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PARSHAT TAZRIA

DECISION-MAKING ON MATTERS OF HALAKHIC PUBLIC POLICY OR META-HALAKHIC ISSUES: SOME TENTATIVE THOUGHTS

NATHANIEL HELFGOT is the spiritual leader of Congregation Netivot Shalom in Teaneck, NJ, and the chair of the department of Torah She-Ba'al Peh in SAR High School in Riverdale, NY.

Introduction

One of the major elements that consistently stands at the center of many of the discussions, debates, and boundary markers within the contemporary Orthodox community relates to decision making in the realm of halakhic public policy and meta-Halakhah. As a Modern Orthodox rabbi and educator for more than thirty years, reared in the educational bastions of Modern Orthodoxy and deeply involved in its communal life, educational institutions, and organizations, teasing out parameters and guidelines in these areas has been a central area of interest to me for many years. Moreover, as an active participant in some of these debates and their practical applications on the ground since the late 1980s to our very day and age, many of the issues have been an important part of my public life for numerous decades.

This short essay contains reflections on crucial elements that, I believe, should be central to decision-making on issues of halakhic public policy. Much of my thinking in this area was, and continues to be shaped, by my study of the works, as well as deep personal interaction, with two pillars of Modern Orthodox rabbinic leadership, my revered mentors and teachers, Rav Yehuda Amital zt"l and Rav Aharon Lichtenstein zt"l. For many in our broader Modern Orthodox community, the teachings and perspectives of these two titans of Torah scholarship and religious and moral leadership, continue to play a decisive role in shaping the contours of the discussion in many areas of our contemporary communal halakhic and hashkafic discourse. On many occasions both Rav Amital zt"l and Rav Lichtenstein zt"l spoke and wrote on the interface between strict Halakhah and public policy and meta-halakhic issues. In numerous instances over their storied careers, they also modeled how those elements impacted on real world issues. And thus exploration of some of their thoughts, as well as the thoughts of some of their esteemed students, has particular significance in this realm.

Before examination of some substantive issues, I would like to offer two disclaimers and two introductory comments.

1. While this short essay makes use of the writings and oral comments of both Rav Lichtenstein and Rav

Amital, it in no way should be construed as to imply that they would necessarily concur with any specific formulation, claim, or conclusion that I make here. These are my reflections alone, and I bear responsibility for them.

2. This essay is far from exhaustive, primarily, for two reasons:
 - a) The limitations of the author.
 - b) The scope and vastness of the topic.
3. The essay below should be seen as containing initial thoughts to be examined and expanded in future analysis and debate. It is far from exhaustive and there are other elements that may need to be brought into conversation to round out a full picture.
4. In using the term of "issues of halakhic public policy or meta-Halakhah" we refer to:
 - a) Matters of moral and Jewish significance that go beyond the more narrow confines of the life of the specific individual and his or her *she'eilah*.
 - b) Issues which are not (or not primarily) strictly halakhic in nature as there are no clear substantive halakhic sources that are controlling.or
 - c) Issues which have substantial halakhic elements to them with legitimate halakhic perspectives on each side of the debate that ultimately require decision-making in one or another direction and have broad public policy implications.

Public Policy, Meta-Halakhah and Pesak Halakhah

All halakhically committed Rabbis and scholars study the same textual sources and examine previous precedents and the writings of the great *poskim* from past and present. But as *Hazal* teach us, human beings and their perspectives are diverse: "*Ke-shem she-partzufei hem shonim kakh dei'otei hem shonot*" (see [Berakhot 58a](#)).

Thus, Halakhah is rich with endless debates and different points of view emerge in every area of Jewish law whether in the complex areas of the laws of *eiruv* through the intricate details of the laws of *ribbit* and business ethics. The *posek* is not a human computer that is simply fed information yielding an exact result without deviation nor is it a chemistry experiment that can be replicated in the exact same fashion in each and every situation. Differing readings of the sources and weight given to this factor or this position are run of the mill in all areas of halakhic discussion and practice. In these areas the ideological component is barely present. Therefore, the debate as to whether one can move a fan on Shabbat (is it *muktzeh* or not?) does

not generally break down along ideological lines (nor should it). Indeed, in a counter-intuitive fashion, Modern Orthodox *poskim* are on a few occasions actually more stringent than *haredi* ones in areas of Shabbat observance or marital issues, e.g. the Rav's rejection of the use of *shtar mekhirah* to allow Jewish owned businesses to operate on *Shabbat* or his refusal to sign on to or encourage the use of *Heter Meiah Rabbanim* on ethical grounds¹, Religious-Zionist *pesak* on the wearing of *tekheilet* on *tzitzit*, even at great cost, and other such examples.

