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THE PREGNANT SOTAH: A CASE STUDY IN THE ETHICS OF ABORTION

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Much ink has been spilled on the Jewish view of abortion. This essay explores an obscure set of sources that have received little attention in the literature. My purpose in this article is not to take a halakhic or philosophical stance on the status of fetal life, but rather to shed light on some neglected rabbinic texts relevant to this issue. *Tractate Sotah* (the "wayward wife") elaborates on the miraculous biblical ritual (Numbers 5:11-31) for testing the fidelity of a suspected adulteress. The Sotah drinks bitter water mixed with dirt, and a priest erases into it a scroll containing God's name. In the rabbinic view, if she is guilty, she dies, but if she is innocent, she will be blessed with children. A dispute between Rashi and Tosafot regarding the case of a pregnant Sotah addresses the ethics of performing a ritual potentially fatal for a fetus.

The *locus classicus* of this case, *Sotah* 26a, discusses which women are eligible to undergo the Sotah ritual. There, a *baraita* rules that a woman "pregnant from [the husband] himself either drinks [the bitter water] or forfeits her *ketubah*." According to Rashi, whose reading seems to be the most straightforward interpretation, this passage permits a pregnant Sotah to drink the bitter water, despite the fatal potential for the fetus.[1] Tosafot, by contrast, reject Rashi's read, instead explaining that when the *baraita* says the pregnant Sotah may drink the bitter water, it means she may undergo the ritual only after she gives birth. It is possible that this dispute

[1] An aggadic source implies that the purpose of the Sotah ritual is to determine the paternity of a pregnant woman's fetus; see *Tanhuma* [Buber ed.], *Naso* 5; Lisa Grushcow, *Writing the Wayward Wife: Rabbinic Interpretations of Sotah* (Leiden: Brill, 2006), 103. The *baraita* also records a dispute between R. Meir and the Rabbis whether a woman pregnant from a previous husband is eligible for the Sotah ritual initiated by her current husband. Cf. *Sotah* 24a; *Tosefta Sotah* 5:1-2; *Mishneh Le-Melekh, Hilkhot Sotah* 2:7; Avi Gurman, *The Origins and Evolution of the Prohibition Forbidding the Remarriage of the Pregnant or Nursing Widow in Jewish Law* [Heb.] (Jerusalem: Karmel, 2020), 169-188. However, *Sifrei Zuta* cites a dissenting view of Rabban Gamliel that, unlike the *baraita*, excludes a pregnant Sotah from the ritual; see *Keren Orah, Sotah* 26a; *Hazon Yehezkel, Tosefta Sotah* 5:1; *Sapirei Efraim, Sifrei Zuta* 5:28.

revolves around the status of fetal life, which may have broader implications regarding the issue of abortion in Jewish law; however, theories elucidated in later commentaries complicate the ethical implications of the pregnant Sotah and undermine its relevance to abortion.

Rashi and Tosafot

Rashi's position, as reflected in his brief and ambiguous comment on the *baraita* in *Sotah* 26a, indicates that he does not consider abortion to be murder, which appears to inform his approach to the case of the pregnant Sotah. Tosafot's interpretation, on the other hand, suggests a more restrictive view of abortion. Both texts require careful analysis to identify the precise point of contention.

Rashi seems to read the *baraita* in *Sotah* 26a as indicating a lack of concern for fetal life, which is perhaps its most straightforward interpretation. Rashi comments, "We do not say that the child should not be killed."[2] This double negative implies that causing the death of a pregnant Sotah would not be considered feticide (murder of the fetus). Accordingly, the *mitzvah* (biblical commandment) of performing the Sotah ritual[3] outweighs the value of ensuring the fetus carries to term; conversely, if abortion is feticide, it would be difficult to understand why the *mitzvah* of Sotah would outweigh the prohibition of murder, which is *yehareg ve-al ya'avor* (categorically inviolable). However, the implications of this position beyond the context of Sotah remain unclear from this source alone. It does not necessarily follow from here that Rashi would allow an abortion in cases that do not have the mitigating factor of fulfilling a *mitzvah*; and as I will demonstrate below, many sources identify Sotah as a unique exception to general rules about abortion.

To better understand the reasoning behind Rashi's assumption that abortion is not feticide, we must consider another relevant source, which appears outside the context of Sotah in *Arakhin* 7a. There, the Mishnah states, "A woman who is taken to be executed, we do not wait until she gives birth. A woman in the throes of labor, we wait until she gives birth." By allowing the execution of a pregnant woman, the Mishnah does not seem concerned by the death it will inevitably cause to the fetus. The Gemara initially characterizes the first ruling as "obvious" given that the fetus is "her body." Subsequently, the Gemara suggests that one might have thought to delay the execution based on Exodus 21:22, which indicates that the fetus is the "property of the husband" (i.e., a separate entity from the mother).[4] As to why the Mishnah did not accept that argument, R. Yohanan cites a scriptural source, interpreting "and they shall also both of

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[2] *Sotah* 26a, s.v. *o shotot*. Similarly, Rambam glosses that a pregnant Sotah undergoes the ritual "as she is [now]" (*Hilkhot Sotah* 2:7); for commentary on Rambam's position, see R. Sheraga Faivel Shternfeld, *Sefer Parashat Sotah* (Bnei Brak, 5782), 146-149. See also Meiri, discussed below in this essay.

[3] See, e.g., Rambam, *Sefer Ha-Mitzvot*, Positive Commandments 223, and the introductory heading in print editions of Rambam's *Hilkhot Sotah*; *Sefer Ha-Hinukh* 365; *Sefer Mitzvot Gadol*, Positive Commandments 56.

