

Zeramim: An Online Journal of Applied Jewish Thought

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Dear readers,

We begin with death and end with birth.

That is, *Zeramim*'s latest assemblage of articles overviews a wide expanse of Jewish life. After our last issue, a special issue dedicated to Judaism and the political in the 21st century, our third issue of *Zeramim*'s second volume is a return to form, publishing pieces on a potpourri of subjects that reflect on the Jewish past in order to be present in the future.

Each Jewish year, *Zeramim* publishes issues during three seasons: fall, winter, and spring. Thus, this issue will be our last of 5778. Nonetheless readers will welcome 5779 having read Judith Hauptman's "A Talmudic Reading of the High Holiday Prayer *Un'taneh To-kef,*" a study of one of the most famously haunting and enigmatic passages of Rosh Hashanah liturgy. In it, Hauptman provides a solution to the puzzle of the perplexing language that is often understood to be the climactic turning point in this *piyyut* (liturgical poem). And, as Hauptman argues, the poem's ultimate takeaway remains widely misunderstood in many prayer books.

Turning the hand of time to the beginning of the 20th century, Joseph H. Prouser examines a surprising case of clear prejudice expressed in a widely publicized address by the Jewish Theological Seminary's second president, Solomon Schechter. In "Quacks and Real Americans: Solomon Schechter's Anti-Mormonism," Prouser describes the America that Schechter came to know, colored by the rumors and current events that placed the Church of Jesus Christ and Latter-day Saints at the center of heated debates, controversy and—evidently even within the confines of the Seminary—mockery. Though all persons are a product of their time, Prouser suggests that the intolerance exhibited by Schechter is a foul legacy that has yet to be mended by those who have taught and learned in Schechter's name.

Perhaps it is that words can hurt because of the power attributed to words. For the rabbis whose words filled the Mishnah, Martin S. Cohen argues, these very words were believed to effect changes as immense as the laws of physics. In "Rabbinic Self-Confidence: Bending the World to the Word," Cohen examines rabbinic dicta surrounding the physics of how ritual contamination spreads, highlighting teachings that contradict previous statements about how they understand physics to work. As the rabbis considered their words to be part of a

chain of the tradition Moses received in the wilderness, Cohen provides a meditation on what it must have meant for these early sages to assert the authority both to recover long lost laws (even scientific truths) from Sinai and, with equal surety, to expand upon these very ideas.

Steeping answers in precedents set long before the questions asked could ever have arisen lies at the core of rabbinic interpretation and innovation. Thus, Nelly Altenburger naturally grounds a responsum on gun control in the earliest sources of Jewish law and links them to medieval and modern halakhic codes. Altenburger digs deeper, exploring the wells of these Jewish teachings in light of the findings of sociologists and journalists in their researching the foundations of the space guns occupy in American culture. In "Jewish Law and Guns: A Modest Proposal," Altenburger supplies guidelines for a responsible Jewish approach to a life where guns intrude unwelcome spaces.

We began the core of this issue with the frame of death—from contemplating mortality in *Un'taneh Tokef*, to delineating a Jewish attitude towards lethal instruments. The coda of this issue of *Zeramim* ends with birth—from the sages who imagined the Divinely created world evolving as a human fetus develops, to the reemerging ritualization of *Simchat Beit HaSho'evah* ("the joy of the house of the drawing [of water]"). In "Offering to the Foundation Stone," Jill Hammer provides a modern prayer giving new voice to an ancient mythical foundation of the universe—bringing celebrants of Sukkot's water-libation ceremony together with the very time and space where matter began.

With an expanding pool of readers, writers, and editors, the *Zeramim* editorial team is excited to present the latest issue of our journal. As a free online journal, we encourage you—our readers—to share and to discuss with your peers, students, teachers, and politicians the pieces in this issue you find most compelling. Between this latest issue and our back issues—catalogued by ISSN, indexed by RAMBI (The Index of Articles on Jewish Studies), and archived on our website—we hope that *Zeramim* leaves you with plenty of food for thought for the summer until we return in the fall.

With gratitude,

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A TALMUDIC READING OF THE HIGH HOLIDAY PRAYER *UN'TANEH TOKEF*

Judith Hauptman

Jews flood the synagogues on Rosh Hashanah. Many who do not show up at any other time find their way to services on the very day that the liturgy is the longest. True, they come to hear the *shofar* blown, but they also come to hear, at the beginning of the repetition of *Musaf*, the *Un'taneh Tokef* (נתתנה תקף) prayer. What makes this prayer so attractive? Could it be the poignant question, "Who will live and who will die?" Or the daunting list of ways in which one may die?

Most people think that the message of this *piyyut*, or liturgical poem, is that our fate is in God's hands, that it is God who determines how long we live, and that we have, at best, little control over our future. These ideas are borne out, or perhaps suggested, by many of the English translations of the climactic line of this prayer, *ut'shuvah*, *ut'filah*, *uz'dakah ma'avirin et ro'a hagezeirah* (מעבירין את רע הגוירה ותשובה ותפלה וצדקה). Here are a few:

Gates of Repentance (Reform, 1978): "But repentance, prayer, and charity temper judgment's severe decree."³

¹ These words mean, "We will acknowledge (נתנה), netaneh) the power (חוקף, tokef) [of this day's holiness]." This prayer is a well-known feature of the Ashkenazi rite. It rarely appears in Sephardi rites.

The poem continues after this line, but, at most services, this is where the public recitation and the cantorial rendition end. The first several paragraphs of *Un'taneh Tokef* are the subject of this article.

³ Chaim Stern (ed.), *Gates of Repentance: Shaarei Teshuva* (Central Conference of American Rabbis 1978; revised version 1996), p. 178.

Mishkan Hanefesh (Reform, 2015): "But through return to the right path, through prayer and righteous giving, we can transcend the harshness of the decree."

High Holiday Prayer Book (Conservative, 1951): "But repentance, prayer, and righteousness avert the severe decree." ⁵

Mahzor Hadash (Conservative, 1977, 2001), "But repentance, prayer, and deeds of kindness remove the severity of the decree."

Mahzor Lev Shalem (Conservative, 2010): "But T'shuvah, T'fillah, and Tz'dakah have the power to transform the harshness of our destiny."⁷

Artscroll Mahzor (Orthodox, 1985): "But repentance, prayer, and charity remove the evil of the decree."8

Lawrence Hoffman's *Prayers of Awe* series: "And⁹ repentance, prayer and charity help the hardship of the decree pass." ¹⁰

Wikipedia, "Unetanneh Tokef:" "But Repentance, Prayer, and Charity annul the severe Decree." 11

These translations share two ideas: they call God's decision about a person's fate in the coming year a "decree," and they see the

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⁴ Hara Person (ed.), *Mishkan Hanefesh: Machzor for the Days of Awe*, (Central Conference of American Rabbis 2015), p. 180.

Morris Silverman (ed.), *High Holiday Prayer Book*, (The Prayer Book Press for the United Synagogue of America 1951), p. 148.

⁶ Sidney Greenberg and Jonathan D. Levine (ed.), *The New Mahzor for Rosh Hashanah and Yom Kippur: Mahzor Hadash* (Prayer Book Press 1977), p. 285.

⁷ Edward Feld (ed.), *Mahzor Lev Shalem* (Rabbinical Assembly 2010), p. 144.

⁸ See, e.g., Nosson Scherman (ed.), *The Complete ArtScroll Machzor: Rosh Hashanah (Nusach Ashkenaz)* (Mesorah 1985), pp. 483 and 521.

⁹ This is the only translation of this group that begins with "and" rather than "but." I will argue below that "but" makes more sense.

Joel M. Hoffman, "Un'taneh Tokef: Translation" in Lawrence Hoffman (ed.), Who By Fire, Who By Water: Un'taneh Tokef (Jewish Lights 2010), pp. 29-32, esp. p. 31.

¹¹ See "Unetanneh Tokef - Wikipedia" at *Wikipedia*, as accessed at https://en.wikipedia.org/wiki/Unetanneh_Tokef on June 12, 2018.

outcome of repentance, prayer, and acts of kindness¹² as reducing the severity of the decree but not eliminating it. Only *Wikipedia*, of these translations, says that the three actions can completely cancel it.

In my opinion, most translators have misunderstood the import of this key line of *Un'taneh Tokef*.¹³ It is clear from the language of the *piyyut* that the author, whose identity remains unknown,¹⁴ based his *piyyut* on Talmudic teachings. A good way, therefore, to determine his message is to examine the sources he utilized. The words *ut'shuvah ut'filah uz'dakah*, already appear in the Jerusalem Talmud (Ta'anit 2:1, 65b), albeit in a different order from the High Holiday prayerbook:

א"ר לעזר שלשה דברים מבטלין את הגזירה קשה ואלו הן תפלה וצדקה ותשובה ושלשתן בפסוק אחד ויכנעו עמי אשר נקרא שמי עליהם ויתפללו זו תפלה ויבקשו פניי זו צדקה... וישובו מדרכיהם הרעים זו תשובה אם עשו כן מה כתיב תמן ואני אשמע השמים ואסלח לחטאתם וארפא את ארצם.

R. Lezar¹⁵ said: **three things cancel the harsh decree**, and they are: **prayer**, *zedakah*, and **repentance**. And all three appear in the same verse: "When My people, who bear by My name, humble themselves and pray" (II Chronicles 7:14)—this [phrase] refers to **prayer**; "and seek My fa-

¹² I am rendering *zedaqah* (צדקה) as acts of kindness. It is beyond the scope of this article to thoroughly investigate this hard-to-translate term.

Some of these translations are likely to be theological interpretations. My goal in this article is to recover the Talmudic origins of the liturgical poem and to translate this line accordingly.

14 Much has been surmised about the authorship of this *piyyut*. See Lawrence Hoffman, "Un'taneh Tokef as Poetry and Legend," in Who By Fire, Who By Water (Jewish Lights 2010), pp. 23-24, in particular. My assumption throughout this article, despite the mystery surrounding the *piyyut*'s authorship, is that the same person composed all of Un'taneh Tokef's first section, i.e., beginning with the words Un'taneh tokef and ending with ro'a hagezeirah (הע הגוירה). My conclusions hold even if the second part of Un'taneh Tokef was written later by a different author.

Translation of the verse is from the New Jewish Publication Society of America Tanakh (Jewish Publication Society 1985). Rest of translation is mine. vor,"—this [phrase] refers to *zedakah*... "and turn from their evil ways" (*ibid*.)—this [phrase] refers to **repentance**. If they do thus, "I will hear in My heavenly abode and will forgive their sins and heal their land" (*ibid*.).¹⁶

This teaching of R. Lezar appears in tractate Ta'anit, a volume dealing with communal fasts, those instituted by leaders of the community when a drought, locusts, or other calamity seems imminent. People back then understood these untoward events as punishment by God for their misdeeds. R. Lezar suggests that, if the members of the community pray, engage in acts of kindness, and turn from their evil ways, they may influence God to withhold retribution. His fitting prooftext from II Chronicles is God's response to King Solomon's entreaty. Upon dedicating the temple he built in Jerusalem, the king asked God to hearken to the pleas of people who will come there to ask for deliverance. God replied that if they submit themselves to Him and abandon their evil ways, He will forgive their sins. R. Lezar's statement shows that the phrase *ut'shuvah ut'filah uz'dakah* originated in a context other than the High Holidays.

We turn now to the Babylonian Talmud. R. Yizhaq, who lived a little later than R. Lezar,¹⁸ and possibly was his student,¹⁹ appropriated R. Lezar's teaching for a different but related purpose. R. Yizhaq's teaching appears not in tractate Ta'anit but Rosh Hashanah (16b). The *amora*²⁰ presents a collection of eight statements²¹ related to the holiday. The sixth, below, is of particular interest:

¹⁷ See Mishnah, Ta'anit 3:5-7.

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¹⁶ Emphasis added.

Both are land of Israel amoraim (אמוראים, scholars of the rabbinic tradition in the period immediately following the compilation of the Mishnah.). R. Lezar is a second-generation amora (אמורא, the singular of amoraim), and R. Yizhaq a second-third-generation amora. R. Yizhaq's statement appears only in the Babylonian Talmud.

 $^{^{\}rm 19}~$ As suggested by the biographical note in the Bar Ilan database.

²⁰ See fn. 18.

²¹ Some talk about shofar blasts and others about sin. A few talk about holiday behavior in general.

ואמר רבי יצחק: ארבעה דברים מקרעין גזר דינו של²² אדם, אלו הן: צדקה, צעקה, שינוי השם, ושינוי מעשה. ²³ צדקה דכתיב וצדקה תציל ממות; צעקה דכתיב ויצעקו אל ה' בצר להם וממצקותיהם יוציאם; שינוי השם דכתיב שרי אשתך לא תקרא את שמה שרי כי שרה שמה, וכתיב וברכתי אתה וגם נתתי ממנה לך בן; שינוי מעשה דכתיב וירא האלהים את מעשיהם, וכתיב וינחם האלהים על הרעה אשר דבר לעשות להם ולא עשה. ויש אומרים: אף שינוי מקום, דכתיב ויאמר ה' אל אברם לך לך מארצך, והדר ואשד לגוי גדול.

R. Yizhaq also said: Four things rip up a person's verdict24 and they are: zedakah, crying out [to God], changing one's name, and changing one's behavior.25 Zedakah, for it says, "Zedakah saves from death" (Proverbs 10:2); Crying out, for it says, "they called out to God in their difficulties, and God will deliver them from their distresses" (Psalms 107:6); Changing one's name, for it says, "Sarai, your wife, shall no longer be called by this name but rather Sarah shall be her name," and the verse continues, "and I will bless her and give her a child" (Genesis 17:15); Changing one's behavior, for it says, "God saw their deeds," and the verse continues, "God changed His mind about the punishment He was about to visit upon them" (Jonah 3:10). And some say, also changing where one lives [will rip up a person's verdict]. As it says, "God said to Abram, go forth from your birth-

²² The Munich 95 manuscript of this passage omits the word *gezar* (גוד), only saying that four things rip up a person's *din* ("judgment"). When the two words appear together, the phrase *gezar din* means a "verdict." The absence of *gezar* here in Munich 95 is likely a copyist's error and thus ought not affect one's understanding or translation of the printed Vilna text reproduced above.

One further related manuscript variant is that there is a *vav* (1, meaning "and") before the second, third, and fourth required acts.

²⁴ See fn. 22.

²⁵ See fn. 23.

place," and then it says "And I will make you into a great nation" (Genesis 12:1,2).²⁶

Before comparing R. Yizhaq's statement in the Bavli (*i.e.*, the Babylonian Talmud) to R. Lezar's in the Yerushalmi (*i.e.*, the Talmud of Jerusalem), there is one more text to bring into this conversation. On the same page of Talmud as R. Yizhaq's High Holiday "sermon," ²⁷ we find the now-famous statement that, on Rosh Hashanah, God opens the Book of Life and the Book of Death and decides the future of each individual:

אמר רבי כרוספדאי אמר רבי יוחנן: שלשה ספרים נפתחין בראש השנה, אחד של רשעים גמורין, ואחד של צדיקים גמורין, ואחד של בינוניים. צדיקים גמורין נכתבין ונחתמין לאלתר לחיים, רשעים גמורין נכתבין ונחתמין לאלתר למיתה, בינוניים תלויין ועומדין גמורין נכתבין ונחתמין הכפורים. זכו נכתבין לחיים, לא זכו נכתבין למיתה.

Said R Krospedai in the name of R. Yohanan: Three books lie open on Rosh Hashanah: one for [inscribing] those who are completely evil; one for inscribing those who are completely righteous, and one for those in the middle. The completely righteous are immediately inscribed [on Rosh Hashanah] and sealed for life; the completely evil are immediately inscribed and sealed [on Rosh Hashanah] for death. As for those in the middle, their fate remains undecided from Rosh Hashanah until Yom Kippur. If they merit, they are inscribed for life; if not, they are inscribed for death.

This statement makes it very clear that on Rosh Hashanah there are only two fates that God metes out to His subjects: life and death. It follows that, when R. Yizhaq says that four acts on Rosh Hashanah can cause God to tear up a person's verdict—a *gezar din* (גור דין)—the verdict the *amora* most likely refers to is death.²⁸

²⁷ Bavli, Rosh Hashanah 16b.

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²⁶ Emphasis added.

²⁸ When R. Lezar used the expression "harsh decree" (גוירה קשה, gezeirah qashah) he was referring to calamities like droughts which lead to

If we now align the two teachings of R. Lezar and R. Yizhaq, we will see that R. Yizhaq did not issue an independent statement but modified R. Lezar's teaching to make points of his own. The first modification lies in R. Yizhaq's increasing the number of actions from three to four. R. Yizhaq repeats R. Lezar's request for acts of kindness, prayer, and repentance, and then adds a fourth, "changing one's name," which is way of adopting a new identity. Also true is that, for mnemonic assistance, R. Yizhaq alters the designation of two of R. Lezar's three actions: he calls prayer ze'aqah (געקה, "crying out"),29 instead of tefilah, so that it sounds like, and rhymes with, zedakah; and he calls repentance shinui ma'aseh (שינוי מעשה), which means "changing one's deeds," so that it sounds like shinui hasheim (שינוי השם "changing one's name"). He convincingly argues that, in the Bible, change of name necessarily means change of role and fate, as it did for Abraham and Sarah. As for changing one's deeds, he cites an apt verse from Jonah (3:10): when God saw the improved behavior of the people of Nineveh, He rescinded His plan to destroy the city and its inhabitants.