When one comes to other, more sensitive areas such as the appropriate role for women in ritual and leadership, attitudes to non-Jews in general, and those in the State of Israel in particular, attitudes towards the secular world, approaches to Zionism, *shemittah*, organ donations, and many other of these more meta-halakhic issues one finds that ideological, moral, sociological, and philosophical components play a crucial role in the interpretation of sources, choice of emphasis of precedents, and the type of *posek* a community will adopt as their mentor. In this context, I would argue that a healthy and robust approach to "*pesak*" in areas of halakhic public policy, in our community, would include (at least) the following components that play, and should play, a critical role in evaluating the issue at hand and coming to a legitimate model of guidance and advice.

1. Recognition That Some Fundamental issues are Not Ones of Pure Halakhah

In some circles, the entire notion of "halakhic public policy" or "meta-Halakhah" is viewed with a jaundiced eye. In some formulations, there only exists pure "Halakhah" and every issue has a source that can be found or read to address the issue at hand. Both Rav Lichtenstein and Rav Amital clearly believed that not every issue of contention in our religious world was a purely halakhic one and often was one that involved values, meta-Halakhah, ethical concerns, and ideological perspectives that were in clash.

In his famous lecture, "*Lo Ha-Kol Halakhah*" (and in many other public addresses), Rav Amital emphasized that not every religious and moral issue can be resolved by looking to formal halakhic sources and the dangers in such an approach:

We live in an era in which educated religious circles like to emphasize the certainty of Halakhah, and commitment to it, in Judaism. I can say that in my youth in pre-Holocaust Hungary, I didn't hear people talking all the time about "Halakhah." People conducted themselves in the tradition of their forefathers, and where a halakhic problem arose, they consulted a Rabbi. Reliance on Halakhah and unconditional commitment to it mean, for many people, a stable anchor whose purpose is to maintain the purity of Judaism, even within the modern world. To my mind, this excessive emphasis of Halakhah has exacted a high cost. The impression created is that there is nothing in Torah but that which exists in Halakhah, and that in any confrontation with the new problems that arise in modern society,

¹ See R. Joseph B. Soloveitchik, *Community, Covenant and Commitment*, ed. Nathaniel Helfgot, (Meotar HoRav/Ktav, 2006), 217; Walter Wurzbarger, "Rav Soloveitchik as Posek of Post Modern Orthodoxy" in *Engaging Modernity: Rabbinic Leaders and the Challenge of the Twentieth Century*, ed. Moshe Z. Sokol (Jason Aronson, 1997), 132, 134.

answers should be sought exclusively in books of Halakhah. Many of the fundamental values of the Torah which are based on the general commandments of "You shall be holy" (Lev. 19:2) and "You shall do what is upright and good in the eyes of God" (Deut. 6:18), which were not given formal, operative formulation, have not only lost some of their status, but they have also lost their validity in the eyes of a public that regards itself as committed to Halakhah. This phenomenon makes dealing with the issues I discussed above [e.g. territorial compromise, the Jewish nature of the State of Israel, etc. – NH] such as the relationship to democracy difficult. Topics, such as these, due to their inherent novelty, cannot be resolved by only looking to halakhic precedents.²

2. The Role of Ethics, Natural Morality, *Derekh Eretz*, Respect for *Tzelem Elokim*, and Other Values in Addressing Meta-Halakhic Issues

In the halakhic calculus of weighing various texts and positions the role of ethical and moral intuitions should also be a critical factor. Halakhic decisors are not simply people who dispassionately evaluate written texts and sources but people who are, and should be, animated by the highest ethical and moral values that emerge from the study of Torah such as "*derakhehah darkhei noam*- the ways of Torah are ways of pleasantness (Proverbs 3:17)," "*ve-asita ha-yashar ve-hatov*- you shall do that which is upright and good in the eyes of the Lord (Deut. 6:18)," *kevod ha-beriyot*- the dignity and sanctity of the human being, and every human being was created in the image of God- *be-tzelem Elokim*. In addition, the deep-rooted ethical values that are reflected here are complemented by our own inherent moral values that God has implanted in us, what Rav Kook often termed *ha-mussar ha-tivi*, natural morality, as well as broader categories such as those Rav Yuval Cherlow, a prominent Religious Zionist rosh yeshiva and thinker, as well a close student of both Rav Lichtenstein and Rav Amital, has often written about as inherent in the concept of *derekh erez kademah la-Torah*.³

These are, of course, points that Rav Amital often brought to bear in his discussion on public issues of great importance and are fully fleshed out in his small but seminal volume *Ve-Ha'aretz Natan Livnei Adam*. These are the moral intuitions that reason, philosophy, human intuition, societal progress, and history have helped flesh out into the open. As Rav Lichtenstein wrote over thirty years ago:

The parameters of ethics and its truths have an important role to play in understanding Halakhah and defining its boundaries. Of course, a Jew must be ready to answer the call "I am here" if the command to "offer him up as an offering" is thrust upon him. However, prior to unsheathing the sword, he is permitted, and even obligated to clarify, to the best of his ability, if indeed this is what he actually has been commanded...to the extent that there is a need and room for halakhic exegesis, and this must be clarified -- a

² "*Lo Ha-Kol Halakhah*," *Alon Shvut Bagrim* 13: 96. For an example of Rav Lichtenstein's comments on such phenomena see the Hebrew collection of eulogies for Rav Lichtenstein "*Ashrei Adam Oz Lo Bakh*" (Yeshivat Har Etzion, 2018), 224-225.