[4] Cf. *Bava Kamma* 49a.

them die" (Deuteronomy 22:22)—the mandate of capital punishment for adultery—to include both a mother and her fetus.

Rashi's statement on Sotah seems consistent with his approach to *Arakhin* 7a. Commenting on the Mishnah there, he explains, "We kill her fetus with her, since it is one body." Rashi implies that the fetus is considered part of the mother's body (*ubar yerekh imo*), and thus the execution of a pregnant woman does not amount to feticide.[5] Here, too, however, one cannot necessarily extrapolate broader leniency for abortion beyond the context of capital punishment, which also fulfills a biblical commandment. Nevertheless, Rashi seems to apply the logic of *Arakhin* 7a to *Sotah* 26a, suggesting the existence of at least two Talmudic rulings that appear to disregard the value of preserving fetal life.

Tosafot, however, reject Rashi's read of the *baraita* in *Sotah* 26a, insisting that the passage should be interpreted to allow a pregnant Sotah to undergo the ritual only *after* giving birth. They challenge, "Why let it be killed? Why would we care [to rush the ritual]? Let us wait until she gives birth."[6] The rhetoric of Tosafot implies that they take issue with Rashi's read for its apparent lack of care for the life of the fetus. Granted, performing the ritual fulfills a *mitzvah*, yet it is possible to do so without endangering the fetus by simply waiting until the mother gives birth before drinking the bitter water. But this reading of *Sotah* 26a seems to conflict with the implication of *Arakhin* 7a, which emphasizes the need for an urgent execution. Tosafot therefore distinguish between Sotah and capital punishment: R. Yohanan's derivation for executing a pregnant woman in *Arakhin* 7a implies that absent a *gezeirat ha-katuv* (inscrutable Scriptural commandment), the rational approach is to refrain from causing the death of a fetus, "because it is the husband's property" (i.e., a separate entity from the mother). Thus, since no such exegesis exists regarding Sotah, delaying the ritual is warranted.[7]

In *Arakhin*, Tosafot elaborate an argument that bolsters distinguishing between *Arakhin* 7a and *Sotah* 26a. They explain that after *gemar din* (conviction), the reason for not delaying execution stems from the concern of *inui ha-din* (affliction of judgment), the psychological agony of remaining on death row.[8] The analogue of *gemar din* in the context of Sotah is not clear, but the factor of *inui ha-din* would not seem to apply here. Although performing the Sotah ritual fulfills a *mitzvah*, it

[5] *Arakhin* 7a, s.v. *ha-ishah*; cf. Rabbeinu Gershom ad. loc; *Ran al ha-Rif* (19a) to *Hullin* 58a (first explanation); *Tosafot R. A. Eiger, Arakhin* 1:4; R. Y. S. Elyashiv, *He'arot be-Masekhet Sotah*, 26a and *He'arot be-Masekhet Bava Kamma*, 49a; *Dvar Shaul, Sotah* §45.

[6] *Sotah* 26a, s.v. *me'uberet atzmo*.

[7] See *Mishneh Le-Melekh, Hilkhot Sotah* 2:7; *Beit Shmuel, Even Ha-Ezer* 11; *Torat Ha-Kenaot, Sotah* 26a; R. Y. S. Elyashiv, *He'arot Be-Masekhet Sotah*, 26a; *Netivot Ha-Kodesh, Sotah* 26a; Netziv, *Meromei Sadeh, Sotah* 26a.

[8] *Arakhin* 7a, s.v. *yashvah*; cf. Tosafot, *Sanhedrin* 80b s.v. *ubar*; *Ran al ha-Rif* (19a) to *Hullin* 58a (second explanation). The author/editor/compiler of Tosafot printed in the Vilna edition of the Talmud may differ across tractates, and thus we should not necessarily assume consistency between the passages discussed here, or other discussions of Tosafot elsewhere about abortion.

remains optional; the wife is not forced to undergo it, and either spouse has the power to cancel it before God's name is erased.[9] Not only is there no rush to complete the process, but the judges intentionally delay it and attempt to convince the woman to confess instead.[10] It follows that a pregnant Sotah may not undergo the ritual before she gives birth, since doing so may unnecessarily kill the fetus. Thus, whereas Rashi seems to view Sotah as analogous to *Arakhin* 7a, Tosafot view R. Yohanan's teaching in *Arakhin* 7a as exceptional to *dinei nefashot* (capital cases), rather than the basis for potentially allowing one to cause the death of the fetus in the case of a pregnant Sotah.

The commentary of Meiri potentially provides support for Rashi's reading of the *baraita* in *Sotah* by analogizing Sotah to capital punishment. Unlike Tosafot, Meiri maintains that the *baraita* in *Sotah* 26a allows a pregnant woman to undergo the ritual during her pregnancy and does not require a delay on account of the fetus. He explains that if the Sotah is innocent, there is no concern, and if she is guilty, she does not deserve a delay any more than she would in *dinei nefashot*, and he invokes the ruling in *Arakhin* 7a that we execute a pregnant woman.[11] Evidently, Meiri sees the potential outcome of death to the Sotah as analogous to capital punishment, which thus explains why he does not require a delay in the case of a pregnant Sotah. This conceptual framework supports Rashi's read, which assumed that the pregnant Sotah has the same rule as *Arakhin* 7a. Tosafot, by contrast, implicitly reject the conceptualization of Sotah as an analogous capital case, instead noting that *Arakhin*'s harsh ruling is the result of scriptural exegesis that does not apply to Sotah.