The second way in which R. Yizhaq modifies R. Lezar's teaching is even more significant: instead of claiming that three actions can help an entire community avoid a common disaster, R. Yizhaq asserts that those same three actions, plus one more, if performed on Rosh Hashanah, can save an individual from a personal disaster, *i.e.*, from God's verdict of death. R. Yizhaq is thus transforming Rosh Hashanah, characterized by the Torah as a day of blasting (*teru'ah*) and offerings,³⁰ into a day of prayer and repentance and acts of kindness to be performed by an individual for the individual's benefit. That is—according to R. Yizhaq, if prayer, acts of kindness, and repentance can save a community from impending disaster, as noted by R. Lezar—it stands to reason that these three actions can do the same for an individual who faces a decree of death. Mishnah Yoma does talk about repentance³¹ but gives few details on how to accomplish it.

death. Thus, when R. Yizhaq employs the term *gezar din* in conjunction with Rosh Hashanah, a term similar to R. Lezar's *gezeirah qashah*, it most likely connotes a verdict of death in the coming year.

²⁹ See Mishnah, Ta'anit 3:7.

³⁰ Numbers 29:1-6; Leviticus 23:24.

³¹ See Mishnah, Yoma 8:9:

R. Yizhaq spells out what repentance and related behaviors look like.³² Understanding Rosh Hashanah as a day of judgment,³³ already noted by statements in the Mishnah and Tosefta,³⁴ made good sense in post-Temple times when many holidays were undergoing change given that offerings were no longer possible. One might even say that R. Yizhaq, upon seeing R. Lezar's prooftext from II Chronicles, is suggesting that the special connection to God that Jews had in the time of the Temple can now be maintained via the High Holiday strategy that he prescribes.

עבירות שבין אדם למקום יום הכפורים מכפר. עבירות שבין אדם לחבירו אין יום הכפורים מכפר עד שירצה חברו.

Transgressions between a person and God, Yom Kippur atones for. Transgressions between one person and another, Yom Kippur does not atone for until the offender appeases

the person offended.

- 32 R. Yizhaq is not the first to say that repentance cancels a verdict. See, for instance, in the Babylonian Talmud, Rosh Hashanah 17b: " אמר רבי ("R. Yohanan said: great is repentance for it rips up a person's verdict [of death]..."). R. Yohanan lived in the land of Israel a little before R. Yizhaq. R. Lezar was R. Yohanan's student.
- We cannot be sure that R. Yizhaq views Rosh Hashanah as the beginning of ten days of repentance, culminating in Yom Kippur, but it is likely that he does. Although the Mishnah calls Rosh Hashanah the one and only day of judgment for human beings, the Tosefta and the two Talmuds see Rosh Hashanah as the beginning of a period of repentance. See the next footnote.
- ³⁴ See, for instance, Mishnah, Rosh Hashanah 1:2, which calls Rosh Hashanah a day on which people are judged. Tosefta, Rosh Hashanah 1:13 understands Rosh Hashanah differently:

. הכל נידונין בראש השנה וגזר דינו נחתם ביום הכפורים דברי ר' מאיר. All are judged on Rosh Hashanah, and every person's verdict is sealed on Yom Kippur; these are the words of R. Me'ir.

See also my discussion of these and other texts, in *Rereading the Mishnah* (Mohr Siebeck 2005), pp. 12-13.

With these Talmudic texts in the background, we can now turn to *Un'taneh Tokef*. The prayer's wording makes it abundantly clear that the author was familiar with these Talmudic texts when he composed his poem. The first paragraph describes God as writing, recording, and sealing, as we saw above in a text from tractate Rosh Hashanah. The second paragraph says that God is like a shepherd who makes each sheep pass under his staff so that he can count them accurately. as stated in Mishnah Rosh Hashanah.³⁵ So too, the prayer continues, again basing itself on the same Mishnah, all inhabitants of the world will pass before God as God decides the fate of each for the coming year. The third paragraph states that individuals are inscribed on Rosh Hashanah and that their fate is sealed on Yom Kippur. It goes on to say that God decides in this ten-day period how many individuals will pass away in the coming year and how many will be born, who will live out the year and who will not, who will die at the end of his days and who prematurely, and so on.

Following this long list of possible outcomes, both good and bad, the author says that repentance, prayer, and deeds of kindness will "make pass," *i.e.*, cancel, the evil decree,³⁶ meaning death. After

בארבעה פרקים העולם נידון: בפסח על התבואה, בעצרת על פירות... האילן, בראש השנה כל באי עולם עוברין לפניו כבני מרון... At four seasons, the world is judged: at Pesach for grain; at Azeret (Shavuot) for fruit of trees, at Rosh Hashanah all inhabitants of the world pass before Him like sheep...

Emphasis added.

Rabbi Jeff Hoffman has noted that "the evil decree" is the correct translation of ro'a hagezeirah. Although the word for "evil" (ro'a, רוע, ובוע) in the phrase ro'a hagezeirah appears as a noun in the construct state, it was common among medieval Hebrew poets to turn a noun in a construct state into an adjective. Hence, the phrase ro'a hagezeirah is the equivalent of the gezeirah ra'ah (אוירה רעה, "evil decree"). See Hoffman's note on translating ro'a hagezeirah, in "A Linguistic Analysis of the Phrase Ma'avirin et Ro'a HaGezeirah—מעבירין את רוע הגוירה מעבירין את רוע הגוירה at TheTorah.com: A Historical and Contextual Approach, as accessed at http://thetorah.com/linguistic-analysis-of-maavirin-et-roa-hagezeirah on June 12, 2018.

³⁵ Mishnah, Rosh Hashanah, 1:2 reads:

asserting that so much depends on God, the author surprises his audience by suggesting that there are ways for human beings to change God's mind, to take control of their own future.³⁷ He thus provides an incredibly upbeat, optimistic conclusion to the first section of his liturgical poem.³⁸

Not everyone agrees with this interpretation of that line of the prayer. The translators cited above argue that the notion of being in control of one's fate does not follow logically from the preceding paragraphs. At best, they say, one can lessen the harshness of the decree, but not cancel it. In my opinion, in this climactic passage the poet is saying that our fate is in our own hands. God has a plan for each one of us, but we have it within our power to cause God to alter it. To understand the phrase "who will live and who will die" as asserting that life and death are determined by God alone is to distort what this poet is saying. His point is just the opposite: the actions of the individual can determine his or her own fate. True, God may be thinking of inscribing him or her in the Book of Death, but, the author says, each person has the ability to stay God's hand. A key reason this piyyut induces fear and trembling in many people is that they don't understand it correctly. The fault lies in part with the misleading translations. The correct message of *Un'taneh Tokef*, which, as I have shown, is based on the teachings of R. Lezar and R. Yizhaq, is that—despite the warnings of awful ways to die – there is a possibility for complete reversal of fate via prayer, acts of kindness, and repentance. That is the core message of *Un'taneh Tokef*. The author of this liturgical poem has conflated the teachings of R. Lezar in the Yerushalmi and R. Yizhaq in the Bavli; the anonymous poet requires three forms of behavior, precisely those mentioned in the Yerushalmi, but claims that they will

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³⁷ For this reason, translating the opening *vav* (1—the *u* in *ut'shuvah*) as "but [repentance...]" is more correct than translating it as "and," as suggested by Joel Hoffman. See fn. 10.

³⁸ See Reuven Hammer, *Entering the High Holy Days* (JPS 1998), p. 89. According to Hammer, this climactic line says that no matter what one has done, the penalty of death can be averted by performing the three acts of prayer, charity, and repentance. His source is *Bereishit Rabbah* 44:12 (Theodor-Albeck eds., p. 434), a collection of midrashic teachings dating to the Talmudic period. See next note.

save the individual, not the community, from disaster, as in the Bavli.39

One more step is needed to clinch this argument, and that is to determine why the author chose to use the word ma'avirin in his key statement, which literally means that the three actions will "make [the decree] pass," rather than "cancel." Does the Hebrew word ma'avirin (מעבירין) imply that rather than cancel a decree, God is simply going to downgrade it to something lesser, just "transform" or "temper" it somewhat? I think not. The verb in the Yerushalmi is m'vat'lin (מבטלין), which means to "cancel," and, in the Bavli, m'gar'in (מקרעין), which means to "rip up." Both teachings thus speak of total abrogation.

There is a reason that the author of this liturgical poem, who wanted to convey outright cancellation of the harsh decree, chose a verb that is open to more than one interpretation. He utilizes the root '.B.R (ע.ב.ר) in this final statement because he employed this verb a number of times earlier in the prayer, as already noted by Rabbi Jeff Hoffman.⁴⁰ This is good literary form. Each time the root '.B.R appears, it means something different. The first use is in the statement, "as a shepherd passes (מעביר, ma'avir) each sheep under the staff when counting them."41 This line is taken from Mishnah, Rosh Hashanah 1:2., which uses that very phrase.⁴² In the next section of the prayer, the author asks, how many will pass away (יעברון, ya'avrun) and how

³⁹ It is less likely that the poet knew only the passage in *Bereishit Rabbah* which presents R. Lezar's teaching, and which is followed by R. Yizhaq's teaching in a significantly abbreviated form. Furthermore, Bereshit Rabbah does not place the passage in a High Holiday context. It appears in Genesis, in connection with God telling Abraham to count the stars; see Genesis 15:5. The very next verse says that God considered Abraham's steadfast belief in Him to be a zedagah, the same word that appears in the statements of both R. Lezar and R. Yizhag.

⁴⁰ See fnn. 36-37. I am elaborating on R. Jeff Hoffman's point that the root '.B.R. is a leitmotif of *Un'taneh Tokef*.

⁴¹ The same verb '.B.R is used three times in this context.

The two words, b'nei meron, are really one, numero, meaning "troops," as stated later in the Babylonian Talmud, Rosh Hashanah 17a. But another view in the Talmud understands these words as sheep. See also Hanokh Albeck (ed.), Mishnah Mo'eid, Rosh Hashanah (Bialik 1952), p. 486.

many will be created (יבראון), yibarei'un). Initially using the same root, '.B.R—this time meaning to die—the author balances this usage with a verb that sounds similar—B.R.' (ב.ר.א)—but which means just the opposite, to be born. And finally, toward the end of that paragraph, instead of using a verb from either of the two Talmuds to express the notion that one's fate can be reversed, the author again chooses to employ the verbal root '.B.R.—ma'avirin. He utilized this verb, more opaque than either R. Yizhaq's "ripping up" (Q.R.', ע.ר.ע) or R. Lezar's "cancelling" (B.T.L, לב.ט.ל, because this verb ('.B.R) runs through the author's piyyut. By replacing the Talmud's m'vat'lin and m'qar'in with ma'avirin, the author is not changing the meaning of the verb—it still connotes to cancel—he is just using, for poetic effect, the same verb he used earlier, now giving it an active rather than passive connotation. Unlike sheep passing before a shepherd, people are being told to assert control over their own future.

In this way, the anonymous poet has incorporated into the High Holiday liturgy a Talmudic teaching about our ability to take our fate into our own hands. As stark as is the paragraph describing all the ways that God can punish an individual, the poet's point is that we can still exercise control over our own destiny.

People are right to crowd the synagogues on Rosh Hashanah and Yom Kippur to hear *Un'taneh Tokef*. Its message is direct, hopeful, and exhortative. No matter how many misdeeds one has committed in the past year, by means of prayer, repentance, and acts of kindness, one can get a reprieve and start over, *tabula rasa*. That is the immensely appealing theme of the High Holidays, and of this poem in particular.

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Jewish Research. In 2004, she established Ohel Ayalah, a free, walk-in High Holiday service for Jews in their 20s and 30s. Hundreds attend each year.

A Talmudic Reading of the High Holiday Prayer Un'taneh Tokef

Judith Hauptman

QUACKS AND REAL AMERICANS: SOLOMON SCHECHTER'S ANTI-MORMONISM

Joseph H. Prouser

Our heavenly Father is more liberal in His views, and boundless in His mercies and blessings, than we are ready to believe or receive...

- Joseph Smith¹

The love of God's creatures must include all human-kind, regardless of religion and race. The narrow-mindedness that sees whatever is outside our people as impure and contaminated is one of those terrible blights that destroys any good structure.

- Rabbi Abraham Isaac Kook²

The esteem and veneration with which Professor Solomon Schechter (1847-1915) is celebrated as "a world-class scholar" and as the pioneering founder of the central institutions of Conservative Judaism constitute a florid and copious panegyric which, it might fairly be said, runs afoul of its subject's own standards of critical analysis.

[&]quot;Teachings of the Prophet Joseph Smith," compiled by Joseph Fielding Smith and the church historian's staff (1976), Section Five (1842-1843), p. 257. Quoted by Elder Jeffrey R. Holland, General Conference Address, April 13, 2012, coinciding with the seventh day of Passover 5772.

² Middot Ha-Raayah, Ahavah, #5.

Mel Scult, "Schechter's Seminary" in Tradition Renewed: A History of the Jewish Theological Seminary, ed. Jack Wertheimer, (New York: JTSA, 1997), vol. I, p. 89.

In addition to reorganizing and serving as President of the Jewish Theological Seminary and recruiting its faculty, Schechter was founder and President of the United Synagogue of America (later renamed United Synagogue of Conservative Judaism), and, until his death, its ho-

In his introduction to Schechter's collected *Seminary Addresses* and *Other Papers*, Rabbi Louis Finkelstein, Schechter's student and eventual successor as President (and then Chancellor) of the Jewish Theological Seminary of America, wrote:

In Solomon Schechter, modern Judaism produced a figure comparable in depth of understanding, breadth of learning, originality of thought, force of personality, genius for organization, brilliance of vision, and religious insight, to the foremost personalities of post-Talmudic times.⁵

Professor Finkelstein pays tribute to Schechter's "astonishing genius," describing him as "fearless, determined, confident, energetic and resourceful," admired by his contemporaries for his "kindliness of spirit, a charitable forgiveness of errors, a profound love." Rabbi Neil Gillman, who served JTS variously as Professor of Philosophy and Rabbinical School Dean, asserts that

Schechter represented in his very person the kind of integration that was at the heart of everything the Seminary stood for... he was open-minded intellectually and traditionalist in his practice.¹⁰

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norary president. He also played a decisive role in the founding of the Rabbinical Assembly, the professional organization of Conservative rabbis.

⁵ *Seminary Addresses and Other Papers by Solomon Schechter,* (New York: Burning Bush Press, 1959), p. ix.

⁶ Ibid..

⁷ Ibid., p. xvi.

⁸ *Ibid.*, p. xvii.

⁹ Rabbi Gillman (1933-2017), gifted teacher and theological mentor to generations of Conservative rabbis and adult education students, died while this article was in final revisions. See *New York Times* obituary, November 28, 2017.

Neil Gillman, Conservative Judaism: The New Century (Behrman House, 1993), p. 46.

Similarly, Mel Scult, Professor of Jewish Thought at Brooklyn College, reports that "people of all kinds were easily attracted to his powerful persona, his sense of humor, and his tolerance for the opinions of others," coupled with his "strong intellectual leadership." ¹¹

Schechter's storied "kindliness of spirit" and "tolerance for the opinions of others," alas, had their limitations. This becomes clear in his April 26, 1903 address, delivered at the dedication of the Seminary building. Included among his celebratory remarks and scholarly insights is a mean-spirited and vituperative attack leveled against the still young Church of Jesus Christ of Latter-day Saints (LDS or "Mormon" Church). While Schechter does not explicitly name the Mormon Church as the object of his theological rebuke, there can be little doubt as to his meaning:

This country is, as everybody knows, a creation of the Bible, particularly the Old Testament, and the Bible is still holding its own, exercising enormous influence as a real spiritual power, in spite of all the destructive tendencies, mostly of foreign make. Nay, it is this very excess of zeal and over-realization of the presence of Biblical times which unfortunately enabled quacks to create new Tabernacles, with new Zions and Jerusalems, and to proclaim themselves as second or first Moseses, and even to profit their followers with caricature revelations. But these are only the excesses. The large bulk of the real American people have, in matters of religion, retained their sobriety and loyal adherence to the Scriptures, as their Puritan forefathers did.¹²

Decrying "new Zions and Jerusalems," Schechter directly assails the very heart and structure of the Mormon Church, summarized in the tenth of its thirteen Articles of Faith, which declares in part: "We believe in the literal gathering of Israel and in the restoration of the Ten Tribes; that Zion (the New Jerusalem) will be built upon the American continent..." Schechter's reference to "Tabernacles" also has

¹¹ Mel Scult, ibid...

¹² Solomon Schechter, "The Seminary as a Witness" in *Seminary Addresses and Other Papers by Solomon Schechter*, (New York: Burning Bush Press, 1959), pp. 48-49.

specific application to the Latter-day Saints. Tabernacles, with far less restricted access than Mormon temples, serve Latter-day Saints in a variety of ways: gatherings social and religious, and as the venue for formal Church meetings. While Salt Lake City's Tabernacle (where President Theodore Roosevelt later spoke in May 1903) is the Church's most famous, there were already nearly 80 such Church facilities in Schechter's time.

In this context, the "quacks" assailed by Schechter can only be understood to refer to Mormon Church leaders, and "second or first Moseses" as a reference to martyred Church founder, President, and Prophet Joseph Smith, Jr., and, perhaps, his successors. The "caricature revelations" which Schechter derogates would include the Book of Mormon and its scriptural complements, the Doctrine and Covenants and the Pearl of Great Price. Perhaps Schechter was familiar with the view articulated by his contemporary, Mark Twain, who esteemed the Book of Mormon as "chloroform in print." ¹³

"The over-realization of the presence of Biblical times" is a disparaging summary of the Book of Mormon's asserted 1000-year history, dating to the emigration of a group of Israelites from Jerusalem to North America prior to the destruction of the First Temple, around 600 BCE. That history was the substance of the revelation reported and eventually published by Joseph Smith in 1830.

