayelet Wenger will be giving a shiur to the Oxford Jewish Congregation entitled, "Ruth Rewrites Joseph: How to Make a Nice Jewish Dynasty."