There is conflicting evidence in the Talmud regarding the place of Sotah in Jewish law. On one hand, Meiri's view analogizing Sotah to *dinei nefashot* has support from several sources. Firstly, the Sotah appears before the High Court of seventy-one judges in Jerusalem, typically reserved for grave cases of national significance. There, "we threaten her like the way we threaten witnesses in capital cases," an analogy that Meiri interprets as referring to procedures similar to those prescribed in *Mishnah Sanhedrin* 4:5, which includes questioning, "inquiry and interrogation" (*derishah ve-hakirah*), and emphasizing the gravity of shedding innocent blood; in the context of Sotah, the judges similarly warn the wife that the bitter water is lethal and she should not jeopardize her life.[12] Additionally, another source derives from the Sotah ritual that deliberations in capital cases must first proceed with arguments for acquittal.[13] These

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[9] *Sotah* 6a, 20a. See Tosafot, *Sotah* 7b, s.v. *mah* and 17b, s.v. *mah*.

[10] *Sotah* 7a-7b; see also *Torat Ha-Kenaot*, *Sotah* 26a.

[11] Sotah 26a, s.v. *kinei*.

[12] *Sotah* 7a, Meiri ad. loc; see also Rashi ad. loc; cf. *Tiferet Yisrael*, *Sotah* 1:4; Ishay Rosen-Zvi, *The Mishnaic Sotah Ritual: Temple, Gender and Midrash* (Leiden: Brill, 2012), 49-66.

[13] *Sanhedrin* 33a; cf. *Sifrei Bamidbar* 12. See also Tosafot, *Sotah* 17b, s.v. *mah*.

sources provide a compelling basis for Meiri's analogy.[14]

Some sources, on the other hand, support Tosafot and undermine the analogy between Sotah and capital punishment. As Ramban emphasizes, the miraculous intervention is *sui generis* in Halakhah. Sotah uniquely weaves divine judgment into the framework of human law.[15] Ultimately, if the Sotah dies from the ritual, it is not an execution in the conventional sense. Although the Sotah travels to the High Court, Tosafot do not view this step as dispositive for fulfilling the ritual.[16] Additionally, capital punishment requires two witnesses of the offense, a criterion definitionally absent in the case of the Sotah. Although the ritual is initiated on the basis of two witnesses who verified the husband's *kinui* (formal warning) and the wife's subsequent *setirah* (suspicious act of seclusion), the Sotah is only eligible for the ritual if there are no witnesses for the act of adultery itself.[17] Perhaps due to these sources, Tosafot concluded that the analogy between Sotah and capital punishment remains incomplete beyond the specific procedural rules invoked by the Talmud.

Regardless of the question of how to conceptualize the legal nature of the Sotah ritual, a fundamental dispute seems to emerge between Rashi and Tosafot on the status of fetal life. Rashi appears to assume that abortion is not murder, whereas Tosafot implies that it is. Such a conclusion is bolstered by the fact that Rashi does not appear to contend with Tosafot's ethical challenge to not unnecessarily endanger the fetus. His lack of insistence on delaying the ritual might lead one to infer a broader position that takes the rejection of fetal personhood to a very lenient conclusion. However, as I explore below, later thinkers offer novel explanations of Rashi's position that undermine such claims.

Modern Perspectives

Within Rashi's school of thought that allows the testing of a pregnant Sotah, postmedieval rabbinic commentaries provide new arguments that complicate the ethical implications of the ritual. Some suggest that the divine nature of the Sotah ritual absolves us of moral responsibility for the potential feticide, either because God will delay the Sotah's death to protect the fetus, or because we are not responsible for God's judgment. Other more recent thinkers offer a radical theory that the Sotah is presumed to be innocent, thus negating the risk of death for the fetus.

Whereas Meiri conceptualized the Sotah ritual as *dinei nefashot*, thereby locating it within the jurisdiction of human (Jewish) law, some offer a different conceptualization that considers the divine element. A letter from R. Joseph Rosen (the

[14] For halakhic discussions, see *Minhat Sotah*, *Sotah* 26a; *Tosafot R. A. Eiger, Mishnah Yevamot* 6:1; *Shu"t R. A Eiger*, *Responsa*, vol. I, 222:18; *Shu"t Hatam Sofer, Hoshen Mishpat* 77.

[15] *Ramban al ha-Torah*, Numbers 5:20.

[16] *Sotah* 7b, s.v. *mah*.

[17] See, e.g., *Sotah* 2a-2b, 31a.

Rogatchover Gaon) to R. Elhanan Halpern discusses the possibility that a fatal outcome of the Sotah ritual would fall under the category of *mitah be-yedei shamayim* ("death at the hands of heaven").[18] If God determines the fate of the Sotah, one could also suggest that God determines the fate of the pregnant Sotah's fetus, absolving the court of responsibility. R. Elazar Moshe Horowitz takes this idea in one direction, pointing out that God can choose to temporarily suspend the effects of the bitter water to protect the fetus: "Everything is in the hands of heaven, and by His will He can delay her [death] for some time."[19] In this read, we are not morally responsible because the fetus may very well live. More recently, some have sought to avoid R. Horowitz's implication that the presence of a fetus could undermine the efficacy of the Sotah ritual and cause the woman to live when she otherwise should have died. Instead, these thinkers suggest that if the bitter water kills the woman, we are not morally responsible for a divine action; it is not our place to question or speculate why God would allow the death of the fetus.[20] Either way, according to this school of thought, the ethics of the pregnant Sotah are subordinated to inscrutable divine judgment, much like the execution of a pregnant woman, which R. Yohanan ultimately justifies through a *gezeirat ha-katuv*. Those who emphasize the role of divine intervention here cannot conclusively extrapolate broader implications for abortion from the case of the pregnant Sotah.