Schechter unfavorably contrasted Latter-day Saints with "the real American people" — an audacious distinction on the part of a Romanian Jew who had arrived to assume Seminary leadership barely one year prior to this address and was himself without benefit of the "Puritan forefathers" he so reverently acknowledged. Schechter wryly mocked the Book of Mormon and its Latter-day Saint adherents' principled abstention¹⁴ from intoxicants by his assertion of the "sobriety and loyal adherence to Scripture" of those he deemed "real Americans."

The Latter-day Saint doctrine that Native Americans are descended from among the original Israelite immigrants may account for Schechter's assertion that "the history of the United States does not

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See Steven Epperson, Mormons and Jews (Salt Lake City: Signature Books, 1992), p. 22.

¹⁴ See "The Word of Wisdom," *Doctrine and Covenants*, section 89.

begin with the Red Indian, and the genesis of its spiritual life is not to be traced back to the vagaries of some peculiar sects."¹⁵

Even Schechter's discussion of specific challenges facing the Seminary he led and the students it trained coopts terms evocative of the Mormon Church. Lamenting the necessary evil of institutional concern with "the ultimate material success of the alumni," Schechter warns:

Let us not be too successful. For it is this consideration of ulterior motives which is responsible for the fact that latter day Judaism is almost entirely devoid of the element of saintliness. ¹⁶

That is to say, if latter day "saints" had a place anywhere in the religious landscape of "real Americans," it was Solomon Schechter's aspiration that they be among those ordained and served by the Jewish Theological Seminary of America!

The Seminary dedication was a major media event. "President Schechter's" address concerning the Seminary's "mission" was reprinted in its entirety in the next day's *New York Times*.¹⁷ What factors and concerns motivated Solomon Schechter to include his anti-Mormon jeremiad, extended, detailed, and acerbic, at the inauguration of the Seminary's campus? What compelled Schechter so publicly to deride the "excesses" of The Church of Jesus Christ of Latter-day Saints, which he deemed to be "destructive" and "unfortunate?"

Schechter's reasoning must be considered in the context of the era. 1903 was a trying time for The Church of Jesus Christ of Latterday Saints. "Objections to overt violence against the Mormons were few, of no practical effect, and muted by agreement with its ends." Just one week before printing the Schechter address, the *New York*

New York Times, April 27, 1903: "Jewish Theological Seminary Dedicated." Subheadings included: "Large Assembly in the Hall of the Institution in Harlem," "American Conservatism Praised," and "\$500,000 For Endowment." Remarks by Jacob Schiff and Cyrus Adler were also published as were excerpts from a speech by Judge Mayer Sulzberger.

¹⁵ Schechter, op. cit., p. 48.

¹⁶ *Ibid.*, p. 43.

¹⁸ Kathleen Flake, *The Politics of American Religious Identity* (University of North Carolina Press, 2004), p. 27.

Times ran a brief article (dateline Cooperstown, New York) concerning an incident in which, "brandishing a broom, Mrs. S.A. Douglas of Franklin, Delaware County, ordered a Mormon missionary from her steps." The *Times* reported that "the residents of Franklin will now make a concerted effort to drive them out of town." ¹⁹

The "band"²⁰ of missionaries in Cooperstown (which, as future home to the Baseball Hall of Fame would come to represent that which is wholesome and unifying and quintessentially American) fared better than a certain coreligionist the previous year. In 1902, a "missionary caught organizing a Sunday school in Arkansas was tied to a tree and given thirty lashes with promise of worse if he returned."²¹

Joseph F. Smith, namesake²² and nephew of Church founder Joseph Smith, Jr., became President of the Church in 1901. It may well be the elevation of the younger Smith from among the Church hierarchy to which Schechter referred in his dedication address: "I am also inclined to think that any attempt towards the centralization of spiritual power into the hands of a man or a body of men will only prove injurious to the country."²³ As Church President and Prophet, Smith summarized the challenges facing his besieged community of faith:

We have been looked upon as interlopers, as fanatics, as believers in a false religion; we have been regarded with contempt, and treated despicably; we have been driven from our homes, maligned and spoken evil of everywhere.²⁴

Smith lamented the

thousands upon thousands of innocent people in the world whose minds have become so darkened by the slanderous reports... that they would feel they were doing God's service to deprive a member of this Church of

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[&]quot;Brandished Broom at Mormon," New York Times, April 19, 1903.

²⁰ *Ibid.*.

²¹ Flake, p. 37.

²² Joseph Fielding Smith also bore the name of his maternal uncle, Joseph Fielding.

²³ Seminary Addresses, p. 50.

²⁴ Flake, p. 31.

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life, or of liberty, or the pursuit of happiness, if they could do it.25

Latter-day Saints were also very much in the news during the period leading up to Schechter's speech with the April 11, 1903 death of Brigham Young, Jr. The son of Joseph Smith's immediate successor, Young was President of the Church's Quorum of the Twelve Apostles, which, together with the Church President and his two counselors, form the highest doctrinal authority and governing body of the faith.

Solomon Schechter was certainly aware of local anti-LDS measures. In 1903, New York City Mayor Seth Low, formerly President of Columbia University (and for whom its iconic, domed Low Library is named), revoked permission for LDS elders to preach in the streets. Similar measures, ominous in historic retrospect, were taken during the same period by government officials in Germany.²⁶

Anti-LDS sentiment and the precarious standing of the Church in American society found their most dramatic and public expression, however, following the January 1903 election of Reed Smoot as the United States Senator from Utah. Smoot, elected as a Republican, was one of the twelve Apostles of the LDS Church. Opposition to Smoot's candidacy and, notwithstanding his lawful election, to seating him in the United States Senate was swift, widespread, and protracted. President Roosevelt himself was on record as opposing the election of a Church Apostle²⁷ – if not necessarily a Mormon per se–to the Senate.28 A broad alliance of Protestant churches overlooked denominational differences, historic rivalries, and mutual antagonism to unite in their opposition to seating Smoot. Rev. Charles L. Thompson, leader of the Presbyterian Church, set the tone, stating that if Mormonism "is not to be educated, not to be civilized, not to be reformed—it must

Ibid..

²⁶ See Flake, p. 33. See also "Mormon Appeal to Kaiser," in New York Times, April 27, 1903.

²⁷ "President Does Not Want Mormon Apostle in Senate," New York Times, January 10, 1903.

²⁸ Roosevelt would, in fact, develop a close and productive working relationship with Smoot, a function of the character and professionalism of both men, as well as the President's calculated approach to securing Utah's electoral votes.

be crushed." 29 The Baptist Home Mission Society also took a leading role in the anti-Smoot effort.

At the Church's biennial general conference held in the Salt Lake City Tabernacle just weeks before Schechter's dedication remarks, President Smith addressed the unrest in the Senate, describing Smoot's detractors as "contemptible hounds." In Senator Smoot's presence, Smith denounced

the lying, hypocritical, sneaking, cowardly wolves in sheep's clothing that go through the world seeking to stir up strife and trouble for the righteous. They seek to bring the wrath and ire of the Nation down upon us.³⁰

Protestant opposition to Smoot precipitated formal Senate proceedings, tasking a fourteen-member panel to consider his admission or ouster. The alliance of churches arrayed against Senator Smoot may well have had more to do with the perceived loss of Protestant dominance in American society than with any objection about Smoot himself. Smoot's "arrival in Washington was a very public signal that freedom to be religious could no longer mean freedom to be one of the varieties of Protestantism" 2 — a cultural shift catalyzed by increasing rates of both Jewish and Catholic immigration to the United States.

While individual Catholics and Jews were to be found among Smoot's antagonists, there was little organizational opposition to Utah's Senator from among these religious communities. One telling case of Jewish participation in the widely Protestant campaign is that of Isidor Rayner, United States Senator from Maryland, who opposed seating Smoot. Rayner explained that "the reason he voted against the Senator was that he is a Jew, and he felt that the Christian people of his State would have felt that he took advantage of his position to slap the Christian religion had he voted for the Senator's retention." Prior to his own election to the Senate, Rayner had served three terms in the House of Representatives, and as Maryland's attorney general. His biographical sketch in the *Encyclopaedia Judaica* describes him as "a nom-

²⁹ Flake, p. 14.

³⁰ "Attacks Smoot's Accusers," in New York Times, April 7, 1903.

Matthew Bowman, The Mormon People (Random House, 2012), p. 157,

³² Flake, p. 18.

³³ *Ibid.*, p. 2.

inal member" of Baltimore's Har Zion Congregation, noting that he "married a Christian and was buried in a Unitarian ceremony."

In addition to (or perhaps so as to obscure) territorial and partisan concerns with a perceived diminution of Protestant privilege, religious leaders opposed to Smoot focused their rhetorical and political efforts (both before and after his election) on improper ecclesiastical entanglement with civil governance and the historic LDS practice of polygamy. Typical of the 3100 petitions³⁴ sent to Washington protesting the seating of Senator Smoot was one from the Ministerial Alliance of Salt Lake City, insisting:

[T]he election of Apostle Reed Smoot to the United States Senate would actually be the election of the will of the Mormon first Presidency and twelve apostles to that body... Apostle Smoot cannot make an important move without getting permission or taking counsel of the quorum of Mormon high priests to which he belongs... He must act first as a Mormon apostle and second or third as a citizen of Utah and patriotic American.³⁵

The fact that the monogamous Reed Smoot had never been party to a plural marriage did not prevent salacious innuendo or spurious charges of polygamy from being lodged against him. Rev. J.L. Leilich, head of Methodist missions in Utah, conveyed a sworn statement to the chairman of the Senate Committee on Privileges and Elections, demanding that Smoot be denied his seat. Rev. Leilich swore—with absolutely no basis in fact—that "Reed Smoot is a polygamist... The said Reed Smoot has lived and cohabited with both his legal wife and his plural wife in the State of Utah and elsewhere, as occasion offered."³⁶

Despite his own conventional marriage, Smoot was attacked on the basis of his association with a Church that (prior to its formal renunciation of the practice in its 1890 "Manifesto" and President

³⁴ See Harvard S. Heath, "Smoot Hearings" in *The Encyclopedia of Mormonism* (Macmillan, 1992).

See "Oppose Mormon Candidate," New York Times, November 25, 1902.

[&]quot;Anti-Smoot Fight Opens: Missionary of Salt Lake Files Charges, Claiming the Senator-elect Is a Polygamist," New York Times, February 27, 1903.

Smith's still more stringent "Second Manifesto" of 1904³⁷) had permitted polygamy. "Have you ever practiced or countenanced polygamy?" he was asked in an interview on the eve of his election. "I never practiced polygamy," he responded. "Did you believe in polygamy before the manifesto was issued?" Reed answered with care: "As an American citizen, I claim the right to believe as I please, so long as it does not interfere with the rights of any citizen." In fact, though he never practiced plural marriage, Smoot's mother, a convert to Mormonism, was the fourth plural wife of Abraham O. Smoot, who, following their marriage, had been arrested and tried as a polygamist. The interview appeared in *The New York Times* on November 7, 1902, under the politically unenviable headline, "Smoot Denies Polygamy: Mormon Apostle, Candidate for United States Senate, Says He Never Had a Plurality of Wives."

Clearly, Smoot's antagonists were hoping, simply by creating the illusion of impropriety, to repeat their successful 1900 campaign to deny his seat in the House of Representatives to Utah's B.H. Roberts, who had indeed practiced plural marriage. ³⁸ "Mr. Roberts should have been seated first and tried later," Mr. Smoot proffered. ³⁹ The campaign against Smoot was ultimately unsuccessful, though often rancorous Senate hearings, exploring in extensive detail not the senator's character or qualifications but the prescribed doctrines of his faith, continued until February 20, 1907. Matthew Bowman writes:

For four years the Senate investigated polygamy and its persistence, the content of the endowment ceremony (many senators were troubled at the prayer for vengeance for "the blood of the prophets"), Brigham Young's attempts to establish economic communalism, and most centrally the authority of those men Mormons revered as prophets.⁴⁰

The second manifesto, which imposed excommunication on polygamists, was issued during the course of the Smoot hearings, though after the Schechter address.

³⁸ See "Polygamist's Wife Barred," New York Times, May 1, 1902.

³⁹ "Smoot Denies Polygamy..." New York Times, November 7, 1902.

⁴⁰ Bowman, p. 158.

The LDS Church was depicted as a "religious monopoly"⁴¹—an accusation at times lodged against the Roman Catholic Church, as well. Ultimately, Smoot's good standing in the United States Senate was affirmed by a vote of 47 to 28. "Nine Republicans broke ranks to vote against their colleague from Utah; three Democrats crossed party lines to vote for him."⁴²

"Ironically, Joseph F. Smith had hoped that sending Smoot to Washington as an ambassador of sorts would cool rather than stoke apprehension of Mormons." Though the desired effect was certainly not immediately forthcoming, in the end, Smith's vision prevailed. Senator Smoot served with distinction for 30 years and as an Apostle of his Church until his death in 1941. "Perhaps more than any other individual, Reed Smoot molded and shaped the positive national image the Church was to enjoy throughout the twentieth century." 43

If the political vulnerability of the LDS Church and rampant anti-Mormon sentiment in Schechter's New York, in the nation's capital, and around America motivated and perhaps even animated his 1903 remarks, they were not the only factors weighing on him that April morning. The infamous Kishinev pogroms took place on April 19 and 20, 1903, just a week prior to Schechter's Seminary dedication address. The pogroms initiated a fearful wave of Jewish emigration, and sparked outrage throughout the international Jewish community.

The anti-Jewish riots in Kishinev, Bessarabia,⁴⁴ are worse than the censor will permit to publish. There was a well laid-out plan for the general massacre of Jews on the day following the Russian Easter. The mob was led by priests, and the general cry, "Kill the Jews," was taken up all over the city. The Jews were taken wholly unaware and were slaughtered like sheep. The dead number 120[,] and the injured about 500. The scenes of horror attending this massacre are beyond description. Babes were literally torn to pieces by the frenzied and bloodthirsty mob. The local police made no attempt to check the reign of terror.

⁴¹ *Ibid.*..

⁴² Flake, p. 145.

⁴³ See Harvard S. Heath, "Smoot Hearings" in *The Encyclopedia of Mormonism* (Macmillan, 1992).

⁴⁴ Now Moldova.

At sunset the streets were piled with corpses and wounded. Those who could make their escape fled in terror, and the city is now practically deserted of Jews. 45

According to a centennial commemoration of the pogroms, "1300 homes and businesses were looted and destroyed[,] and 2000 families were left homeless."46 The Jewish Forward reported the massacre with the headline "Rivers of Jewish Blood in Kishinev." 47

A public meeting to protest the massacre was held in an East Side Manhattan synagogue on April 27, 1903, the day following the Seminary dedication.⁴⁸ It stands to reason that the matter was already widely known in the Jewish community, and the synagogue gathering well publicized by the time Schechter delivered his remarks. Indeed, the pogrom must have been a topic of wide conversation, concern, and consciousness among his listeners.

It seems clear that Kishinev also had a profound impact on Schechter himself. In the year that followed, Schechter frequently addressed the issue of anti-Semitism. On May 16, 1904, he delivered a lecture in which he surveyed the long history of anti-Jewish brutality, beginning with Contra Apion, Flavius Josephus' first century defense of Judaism, and lamenting that such acts of hate and violence had been "raised to the dignity of an 'ism,' and the term 'Anti-Semitism' was invented."49 In his remarks he refers to the literature of anti-Semitism as "actual vivisection, without the relief of anaesthetics," 50 echoing some of the most graphic imagery of Hayvim Nahman Bialik's poetic response⁵¹ to the Kishinev attacks, published in the summer of 1903.

⁴⁵ "Jewish Massacre Denounced," New York Times, April 28, 1903.

⁴⁶ J.J. Goldberg, "Kishinev 1903: The Birth of a Century," The Forward, April 4, 2003.

⁴⁷ Ibid..

⁴⁸ Such protests were also held in London and Paris. See "Jewish Massacre Denounced," New York Times, April 28, 1903.

⁴⁹ "Rebellion Against Being a Problem," in Seminary Addresses and Other Papers by Solomon Schechter, (Burning Bush Press, 1959), p. 67.

⁵⁰ Ibid...

⁵¹ "A tale of cloven belly, feather-filled... of how a dagger halved an infant's word." See "Upon the Slaughter" and "The City of Slaughter" in Complete Poetic Works of Hayyim Nahman Bialik, Translated from the

In May 1904, presiding over his first Seminary commencement and ordination exercises, Schechter adjured graduating rabbis, "It will be your duty to defend Israel against these unjust attacks."⁵²

It is a sad and bitter irony that, at the dedication of the Jewish Theological Seminary of America, which would in time place interreligious dialogue at the very heart of its public activities and institutional persona, bigoted and intolerant invective against a community of faith was given so prominent a platform. In his gratuitous attacks on The Church of Jesus Christ of Latter-day Saints, Schechter, alas, embraced the morality of the mob, lending his stature as a "world class scholar" and the prestige of the institution he led to widespread, populist prejudice, discrimination, and violence. Perhaps, like Senator Isidor Rayner, Schechter feared offending the Christian majority by taking an opposing position, however principled or appropriate.

It is a further irony that Schechter aligned himself with a Protestant coalition for which territorial and market share concerns were only thinly veiled by a campaign of righteous indignation regarding the history of polygamy in the LDS Church. Schechter knew well that Jews in Muslim-majority countries still practiced polygamy, as they would to some extent until the massive Sephardic migration to the State of Israel in the 1950s. No doubt he witnessed the phenomenon first-hand during his storied and personally defining travels to Egypt and the Cairo Geniza. Ferhaps Schechter's anti-LDS remarks were designed to defend preemptively against precisely such charges.