³ See for example: <https://www.ypt.co.il/beit-hamidrash/view.asp?id=7065>.

sensitive and insightful conscience is one of the factors that shape the decision-making process. (my emphasis – NH)

Just as Maimonides in his day, consciously, was assisted by a particular metaphysical approach to the world in order to plumb the depths of the meaning of Biblical verses, so too one can make use of an ethical perspective in order to understand the content of Halakhah and, at times, to outline its parameters. (In the volume *Arakhim Be-Mivhan Milhama*, my translation)

The relationship between Halakhah and broad ethical and moral categories both explicitly found in Biblical and Rabbinic sources and those rooted in general human intuitions are, of course, central topics that engaged Rav Lichtenstein in many of his essays from the 1960s through the 2000s, such as: “*Ma Enosh*”: *Reflections on the Relation between Judaism and Humanism* (1960s); *Does Judaism Recognize An Ethic Independent of Halakhah* (1970’s); *i Ve-Halikhim – The Sources of Ethics* (Hebrew, 1980s); *The Human and Social Factor in Halakhah* (late 1990s); *Formulating Responses in An Egalitarian Age* (2000s).

His most robust presentation of his views on how they impact on concrete halakhic *pesak* and guidance is found in the essay “The Human and Social Factor in Halakhah.” In that essay he makes the forceful case for the measured use of all of the factors mentioned above by responsible *poskim* in their application of halakhic norms. As he puts it in a passage that is representative:

The notion that “where there is a Rabbinic will there is a halakhic way” both insults *gedolei Torah*, collectively, and, in its insouciant view of the totality of Halakhah, verges on the blasphemous. What we do expect of a *posek* is that he walk the extra mile – wherever, for him, it may be – harnessing knowledge and imagination, in an attempt to abide by his responsibility to both the Torah with which he has been entrusted and to his anguished fellow, whose pangs he has internalized. For insensitive *pesika* is not only lamentable apathy or poor public policy. It is bad Halakhah. To the extent that *kevod ha-beriyot*, for instance, permits a “violation,” be it of a *de-rabbanan* injunction, actively, or of a *de-oraita*, passively, failure to act on that principle undercuts a spiritual ideal. The Rav was fond of quoting the Chafetz Chayyim to the effect that interruption of *Keri’at Shema*, where enabled, *mi-penei ha-kavod*, was not permissible but mandatory. Human dignity – the Rav would have preferred the term, “human sanctity” – is hardly a neutral matter.

This can lead to far reaching leniencies in individual cases where Halakhah is stretched to engage differentially to cases of extreme need – *she’at ha-dehak* and the like. In some instances, when these challenges move to the larger plane of communal challenges they may even engender even greater leniencies.

At the same time, the thoughtful, sensitive, and responsible Orthodox decisor may find himself or herself in a position of the need to pull back when we move from the individual to the public plane. As Rav Lichtenstein notes later in that essay:

Reference to the public sector serves to introduce a second comment. I have spoken throughout of sensitivity to the human or social factor as a basis for leniency. With regard to decisions a *posek* is called upon to render vis-à-vis an

individual, this is indeed ordinarily, although not invariably, the case. In the communal arena, however, concern over the human factor may rather stimulate *humra*. Decisions made at this plane, even of the nature of *pesika*, are less ad hoc in character and take a more panoramic view of public policy. Part of that policy surely involves sustaining the human aspect of a society and enhancing its moral fiber; and that may militate stringency as well as leniency.

This comment of Rav Lichtenstein, of course, points to the importance on the public level that the factor of communal cohesiveness, respect for tradition, and the integrity of the halakhic system must play in weighing proper decision-making and advice on divisive public policy issues. Revolutionary change, while possibly desirable from some perspectives, may come with too high a cost to the overall values of the halakhic system and tear the Orthodox community apart in a way that undermines the overarching goals of *avodat Hashem* and continuity. Recognizing that halakhic change is often a gradual evolutionary process that preserves the integrity of the system, expresses respect for custom and precedent and the ability of various parts of the community to come together as one, with all their differences, is a critical factor.