Another crucial distinction between *Sotah* 26a and *Arakhin* 7a is the possibility of innocence. In the latter case, the court has already convicted the pregnant woman, and the execution will inevitably cause the death of the fetus. The Sotah's guilt, however, is definitionally doubtful, and she may survive the ritual. At most, the ritual presents a *risk* of death, which is mitigated by a variety of caveats that can render the test ineffective. According to rabbinic law, the bitter water will not be fatal if the husband himself ever committed a sexual sin; if witnesses to the adultery are overseas and did not come forward; if the husband knows she is guilty; and according to several opinions, if she had merit protecting her, the effect could be delayed for a significant amount of time, which would enable the pregnancy to come to term safely.[21] It would be impossible for anyone to know with certainty that all the conditions of efficacy have been met. Thus, enabling a pregnant Sotah to undergo the ritual is not conceptually analogous to a direct act of abortion.

Some take this argument even further by suggesting that the Sotah who chooses to undergo the ritual is assumed to be innocent. In this view, a pregnant

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[18] *Shu"t Tzofnat Paneah* 212. Cf. *Tzofnat Paneah al Masekhtot Sotah Gittin* (Mehon Ha-Maor ed., 2016), pp. 7-8.

[19] *Ohel Moshe*, vol. I, *Sotah* 26a; see also *Netivot Ha-Kodesh*, *Sotah* 26a (citing an oral teaching of R. Yisrael Meir Kagan [Hafetz Hayyim]). Cf. *Radal*, *Sotah* 20b.

[20] See *Sefat Emet*, *Sotah* 26a; R. Yosef Shalom Elyashiv, *He'arot be-Masakhet Sotah* 26a; and *Alei Ba'er* ibid.

[21] *Sotah* 47b, 6a-6b, 20a-21a, 22b; *Sifrei Bamidbar* 7-8. Cf. *Tosefta Sotah* 2:4; *Yerushalmi Sotah* 3:5; Rambam, *Hilkhot Sotah* 3:20; *Radal*, *Sotah* 20b; *Netivot Ha-Kodesh*, *Sotah* 26a.

Sotah would pose no risk to the fetus. As mentioned above, the Sotah ritual is optional for the woman. R. Yehiel Michel Epstein (*Arukh Ha-Shulhan*) suggests that the Sotah's innocence is "close to certain" because she chooses to undergo the ritual; presumably, a woman who knows her own guilt would refuse the ritual for fear of death.[22] Similarly, R. Yaakov Kamenetsky suggests that the purpose of the Sotah ritual is not to punish adultery but rather to prove the wife's innocence, since the husband's jealousy and doubt will not be assuaged without divine intervention. As evidence, he cites the Gemara's comment that by allowing God's name to be erased into the Sotah waters, the Torah demonstrates the importance of peace between husband and wife; the goal to restore marital harmony, he implies, can only be achieved if the wife remains alive.[23] Other sources, however, suggest a more punitive purpose; at various stages throughout the process, the judges humiliate the Sotah and immensely pressure her to confess.[24] Arguably, though, even if one accepts the punitive view, a woman who nevertheless insists on proceeding with the ritual would very likely be innocent. Accordingly, it would follow that a pregnant Sotah would almost never pose a risk to the fetus, thus limiting the relevance of the case to the issue of abortion.

Conclusion

Some understandings of the pregnant Sotah potentially intersect with the issue of abortion. A straightforward reading of the dispute between Rashi and Tosafot revolves around the status of fetal life. Rashi seems to maintain that the fetus is considered part of the mother's body; thus, just as we execute a pregnant woman, we allow a pregnant Sotah to undergo the ritual. Tosafot, by contrast, seem to reject this possibility based on a concern for the life of the fetus, and they understand the case where a pregnant mother receives capital punishment as the exception to the rule against abortion. However, the broader implications of Rashi's position remain inconclusive. One postmedieval school of thought conceptualizes Sotah as a unique divine punishment, which undermines its relevance to the issue of abortion. Similarly, a group of modern thinkers reinterpret Sotah as a presumptively non-fatal ritual which would present no risk to the fetus, again limiting the relevance of the case to abortion.

Notwithstanding these limitations, we must still contend with *Arakhin* 7a. While there is

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[22] *Arukh Ha-Shulhan*, *Even Ha-Ezer* 178; see also *Minhah Hareivah*, *Sotah* 26a.

[23] *Emet Le-Yaakov*, Numbers 5:15; *Hullin* 141a; for further discussion, see Yosef Lindell, "Was the Sotah Meant to be Innocent?" (*Lehrhaus*, 6/9/22). See also *Alei Ba'er*, *Sotah* 26a, n. 103.

[24] *Sotah* 7a-7b, 14a; Rambam, *Hilkhot Sotah* 3:3; cf. *Guide to the Perplexed* III:49; Rosen-Tzvi, *Mishnaic Sotah Ritual*, 3.

disagreement about the case of the pregnant Sotah and whether it is analogous to capital punishment, all sources seem to agree that we execute a pregnant woman despite the inevitable abortion it entails. Whereas the implications of *Sotah* 26a remain inconclusive, given its atypical place in Jewish law, *Arakhin* 7a seems directly relevant to the issue of abortion. Yet, because it has received attention in the literature, a full analysis of *Arakhin* 7a falls beyond the scope of this essay, which focuses on the case of the pregnant Sotah.[25] Further research is necessary to determine how the positions of Rashi, Tosafot, and other commentaries on *Sotah* 26a and *Arakhin* 7a might fit with their approaches to additional sources relevant to abortion in rabbinic literature. Despite its obscurity, the intellectual history of the pregnant Sotah offers a rich case study with significant implications for Jewish thought.