More ironic still is that the Seminary, together with the Conservative Movement Schechter molded and championed, would evolve in much the same social and religious manner as the Protestant churches which joined forces against Mormonism and Senator Smoot. They

spent the rest of the century edging toward accepting a wider variety of consensual relationships among adults,

Hebrew (ed., Israel Efros, The Histadruth Ivrith of America, 1948), translations by Abraham M. Klein, pp. 127-143.

⁵² "The Reconciliation of Israel," in *Seminary Addresses and Other Papers* by *Solomon Schechter*, (Burning Bush Press, 1959), p. 76.

For a full account of Schechter's involvement with the Geniza, see Adina Hoffman and Peter Cole, *Sacred Trash: The Lost and Found World of the Cairo Geniza* (Jewish Encounter Series, 2016).

while the Mormons moved in the opposite direction to become aggressive defenders of the traditional family structure.⁵⁴

That process of increasing inclusiveness in matters of romantic relationships and standards of sexual conduct remains at the forefront of Conservative Movement concerns, culture, and branding.⁵⁵

There can be no doubt that Schechter's Seminary dedication audience was shaken and still reeling in the wake of the horrific pogroms in Kishinev. Might they not reasonably have expected the Seminary President to address these concerns in his address? Indeed, he did. By so caustically impugning the legitimacy of the Mormon Church, Schechter unscrupulously if effectively exposed a religious minority yet more unpopular, and even more vulnerable to abuse in 1903 than the Jewish community. If among "real Americans" the inhumane instincts that moved the mob in Kishinev were brewing, Schechter made clear that another, more newly besieged object for their brutality was readily available: a "caricature" faith "injurious to the country" — with its own Moses and Zion and Jerusalem.

Well over a century after the events of 1903, negative attitudes toward The Church of Jesus Christ of Latter-day Saints are rife among American Jews. Professor Jacob Neusner typified Jewish anti-LDS

institution.

⁵⁴ Flake, p. 10.

In addition to relaxing prohibitions uniquely binding on those of priestly descent (see Isaac Klein, *Responsa and Halakhic Studies* [KTAV, 1975]), see also Elliot Dorff "'This Is My Beloved, This Is My Friend': A Rabbinic Letter on Human Intimacy" (Rabbinical Assembly, 1996), which acknowledges the potential for sanctity in non-marital sexual activity. See also Elliot Dorff, Daniel Nevins, and Avram Reisner, "Homosexuality, Human Dignity and Halakhah" (Rabbinical Assembly responsum, 2006), as well as "Rituals and Documents of Marriage and Divorce for Same-Sex Couples" by the same authors. More recent, much publicized if as yet unresolved discussions in the Conservative Movement have focused on intermarriage, as well as the solemnization of relationships in a manner which retains some of the language, forms, and appearance of marriage, but is designed specifically so as to obviate the legal complexities and consequences of that traditional

sentiments in his stated opposition to Brigham Young University establishing a campus in Jerusalem:

Nothing they do is selfless. Everything they do has the single goal of converting everyone they can. Pure and simple. The proposed BYU Center will provide access, not only to Israeli Jewry but also (and especially) to large numbers of foreign, including American, Jewish youth who study in Jerusalem.⁵⁶

To his great credit, Professor Neusner changed his outlook and grew beyond these early misgivings. Indeed, he later published a learned article in *BYU Studies*.⁵⁷ Having observed both the worthy comportment of Latter-day Saints at the Jerusalem facility, and having developed warm personal and professional relationships with Latter-day Saint colleagues, Neusner explicitly framed his scholarly contribution as a contrite corrective. Neusner invoked the 1841 Prayer of Orson Hyde⁵⁸ (offered 19 years before the birth of Theodor Herzl), dedicating the Land of Israel for a future Jewish State:

Let the Land become abundantly fruitful when possessed by its rightful heirs... Inspire the hearts of kings and the powers of the earth to look with a friendly eye towards this place... Raise up Jerusalem as its capital, and constitute her people a distinct nation and government...⁵⁹

Quoted in Egal Feldman's Dual Destinies: The Jewish Encounter with Protestant America (University of Illinois Press, 1990). Also cited in Alfred Kolatch, Great Jewish Quotations (Jonathan David, 1996).

Jacob Neusner, "Conversations in Nauvoo about the Corporeality of God," *BYU Studies* 36, no. 1 (1996-97), pp. 7-30.

These words appear in Hyde's November 22, 1841 letter to Brother Pratt, as reproduced at "Orson Hyde's Dedicatory Prayer of

Elder Orson Hyde (1805-1878) was an early Church leader, original member of the Quorum of the Twelve Apostles, and President of the Quorum of the Twelve Apostles from 1847-1875. His Dedicatory Prayer was offered on Jerusalem's Mount of Olives. Hyde added to his blessing a prescient warning that a merciless and mortal enemy, bent on the wholesale destruction of the Jewish People, would arise in Europe. See Epperson, pp. 149ff..

Further, Neusner observed:

The Church of Jesus Christ of Latter-day Saints sent not only missionaries, but also apostles bearing the task simply to pray, even in Jerusalem, for the return of Israel to Zion. To the merit attained by the dreaming of that dream and the saying of that prayer, we of holy Israel have to respond. And I take it as my task on this occasion to do so.⁶⁰

While the transformation in Professor Neusner's thinking about the Church of Jesus Christ of Latter-day Saints represents a personal philosophical and political sea-change, his original derogation of Church motives continues to characterize a dynamic prevalent in the American Jewish community. His penitence remains, alas, an exception, not yet deemed a worthy example to be widely emulated.

It is impossible to determine to what degree Solomon Schechter's Seminary dedication address contributed to Neusner's early views, nor to the suspicions and distrust that too often characterize American Jewish attitudes toward the LDS Church. What is clear is that, at one of the most momentous milestones in the history of the Conservative Movement and its flagship academic institution, Schechter trafficked in hate speech. Under the cover of a fashionable prejudice, he shamefully lent respectability to the very species of triumphalist religious bigotry that had excited attacks on Jews throughout our history and, more to the point, in the days immediately preceding his remarks.

It is left for the "latter day" disciples of Solomon Schechter — the Jewish Theological Seminary, the Conservative Movement, the Jewish Day Schools bearing his name across the continent and educating thousands of elementary and high school students, the Schechter Institutes in Israel together with their allied Rabbinical School and other educational bodies — to acknowledge this historic offense and to effect a *tikkun*: that is, to undertake meaningful, contrite, and redemptive

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dedication on the Mount of Olives," as accessed at http://www.nyx.net/~cgibbons/orson_hyde_prayer.html on June 12, 2018.

⁶⁰ Neusner, p. 7.

"corrective measures" in response. In shaping the future course of American Jewish relations with The Church of Jesus Christ of Latterday Saints, may American Jews be guided by the insight of Solomon Schechter in a far worthier moment. Discussing the tradition that, in the hereafter, we will be asked in our final reckoning whether we related to others with due humility and an appropriately deferential sense of submission, Schechter counsels:

Man should accordingly perceive in his fellow-man not only an equal whose rights he is bound to respect, but a superior whom he is obliged to revere and love. In every person, it is pointed out by these saints, precious and noble elements are latent, not to be found with anybody else.61

Such an attitudinal reorientation in the American Jewish community would more closely align with the clarion call of martyred South African anti-Apartheid activist, Steve Biko:

We regard our living together not as an unfortunate mishap warranting endless competition among us but as a deliberate act of God to make us a community of brothers and sisters jointly involved in the guest for a composite answer to the varied problems of life.62

"Real Americans" were not constrained to await the wisdom of a sensitive moral luminary suffering under South African Apartheid for this insight into the challenge of navigating cultural differences and religious diversity. As early as 1785, American Founding Father

⁶¹ Solomon Schechter, "Saints and Saintliness," in Studies in Judaism, Second Series (Jewish Publication Society, 1908), p. 169.

This statement was included in a paper titled "Some African Cultural Concepts," which Biko delivered at a conference convened by the Interdenominational Association of African Ministers of Religion (IDAMASA) at the Ecumenical Lay Training Centre in Edendale, Natal in 1971. Steve Biko (1946-1977), father of five, and known as the "Father of Black Consciousness," died at the age of 30 after being severely beaten while in South African police custody. His life is the basis for the 1987 film Cry Freedom.

and Declaration of Independence signer Benjamin Rush⁶³ prayed for the day "when the different religious sects, like the different strings in a musical instrument, shall compose a harmony delightful in the ears of heaven itself!"⁶⁴

Would that such an affirming spirit of congenial mutuality had informed the 1903 Seminary dedication! May it increasingly guide all those grappling to overcome entrenched and insidious historic patterns of prejudice and distrust toward neighbors practicing different faiths. Among those seeking such illumination, may those Americans who celebrate the glories of the Mosaic Religion come increasingly to celebrate America's glorious religious mosaic, as well.

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⁶³ Benjamin Rush (1746-1813) was a delegate to the Continental Congress, signer of the Declaration of Independence, civic leader in Philadelphia, and a renowned physician who served as Surgeon General of George Washington's Continental Army and is recognized as among the leading early pioneers of American Psychiatry. It was Dr. Rush who famously facilitated the reconciliation of John Adams and his erstwhile Vice President, Thomas Jefferson, after the former Presidents, friends, and compatriots had become bitterly estranged.

⁶⁴ See William Lee Miller, The First Liberty: Religion and the American Republic (New York: Alfred A. Knopf, 1986), p. 6. Also quoted in Carl J. Richard, The Founders and the Bible (London: Rowman and Littlefield, 2016), p. 297.

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the Boy Scouts of America and its allied National Jewish Committee on Scouting, which he serves as National Chaplain.

Quacks and Real Americans: Solomon Schechter's Anti-Mormonism Joseph H. Prouser

RABBINIC SELF-CONFIDENCE: BENDING THE WORLD TO THE WORD

Martin S. Cohen

Restoration and Innovation

There is a restorative feel to much of rabbinic literature.¹ The traditional way to understand the famous opening of Pirkei Avot ("Moses received [the] Torah from [God at] Sinai"), for example, is to take it precisely *not* to refer to the written Torah at all, but rather to the Oral Torah.² At first blush, that interpretation could almost be waved

Regarding this notion, cf. Moshe Halbertal's People of the Book: Canon, Meaning, and Authority (Cambridge, MA: Harvard University Press, 1997), pp. 54-72, where the author proposes and compares the "retrieval," "cumulative," and "constitutive" models.

Mishnah (henceforth, M.) Avot 1:1. (All translations in this essay are the work of the author.) For one example among many, I offer the simple ad locum comment of the Meiri (that is, Rabbi Menachem ben Shlomo Meiri, 1249-1306) as printed in his Sefer Beit Ha-b'hirah al Massekhet Avot, ed. Samuel Waxman (Jerusalem and New York: Hokhmat Yisrael, 5704 [1943/1944]), p. 73: "Moses received the Torah from [God at] Sinai and transmitted it to Joshua – this refers to the Oral Torah..." Cf. the comments of Adiel Schremer in his "Avot Reconsidered: Rethinking Rabbinic Judaism," Jewish Quarterly Review 105:3 (Summer 2015), pp. 287-311, which is essentially an elaborate argument for taking the beginning of Avot precisely as the Meiri suggested, and cf. also Martin Jaffe, Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism, 200 BCE-400 CE (Oxford: Oxford University Press, 2001), p. 84, where the author writes that the opening of Avot is merely "the bestknown example of the claim that all rabbinic teaching stems from a Mosaic source." And now cf. also the comments of Gordon Tucker ad locum in Pirkei Avot Lev Shalem, ed. Martin S. Cohen (New York: Rabbinical Assembly, 2018), pp. 2-4.

away as an effort merely to defend the integrity of the scriptural narrative: Moses is, after all, depicted at the end of Deuteronomy as composing the *written* Torah four decades after the Israelites first camped at the foot of Sinai. Yet the essentially restorative light that this notion casts on the larger rabbinic enterprise has a lot to say about the rabbinic mindset.

Indeed, by suggesting that the work of the rabbis was essentially to recover traditions originally vouchsafed to the greatest of all prophets, to Moses himself, but which had somehow fallen away over the generations and were thus in danger of being lost permanently, the rabbis were saying something profound about the way they understood their own work. When, for example, Rabbi Abbahu of third-century Caesarea taught that the first of all the judges of Israel, Othniel ben Kenaz, was able through the sheer force of his deductive reasoning skills to restore to the Jewish people all three *thousand* of the traditions forgotten by the distraught Israelites in the course of their national *shiv'ah* week of mourning following the death of Moses, he was merely depicting Othniel as a kind of proto-rabbi who managed successfully to accomplish exactly what the rabbis would devote themselves later on to trying to accomplish and in the exact same way.³

Even texts that initially appear to be suggesting that the rabbis understood themselves to be evolving new traditions through their studious elaboration of the written text nevertheless point, even if a bit indirectly, to this restorative aspect of the rabbinic enterprise.

Of such texts, that over-cited <code>aggadah</code>—and "over-cited" is really saying the very least—that features Moses magically transported into the future but unable even slightly to comprehend the lesson that Rabbi Akiba was teaching to his pupils is merely the best known. But that overused text, so often trotted out proudly in liberal Jewish set-

The three thousand forgotten *halakhot* are mentioned in a lesson attributeed to the first-generation *amora* Samuel at Babylonian Talmud (henceforth, B.), Temurah 15b. Rabbi Abbahu's lesson about Othniel ben Kenaz is preserved on the following page of the tractate. The Hebrew for "through the sheer force of his deductive reasoning skills" is *mi-tokh pilpulo* (מתוך פלפולו). The term *amora* is used to designate rabbinic scholars who worked in the years following the close of the mishnaic period, c. 220 CE. Othniel ben Kenaz is presented in Scripture at Judges 3:9-11.

⁴ B. Menaḥot 29b.

tings to demonstrate the legitimacy of even radical halakhic innovation, actually implies precisely the opposite: by presenting Rabbi Akiba as hard at work in his classroom teasing out "heaps upon heaps of laws" from even the parts of the Torah's letters that are essentially mere scribal flourishes, and then depicting him as able to justify his efforts solely by explaining that these laws were not being developed by himself *de novo* at all but had once actually been taught to Moses himself back at Sinai, the text is saying that the rabbis — in this specific case, Rabbi Akiba – were possessed of the almost supernatural ability to reconstruct aspects of the torah she-be'al peh (תורה שבעל פה, "oral Torah") of which even Moses himself – a man, after all, and not a machine – eventually lost track. This, then, is merely a restatement of the restorative idea... and suggests that the rabbis believed themselves able to regain lost ground even when unable rationally to explain precisely how they could possibly have known that they were right with any degree of on-the-ground certainty. The restorative enterprise thus rests on the supposition of its own reasonableness, on the theory that debate in the beit-midrash can somehow lead to the recovery of longlost traditions and that such traditions, in the absence of even unconvincing proof that they ever really existed in the past, are wholly and fully legitimate aspects of Torah learning.

Other texts should be read in that same light. For example, consider the well-known text surrounding the so-called Akhnai (עכנאי) oven, which is also regularly pressed into service—albeit probably slightly less so than the story about Moses and Rabbi Akiva discussed above—to demonstrate the reasonableness of even radical rabbinic innovation. In that story, Rabbi Eliezer demonstrates the correctness of his opinion—the story has to do with some specific way of building an oven so as to make it impervious to tum'ah (שומאה)-contamination—by bringing nature itself into the mix to prove the correctness of his personal opinion. And, indeed, nature obliges him nicely: a tree

The story is told at B. Bava Metzia 59a-b; *cf.* B. Berakhot 19a. For an interesting exposition of the story, see Jeffrey Rubenstein, *Rabbinic Stories* (New York and Mahwah, NJ: Paulist Press, 2002), pp. 80-84.

⁶ The word *tum'ah* is often misleadingly translated as "impurity" or, even worse, as "uncleanness." Both are slightly correct, but neither captures the range of the Hebrew. In this essay, therefore, I will refer

deracinates itself and flies through the air, a river flows backwards, some schoolhouse walls totter, etc.. And then we get to the big finish when a bat kol (בת קול), a voice emanating from Heaven itself, declares Rabbi Eliezer right (and not only in this instance, but in all matters of halakhic dispute), to which semi-miraculous occurrence his opponent in this matter, Rabbi Joshua, responds by coolly citing Deuteronomy 30:12, the verse from Scripture that declares that, ever since Sinai, the Torah is no longer to be found in heaven, and then opting instead to follow Exodus 23:2, according to which verse halakhic decisors are commanded to put matters in dispute to a vote and then to follow the opinion of the majority. (The text goes on to gild the lily just slightly by depicting God as thrilled to have been so artfully superseded as the nation's ultimate halakhic authority.) But this story too, so often used to "prove" the legitimacy of halakhic innovation, actually implies precisely the opposite: that, because the Oral Torah vouchsafed in its entirety to Moses at Sinai has been corrupted over the generations and vast portions have been lost, the sole reliable way to recover the law is to believe in the ability of scholars to recover the law through intensive study and then to take it on faith that a simple vote will always decide the matter correctly because the majority, guided by the unseen hand of God's presence in the study-hall, will always be right. So even texts regularly adduced to justify innovation are essentially restorative in nature.

If these well-worn texts, then, do not really support the claim that the rabbis of classical antiquity were radical innovators, can we find texts that do support the argument that these ancient sages were indeed daringly creative *and* innovative?

An Alternate Approach: The Example of Tum'ah

In this essay, I would like to present some ancient texts that suggest that the rabbis believed themselves to possess the power actually to alter the laws of the physical universe through the sheer intellectual and moral force of their decision-making process and to ask if these,

to *tum'ah* by its Hebrew name. *Cf.* fn. 17 below for a brief discussion of the relationship between ritual and moral impurity.

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and many similar passages, could not serve as the complement to those passages that present the rabbis' work as essentially restorative.