3. Calibrating the Proper Use of the “Slippery Slope” Argument

Many legal and ethical systems throughout history clearly recognize the validity of what is popularly known as the “slippery slope” argument. In its most basic form, the argument is built on the claim that the validity or permissibility of an action to be undertaken by an individual before you right now, should not be evaluated solely on its halakhic or ethical merits per se, but on its ramifications, even if these are only potential ramifications. Concern for potential negative consequences, by the person himself or even by other actors, is enough to justify limiting the action of the individual in the here and now. As many have noted this argument rests on a number of moral claims:

- a) The individual himself, “other people,” or society in the present or the future may fall into physical or ethical or spiritual danger. In light of that we withhold permission from the individual to engage in a morally permissible act to head off that possibility. The individual is asked to pay the ethical price in his or her autonomy and action for the potential mistakes, errors, and corruption of others or the individual in the future, that society may not be able to stop from happening.
- b) This price that the individual before you currently has to pay in pain, suffering, alienation, or frustration is considered legitimate and worth the cost for the “greater” good of the individual in some potential future time, or for others and society in general.
- c) There is a significant chance that indeed the future action viewed as a negative one will in fact occur.
- d) The future potential ramification that may arise is indeed viewed as negative and unwanted.

All of these assumptions can be subject to moral, ethical, and practical critique. For example, the first assumption posits that the real and immediate legitimate needs of the individual should be sacrificed on the altar of some potential good to the theoretical self, to “others”, or to society, even at the price of great pain to the individual, in the here and now.

How does one measure the level of suffering or alienation that is morally acceptable to avoid some potential problem down the road?

How does one realistically judge the potential risk? What percentage is significant to deploy the slippery slope argument and on what basis? How and who will determine these elements? Some have even pointed to an internally contradictory logical fallacy: The excessive use of the slippery slope argument may itself lead to a slippery slope where the individual who legitimately should be allowed to act in some way in this instance is thwarted because of the improper evaluation of the future threat or chance of deterioration. If the slippery slope argument is a legitimate concern then it may not be used because it can lead to a slippery slope of excessive use of itself. If it is not a legitimate concern then it cannot be used in the first place.

Despite these strong philosophical and practical challenges, almost all systems adopted some form of the slippery slope argument as part of their legal and ethical jurisprudence.

Normative Halakhah also clearly adopted use of the slippery slope argument in many instances.⁴ The entire notion of "*asu seyag la-Torah*" gives voice to the underlying notion that, sometimes, permissible actions must be limited in order to ensure the stability and integrity of the core of Torah values and practice. Similarly, the application of *gezeirot Hazal* is often based on the principle that allowing permissible actions in this or that instance may lead to violations of the law and thus the Rabbis used the full force of their authority to widen the scope of the normatively prohibited. At the same time, it is clear that the system itself did not see this move and halakhic tool as one that is unfettered and without constraints. For example, the notion that "*ein gozerin gezeirah li-gezeirah*" or that a *gezeirah* must have widespread acceptance in the community reflects the tensions that *Hazal* felt in applying the slippery slope argument cavalierly. To cite Rav Yuval Cherlow in his wonderful Hebrew essay on this topic:

Therefore, Halakhah gives validity to the slippery slope argument, and often makes use of it. However, the Sages, throughout the ages, were sensitive to the unbridled use of the slippery slope argument for two reasons. One was the harm to Halakhah itself. This is the danger that excessive stringency would become impossible to keep in practice so that it would lead to what the Rabbis term "stringency that leads to (inappropriate) leniency." In our terms, excessive use of the slippery slope argument could specifically lead to greater deterioration in [the world of *shemirat mitzvot* – NH] as a result of the lack of willingness to live up to these conditions [of stringency].

The sages also related to what we called the "price" that arises from use of the slippery slope argument. Excessive use of the slippery slope argument can bring intense harm to the rights of the individual, and potentially make life unlivable.⁵ (my translation-NH)

⁴ See on this entire section, the important essay by Rav Yuval Cherlow, "*Halakhah U-Madron Chalalak*," *Tzohar* 23.

⁵ In this context, Rav Cherlow cites a wonderful selection from Rav Kook's "*Ein Ayah*" on *Shabbat* (9a), reproduced below in my translation with my additions for clearer comprehension:

Everything that the Rabbis did in order to "make a fence around the Torah" was exactly and precisely weighed so that [these additional restrictions – NH] should not be

In short, then, the careful *posek* will extrapolate and call for limited use of the slippery slope arguments, based upon serious and careful evaluation of the three elements of the chance that deterioration will indeed stem from this leniency, the real threat to the integrity of Halakhah if this scenario does occur – i.e. is it really so terrible? And at what cost is one asking the individual or group to lie with to ensure the potential avoidance of some problematic future? In some instances, the relative weight given to these elements is what distinguishes various and divergent approaches amongst Orthodox *poskim* and halakhic communities on important contemporary issues. It is interesting to note that Rav Lichtenstein would on occasion question the excessive use of the slippery slope argument in the heated discussion around charged issues in the Orthodox community as for example here:

Yet in evaluating the principle two factors will need to be weighed. We shall have to evaluate, first, the likely course of events. How truly slippery is the slope? What innovation is likely and how likely to generate what kind of pressure. Second, we shall need to examine at what cost – whether in the form of possible alienation of certain constituencies or in the dilution of the quality of spiritual life of an ultra-conservative stance.