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Renew Our Days as Days of Old

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Childhood memories have a power that is difficult to put into words. Most of what we experience when we are young fails to stay with us. We may remember events for a stretch, but eventually, the tide comes in, and the memories wash away as we get older. There are, however, moments that linger, perhaps just an image, sound, or feeling that leaves an indelible mark. When I was four years old, my parents and I made the trek into Brooklyn to visit an elderly cousin. He was a rabbi, a Satmar Hasid, and a Holocaust Survivor. I was too young to be aware of how long we were there or what was discussed, but something about the visit always stayed with me.

When I decided to make a greater commitment to religious observance as a young adult, the memory of our visit was often in my mind. It was a reminder that my decision need not be felt as departure from my past but rather a return to it. Not long after I started studying at yeshiva in Jerusalem, my parents shared with me that the purpose of the visit had been to reconnect with family roots torn up by the Holocaust. Our cousin had in fact sent us a letter detailing that my father was descended from Rabbi Shlomo Gross, a beloved student of the first rebbe of Munkatch, the *Bnei Ysoscher*, who had served as a rabbinic judge there and was greatly admired for his piety and humility.

At the time, I felt a strong sense of pride in knowing my family had such prestigious lineage, but the news was also disconcerting. Being a passionate Religious Zionist, I could only imagine how my forebearer might think of me. The *Bnei Ysoscher* was a strident opponent of modernity, and the rebbes descended

[25] For discussion, see, e.g., R. J. David Bleich, "Abortion in Halakhic Literature," *Tradition: A Journal of Orthodox Jewish Thought* 10, no. 2 (1968): 72-120; R. Eliezer Melamed, *Simhat Ha-Bayit U-Birkhato* 9:3, n. 4.

from him did little to hide their hostility to Zionism. Would Rabbi Shlomo Gross have taken pride in his descendant, who deeply identified with both? While I maintained an interest in Hasidic teachings even after my time in yeshiva, it was many years before I seriously opened up the books of the *Bnei Ysoscher*. Only after making *aliyah* and being impacted by the works of Rav Shagar was I able to overcome my ambivalence towards my own history. Though the Jewish tradition thrives on continuity, Rav Shagar makes clear that the Jewish people's relationship to the past has never been simple, and the events of the last century have only made this infinitely more complicated. In a powerful essay, "The Gates of Jerusalem," he explores the challenges and possibilities faced by the Jewish people's greatest attempt to bring the past into the present with the creation of the modern State of Israel. To do this he offers a fascinating reading of two *midrashim* that discuss the gates of the Temple. For Rav Shagar, each *midrash* reflects a different orientation to the Jewish past and the impact it has on the Jewish future.

No Past, No Future

The first *midrash* attempts to imagine the fate of Korach and his sons after the earth swallowed them up in the wake of their failed rebellion. Though it would have been reasonable to assume they had perished, the rabbis envision a different outcome, one Rav Shagar describes as Kafkaesque.[1] Rather than die, they were condemned to a ghost-like existence far beneath the earth. According to Rav Shagar, the *midrash*'s depiction of them serves as a powerful metaphor for the Jewish condition during two thousand years of exile.

> Those [Korach and his sons] that descended deep into the earth thought they would stay there forever until Hannah came and prophesized about them as it says, "The Lord deals death and gives life, Casts down into Sheol and raises up." (1 Samuel 2:6) However, they still did not believe that they would be brought up from the depths until the Temple was destroyed and the gates were swallowed by the earth as well… the gates came to Korach and grasped them. Right away, they had faith and said, "When these gates are be raised up, so too will we along with them." Until that day, Korach and his sons were to be the guardians of these gates.[2]

Neither dead nor quite alive, Korach and his sons found themselves trapped in limbo, a fate, Rav Shagar argues, that is worse than death.

> Human beings are afraid of death, but they are even more afraid of

[1] While Rav Shagar does not refer to it explicitly, this *midrash* bears distinct similarities to Franz Kafka's famous parable, "Before the Law." For an example of Rav Shagar's use of "Before the Law," see "Al ha-Hoda'ah, ha-Ashmah, ve-ha-Kippurim," in *She'erit ha-Emunah: Derashot Postmoderniyot le-Moadei Yisrael* (Resling Publishing, 2014).

[2] *Otzar Midrashim*, vol. 1 (New York, 1915), 19.

> being stuck…a ghost-like existence, a state of fixation that one cannot be freed from. In a deeper sense, this is the fear of a life lacking life, a life behind which there is nothing but an empty existence.[3]

Because ghosts cannot pass on to the next world, they are instead condemned to haunt this one. They remain tied to the places that were important during their lives and become fixated on rectifying what they failed to accomplish in life. The same, Rav Shagar explains, is true for Korach and his sons. Until the day of their redemption, they must continue to fulfill their traditional role as Levites, looking after the gates of the Temple. However, until that day arrives, they are condemned to an existence of absurdity, for these doors lead not to God's presence as they once did but rather to nowhere.

A similar fate befell the Jewish people after the Temple's destruction. Being in exile meant remaining stuck in a state of limbo, unable to live life in the here and now and powerless to shape the future. Though the Jewish people strived to remain loyal to their past, they also remained at a distance from it. In their prayers, they faced towards the Land of Israel and prayed for their return to it, but few imagined they would live to see it in their lifetime. In the words of Gershom Scholem, it was a "life lived in deferment."[4] God would eventually redeem the Jewish people, but the arrival of that day was not in their control. Until then, the Jewish people were destined to be trapped in limbo.[5] They had a past they could not return to and a future they could only pray for. Like Korach, all they could do was wait.