Before presenting those passages, I would like to remind my readers that the rabbis of ancient times took the force called tum'ah in classical sources to be a physically real substance that exists in the material world and that therefore follows (or even, perhaps, *must* follow) a set of preordained rules akin to the ones that govern the behavior of gases or liquids in the physical world.⁷ For example, the "derekh hatum'ah latzeit v'ein darkah l'hikkaneis" (דרך הטומאה לצאת ואין דרכה להכנס) rule means that *tum'ah* by its nature tends to spread out from narrow spaces into broader or wider ones, but not *vice versa*. This rule appears originally throughout Tractate Ohalot in the Mishnah and its parallel tractate in the Tosefta (called Ahilot) where it is applied variously to sources of tum'ah ensconced in sewer pipes, standing cupboards, wallcupboards, drawers, and beehives; to sources of tum'ah held by individuals standing on thresholds; to women in childbirth; and to stacked pots in a kitchen and to large amphoras.8 By comparison, the "tum'ah boka'at v'olah boka'at v'yoredet" (טומאה בוקעת ועולה בוקעת ועולה בוקעת אוורת) rule suggests a different wrinkle in the physical nature of tum'ah: that it has a natural tendency to contaminate things above it and below it always, but only items to its side under certain specific conditions. This rule too has its origin in the various tannaitic permutations of Tractate Ohalot and appears over and over in the Mishnah and the Tosefta. There are

See fn. 12 below for further discussion of this characterization.

Sewer pipes: M. Ohalot 3:7; standing cupboards: M. Ohalot 4:1 and 3, and Tosefta (henceforth, T.) Ahilot 5:3; wall cupboards: T. Ahilot 7:11; drawers: M. Ohalot 4:2; beehives: M. Ohalot 9:10 and T. Ahilot 10:4 and 5; individuals standing on thresholds: T. Ahilot 5:5; women in childbirth: T. Ahilot 8:6; stacked pots: T. Ahilot 10:2; amphoras: T. Ahilot 10:3. Rambam (that is, Maimonides [1135-1204]) cites the rule at Mishneh Torah (henceforth, MT), Hilkhot Tum'at Meit 18:4, 19:3, and 20:8. The Tosefta is a collection of statements by rabbis of the mishnaic period that were not included in the Mishnah itself.

M. Ohalot 6:6; 7:1 and 2; 9:13, 14 and 16; 10:6 and 7; 12:6 and 7; 14:7; and 15:1, 3, and 7; T. Ahilot 5:4; 6:2 and 3; 7:5, 10, and 11; 8:1; 10:5 and 8; 11: 1, 2, 3, 4, 5, and 6; 13: 5 and 6; and 15:1 and 6, and cf. Rambam, MT Hilkhot Tum'at Meit 2:5; 7:4,5, and 6; 12:7; 16:5 and 6; 17:4, 6; 18:8; 19:5 and 6; and 25:1. The word "tannaitic" is used to refer to the age of the tannaim, the sages of the mishnaic period.

others too, of course, but these two are good examples of the larger principle in play: neither has any sort of theological substructure supporting it from beneath and neither would be something the rabbis would have had any specific reason to *want* people to believe; both are best taken merely as the *tum'ah* version of Boyle's or Dalton's Laws—statements unrelated to spiritual matters that simply predict how *tum'ah* will behave in some specific situation in the physical world because of its nature.

The Elaboration of the Law

The rabbis presumed that *tum'ah* laws too were forgotten over the centuries; indeed, the rabbinic effort to restore them was therefore not substantively different than their work in other halakhic contexts. But there are also instances in which the rabbis appear to have felt that their own halakhic discourse was permeated with enough natural intensity for them to be in a position not merely to restore forgotten laws, but actually to make the physical universe obey their decisions and respond accordingly.

The rabbis taught in certain specific contexts, for example, that <code>tum'ah</code> responds to human will in a way that moderns will find, at least, surprising. The Scriptural <code>ki yuttan</code> (כִי יתן) rule (Leviticus 11:38), for example, according to which food-stuffs must be wet down before they can be contaminated with <code>tum'ah</code>, was found by the rabbis to be applicable solely when the wetting-down process was undertaken with the willing assent of the (foodstuff's) owners.¹⁰ But to those who

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¹⁰ The Scriptural basis for the rule is at Leviticus 11:38, where the words v'khi yuttan (וב' יובן), "and should there be put") are applied to the situation of a dead sheretz (שרץ), one of the specific kinds of crawling creatures listed at Leviticus 11:29-30 that are, when dead, sources of tum'ah) that falls on some grain: if the grain had priorly been wet down, it becomes susceptible to tum'ah contamination. The Mishnah, however, at M. Makhshirin 1:1, adds the crucial detail—perhaps rooted in the fact that yuttan is a passive verb rather than an active one—that the law is only operative if the foodstuff was wet down intentionally. Scripture mentions specifically water in this context, but the Mishnah (at M. Makhshirin 6:4) expands the list of fluids to include dew, wine, oil, blood, milk, and bees' honey as well as water, and cf.

cannot imagine how a wet tomato even *could* respond to *tum'ah* differently depending on whether it became wet intentionally or inadvertently, there is at least a kind of a way out because, taking the Torah law as revelation, we can at least try to argue that we truly *are* expected to believe that vegetables have the ability to respond to unspoken intentions and unarticulated desires... and that their ability to do that is simply another way in which the universe is governed by invisible forces and vectors that the Creator imposed on creation. The rabbis are thus casting themselves here as revealers of secrets, not as alterers of nature.¹¹ Accordingly, even these "intentionality" cases do not provide compelling examples of truly innovative rabbinic legislation.

But passages also exist, as will be reviewed in a moment, in which the rabbis go on record as enacting rules *de novo* (called in most passages a *g'zeirah* [מירה], literally "a decree") — and such passages resist the kind of cogent if fanciful explanation that works for the imposition of the human will factor on the *ki yuttan* rule.

One might propose to reject even these examples I am about to present by supposing that the rabbis, by enacting such *g'zeirot* (אוידע)—the plural of *g'zeirah*), meant that the objects of their edicts were to be treated only *as though* they had been contaminated with *tum'ah* but not that they *actually* had been so contaminated. That approach prompts any number of unsettling questions, however. Why would anyone bother undergoing a ritual of purification if the *tum'ah* to be eradicated through the procedure in question didn't really exist? And wouldn't it be forbidden, say, to participate in the ritual involving the ashes of the red heifer if the impurity being so eradicated wasn't real? The whole argument that things and people deemed impure by rabbinic edict were not *really* impure would make the whole concept into a bit of a joke and certainly not something anyone would

Rambam's MT Hilkhot Tum'at Okhalin 1:1-2. The khi in v'khi (כי) and the word ki (כי) are the same word, merely pronounced differently because of an added-on prefix.

For a detailed study of the whole conception of will and intentionality in Jewish law, see Howard Eilberg-Schwartz, The Human Will in Judaism: The Mishnah's Philosophy of Intention (Atlanta, GA: Scholars Press, 1986).

take too seriously.¹² To me, at least, it feels far more likely that the sages of classical times were so convinced of the legitimacy of their work that they imagined a level of physical responsivity to their conceptualizations naturally to inhere in the physical universe.¹³

Altered Realities

There is, for example, a remarkable passage that appears twice in the Talmud in which we hear Rabbi Naḥman bar Yitzḥak explaining that the specific reason the Sages taught that all Gentile males over the age of nine are <code>zavim</code> (בים, that is to say, people suffering from the venereal disease known in Scripture as <code>zivah</code>, pass not because they were ill in any sense at all, but merely to discourage their randy Jewish counterparts from having the version of sexual intercourse Scripture delicately references as <code>mishkav zakhor</code> (משכב מוכר), literally "male intercourse") with them. Did the edict, whenever it was first promulgated, truly have the desired effect on adolescents, both gay ones and their heterosexual friends eager enough to explore their burgeoning sexuality to adopt an "any port in a storm" approach to sexu-

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In this regard, cf. the comments of Vered Noam on pp. 72-73 of her essay "Ritual Impurity in Tannaitic Literature: Two Opposing Perspectives," published in the Journal of Ancient Judaism 1 (2010), pp. 65-103, and cf. too the comments of Yair Furstenberg on pp. 66-76 of his essay, "Controlling Impurity: The Natures of Impurity in Second Temple Debates," published in Diné Israel 30 (2015), pp. 163-196.

To see this issue discussed in its larger context, see Jeffrey Rubenstein's essay, "Nominalism and Realism Again," published in *Diné Israel* 30 (2015), pp. 79-120, where the author reviews the scholarly effort to fit the ongoing debate about the nature of the rabbinic legal enterprise into the larger philosophical debate between realism and nominalism. *Cf.* Richard Claman, "Mishnah as Model for a New Overlapping Consensus," *Conservative Judaism* 63:2 (Winter 2012), p. 61.

B. Shabbat 17b and Avodah Zarah 36b, cf. Rashi's comment ad locum in Tractate Shabbat, s.v. she-m'tammei b'zivah, that we are specifically not thinking here of young non-Jewish men who actually are suffering from zivah. Rabbi Naḥman (d. 356 C.E.) served in his day as rosh yeshivah at Pumpeditha and was as such one of the leading rabbinic figures of his day.

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al liaisons in a world in which girls and women were expected to remain chaste until marriage? That is an excellent question!¹⁵ But far more interesting—at least for the purposes of this essay—is the question of whether the rabbis truly believed Gentile eleven-year-old boys to be *tum'ah*-contaminated and thus fully able to extend that contamination to people who come into contact with them.

The disease called *zivah* was understood to wreak havoc with the effort to maintain a state of ongoing ritual purity because, unlike men who have seminal emissions during sexual activity and women who experience menstrual bleeding during their monthly periods, individuals suffering from *zivah* have an ongoing flow of these fluids—semen or seminal fluid in men and uterine blood in women—unrelated to sexual activity or monthly cycles. The *halakhah*, however, does not apply the law in precisely the same way to Jews as to Gentiles, as Rambam¹⁶ explains clearly in the second chapter of his endlessly fascinating section of the Mishneh Torah called Hilkhot M'tam'ei Moshay U-mishkay:

According to the law of the Torah, Gentiles lack the capacity to <code>tum'ah</code>-contaminate [even if they actually do suffer from the disease called] <code>zivah</code>... as it is written [in the Torah], "Speak to the Israelites and say to them, [this shall be the law regarding] any man who suffers from <code>zivah</code>" (Leviticus 15:2), which [clearly] implies that it is solely Israelites [i.e., Jews] who can contaminate others if they should become <code>zavim</code> [בים], i.e., those who suffer from <code>zivah</code>], but not Gentiles. The sages, however, decreed that all Gentiles, males and females, convey <code>tum'ah</code> in every respect like <code>zavim</code>, the sole proviso being that the males in question be older than nine years and one day of age and the females older than three years and one day. On younger children, however, the sages did not decree [that]

In this regard, see Daniel Boyarin's Unheroic Conduct: The Rise of Heterosexuality and the Invention of the Jewish Man (Berkeley: University of California Press, 1997), where the author argues that the sharp distinction moderns see between homosexual and heterosexual orientation was unknown in ancient rabbinic culture.

¹⁶ See fn. 8.

they should impart] *tum'ah* because the whole point of their decree was to discourage Jewish boys from having intercourse with their Gentile counterparts and the law does not consider the kind of intercourse in which children younger than these age limits might engage to be legally consequential.¹⁷

It certainly sounds as though Rambam means to teach that engaging in *mishkav zakhor* with a Gentile over the age of nine renders the Israelite partner to the deed contaminated with *tum'ah* in exactly the same way he would be so contaminated if he had chosen instead to have sex with an actual *zav* (בו, *i.e.*, the masculine singular of *zavim*) from among his own people, and not that we are obliged merely to consider such a person as though he had been contaminated.

Other examples sharpen the point. There is a passage in the talmudic tractate Bava Metzia, for further example, in which it is noted that the individual hired to guard the red heifer until it can be slaughtered and its remains immolated is susceptible to tum'ah-contamination if he comes in physical contact with the animal-even though there is no hint of this in Scripture: Numbers 19 references as tum'ahcontaminated the individuals who slaughter the heifer, collect its blood, incinerate its carcass, and gather up its incinerated remains, but specifically *not* the individual whose job it is merely to guard the animal until the formal ritual of immolation is undertaken.¹⁸ Why then did the rabbis decree that the guard's clothing is contaminated with tum'ah if he comes into contact with the beast while guarding it? The Gemara explains that easily: the edict was promulgated to discourage the guard from touching the beast at all, lest he inadvertently induce some blemish in it and thus render it unacceptable for use in the red heifer ritual. By decreeing that touching the beast will contaminate the guard's clothing with tum'ah, they obviously hoped to discourage such risky touching. But that only really makes sense if the rabbis issuing the edict believed that they themselves were not merely empowered legally to decree that the clothing be treated as though it were con-

¹⁷ MT Hilkhot M'tam'ei Moshav U-mishkav 2:10.

B. Bava Metzia 93a. The biblical passage is Numbers 19:1-10. The heifer must be wholly unblemished, hence the obvious need to guard it from harm.

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taminated with *tum'ah*, but that they actually were able to will such contamination into existence, thus *actually* inconveniencing the guard who will have to undergo a purification ritual if he transgresses. It's hard to imagine how this would work if the guard didn't *actually* believe that contact with the animal could *actually* render his garment impure. Here too, then, I think the only logical explanation is that the rabbis believed themselves *really* able to alter the physical nature of the universe through the promulgation of a *g'zeirah*. Otherwise, how could the clothing *really* be contaminated?¹⁹

Other examples seem to stress the same general idea. In one of the most interesting passages of his Hilkhot Avot Ha-tum'ot, Rambam explains why it is necessary ritually to wash one's hands under certain specific circumstances:

particularly to regret.

The alternate explanation, that the rabbis were only pretending to have the power to make something susceptible to tum'ah so as to make the guard more likely to take care in his work, seems at best unlikely. And, at any rate, it feels impossible to imagine in the other cases adduced that the rabbis were merely claiming to have an ability that even they did not *really* believe themselves to possess. The rabbis were indeed capable of talking about so-called "moral" impurity, i.e., the kind that inheres in the kind of immoral acts that have dire consequences for the people or the world that was described in fascinating detail by Jonathan Klawans in his Impurity and Sin in Ancient Judaism (New York: Oxford University Press, 2000). Klawans' book devotes a full chapter to the way the rabbis of the mishnaic period understood the consequences of this kind of impurity to unfold, but the other kind of impurity – the one labelled throughout Scripture and rabbinic literature as tum'ah-is so fully divorced from moral considerations that contamination is not considered, at least under normal circumstances, to be at all sinful. Indeed, it is considered meritorious, even virtuous, under many different circumstances to self-contaminate with tum'ah (as, for example, by assisting in burying the dead or by giving birth to a child) but the clear implication in the distinction is that moral impurity is a philosophical, value-based construct, whereas "regular" tum'ah-contamination is physically real and, although regrettable in the sense that it requires looking after, is specifically *not* suggestive of sinfulness at all; it is merely the metaphysical version of coming home dirty after a long day of hard work: something to deal with, but not

King Solomon and his beit din (דור, "court") issued an edict (gaz'ru [גורו], i.e., promulgated a g'zeirah) to the effect that, because people all have "busy" hands, all human hands are secondary sources of tum'ah even when an individual has no specific reason to think that his hands have come into contact with any primary source of impurity. This decree only affected hands that somehow came into contact with sacrificial meat, but later on the sages extended it to include the possibility of contaminating t'rumah as well, which is why it is necessary ritually to wash one's hands before touching t'rumah....²¹

And to that Rabbi Abraham ben David of Posquières (called the Ravad, 1125-1198), adds the following follow-up: "And still later the Sages required ritual washing before [ingesting] profane foodstuffs as well."²²

That is a very interesting comment, and for several different reasons. There is no Torah-based notion that hands are to be deemed pure or impure in any way different from the individual to whom they are attached. But three successive waves of rabbinic elaboration introduced an entirely new set of ideas. First came the notion that hands are to be considered in their own category, thus distinct from the rest of any person's body, and are — even absent any reason to suspect contamination — to be treated as sh'niyyot l'tum'ah (שנייות לשניאת), that is, as secondary sources of tum'ah capable of contaminating sacrificial meat. Then, later on, that edict of contaminative potential was expanded to include t'rumah, the grain given a priest that must be consumed in a state of ritual purity. And then, as Ravad explains, a third expan-

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Secondary sources of *tum'ah* have the ability solely to contaminate sacrificial meat and *t'rumah*, the grain tax paid out by farmers to the priests of ancient times. For the mishnaic source regarding hands having the ability to contaminate *t'rumah*, see M. Zavim 5:12. The notion of ever-"busy" hands implies that no one can possibly keep track of every single thing one's hands come into contact with in the course of a day.

²¹ MT Hilkhot Sh'ar Avot Tum'ot 8:8, based on B. Shabbat 14b.

²² In his comment *ad locum* in the MT.

sion was set in place, widening the scope of the original edict to include "regular" foodstuffs as well, called in the literature *hullin* (חוליום).

There is no real way to understand any of this other than to assume that the rabbis, starting with Rabbi King Solomon, understood themselves able to be enacting an edict that would alter the physical universe, in this case by decreeing that hands be, not considered as though they were impure, but actual sources of tum'ah.²³ To this day, in fact, it is considered correct not only to wash one's hands through the ritual called n'tilat yadayim (נטילת ידים)—the ritual washing of the hands from a vessel—before eating bread, but actually to recite a blessing that implies that the deed has real meaning... which it only has if hands are, indeed, secondary sources of actual tum'ah.²⁴

These are just a few examples of the rabbis' sense of their own ability to alter reality through the force of their halakhic reasoning. There are many others too!²⁵

²³ King Solomon was not really a rabbi, but he was imagined by the rabbis as if he *were* one, somewhat in the same way they imagined (e.g., at B. Yoma 22b or Sanhedrin 107b) King David living in the world alongside a Sanhedrin of sages.