This last factor will itself require dual consideration, as we strive to both perceive the prospects of various alternative scenarios on the ground and to determine how much weight to assign this particular concern.⁶

This type of sensitive and nuanced approach to the use of evaluation of the cogency of slippery slope arguments is one that should be the hallmark of Orthodox *pesak* in halakhic and meta-halakhic discussions.⁷

added to or subtracted from. Just as the Divine wisdom [as manifested in Torah law – NH] evaluated how to establish all aspects of life properly in order not to efface the sublime moral project by diminishing their impact on action, and so as not to overly burden physical life, as Maimonides explains in the third portion of the *Guide of the Perplexed*, so too did the Sages assess the content of the fences they built around the Torah. When they found that [imposing] a small restriction was sufficient, they did not add to the burden even a hairsbreadth, in order to [excessively] burden the human will and prevent it from fulfilling its desire.

⁶ "Formulating Responses in An Egalitarian Age: An Overview" in the Orthodox Forum Volume [Formulating Responses in An Egalitarian Age](#), ed. Marc D. Stern (New York: Rowman & Littlefield Publishers, 2005), 44. Later in that section, Rav Lichtenstein added in a personal vein:

As for myself, I presume that, with respect to both the women's issues, specifically, and the fear of the slippery slope, generally, I find myself somewhere in the middle – enthusiastically supportive of some changes, resistant to others, and ambivalent about many.

⁷ For a good example of a thoughtful discussion of the slippery slope argument in the context of the contemporary debate around Partnership *Minyanim* see the essay by Rav Aryeh Klapper:

4. Taking into Account Impact of Decision on Furtherance of *Avodat Hashem*

The fourth element that is crucial for these discussions, especially in dealing with issues relating to other human beings, is how does this affect the entire calculus of *avodat Hashem*, service of God, and the question as to if we are bringing people closer to God or distancing them away. This is particularly critical in the loaded area of *pesak Halakhah* relating to women's role in ritual and participation in the public sphere of Judaism. A few years back, Beit Hillel, the more progressive Orthodox Rabbinical organization in Israel, issued a responsa permitting women in mourning who so desired to say *kaddish* in the synagogue during services. This *pesak*, in American terms, is not extremely radical, as this practice has taken root for many decades in many Modern Orthodox synagogues under the influence of the permissive *pesak* of Rav Soloveitchik zt"l. In Israel this ruling was more daring and received some vocal critique. In response, Rav Zev Weitman, a prominent *Talmid Hakham*, close student of Rav Lichtenstein and Rav Amital, Rabbi of the *Tnuva* cooperative, and current Rabbi of Alon Shvut in Gush Etzion, (then serving as the head of the *Beit Hillel – Beit Midrash Hilkhati*), published an essay in response in *Makor Rishon*. A number of lines in that essay perfectly sum up what I believe should be the Modern Orthodox approach to *pesak* in these areas:

One who decides Jewish law solely based on the words of the *poskim* and books, while totally ignoring and misunderstanding the reality of the community he is relating to and the changing circumstances of the reality, is not a *posek Halakhah* in my eyes. And it is in this context that the words of the Seridei Eish (Rav Yeche'el Ya'akov Weinberg) regarding the *bat mitzvah* ceremony were cited. He states that there is great significance in our day and age not to create discrimination between boys and girls and not to state positions that embarrass and hurt women, nor to issue *pesakim* that will cause women to distance themselves from Judaism, and these factors are in the eyes of a great and authoritative *posek* like the Seridei Eish legitimate and important factors in deciding Jewish law... We therefore should strive to achieve to the greatest extent possible, within the parameters of Jewish law and the Torah, equality between men and women. There are areas that are difficult for us [to understand and live with]; however, we are forbidden from changing clear cut *halakhot* [that have no alternative]. However, in every area that there is a halakhic opening to bring to greater equality in the world of *avodat Hashem*, we should choose this option, even if there are those who disagree with that approach, and even if there are those who are stringent and insist not to deviate from what was the traditional practice. In our day a stringency in this area leads to much greater laxity, which leads to estrangement from Torah and *mitzvot* and Judaism. The recitation of *kaddish* by a woman is not forbidden and not one of those areas where we have no option and no wiggle room before the [binding] words of the Lord. Just the opposite: it appears that there is no problem and thus it should be no problem to tell that to women who request to recite *kaddish*.⁸ (my translation-NH)

<https://moderntoraleadership.wordpress.com/2014/11/04/are-partnership-minyanim-orthodox/>.

⁸ *Makor Rishon, Mussaf Shabbat, #831.*

Summarizing Rav Weitman's words and significantly changing the thrust of the famous *bon mot* referenced to caustically by Rav Lichtenstein in the previous section above: We need to be animated in *pesak Halakhah* in these sensitive areas with the feeling that "when indeed there is a legitimate halakhic way, there should be a fully supportive Rabbinic will!"