Only the Past Can Open the Gates of the Future

While this description is tragic, the Jewish people eventually discovered that other options were available to them. Though the Temple's gates may remain closed for Korach and his sons, they need not be closed for all others. To illustrate this, Rav Shagar turns to a second *midrash* which depicts Solomon's dedication of the Temple and in his opinion, describes the very essence of Zionism itself. According to the *midrash*, when Solomon attempted to bring the Ark of the Covenant into the Temple, he discovered there was a significant problem. The width of the Temple's gates was the same length as the width of the Ark of the Covenant

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[3] *Ba-Yom ha-Hu: Derashot u-Ma'amrim le-Moadei Iyar* (Mechon le-Kitvei ha-Rav Shagar, 2012), 349

[4] Gershom Scholem, *The Messianic Idea in Judaism: And Other Essays on Jewish Spirituality* (Schocken Books, 1995), 35

[5] Rav Shagar does note that this ghost-like existence can grant a sort of immortality to Jewish existence. Elsewhere in his writings, he cites Franz Rosenzweig to argue that the Jewish people's exclusion from history can also serve as a source of holiness. See *Ba-Yom ha-Hu*, 273, citing *The Star of Redemption*, trans. Barbara Galli (University of Wisconsin Press, 2005), 322 (Rav Shagar cites from the Hebrew translation): "And again the eternal people purchases its eternity at the price of temporal life. For it, time is not time, not a field it cultivates and a share in its inheritance. For it, the moment is solidified and remains fixed between an augmentable past and motionless future, so the moment ceases to fly away."

making it impossible to bring it inside.

> "O gates, lift up your heads! Up high, you everlasting doors, so the King of glory may come in!" (Psalms 24:7). Solomon recited this verse as he brought the Ark of the Covenant (*aron hakodesh)* into the Temple to rest in the holy of holies. However, Solomon had made the Ark of the Covenant ten cubits wide, and when it arrived at the entrance of the Temple, he discovered that the Temple's gates were also ten cubits wide. It is not possible for ten cubits to be brought inside ten cubits… Solomon stood back, felt deeply embarrassed, and did not know what to do. He began to pray before the Holy One Blessed be He [and his prayer was not answered].[6] What did Solomon do? Our rabbis said he went and got the coffin (*aron*) of his father, brought it to the Temple and declared, "O Lord God, do not reject Your anointed one; remember the loyalty of Your servant David" (2 Chronicles 6:42)… At that moment, David lived… for David had said, "O Lord, You brought me up from Sheol, preserved me from going down into the Pit." (Psalms 30:4). Solomon stated, "Master of the universe, act for his merits as it says, 'remember the loyalty of Your servant David.' (2 Chronicles 6:42)." Solomon's prayer was immediately answered… the glory of God filled the Temple, and the holy spirit cried out, "I praise those long dead as more fortunate than those still living." (Ecclesiastes 4:2)[7]

Solomon's dilemma, as described by the *midrash*, is not unlike that faced by Korach and his sons. Despite his dream to build the Temple and see it completed, the gates will not open for him. Nevertheless, Solomon's story offers a different ending than Korach's, for he discovers that he does, in fact, have agency. He is not forced to remain in limbo forever. While he may not be able to open the gates himself, he can do so with his father's help. Solomon then brings David's coffin to the Temple, the gates open, and Solomon puts the Ark inside, fulfilling both his dream and that of his father's as well. In doing so, Rav Shagar explains, the *midrash* teaches a fundamental lesson about the Jewish past:

> …not all which appears dead is truly dead. David, even in death, is able to impact the world and act upon it even more than his son Solomon, the living king. The *midrash* attempts to impart to us the understanding that the past, though it appears to us as inaccessible, as

[6] The section in brackets appears in the version of this *midrash* from *Numbers Rabbah* 14:3.

[7] *Exodus Rabbah* 8:1.

> buried and gone, is the only way to open the gates that lead to holiness.[8]

Though the past may appear beyond our reach, this is not the case, for we will inevitably encounter moments when we hear the past calling out to us, its echoes reverberating in the present. When we hear it, we are faced with a choice: Do we seek to answer its call and give it life once more, or do we close our ears to it forever, leaving it dead and buried? The rabbis contend that by heeding the call of the past, we gain the ability to unlock doors previously closed to us, and in opening them, we discover the possibility of a new and different future.

Whereas Jewish life in exile was a ghost-like existence—a life lived outside of history—Zionism, Rav Shagar explains, was an attempt to do as Solomon did. Zionism sought to reach out and bring the past into the present by returning to the Land of Israel, thereby opening up the gates of the Jewish future.

The notion that Zionism can accomplish this is perhaps most powerfully articulated by Theodore Herzl, viewed as the father of modern political Zionism. Though it is often assumed that Herzl only pursued Zionism as a political solution to the Jewish problem of antisemitism, this is incorrect. He also recognized that Zionism embodied more profound aspirations for the Jewish people, which he expressed in his novel *Altneuland*, translated from the German as *Old-New Land*.[9] The book imagines the Jewish state twenty years after its establishment and attempts to show the various ways in which the Jewish past will come alive once more in the Land of Israel. In the novel, Passover celebrations in the Jewish state recount the story of the Exodus from Egypt and include narratives of the New Exodus, the immigration of Jews around the world to the Land of Israel. In Herzl's imagined future, the Temple is rebuilt, and while no sacrifices are offered there, it serves as a national synagogue unifying the Jewish people. Though rooted in Herzl's secular European worldview, the novel reflects how Zionism has always dreamt of renewing the Jewish past in order to give life to the Jewish future.