How the enlargement of the edict to all hullin ended up, as it is in our day, restricted to bread alone is a good question too. Cf. Maimonides' introduction to Tractate Yadayim in his Commentary to the Mishnah, where he seems to understand hullin in this context as referencing bread specifically.

This approach can be compared to the one set forward by Vered Noam in her essay, "Ritual Impurity in Tannaitic Literature: Two Opposing Perspectives," mentioned above in fn. 12, in which she argues that the rabbis took two basically incompatible approaches to tum'ah, sometimes considering it to be physically real and thus to obey certain specific rules that govern its behavior in the physical world, but sometimes also considering it wholly unsubstantial and unreal. Noam argues her point cogently, but her conclusion founders on the fact that things cannot be real and unreal at the same time, and to argue that the rabbis simply ignored that fact in their analysis of the world seems to me far-fetched. Far more likely is that they simply believed both that tum'ah has among its characteristics a sensitivity to human will that inheres in its very nature and that the sages had the ability to alter the reality of the physical world through their self-arrogated right to enact edicts in its regard. And cf. also Yair Furstenberg's critique of Noam's

Arrogance and Self-Confidence

It would be easy just to wave away the rabbis' self-confidence as so much clerical arrogance, but I think that would be missing the point almost entirely. The rabbis understood creation to be the work of a Creator, the same Creator whose Torah serves Israel as the foundation upon which its faith and its worship life rest and whose ongoing governance of the world they found self-evident. That being the case, it doesn't seem like such a stretch to imagine them feeling that their elaboration of the halakhah (הלכה) brought them closer not only to the Creator, but also to creation itself... and that the latter would naturally respond to the unchallengeable will of the Former as revealed not solely at Sinai, but also in the beit midrash (בית מדרש). 26 What had been forgotten was recalled through study, introspection, and principled exegesis. But new paths were forged as well, each for its own reason deemed necessary as new days dawned and brought along their own set of halakhic exigencies and social realities.

The notion that creation can serve as the path that the created can follow to the Creator is a commonplace of spiritual ecology in our day. But is it really taking that thought so much farther to imagine that creation can be altered in cosmic response to the spiritual, intellectual and halakhic growth of the created? Taken in that light, the notion of the world as the road the faithful follow to God makes it almost reasonable to imagine the process being transformational for all involved: (i) for the pious individual spending a lifetime on the road to Jerusalem; (ii) for the world, which is the path along which such individuals travel as they make their way forward along the spiritual trajectories of their finite lives toward the spiritual perfection for which all yearn and some possibly even attain; and (iii) for the Creator as well, Who is transformed by the religious efforts of the created and to Whom creation itself is a mere servant endowed by its very nature with the ability to serve both the Creator and the created as they seek

theory in his essay, "Controlling Impurity: The Natures of Im-purity in Second Temple Debates," also mentioned above in fn. 12, pp. 177-180.

²⁶ The Hebrew word *halakhah* is widely used in English-speaking circles to denote Jewish law in general. A *beit midrash* is a school or an adult study hall.

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to know each other ever more intimately through the study of Torah and the elaboration of even the least studied of the commandments.

I began this essay by referencing some of the ancient texts that depict the rabbis' conception of their work as essentially restorative. I then went on to attempt to demonstrate that the rabbis also believed themselves capable of altering the physical universe through the sheer intellectual and spiritual force of their work. I hope readers found both assertions cogent, but now I would like to suggest that the restorative aspect of the rabbinic enterprise need not be taken as oppositional to the rabbis' belief in their ability to alter the givens the physical universe. Indeed, one could just as reasonably describe these two aspects of the rabbis' work as each other's complement, the latter merely being to space what the rabbis' restorative work was to time. After all, the sages of classical antiquity cannot really have imagined that, merely by discussing a matter deeply and intently in the beit midrash, they became somehow able magically to "know" something Moses once knew...and to know it absolutely and certainly. Viewed more rationally, what they were doing was willing the past—Moses' past—to conform ex post facto to the present – to their own present in the study hall. And if that is a reasonable way to interpret their work, then why not see that willingness to believe in their own ability to alter the past as the counterpart of their apparent willingness to imagine themselves capable too of altering the present? Our tradition takes a dim view of arrogance and a positive view of self-confidence born of faith in God and the security such faith naturally engenders. But where the precise boundary between the two is... that, of course, is another question entirely.

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Martin S. Cohen

JEWISH LAW AND GUNS: A MODEST PROPOSAL

Nelly Altenburger

Question

Given the recent shooting in Parkland, Florida, is there a clear Jewish position regarding gun ownership? May a Jew own guns for self-protection? May a Jew sell firearms to the public or own a store that sells guns? May a Jew advocate for firearm regulation or gun control?¹

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Orthodox Jewry is divided regarding the issue of private gun ownership; see, e.g., Eugene Volokh, "Orthodox rabbis on guns" in The Wash-Post(September 16, 2014). accessed www.washingtonpost.com/news/volokh-conspiracy/wp/2014/09/ 16/orthodox-rabbis-on-guns/?utm_term=.826d9bf5f22c_on_lune_3, 2018. Notably the Orthodox Union and the (Orthodox) Rabbinical Council of America reaffirmed their commitment for "common sense measures to reduce gun violence;" see the Orthodox Union Advocacy Center, "Statement by the Union of Orthodox Jewish Congregations of America in the Aftermath of the School Shooting in Parkland, Florida; 'We are deeply saddened... and we call for action'" (February 15, https://advocacv.ou.org/statement-unionaccessed 2018), orthodox-jewish-congregations-america-aftermath-school-shootingparkland-florida-deeply-saddened-call-action/ on April 18, 2018. Among the progressive movements the position is more consistently supportive of firearm regulation, with emphasis on certain legislative actions. Note that the Reform movement has positioned itself on the issue so frequently as to land in the NRA's list of enemies; see, e.g., Nathan Guttman, "The Gun Lobby's Jewish Enemies List" in The Forward (February 8, 2013), accessed at https://forward.com/ opinion/170775/the-gun-lobbys-jewish-enemies-list, on April 18,

Introduction

After every highly publicized mass shooting in America, questions such as these arise. As terrifying as the prospect of an emotionally unstable person barging into a school carrying military-grade weapons and discharging them is, this is just the most visible aspect of the question of guns in America. There are additional statistics that need to be taken into consideration when talking about guns and gun ownership according to Jewish law. The fact that there are a few rabbis who are vehemently opposed to any firearm regulation² does not help to point to a clear consensus position gleaned from the Jewish sources.

It should be noted that the argument about a possible need to keep firearms with the intention of overthrowing a tyrannical government is beyond the scope of this *teshuvah* ("responsum"). That being

^{2018.} The Conservative movement's Rabbinical Assembly came out with resolutions calling for gun control in 1990, 1995, 2011, 2013 and 2014-all of which the RA reaffirmed in 2016; see Rabbinical Assembly, "Resolution on American Gun Violence" (April 6, 2016), accessed at https://www.rabbinicalassembly.org/story/resolutionamerican-gun-violence on April 18, 2018, and idem., "Resolution on Sensible Control in the United States" (April 24, 2014), accessed at https://www.rabbinicalassembly.org/story/resolution-sensiblegun-control-united-states?tp=1354 on April 18, 2018. Reconstructing Judaism did similarly in 2017 and 2018; see Reconstructing Judaism, "Response to Parkland, Florida Shooting" (February 15, 2018), achttps://www.reconstructingjudaism.org/cause/guncessed violence on June 3, 2018. In 2012 Ohalah, the association of Jewish Renewal clergy, also published a "Resolution on Gun Safety," accessed https://ohalah.org/tikkun-olam/statements/resolution-on-gunsafety/ on April 18, 2018...

See, e.g., Rabbi Dovid Bendory and Alan Korwin, "Jews for Preservation of Firearms Ownership White Paper: Why Jews Hate Guns: Are they right? And who are *The Shomrim*?" (2012) as accessed at http://jpfo.org/articles-assd02/why-jews-hate-guns.htm on April 18, 2018; and Nathan Guttman, "Jewish Gun Leaders Come Out Firing" in *The Forward* (January 11, 2013), as accessed at https://forward.com/news/169077/jewish-gun-leaders-come-out-firing/ on April 18, 2018.

said, without judging the merit of this discussion in the American body politic, one should remember that the maxim *dina demalkhuta dina* — *i.e.*, "the law of the land is the law" — is part and parcel of Jewish political thought, which generally discourages rebellion against the authority of the government.

There is no denying that American society has a strong culture of firearms. Guns are used for recreational purposes, and they are used in hunting as well. Regarding hunting, whereas the consumption of meat is definitely allowed in Jewish law, killing an animal while hunting it makes the animal *t'refah*, that is, not kosher from the outset.³ A Jew could trap a kosher animal and then slaughter it,⁴ but not hunt it with a weapon. Accordingly, firearms are being considered in this *teshuvah* for self-defense, and for recreational use at shooting ranges.

General Considerations

The most important numbers about guns in the United States come from daily occurrences. Guns and related firearms were responsible for 15,581 deaths in America as well as 31,181 gun injuries in 2017.⁵ CDC—the American health protection agency, the Centers for Disease Control and Prevention—gives the total number of suicides for 2015 (last year of available data) as 44,193.⁶ About half of that

T'refah is defined as an animal unfit to be consumed since before its kosher slaughter one of its major organs is defective or missing, perforated, torn, poisoned, broken or injured in a fall. Major organs include the brain, heart, spinal column, jaw, esophagus, crop (in fowl), lungs, trachea, liver, gall bladder, spleen, kidney, womb, intestines, omasum, abomasum, rumen, reticulum, legs, ribs, and hide. See, e.g., Rabbi Yacov Lipschutz, Kashruth: A comprehensive background and reference guide to the principles of Kashruth (New York, NY: ArtScroll 1988), pp. 23-24.

⁴ See Leviticus 17:13. The verse refers to catching an animal in order to kill it through kosher ritual slaughter.

See the Gun Violence Archive at http://www.gunviolencearchive.org/; accessed on March 13, 2018.

See Centers for Disease Control and Prevention, "Suicide and Self-Inflicted Injury," as accessed at https://www.cdc.gov/nchs/fastats/

number (22,018) had a firearm as its instrument. Another important piece of information is the FBI's reporting that women are killed by their domestic partners with guns at a rate of 50 fatalities per month.⁷

A Jewish conversation about guns has to begin before any discussion of guns themselves: it begins with a conversation about violence, life, and the sanctity of life. Regarding this, most sources agree: human life is not to be trifled with. The famous dictum "whoever kills a soul [from Israel], Scripture considers as if s/he has killed an entire world" appears in several places in rabbinic literature.⁸

It is common knowledge that (nearly) all *mitzvot* ("command-ments") can be transgressed to save one's life. There are three notable exceptions to that general rule, and murdering an innocent person is among them:

A certain person came before Rabba and said to him: The chief of where I live said to me: Go kill so-and-so, otherwise I will kill you.

He [Rabba] said to him: Let him [*i.e.*, the chief] kill you and you should not kill. Who is to say that your blood is redder? Perhaps the blood of that man [*i.e.*, the innocent man you are being asked to kill] is redder.⁹

The answer "his blood is redder" implies that there is no logical reasoning, nor moral impetus, that would allow a person to save her-

suicide.htm on March 13, 2018. One can find there a .pdf with the raw data as well.

Federal Bureau of Investigation, "Supplementary Homicide Reports 2009-13," cited in Everytown for Gun Safety, "Guns and Domestic Violence," as accessed at https://everytownresearch.org/guns-domestic-violence/ on March 13, 2018.

See, e.g., Mishnah, Sanhedrin 4:5; Jerusalem Talmud, Sanhedrin 4:22; Babylonian Talmud, Sanhedrin 37a; and P'sik'ta Zut'ra, Bereshit 1. The words "from Israel" are added when the source is being used regarding capital punishment by Jewish courts, but, for other purposes, the more general sanctity of human life is stressed.

⁹ Babylonian Talmud, Sanhedrin 74a.

self by killing another innocent one. This idea is codified in the Tur,¹⁰ in Maimonides'¹¹ Mishneh Torah,¹² and in other sources.

The value of human life, however, is not absolute; and capital punishment exists within the Jewish body of law—albeit rendered inapplicable by Talmudic sources¹³ and posterior codes.¹⁴ For our discussion regarding the permissibility of owning weapons, this point is important. That being said, the fact that the rabbis did not erase capital punishment from the Jewish tradition underscores the many balances the body of Jewish tradition is trying to achieve. The unwillingness to commit to any single value as absolute is arguably an important characteristic of Jewish thought in general.

Guns are a modern implement created by modern people to do more effectively what humans have been doing since the beginning of history: murdering. It is instructive that our Torah brings us the story of Kayin ("Cain") and Hevel ("Abel"), in Genesis 4:1-18, just after the story of Creation and the Garden of Eden. One could say that the story of Kayin and Hevel is the first story that happens, as it were, in our world. That Kayin killed Hevel without using a gun is irrelevant; the violence is already there. That our Torah sees fit not to add the words exchanged between them is also fundamental to the story: in nature,

Tur, Yoreh Deah 157:1. The Arbaah Turim is often called the Tur. This important halakhic code, first published in 1475, was written by Jacob ben Asher (born in Cologne, 1270; died in Toledo, Spain c. 1340). The four-part structure of the Tur and its division into chapters (*simmanim*) were adopted by the later code Shulchan Arukh.

Moses ben Maimon, commonly known as Maimonides, was born in Cordoba then Almoravid Empire, either in 1135 or 1138, and died in Cairo, Egypt in 1204. The code he authored, the Mishneh Torah, was compiled between 1170 and 1180.

¹² Mishneh Torah, the Foundations of Torah 5:1-4.

¹³ See, *e.g.*, Babylonian Talmud, Makkot 7a.

For a through discussion on this subject, as well as the Talmudic and post-Talmudic sources, please read Ben-Zion Bokser, "Statement on capital punishment" (1960) in the *Proceedings of the Committee on Jewish Law and Standards* 1927-1970, Volume III, pp. 1537-1538; and Jeremy Kalmanofsky, "Participating in the American Death Penalty" (October 15, 2013), available at https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/cjls-onesh-mavet.pdf on June 3, 2018.

members of the same species killing one another for reasons other than food scarcity or reproduction seems to be an exclusively human activity. 15

In our times, the question regarding gun possession is certainly even more critical: if the killer in the Sandy Hook massacre had had access only to knives or swords, the tragedy that that particular mass shooting brought—the death of 20 six- and seven-year-olds and six adults—certainly would not have been as great. As a matter of strange coincidence, on the same day as Sandy Hook—December 14th, 2012—a man in China went on a stabbing spree near an elementary school. He wounded 24 people; 23 of those were children. None died. Access to guns in China is completely restricted among common citizens. 16

For our purposes, we have to face the fact that firearms are a distinct instrument: their basic function is to kill animals or humans. Plowshares and pruning hooks may be used to kill, but that is not their basic function. The same can be said of baseball bats, knives, and almost any other device created by humans. In America, where advocates for a complete lack of restrictions on firearm ownership frequently compare guns with other tools—affirming that people would kill regardless—this is an important distinction to bear in mind. "Guns don't kill people; people kill people" is brandished around on bumper stickers—as if guns had any other function.

There are indirect functions of gun ownership, which must be dealt with: deterrence and display of power. In that same category, of course, are most instruments of war. One must consider how firearms imply power, as do all other weapons of destruction.

In a discussion in the Babylonian Talmud about what objects a person may carry in a public domain on Shabbat, the question of

Joseph Castro, "Do Animals Murder Each Other?" on Live Science (September 16, 2017), as accessed at https://www.livescience.com/60431-do-animals-murder-each-other.html on April 16, 2018; and Erika Engelhaupt, "How Human Violence Stacks Up Against Other Killer Animals" in National Geographic (September 28, 2016), as accessed at https://news.nationalgeographic.com/2016/09/human-violence-evolution-animals-nature-science/ on April 16, 2018.

See, e.g., Shannon Van Sant, "China school knife attack leaves 23 injured" on CBSNews (December 14, 2012), as accessed at https://www.cbsnews.com/news/china-school-knife-attack-leaves-23-injured/ on December 28, 2017; and many other news sources.

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weapons comes up.¹⁷ What is the nature of weapons? Rabbi Eliezer's idea, first offered and then rejected, is that they are ornaments, like jewelry. Jewelry may be carried on Shabbat, so—maybe if weapons are things of which to be proud, things that imply strength and masculinity—they could be carried. The sages say, however, that weapons are something shameful—the prooftext being Isaiah 2:4, the swords-into-plowshares vision for the world. The *gemara*, on that same Talmudic page, elaborates and aims to prove that people should only have weapons because of their need for war—and therefore, in Messianic times, a need for weapons will not exist. This argument thereby forecloses the idea that one ought to see weapons, through the Jewish collective lens, as items that bring aesthetic pleasure. Following that logic, in the absence of a direct threat to one's life, one is not allowed to carry weapons on Shabbat. By extension, given the prooftext, absent a direct threat to one's life, one should never carry a weapon.

It is important to note, however, that owning a gun would be permissible when one lives in an area where crime is present, and personal safety or of one's family could be in jeopardy. Whether owning a gun in such a case is merely permitted or is in fact obligatory depends on having a rational, statistics-based argument as to the expectation that such a person could reasonably have regarding the presence and the efficacy of their local police forces.