5. Promoting *Kiddush Hashem* and Minimizing *Hillul Hashem*

The goal of enhancing *kevod Shamayim* and avoiding the desecration of God's Name in the world is one which all religiously committed Jews share in principle. It is a central theme of many of our sources and has played a significant role in responsa in past generations. In our contemporary era, this element has sometimes been jaded amongst some religious communities for diverse reasons. In some more insular *haredi* communities, the tremendous demographic growth, creation of a vast and self-sustaining infrastructure, political power and influence have sometimes led to a weakening of the perception that specific halakhic and meta-halakhic choices have the potential to lead to *hillul Hashem* in the eyes of the larger public, both Jewish and gentile. Similarly, in some more insular parts of the Religious-Zionist community in Israel, the impact of Jewish independence, military might of the IDF, and disdain for western values has sometimes led to the factors of *kiddush* and *hillul Hashem* not playing a major role in the decision-making process. Rav Amital, in his life and *derekh ha-pesak*, fought vigorously against those trends. He constantly reminded us that, especially in our contemporary era, the factors of enhancing *kiddush Hashem* and minimizing *hillul Hashem* must be front and center. In his writings and life choices he laid out a vision of Orthodox *pesak* on meta-halakhic issues that brought those elements to bear as critical and central ones that must shape halakhic public policy. This is a model that should animate us all.

BORN TO RETURN

ALEX OZAR is the co-director of the OU-JLIC program at Yale University, where he is also pursuing a dual PhD in Philosophy and Religious Studies.

According to rabbinic doctrine, however much Torah we learn in our lifetimes, however ravenous our gobbling of Torah-knowledge between first-breath and the grave, the sum-total is but a murmuring echo of eruditional glories past. For it is taught by Rabbi Simlai that each and every fetus is taught the entirety of the Torah while in the womb—a gift of marvelous beneficence marred only by its violently coerced, comprehensive retraction upon birth (*Niddah* 30b):

And they teach him the entire Torah ... As he enters the world, an angel comes and strikes him upon his mouth, causing him to forget the entirety of the Torah.

Learning is essentially a matter not of acquisition but of *reclamation*, restoring what was once ours. Learning is *recollection*.

Now, mention any of this in the right crowds and before you can say "*Zeitgeist*," you'll have your ears flooded with enthused clamorings about Plato and the famed doctrine of *anamnesis*—that since the

soul has “seen all things ... what we call learning is recollection.”⁹ According to Yitzhak Baer, the rabbinic teaching here is indeed “patently Platonic.”¹⁰ Rabbi Joseph B. Soloveitchik agrees that at the least, the comparison is unavoidable: “One is reminded, by sheer terminological association, of the Platonic doctrine of *anamnesis*.”

Piqued by Soloveitchik’s words but wanting more, [David Flatto](#) writes: “My only quibble with this formulation is that the similarity here is far greater than a terminological coincidence, and cuts to the essence of the underlying idea.”

Plato and Rabbi Simlai really do seem to be saying something very much alike, and that cannot be without significance. But sometimes superficial resemblance obscures a more fundamental divergence, and I will argue that the points of contact here serve precisely to accent the essential differences of worldview and value separating the rabbinic and Athenian minds. What emerges from the spiral of similarity and difference is a powerful portrait of the distinctive intellectual and spiritual character of *Talmud Torah* [Torah learning].

The “Baer” Truth

It will be helpful to have the relevant parts of the talmudic text in front of us:

Rabbi Simlai taught: To what can a fetus in its mother’s innards be compared? To a writing-tablet folded over: its hands on its temples, its elbows on its knees, its heels on its buttocks, its head resting between its thighs, its mouth closed and its navel open, eating from what its mother eats and drinking from what she drinks ... **A candle burns above its head, and it looks and gazes from one end of the world to the other...And they teach to it the entire Torah...As it enters the world, an angel comes and strikes it upon its mouth, causing it to forget the entire Torah.**

Now Yitzhak Baer, he who says the rabbinic teaching is “patently Platonic,” goes on to clarify that this only becomes fully clear “if we extrude the references to the child’s stay in its mother’s womb, a feature that was interpolated by peculiar and late copyists.”¹¹ The issue is that for Plato the soul’s access to universal knowledge decisively depends on its fundamental distinctness and at least part-time holistic apartness from the realm of matter and flesh: “If we are ever to have pure knowledge, we must escape from the body,” declares Socrates.¹²

Compare that to Rabbi Simlai’s richly graphic, decidedly non-spiritual picture of the “fetus in its mother’s innards” and so forth. It is in *this* context that we read of the incipient child’s enlightenment. In this rabbinic view, comprehensive knowledge is acquired not by an incorporeal soul on a supernal cosmic flight but by a fleshy fetus curled up deep in its mother’s innards, the darkness pierced by but a solitary flame. For Baer, since the doctrine is Platonic, and since the context of corporeal grit would be inexplicable in Platonic terms, that context must be an alien excrescence upon an original Greek core.