Redeeming the Past, Redeeming the Torah

Unlike Herzl, most Secular Zionists did not believe that much of the Jewish past could be saved. Most of it, including nearly all of its religious elements, had to be jettisoned in order to build a thriving Jewish future in the modern word. In truth, Zionism appealed to many Jews precisely because it offered a way to be Jewish without holding on to outdated religious practices and beliefs. Returning to the Land of Israel may have created new opportunities for the Jewish people, but for many Jews, doing so meant leaving the Jewish tradition and most importantly the Torah behind. In the decades

[8] *Ba-Yom ha-Hu,* 353.

[9] When *Altneuland* was first translated into Hebrew, it was given the name "Tel Aviv." "Tel" is the Hebrew word for a small man-made hill containing the layers of ancient civilizations, while "Aviv" is the word for spring symbolizing renewal. The name became so popular that it was eventually given to the settlement that would become Israel's largest city.

following the establishment of the state, Secular Zionism came to recognize the error of its ways. It too began to realize that the Jewish people have always drawn their strength and vitality from the Torah and that Jewish identity cannot be sustained without an active and enduring relationship to it.[10]

If Secular Zionism did its best to jettison the past, Religious Zionism took the opposite approach and claimed that Zionism was the natural extension of it. For Religious Zionism, the Torah was seen as the ideal blueprint for the state, and despite the fact that many of its laws had not been put into practice for thousands of years, it could be easily shown how they were to be applied to contemporary times.[11] Rav Shagar, however, is much more circumspect about such claims and contends that Religious Zionism still struggles to understand the full weight of Israel's existence from a religious perspective. To emphasize this, he points to the example of the eclectic prayer service composed by the Israeli Chief Rabbinate for *Yom Ha'atzmaut*. Rather than fitting naturally within the *siddur*, the prayer service of *Yom Ha'atzmaut* is a hodgepodge of different prayers caught somewhere between weekday and holiday.

> In practice, it is a collection of prayers from different times of the year. You will find in it chapters of psalms, the prayer "*Lekhah Dodi*" from *Kabbalat Shabbat*, which are appropriate of course for the essence of the day; the concluding prayers of Yom Kippur, the *mi she-asah nisim* of *rosh hodesh*—all of this recited in the tune of *yom tov* with the Zionist addition of *shir ha-ma'alot* in the melody of *ha-Tikvah*... This is the way things are in the night when the holiday begins, and in the morning, the situation is worse: *hallel* without a *berkchah*, and a *haftarah* without a Torah reading… What was the motivation of those who created the service to organize it like this? Its artificiality is grating on the Jewish ear that is accustomed to the consistency of other prayer services throughout the year.[12]

The Yom Ha'atzmaut prayer service's lack of coherence, Rav Shagar explains, is in part

[10] A clear example of this can be found in Ruth Calderon's moving speech when appointed a member of Knesset in 2013: "The Torah is not the property of one movement or another. It is a gift that every one of us received, and we have all been granted the opportunity to meditate upon it as we create the realities of our lives. Nobody took the Talmud and rabbinic literature from us. We gave it away, with our own hands, when it seemed that another task was more important and urgent: building a state, raising an army, developing agriculture and industry, etc. The time has come to reappropriate what is ours, to delight in the cultural riches that wait for us, for our eyes, our imaginations, our creativity." Calderon's speech can be found in English at https://jewishweek.timesofisrael.com/the-heritage-of-all-israel/.

[11] Rav Yitzhak Herzog's efforts serve as a clear example of this. See Alexander Kaye, *The Invention of Jewish Theocracy: The Struggle for Legal Authority in Modern Israel* (Oxford, 2020).

[12] *Ba-Yom ha-Hu*, 267.

psychological. The sanctity of Halakhah depends on the feeling that it reflects an unchanging and eternal past. As a result, "any attempt, even one that is justified, to introduce a new practice which is not rooted in that same memory, is destined to failure because it is not able to establish itself in the past."[13] Despite Religious Zionism's self-confidence that the Torah can easily be brought into the present, the prayer service of *Yom Ha'atzmaut* appears to demonstrate otherwise.

> If Religious Zionism desires to be a part of the Zionist goal, to return the Jew to the historical reality of land and home, in the religious dimension as well—to bring the *shekhinah* to the earth in order to be part of the historical events that the Jewish people experience in the present—the prayers of *Yom Ha'atzmaut* prove how difficult this is.[14]

Trapped in a liminal moment that is neither exile nor redemption, how then is Religious Zionism to accomplish its lofty aspirations of bringing the Torah into the present and opening up the gates of the Jewish future? If up until now, it has focused primarily on redeeming the Land of Israel, Rav Shagar explains, it must now begin to focus on redeeming the Torah of Israel. To explain what this might mean, he turns to Walter Benjamin, the great German Jewish thinker of the early twentieth century and his "Theses on the Philosophy of History". Though an ostensibly secular thinker and most certainly not a Zionist, Benjamin saw a necessity for combining theology and philosophy in a way not unlike Rav Shagar. He too recognized that the past is not easily brought into the present and that too often progress demands that the past must die for the future to live. Though the last two centuries have brought about extraordinary advancements in all aspects of society, we rarely pay attention to what was lost along the way and to those who paid the price. According to Benjamin, when history is viewed as an unfolding process of inevitable improvement, it barrels forward, leaving only destruction in its wake.