Throughout most of Jewish history, the idea of a police force, financed by all the inhabitants of a place through taxes, committed to serve all people with the same level of justice and courtesy, was non-existent. The first country to have a modern police force was England in 1829, and even more recent is the expectation that police officers will respond to the public – through the justice system – for misuse of police force. These expectations vary not only between countries but between neighborhoods in any given city as well.

But what if one lives in a dangerous area—one full of robbers and home invaders, with little or no expectancy of policing and police work? In that case, one could say that his or her house falls into a specific category within the Talmud, the category of one who is "near the border." "Near the border" for the Talmud means that the home is located in an area prone to being attacked by bands of non-Jewish marauders. This idea of one's home being "near the border" gives rise to

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¹⁷ Babylonian Talmud, Shabbat 63a.

several allowances in the Talmud, such as requiring that the city be encircled by walls¹⁸ and other defense mechanisms, such as raising vicious dogs¹⁹ (we will return later to the similarities between firearms and dogs). The Talmud then states, as an exception, that weapons can be carried out on Shabbat if the inhabitants are certain that the marauders are invading with the intent of inflicting bodily harm to the population. If they merely seek food, then weapons cannot be taken out against them on Shabbat.

Many generations later, Maimonides saw living in a city near the border as such a precarious position that he gave permission to deploy weapons for defense even on Shabbat. He affirmed, in this particular case, contrary to what the Talmud proposes, that there is no need to investigate whether the marauders come merely seeking food and affirmed: "in the city near the border, even if they come only after food, we bring out weapons and desecrate the Shabbat on account of the marauders."

In other situations, that is, if the home is not in a city near the border, Maimonides' Mishneh Torah makes clear that there are different limits. For instance, should a homeowner be aware that an intruder has broken into the home certainly only to steal, and not to do anything else, killing such a robber is, in Maimonides' words, murdering—for defending possessions is not viewed as at the same level as defense of a human life.²¹

But let's continue with that line of thought: What if there is an actual threat to a person's life? What if—God forbid—one knows that a would-be murderer is coming with the single intent of murdering? Then, of course, the Talmud brings the flip side: "[if] one comes to kill you, get up earlier and kill him."22 This can only be understood with the premise that the one coming to murder is not innocent; on the contrary, he or she is considered under the rubric of *rodef*, a pursuer whose only intent is to murder and against whom the dictum above applies. Maimonides will even go one step further, and assure that, should the intentions of the intruder be unclear, given that every person would

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¹⁸ *Ibid.*, Bava Batra 7b.

¹⁹ *Ibid.*, Bava Kamma 83a.

Mishneh Torah, Laws of Shabbat 2:23, based on Babylonian Talmud, Eruvin 45a.

²¹ Mishneh Torah, Laws of Theft, 9:9-11.

²² Babylonian Talmud, Berakhot 58a and Sanhedrin 72a.

stand up for their possessions, killing the intruder is not punishable by law.²³ Here we see that security of individuals is fundamental in Jewish thought; and this adds another layer of complexity to the issue of firearm ownership at home by Jews.

It should be noted that the idea of having a gun for self-defense, whereas emotionally appealing, is not efficacious in practice. A study published by the Harvard School of Public Health in 2015, led by Dr. David Hemenway, shows that self-defense gun use in "contact crimes" present a 0.1% decrease in the likelihood of injury to "contact crimes" in which the victim has no gun and defended herself in any other way.²⁴ This sobering statistic should give pause to anyone considering keeping a gun at home, given the enormous amount of danger that a firearm presents to those living in close quarters with one.

Having guns in a house is certainly dangerous. Unsecured guns pose a clear danger to children and adults: a gun kept at home is more likely to be used in cases of criminal assault, suicide or accidental shooting than be used in self-defense.²⁵ In terms of unintentional gun fatalities, American children between 4 and 15 years of age are seventeen times more likely to die by a gun accident than those in the rest of the developed world,²⁶ with an average of 5,790 children being treated for gunshot wounds, and 1,300 dying, on average per year.²⁷

²³ Mishneh Torah, Laws of Theft, 9:7-8.

David Hemenway and Sara J. Solnik, "The epidemiology of self-defense gun use: Evidence from the National Crime Victimization Surveys 2007–2011" in the *Journal of Preventive Medicine*, Volume 79 (October 2015), pp. 22-27—available at https://www.sciencedirect.com/science/article/pii/S0091743515001188 as accessed on April 16, 2018.

Arthur L. Kellermann, Grant Somes, Fred Rivara, and Joyce G. Banton "Injuries and deaths due to firearms in the home," in *The Journal of Trauma*, 1998 Aug; 45(2):263ff, abstract available at https://www.ncbi.nlm.nih.gov/pubmed/9715182 as accessed on December 28, 2017.

²⁶ David Hemenway, *Private Guns, Public Health* (University of Michigan 2004), p. 86.

The research was done with numbers from 2002 to 2014. Katherine A. Fowler, Linda L. Dahlberg, Tadesse Haileyesus, and Joseph L. Annest, "Childhood Firearm Injuries in the United States" in the *Journal of the American Academy of Pediatrics*, vol. 140:1 (July 2017), as accessed at http://pediatrics.aappublications.org/content/140/1/e20163486 on April 18, 2018.

The situation is deemed serious enough that the American Academy of Pediatrics has issued policies and recommendations against keeping firearms at home.²⁸

Keeping dangerous things in a home is not a modern problem, and it is taken up by the Babylonian Talmud.²⁹ From the Torah verse regarding making a parapet on one's flat roof³⁰ comes the rabbinic idea that dangerous entities, such as vicious dogs and rickety ladders, should never be kept at home.³¹

In the Talmudic reality, vicious dogs constituted weapons in a house. They could attack strangers, and thus the fear they provoked was of concern. Talmudic legend has it that women miscarried due to the fright caused by a barking dog.³² So too, the Talmud informs us that vicious dogs prevented people from giving *tzedakah* ("charity"), for they prevented the poor from asking for *tzedakah* due to their fear of being attacked.³³

Recalling these anecdotes, Jewish questions surrounding the ownership of dangerous entities turns towards the halakhic (*i.e.*, Jewish legal) question of whether one may keep vicious dogs at home at all. The Shulchan Arukh³⁴ does allow having such a dog—provided

See the American Academy of Pediatrics, "Policy Statement: Firearm-Related Injuries Affecting the Pediatric Population," as accessed at http://pediatrics.aappublications.org/content/pediatrics/early/2012/10/15/peds.2012-2481.full.pdf, and Quora, "The American Academy of Pediatrics Gun Safety Recommendation" on *HuffPost* (February 1, 2017), accessed at https://www.huffingtonpost.com/quora/the-american-academy-of-p_b_14553860.html on December 28, 2017.

²⁹ Babylonian Talmud, Bava Kamma 15b and 46a.

³⁰ Deuteronomy 22:8.

The image of the vicious dog in the Talmud appears in contrast with the village dog, which helps in ridding homes from mice, and obviously poses no danger, as found in *e.g.*, the Babylonian Talmud, Bava Kamma 80a.

Babylonian Talmud, Shabbat 63b.

³³ *Ibid.*, 63a.

The Shulchan Arukh is the most widely consulted of the various legal codes in Judaism. It was authored in Safed (today in Israel) by Joseph Karo in 1563 and published in Venice two years later. Since Karo supported his decisions mostly on Sephardi authorities and customs, most editions of the Shulchan Arukh also contain the glosses of Moshe Isser-

that it is constantly secured with a metal chain³⁵ (in accordance with the Babylonian Talmud's broad statement on the matter).36 Maimonides affirms that, if the owner of the vicious dog refuses either to chain the canine or to remove the danger, the owner should be put in *cherem* (effectively, "excommunication"), becoming ostracized by the Jewish community.37

Making an analogy from vicious dogs to firearms, one can understand that, if, as stated above, there is a need for a firearm in a home, then that it should be kept absolutely secured, that is, "chained at all times." Particularly in a home where children live, this stipulation is vital, and the severity of the consequences cannot be overly stressed. The AAP study previously mentioned highlights the fact that an average of 1,300 children die from gun injuries annually, many of them due to unsecured firearms at home; and every week in the United States there are reports of toddlers and children shooting adults or other children using unsecured and easily accessible loaded guns.

Selling Guns

It is obvious that weapons have been made and sold since they were created, way before the invention and production of firearms, and Jews have been involved in such sales. While there is no prohibition against a Jew owning a gun shop, halakhah (Jewish law) does prescribe some limits.

The question of whether Jews may sell weapons receives an intriguing treatment in the Babylonian Talmud.38 There, Jews are forbidden to sell weapons or their accessories to idolaters, for there is an assumption of a negative outcome of their actions. The same applies, the Talmud continues, to Jewish bandits. The evident idea is not necessarily the religion or ethnicity of the buyer, but the probable outcome of the buyer's actions.

les, an Ashkenazi halakhic authority contemporary of Karo. Isserles wrote his glosses so that the customs of the Ashkenazim might be recognized and not be discarded on account of Karo's reputation.

³⁵ Shulchan Arukh, Choshen Mishpat 409:3. ³⁶ *Cf.* Babylonian Talmud, Bava Kamma 79b.

³⁷ Mishneh Torah, Laws of Torah Study 6:14.

Babylonian Talmud, Avodah Zarah 15b.

These ideas are brought forth in stark clarity by Maimonides: "[O]ne does not sell... anything that can bring damage to the public."³⁹ His instruction continues, expressing that

anyone who supports a criminal, who is blind to the ways of truth because of the greed in his heart, transgresses the negative commandment "do not put a stumbling block in front of the blind" (Leviticus 19:14).⁴⁰

In the words of the Shulchan Arukh:

And so too, for every stumbling block in which there is danger to life, it is a positive commandment to remove it, protect oneself from it, and be exceedingly careful in its regard; as it says: "You shall guard and protect your lives" (Deuteronomy 4:9). And if the stumbling blocks were not removed and were placed in front of those who come to danger, one has violated a positive commandment and transgressed "do not place blood in your home" (*ibid.*, 22:8).⁴¹

Based on this, one should only sell weapons if the purchaser has received firearm training, if the buyer has a clear history of sound mental health as well as a clear criminal background check, and if his or her good intentions are beyond doubt. The presence of any doubt in the seller's mind must prevent the sale, as the seller would be transgressing the Biblical injunction to "not put a stumbling block in front of the blind." It should be noted that most guns used in mass shootings are obtained legally⁴² and sellers have been reported to be distraught when facing the undeniable fact that they had a part in the chain that led to enabling the crime to be committed. Moreover, many gun shops

⁴¹ Shulchan Arukh, Choshen Mishpat 427:8.

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³⁹ Mishneh Torah, Laws regarding the Murderer and the Preservation of Life 12:12.

⁴⁰ Ibid., 12:14.

Larry Buchanan, Josh Keller, Richard A. Oppel Jr., and Daniel Victor, "How They Got Their Guns" in *The New York Times* (February 16, 2018), as accessed at https://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html on March 13, 2018.

are broken into and have had their guns stolen and subsequently used in crimes.

Although there is no prohibition against selling guns, *halakhah* urges that Jewish individuals should consider other ways to make a living, so as not to be put into a position of having enabled or facilitated murder and other crimes.

Guns For Recreation

The existence of the Second Amendment to the Constitution of the United States, even though legal scholars and judges disagree about its precise meaning and scope, is very significant in cultural terms. Any Jewish view on an issue needs take into consideration the civilization in which the Jew finds him or herself living. In part this is due to the fact that we are applying Jewish texts that were written in a certain set of circumstances to a different set of circumstances.

The sociological aspect of American gun culture cannot be ignored.⁴³ The questions that arise from having the possibility of personal gun ownership protected by an amendment of the United States constitution do not arise in other countries where gun ownership is not debated as an individual right; nor as an important piece of a country's history. Given numbers such as the ones presented by the 2015 National Firearms Survey⁴⁴ it is understandable that Jews could be interested in collecting and/or using guns for sport.

⁴³ See one of the few studies on the subject: David Yamane, "The Sociology of U.S. gun culture" in *Sociology Compass* 11:7 (June 16, 2017), as accessed at https://onlinelibrary.wiley.com/doi/full/10.1111/soc4.12497 on June 4, 2018.

This survey allowed respondents to name multiple primary reasons for firearms ownership. It presented as results: 40% hunting, 34% collecting, and 28% sporting use. 63% of all owners did mention protection against people as one of the primary reasons. See Deborah Azrael, Lisa Hepburn, David Hemenway, and Matthew Miller, "The Stock and Flow of U.S. Firearms: Results from the 2015 National Firearms Survey" in RSF: The Russell Sage Foundation Journal of the Social Sciences 3(5) (2017), pp. 38-57, as accessed at https://www.rsfjournal.org/doi/full/10.7758/RSF.2017.3.5.02 on April 18, 2018.

Should a Jewish person be inclined to have guns for recreational use and see the need of improving his or her marksmanship, in the confines and safety of a shooting range, this technically poses no problem from a *halakhic* perspective, once the question of safeguarding the weapon at home is solved with the utmost care and that that home has no children.

At this moment one should pause, however, and recall the words of Rabbi Yechezkel Landau,⁴⁵ who, through his *teshuvah* on hunting, is one of the few post-talmudic sages who engaged, albeit tangentially, with the question of guns: "For how can a man of Israel actively kill beasts needlessly, simply to pass his leisure time by engaging in hunting?"⁴⁶

Similarly, that a Jewish person would spend time in a shooting range just for the sake of shooting, with no other objective in mind aside from passing time, is astounding. One would hope that such interest in firearms would be channeled towards service to one's country or police force.

Guns as an Expression of Power and Masculinity

In Hebrew, weapons are called $\it keleizayin$ (כלי זין), and the phallic imagery should not escape us. 47

There is a toxic brand of masculinity sold in a specific type of American movie, and as an archetype in American culture, which has been duly noted by scholars. Thus, in *Rampage: The Social Roots of School Shootings*, the authors state the fact that "the script of violent masculinity is omnipresent" and offer an enormous amount of evi-

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Yechezkel ben Yehuda Landau was born in Opatow, Poland, on October 8, 1713 and died in Prague – then in the Holy Roman Empire – on April 29, 1793. His responsa are collected under the name Noda BiYhudah.

⁴⁶ Noda BiYhudah, Yoreh Deah II:10.

⁴⁷ In the Hebrew phrase *kelei zayin*, the *kelei* (כלי) can be translated as "instruments of" and *zayin* (זיין) as either "weaponry" or "phallus."

dence for the message that boys and teenagers receive that "'Men' solve their own problems. They don't talk, they act. They fight back." 48

Dr. Peter Langman, in his Why Kids Kill: Inside the Minds of School Shooters makes clear that there is a connection between the lack of power, owning guns and killing fantasies.⁴⁹

In terms of Jewish law, parents and teenagers should be careful with exposure to such images and archetypes, as well as seeking help should any anxiety regarding toxic forms of masculinity arise. Buying a gun, or enabling access to one, in these circumstances would be completely forbidden, given the statistics provided throughout this paper.

Weapons with High Capacity

Even if an individual might legitimately see the need to own a handgun or a rifle for protection, as stated above, it is very difficult to see an individual need to have a military-grade weapon of any sort. The fact is that having no limit to what type of weapon a person can own makes for a steady climb of body counts in mass shootings as is statistically evident: 59 were killed in Las Vegas last year, in contrast with 50 in Orlando (2016) and 33 at Virginia Tech (2007). Allowing military-grade weapons to reach the hands of mentally unstable people necessarily leads to war-like deaths.

A firearm that can shoot up to 600 bullets in a minute, such as an AR-15,⁵¹ has no place outside a military operation—and a Jew should join the military in order to manipulate such a weapon. It is unusable for hunting, for hunters prefer their prey with as much flesh

⁴⁸ Katherine S. Newman, Cybelle Fox, David J. Harding, Jal Mehta, and Wendy Roth, *Rampage: The Social Roots of School Shootings* (New York, NY: Basic Books, 2004), p. 269.

⁴⁹ Peter Langman, Why Kids Kill: Inside the Minds of School Shooters (New York, NY: St. Martin's Press, 2009), pp. 28-29 and 39-40.

Susan Miller, "Las Vegas shooting now tops list of worst mass shootings in U.S. history" in *USA Today* (October 2, 2017), as accessed at https://www.usatoday.com/story/news/2017/10/02/worst-mass-shootings-u-s-history/722254001/ on December 28, 2017.

The number given in its manual affirms that 45 bullets can be shot per minute under regular conditions, the number 600 comes without having to account for changes in magazines (which hold up to 30 bullets).

as possible. That such a weapon can be bought in the city of Orlando in under 40 minutes merely a few days after the Orlando shooting,⁵² in which 50 people were killed, shows the current lack of legislation as well as common sense on the part of sellers.

Firearm Regulation, Gun Control and Gun Advocacy

Firearms are ubiquitous in America. Between 37% and 42% of American households own a gun⁵³ and between 265 million and 310 million guns are estimated to be in civilian hands in America. This is about one gun per American. The concentration of firearms is high: 3% of the American population owns about half of the firearms in America.⁵⁴ Any proposal to deny citizens of their firearms is unthinkable, particularly when considering the presence of the second amendment in the American Constitution.

However, the question of firearm regulation is fundamental, precisely given the presence and lethality of firearms. In Jewish thought there are no rights, but rather obligations that come with power. As an example, if a person wants to own an ox, which is a powerful animal to plow fields, every effort is needed to make sure that it is safe to have that animal around, both in one's domain and in the possibility that the animal encounters other people and animals.⁵⁵ The Jewish concept of freedom comes with boundaries. This is most clearly

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Andy Campbell and Roque Planas, "It Took Us Just 38 Minutes To Buy An AR-15 In Orlando" on *HuffPost* (June 14, 2016), as accessed at https://www.huffingtonpost.com/entry/ar-15-orlando-us-576059f3e4b0e4fe5143fd4d on June 3, 2018.