⁹ *Five Dialogues of Plato: Euthyphro, Apology, Crito, Meno, Phaedo*, trans. G.M.A. Grube (Indianapolis: Hackett Publishing House, 2002), 71.

¹⁰ Quoted in Ephraim Urbach, *The Sages* (Jerusalem: Magnes University Press, 1979), 246.

¹¹ Urbach, *The Sages*, 246.

¹² Plato, *Five Dialogues*, 103.

But as Ephraim Urbach argues, this is precisely the wrong conclusion to draw.¹³ If the rabbinic picture appears strikingly dissonant with the Platonic, that is because the rabbinic picture is strikingly dissonant with the Platonic. The dissonance stands for an affirmative argument: to the rabbinic mind, it is basic that the omniscience of trans-world vision is achieved not by a soul apart but by a person in the flesh.

From Plato to Flatto

David Flatto argues that despite the eminent convergences, closer examination of the talmudic passage shows that “the core conceptions of Greek and Rabbinic thought are actually dramatically different.” For Plato, prior to (and after) each incarnation the pure soul enjoys unalloyed cognitive access to the universal forms. And since souls are imperishable and hence eternal, any given soul at given time t_1 should already have acquired all the knowledge there is to know.¹⁴ But Flatto points to the very first image offered in Rabbi Simlai’s fetal description: “To what is a fetus comparable? To a *folded tablet*.” Assuming that the figured tablet is of the proverbial blank variety, it would seem that R. Simlai is depicting the fetus as wholly without knowledge at some point t_1 in time. But that cannot be on the Greek conception. Whatever knowledge you have, you’ve always had.

Of course, it is likewise unclear how this could be on the rabbinic view—isn’t the child in the womb said to know the world from end to end and the Torah in and out? Whence, then, the *tabula rasa*? On the strength of these considerations, Flatto argues that the blank tablet image is best interpreted as referring to a registry not of the child’s fetal knowledge but of the person-to-be’s *deeds* in their upcoming terrestrial lifetime. After all, “the notion of a ledger is used in rabbinic literature to describe the record of a human being’s deeds.”

What shifts in the rabbinic version is not the nature but the purpose of the fetal educational experience: the pursuit of lived ethical rectitude rather than the enjoyment of intellectual-contemplative bliss.

In the talmudic passage, the utopian idyll of omni-enlightenment in the womb is overtaken by and subordinated to the struggle to do right out in the world. In the end, “What is the oath with which they forswear him? Be a righteous man, and do not be a wicked man” (*Niddah* 30b). And so for Flatto it is precisely through first strongly depicting the convergence of its own doctrine with the Platonic that the Talmud asserts its ultimate independence from it, transcending the Athenian commitment to purely contemplative existence in rendering such existence preparatory to a life of righteousness in action.

Knowing, or Learning?

Without discounting Flatto’s analysis, I would argue that the break occurs earlier on, and that the rabbinic account not only supplements but fundamentally transforms the Platonic doctrine at its core.

¹³ Urbach, *The Sages*, 246. “The very need to declare, without giving any reason, that the basic subject-matter of the source was a feature ‘that was interpolated by peculiar and late copyists’ shows the weakness of the argument.”

¹⁴ Or, in Socrates’ more mythical formulation, “As the soul is immortal, has been born often, and has seen all things here and in the underworld, there is nothing which it has not learned” (Plato, *Five Dialogues*, 71).

For how is it that an individual soul comes to know all things, in Plato's view? As noted, it is an inevitable, simple byproduct of the soul's imperishability: "As the soul is immortal, has been born often, and has seen all things here and in the underworld, there is nothing which it has not learned."¹⁵ The soul has simply seen it all, and seen it with its own eyes. This is important, because Plato holds that teaching—the gift of knowledge from one person to another—is fundamentally impossible. Why?

Suppose you aim to teach me, a moderately bright and eager but wholly untutored pupil, the art of geometry, and you begin by impressing upon me the Pythagorean Theorem. Having seen the formula on the board and heard it from your lips, do I now know the Pythagorean Theorem? Not yet, Plato argues, as how am I to know that it's *true*? You are fallible, after all, and so to recognize what you present to me as true I must be able to give an *account*, to generate through my own reason an understanding, of *why* $A^2 + B^2 = C^2$.