> This is how the angel of history must look. His face is turned towards the past. Where a chain of events appears before *us*, *he* sees one single catastrophe, which keeps piling wreckage upon wreckage and hurls it at its feet. The angel would like to stay, awaken the dead, and make whole what has been smashed. But a storm is blowing from Paradise and has got caught in its wings; it is so strong that the angel can no longer close them. The storm drives him irresistibly into the future, to which his back is turned,

[13] *Ba-Yom ha-Hu*, 269.

[14] Ibid., 271

> while the pile of debris before him grows towards the sky. What we call progress is *this* storm.[15]

For Benjamin, Judaism provides a redemptive alternative to modern progress, and in a certain sense, it also provides an alternative to the path most often taken by both Secular and Religious Zionism. Through the power of memory, Judaism retains a connection to the past, which creates the possibility of redeeming those voices long since believed to be lost to the destructive forces of history. However, to do this, Benjamin explains, one must "brush history against the grain."[16] Instead of allowing a single narrative to dominate, those voices swept aside must be recovered and given life once more. If Secular Zionism sought to kill most of the past, Religious Zionism failed to allow it to find its own voice in the here and now. The same approach, Rav Shagar argues, must be applied to the Torah to redeem what has been lost in the transformations and ruptures brought about by both modernity and Zionism. One must look into the tradition and find a way to "tell the story differently" to allow it to be "turned into a song in a manner that brings forth its light."[17]

Rav Shagar saw the redemption of the Torah and its many voices as his life's mission. After being seriously wounded in the Yom Kippur War, he was forced to recuperate in the hospital for many months. During that time, he came to realize the following:

> I was wrapped in bandages and wounded. There, I understood that the Torah is wrapped in bandages, covered in infinite wrappings and that it, like me, needed to get out of her bandages and constraints. Since then, I have gone about with this awareness in all that I learn and teach: to take the Torah out of its bandages and expose it to the light.[18]

Rav Shagar hoped that the Torah of the Land of Israel could redeem the past and transform the future. Like Solomon, he understood that the gates which lead to redemption could only be opened when the bandages are removed and the dead are brought back to life—when that which had been deemed lost and gone is given new vitality once more.

Reading the *Bnei Ysoscher* in Jerusalem

I have been blessed to experience such a transformative Torah during my own time in the Land of Israel. When I first read the letter sent to my parents by our cousin outlining the family

[15] "Theses on the Concept of History," Thesis 9. Translation from Michael Lowy, *Fire Alarm: Reading Walter Benjamin's 'On the Concept of History'* (Verso Books, 2016), 60–62.

[16] Ibid. Thesis 7.

[17] *Shiurim Al Likkutei Moharan*, vol. 1 (Mekhon le-Kitvei ha-Rav Shagar, 2012), 150. Rav Shagar also compares this to *ha'alat nitzotzot*, the raising up of the divine sparks scattered throughout creation.

[18] Elchanan Nir, "Be-tzel ha-Emunah," *Makor Rishon* (June 18, 2017).

history, it had been more than a century since Rabbi Shlomo Gross was alive, more than twenty years since the letter had been written, and nearly a decade since my cousin's passing, but in reading his words, I could hear his voice, the voice of the past, calling out to me as if he were right before me. Over the years, I found myself trying to answer them by returning to the books of the *Bnei Ysoscher* out of the conviction that if his teachings had spoken so profoundly to my ancestor, perhaps they could speak to me as well.[19]

After making *aliyah*, the *Bnei Ysoscher*'s *seforim* became a fixture of the Torah I study with my children on Shabbat. It feels, if only in some small way, that his Torah serves as a bridge between my family's distant past and its still undetermined future. I like to think Rabbi Gross would have appreciated this, as would my cousin Rabbi Steinberger. The letter he wrote to my parents expresses this hope by closing with a verse from Malachi, which describes the prophet Elijah as the harbinger of redemption. Elijah's role is not only to announce the messiah's arrival but also to provide another critical function: He will heal the rupture that exists between past and present. He will "bring together parents with children and children with parents."[20]

It was only recently that I discovered that my parents made an audio recording of our visit to Brooklyn, and in it, one can hear my cousin recount our family's history and reflect upon his own experience during the Holocaust. He mentions he is writing a Yizkor book for those from Munkatch, because without such a record those who died once will die again. Their very memory will be forgotten forever. When my father heard this, he responded with something profound, something Rav Shagar and Walter Benjamin would have agreed with wholeheartedly: "If there are books, there is hope. Someone will read it and remember it. We know this. You open the Talmud, and they are still here."

Though it may appear at times as though the gates of the Temple remain closed and that we are cut off from both our past and future, we must remember they are never permanently shut. Walter Benjamin himself makes this point explicit by drawing on the same image of the gate described in the *midrash* discussed by Rav Shagar.

> We know that the Jews were prohibited from inquiring into the future: the Torah and the prayers instructed them in remembrance… This does not imply, however, that for the Jews, the future became homogeneous, empty time. For every second was the small gateway in time through which the Messiah might enter.[21]

[19] After many years, I even discovered that the *Bnei Ysoscher* also comments on the *midrash* of Korach and the gates of the Temple. See *Bnei Ysoscher, Ma'amarei Chodshei Tamuz-Av*, Maamar 3:11.

[20] Malachi 3:24.

[21] "Theses on the Concept of History," Thesis B. *Fire Alarm*, 102.

If we refuse to see the future merely as the inevitable result of a long series of events, it becomes open to infinite possibilities. The gate to such a future can only be opened if we, like Solomon, are carrying the Jewish past with us—as much of it as we can possibly hold in our hands including those voices we struggle to make sense of. By remembering them, we find a way to bring them into the present and breathe new life into them. In doing so, we give them the chance not only to speak but sing, and when they do, the gates of the Temple open just a little bit wider.

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