But suppose I can do that, and hence can verify your lesson as true. For what, then, do I need you? If I can produce the answer on my own, it turns out that all that's left for you to do is to prompt me to bring to mind, to *recall*, what I essentially already know and have always known. In so doing you serve not as a teacher but simply as an incidental *occasion*—it could have been anyone—for my own achievement. Teaching is impossible.¹⁶

Kierkegaard, for his part, was quite exercised by this thinking, as it seemed to undermine a basic premise of biblical religion: that God appeared and gave the Truth to humanity at a historical moment in time. On the Platonic view this must be doubly wrong: what is known has been known from eternity, and the identity of any occasion—the someone providing the prompts—for recollection can have no essential significance. "The fact that I have learned from Socrates or from Prodicus or from a maidservant can concern me only historically."¹⁷

Knowing is a fundamentally lonely, even solipsistic affair where everyone is self-sufficient unto themselves. "In the Socratic view, every human being is himself the midpoint, and the whole world focuses only on him because his self-knowledge is God-knowledge."¹⁸ The possibility of real relationship, where the identities of the parties matter essentially and the intercourse between them can generate something truly, dynamically new, is foreclosed. It is, necessarily, everyone for themselves.

What this all highlights, for Kierkegaard, is just how wondrous the miracle of divine revelation really is. The almighty God, out of nothing but love for humankind, reaches across the infinite chasm to embrace us, and in that moment we gain the knowledge that we are loved by God, knowledge we could have learned from no other teacher and in no other way. The first radical claim of biblical religion is that *teaching really is possible*.

Returning to the talmudic passage, it is noteworthy that the initial mention of fetal omniscience really does seem to be of the Platonic,

¹⁵ Plato, *Meno*, 71.

¹⁶ Based on Plato, *Meno*, 70-78.

¹⁷ Soren Kierkegaard, *Philosophical Fragments*, trans. Howard V. Hong and Edna H. Hong (Princeton: Princeton University Press, 1985), 12.

¹⁸ *Ibid*, 11.

internally self-sufficient kind: "And above its head a candle is lit, and it gazes and looks from one end of the world to the other." This is a depiction of supernal enlightenment, with the soul transcending the narrow confines of any worldly here-and-now, enjoying an instantaneous view of the whole not from a finite somewhere but from the infinite everywhere. But now we notice that this is emphatically not how the incipient child comes by their *Torah* knowledge. Unlike the world, the Torah is not simply swallowed in a flash of enlightenment. Rather, "And they *teach* to it the whole entirety of the Torah."

In the context of Platonic philosophy, then, the point made by the text is that direct contrast to worldly wisdom, knowledge of Torah is not merely known or recalled but *taught* and *learned*. And so, in Kierkegaard's terms, it follows that learning Torah involves a *relationship* between teacher and disciple, a relationship for which the unique identities of the teacher and the student and the intercourse between them make all the difference. It is not an impersonal, objective exercise, but rather a relationship between personal subjects.

From Relationship to Fellowship

There is more than one way for such a relationship to go, however. For Kierkegaard, it is vital that the teacher in question is not just anyone, but exclusively God himself, and this comes along with several unfortunate consequences: Revelation on Kierkegaard's view occurs at a single, wholly unique, capital 'M' Moment to a solitary individual (a "flight of the alone unto the alone"), a moment in which the specifics of time, place, and personality are of no meaning, and what is revealed has no content other than its violent offense to human reason as the paradox, the humiliating confrontation of the mind with the perfectly unknowable.

Kierkegaard counters Plato's picture of perfect intellectual self-sufficiency by simply inverting it to one of perfect dependence; anything less, he says, is so much "slipshod thought" and "idle chatter." It remains a zero-sum, one-sided affair, all give and no take. In Jewish terms, we might say that while Kierkegaard gives us a teacher and student, he stops short of giving us *learning*.

Is it possible to move beyond the dichotomy of pure intellectual autonomy (Plato) or pure dependence (Kierkegaard)? Can we be active, creative in our reception of God's teaching, can it matter for my learning that I am who I am and you are who you are, can we finite humans truly teach and learn from each other and generate new ideas together? The rabbinic answer, crystallized in Rabbi Simlai's teaching, is emphatically affirmative to all of the above. To the rabbinic mind, Rabbi Akiva's Torah is not Rabbi Yishmael's is not Reb Hayyim's is not Rabbi Shimon Shkop's, and it goes to the heart of the matter that your rebbe is *your* rebbe and your student is *your* student. And whereas Socrates could never quite manage a steady *havruta*, with Torah it is fundamental that partnership and community beckon clarity, passion, and dynamic divine fire far surpassing the lonely powers of any solitary mind.

Is the rabbinic position *true*? Is genuinely collaborative, generative learning really possible? I have no knock-down argument, but then a merely rational demonstration would of course hardly be adequate to the reality in question—one would expect that the possibility of truly relational teaching, should it be real, would not be autonomously proven but relationally taught.

So I will say this: if you have been privileged to know the walls of the *beit midrash* from the inside, you know that the fruits of your labor

there are forever marked by the unique personalities of your teachers, your relationships with your peers, the fellowship of learners there and everywhere, and the sheer fact of your Jewish identity indelibly linking you to the whole of the Jewish past, present, and future. And whether that awareness has faded, or is a reality one has in their lifetime never known, Rabbi Simlai teaches us that it is a home to which we can all, always and forever, return.

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