Few Research Center, "A minority of Americans own guns, but just how many is unclear" (June 4, 2013), as accessed at http://www.pewresearch.org/fact-tank/2013/06/04/a-minority-of-americans-own-guns-but-just-how-many-is-unclear/ on March 13, 2018; Gallup research, "Guns," as accessed at http://news.gallup.com/poll/1645/Guns.aspx on March 13, 2018.

Youyou Zhou, "Unequal Distributions of Arms: Three percent of the population own half of the civilian guns in the US" in *Quartz* (October 6, 2017), as accessed at https://qz.com/1095899/gun-ownership-in-america-in-three-charts/ on March 13, 2018; also see Azrael *et al.*, *ibid.*.

⁵⁵ Exodus 21:28-32.

expressed in the wordplay of the Hebrew terms for "freedom" and "engraved," present in the midrashic interpretation regarding the inscriptions on the Tablets of the Law, as described in Exodus 32:16:

Do not read [the word הרות as vocalized as] *charut* ("engraved"); rather read *cherut* ("freedom"), for the really free are those who study Torah [*i.e.*, the Law and its ways of peace].⁵⁶

Put in American parlance, there is no right without limits.⁵⁷ Arguing for limits and the type of limit is fundamental to any right. This is also true regarding gun ownership; it is proven that strong firearm regulation diminishes the effects of gun violence and suicide using firearms.⁵⁸

Mindful of the research stated above regarding masculinity and guns, it is clear that some of these regulations should be directed at firearms being purchased by teens and young adults—even though recent shootings have been perpetrated by older males as well, such as the one in Las Vegas in 2017. The question of gun availability for those with mental health issues is also of importance: most people with depression should not be able to buy a gun, given the cited statistics regarding suicides. The lethality of a firearm in a suicide attempt is 91%, meaning that only 9% of firearm suicide attempts are not successful.⁵⁹ Regulations that impose a waiting period between purchas-

Tanna deVei Eliyyahu Zuta, Pirkei Derekh Eretz 2; and Avot deRabbi Natan A 2:3 (ed., Schechter, p. 10).

In the words of Justice Antonin Scalia, the Supreme Court decision of June 26th, 2008, "Like most rights, the Second Amendment right is not unlimited." To read the entire decision, see Supreme Court of the United States, "District of Columbia v. Heller (No. 07-290)" (June 26, 2008), as accessed at https://www.law.cornell.edu/supct/html/07-290.ZS.html on June 4, 2018.

Michael D. Anestis and Joye C. Anestis, "Suicide Rates and State Laws Regulating Access and Exposure to Handguns" in the *American Journal* of *Public Health* (October 2015), as accessed at https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2015.302753 on March 18, 2018.

⁵⁹ E. Michael Lewiecki and Sara A. Miller, "Suicide, Guns, and Public Policy" in *American Journal of Public Health* 103:1 (January 2013), pp.

ing and receiving a gun have the unmistakable effect of diminishing the number of suicides.⁶⁰

A well-known injunction is found in Leviticus 19:16: "Do not stand idly by the blood of your neighbor." The connection of the individual to the web of obligation in the political body, and the conversation in rabbinic sources regarding the ability of protest and its obligation among contemporary Jews living in democratic societies has been taken up by Dr. Aryeh Cohen in his masterful book *Justice in the City:* An Argument from the Sources of Rabbinic Judaism. ⁶¹ Based on these points, and in consonance with the fact that strong regulations diminish the effects of gun violence and suicide by guns, Jews are obligated to support firearm regulation in the United States.

Whereas it is true that just having laws will not prevent every suicide, killing or mass shooting, not having any limit to the ownership and sale of firearms constitutes putting stumbling blocks in front of the blind and letting them stay in the public thoroughfare. Given the amount of deaths that guns bring every year to the United States, advocating for firearm regulation is certainly an obligation.

Conclusions

From the survey of the Jewish sources, what arises is a nuanced view of firearms: there is no complete ban on weapons, for violence is a part of our existence and there is a *mitzvah* of self-defense and defense of our property and of persons. How much violence there is in a

^{27-31,} as accessed at https://www.ncbi.nlm.nih.gov/pmc/articles/ PMC3518361/ on March 13, 2018

Michael Luca, Deepak Malhotra, and Christopher Poliquin, "Handgun waiting periods reduce gun deaths" in *Proceedings of the National Academy of Sciences of the United States of America* 114:46 (November 14, 2017), pp. 12162–12165, accessed at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5699026/ on April 18, 2018. See also C. H. Cantor and P. J. Slater, "The impact of firearm control legislation on suicide in Queensland: preliminary findings" in *The Medical Journal of Australia* 162:11 (June 1, 1995), pp. 583-585; abstract accessed at http://europepmc.org/abstract/med/7791644 on April 18, 2018.

⁶¹ Aryeh Cohen, *Justice in the City: An Argument from the Sources of Rabbinic Judaism* (Boston, MA: Academic Studies Press, 2012), esp. ch. 2.

society, as well as how much effective policing exists, impacts how one applies our sources and makes his or her decisions.

The need for keeping a deadly weapon at home or on one's person should be judged in real terms: not only the real possibility of coming to bodily harm needs to be present, which should be accounted for with data from scientific sources such as CDC and other groups, but also the impulse to have a gun needs to be weighed against the danger that such a firearm brings to a home and society at large. It is clear that, should a person see the unmistakable need to have a firearm at home, such an instrument needs to be securely stored and have safety mechanisms against accidental discharge.

It should be obvious, but it needs to be stated: a Jewish owner of firearms needs to have extensive training so as not to kill bystanders, and a thorough mental health evaluation is required so as to prevent the use of firearms in suicide attempts, domestic disputes or murder-suicides.⁶²

Given the policies and guidelines of the American Academy of Pediatrics, which are based on sound statistics, and given the number of guns present in American society at large, a Jew should not have a firearm if the home has children, and responsible parents must ask about the presence of firearms, and whether they are securely stored, before allowing a child to attend a playdate. The consequences of children encountering an unsecured, loaded firearm while visiting a playmate are too serious not to consider asking the question. Almost every death relating to guns and children under 12 involve an unsecured loaded firearm in a home. There is an average of one of such deaths a week.⁶³

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There are—as of a recent count—26 states in the U.S. where the law permits concealed carry without any type of training; see, e.g., Jennifer Mascia, "26 States Will Let You Carry a Concealed Gun Without Making Sure You Know How to Shoot One" in *The Trace* (April 17, 2017), as accessed at https://www.thetrace.org/2016/02/live-fire-training-not-mandatory-concealed-carry-permits/ on June 3, 2018.

⁶³ Nick Penzenstadler, Ryan J. Foley, Larry Fenn, USA TODAY, and The Associated Press, "Added agony: Justice is haphazard after kids' gun deaths" in *USA TODAY* (May 25, 2017), as accessed at https://www.usatoday.com/story/news/2017/05/24/justice-haphazard-when-kids-die-in-gun-accidents/101568654/ on April 18, 2018.

It is clear that there is no prohibition against discharging firearms in a secure setting such as a shooting range, nor is there any prohibition against owning a gun store. In the latter case, however, it is of fundamental import that the owner have a clear vision of both what he or she is selling and who is buying.

Nowhere else in the developed world do we see more than 30,000 deaths a year due to gun violence. America has so many deaths per capita related to firearms that its gun death per capita is 25.2 times higher than any other developed country in the world.⁶⁴ There is ample evidence that strong firearm regulation diminishes the number of deaths caused by gun violence, and supporting gun and firearm regulation is, therefore, obligatory for Jews in a democratic society.

Rabbi Nelly Altenburger was ordained by the Ziegler School of Rabbinic Studies in 2006, and she is forever grateful for that opportunity. She lives in Danbury, CT, where she has been serving Congregation B'nai Israel for the past 12 years. She has four children together with her incredible husband. The tragedy at Sandy Hook — a 20-minute drive from Danbury — spurred Rabbi Altenburger's study and action surrounding firearm regulation in America.

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⁶⁴ Kara Fox, "How US gun culture compares with the world in five charts" on CNN (March 9, 2018), accessed at https://www.cnn.com/2017/10/03/americas/us-gun-statistics/index.html on April 18, 2018.

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Informed

Inquisitive

Imagining

OFFERING TO THE FOUNDATION STONE

Jill Hammer

Ritual is an organically occurring human activity. No one culture invented ritual—it is something humans do naturally. Ritual is a kind of adult play, a way of making meaning, communicating experiences, beliefs, and values, and creating structure for individual lives and whole societies. "Jewish ritual" is a category that has changed over time, from the biblical rituals of offering to talmudic prayers at morning, afternoon, and evening, to ceremonies invented in later times, such as the celebrating of *bar* and *bat mitzvah*. Throughout history, rituals "canonized" by Jewish law or text exist alongside folk ceremonies such as the celebration of the birth of baby girls, the writing of amulets, or the ritual visiting of graves. New ritual continues to be innovated today in response to the needs of contemporary Jewish communities. As a scholar of ritual and folklore, I am interested in how new rituals meet these needs and what values and beliefs they express.

It is an endless source of fascination for me that sometimes old rituals go out of use and then come back into use again when they are needed. The rituals of the Temple have long been left aside as the Jewish people coped with the Temple's destruction and as Rabbinic Judaism gained ascendancy as the heir to Temple Judaism. Some of those long-lost rituals speak to the current age. In particular, the Temple rituals of Sukkot, which the Talmud describes as ceremonies to plead for the fecundity of the earth and the sustenance of all beings, now feel relevant as we face ecological crises and political arguments about how to treat our planet.

My poem "Offering to the Foundation Stone" was written for

¹ The *bar mitzvah* ceremony is first recorded in 13th century France, and the ritual of *bat mitzvah* innovated in 20th century United States. See, *e.g.*, Rabbi Michael Hilton, *Bar Mitzvah*, *a History* (Philadelphia, PA: Jewish Publication Society 2014), ch. 1.

such a revived ritual. In the ancient Temple, on Sukkot, as part of a water ritual known as *Simchat Beit haShoevah* ("rejoicing in the water drawing"), a water libation was made on the altar to ask for rain for the coming year. There was much joy as part of this ritual: torches, fire-juggling, dancing, and singing all night: "One who never saw the joy of the Water Libation never saw joy in his life." Another text proclaims: "There was not a courtyard in Jerusalem that did not shine from the light of the Water-Drawing ritual."

Every autumn for several years now, at the Isabella Freedman Jewish Retreat Center (owned by Hazon), I have the privilege of being part of the contemporary Simchat Beit haShoevah ritual conceived by Kohenet Sarah Shamirah Chandler. We create a modern version of the water libation ritual described in the Talmud – not to be conducted in a Temple, but to be conducted on beloved local land in celebration of the water cycle and in prayer that the water cycle continue to flow without interruption. We begin the ritual by drawing water from the local pond and dividing it into many bowls and jars. After havdalah⁴, we read the passages from the Talmud that describe the joy of the water libation ritual. Sometimes, we have torch juggling just as they did. Then, each member of the community takes a jar or bowl of water to carry in procession. Accompanied by people carrying torches, we all walk to the firepit, where a lit fire has been prepared. Then we pour out the water around the fire as a water-libation, praying for the blessing of water in our world. After that, there is music and joyful danc-

² Babylonian Talmud, Sukkah 53a.

³ *Ibid.* 54a.

Havdalah – the "separation" between times of different sanctity – is recited once Shabbat (the "Sabbath") or Yom Tov (a "Festival" day) has come to a close. Therefore the ceremony at Freedman is conducted on the third or fourth night of Sukkot, following the end of the festival days (and the end of Shabbat if Shabbat follows the festival days). For those who refrain from the actions traditionally prohibited on Shabbat and Yom Tov, it would be recommended to observe Simchat Beit haShoevah beginning on an evening when Shabbat does not coincide with Chol haMoed ("the profane within the sacred time" – the intermediary days between the first and final days of Yom Tov that surround the bulk of Sukkot). See fn. 5.

ing. It is probably my favorite ritual of the year.⁵

My ritual task has been to make a prayer for the pouring of the first water offering and then to begin the pouring. This poem was created for that ritual. It references the rabbinic legend of the foundation stone. The *even shetiyyah*, "the foundation stone," was said to lie beneath the Holy of Holies. The word *shetiyyah* (שתי) means not only "foundation" but also "weaving," from *shet* (שת), the "foundation," or "warp," of the loom. The foundation stone, legend held, was the point at which God had begun to create the world:

Just as the fetus in its mother's womb starts at the navel and spreads out this way and that way to the four sides, so too the Holy One made the world, making the foundation stone first and from it spreading out the world. It is called the foundation stone for from it the Holy One began to create the world...⁶

In another version of the legend, found in the Talmud, King David is digging the foundations of the Temple and dislodges the foundation stone, causing the deep primordial waters to rise and nearly flood the earth. King David throws a shard with God's name inscribed on it into the waters, in order to cause them to subside. Then the waters dry up entirely, so King David utters the psalms of ascent to bring the world's waters to their proper level. The foundation stone, then, is the keeper of the earth's waters. The word *shetiyyah* can also mean "drinking" as in the "drinking stone."

In the poem, I imagined the foundation stone as the altar to receive the water libation. And, I imagined the Stone not only as a stone set in one place, but as a mysterious entity we might find anywhere: a

⁵ The Talmud does recall *Simchat Beit haShoevah* taking place on the second night of Sukkot, which is not fully reproducible for Jews who, during two consecutive days of *Yom Tov* at the beginning of Sukkot, refrain from lighting torches or engaging with musical instruments. Nonetheless the sages disagreed over the extent to which the celebrations of *Simchat Beit haShoevah* could (or could not) override the traditional restrictions on music on *Shabbat* or *Yom Tov*; see Babylonian Talmud, Sukkah 51a.

⁶ Tanchuma Shemot, Pekudei 3.

⁷ Babylonian Talmud, Sukkah 53a-b.

holy guardian of the gift of water to us and our whole planet.

The Sioux people say *mni wiconi*: "water is life." So too, water in the Bible is called *mayim chayyim*, "living waters." All of us need water to live. Our society, which pollutes and neglects its waters, has forgotten this. We need the ancient water libation ritual to remind us of this, to make us care for the primordial waters that still sustain us.

Offering to the Foundation Stone

Rabbi Jill Hammer

I am the Stone of the Weaving.
I was here
when an ethereal hand
spun planets out of the void,
when an invisible palm
cast down the first drops of rain.
I was set to guard the entrance
to the deep, to hold back the void
so life could find its way.
I am the core of earth, around which
water flows, bringing life
again and again and again.

I am the Stone of the Imbibing, witness to generations quenching their thirst: plants, animals, tribes. On me your ancestors offered libations of water, praying for rain to fall, for wind to bring flocks of clouds. On me the high priest rested the incense. I am the keeper of your deepest prayers, though you have forgotten me. I remind you of what you need to live, of what needs to live, of all that needs you to help it live. I tell the story of the divine image moving through its different forms as water becomes ice and snow and rain.

I am the Stone of the Founding, ground of the sanctuary, floor of the Holy of Holies. You could call me a pebble or a planet.
Souls make their home inside me, as do bears and the roots of trees. I was the Temple before ever there was a Temple; the Temple was built upon the broad ocean of my back. Whenever you stand in a holy place, I am under your feet.

I am the Stone of the Flowing.
I call you at this season
to share the water, to make an offering,
to show gratitude
for the dance between solid and fluid,
for bodies and spirits knitting themselves together.
Return to me at this season
to renew your faith in the Source of Life
still flowing in you, still changing you
as water changes stone.

Rabbi Jill Hammer, PhD, is the Director of Spiritual Education at the Academy for Jewish Religion. She is also a co-founder of the Kohenet Hebrew Priestess Institute. She is the author of a number of books, including The Jewish Book of Days: A Companion for all Seasons (Jewish Publication Society 2006), The Omer Calendar of Biblical Women (Kohenet Institute, 2012), The Hebrew Priestess: Ancient and New Visions of Jewish Women's Spiritual Leadership (with Taya Shere) (Ben Yehuda 2015), and The Book of Earth and Other Mysteries (Dimus Parrhesia 2016). She lives in New York City with her wife and daughter.

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GENERAL SUBMISSION GUIDELINES

Content

Zeramim welcomes the submission of essays in any subject of applied Jewish studies—articles analyzing subjects of Jewish inquiry that offer a unique lens on any aspect of Jewish life or thought that affects the present and/or future of how Jewish culture, religion, and/or people operate in the modern world.

Style

Submissions should be intellectually informed by and informative of current understandings in Jewish academia, referencing recent studies. Any terminology or abbreviations likely to be unfamiliar to non-specialists should be succinctly clarified in the article itself. Submissions should be accessible to a lay readership and helpful to professional academics and/or Jewish professionals; an ideal submission should be able to bring a nuanced exploration of a subject to a diversity of readers.

Gendered Terminology

Gendered pronouns for entities that might be either without gender (e.g., "God Himself") or not necessarily restricted to one gender (e.g., "a scholar should doubt himself") should only be used if the author intends to convey a point about gender by identifying a gender in such situations. Likewise, gender-neutral nouns (e.g., "humanity") are encouraged instead of gender-exclusive nouns (e.g., "mankind") unless a point about gender is intended to be conveyed by using gender-exclusive terminology. Zeramim encourages gender-neutral language (e.g., "God's self") and gender-inclusive language (e.g., "a scholar should doubt himself or herself"); we ask our authors to be sensitive to the assumptions involved in such usages and how our readers will perceive those assumptions.

Length

Submissions may be no longer than 10,000 words.

Citation

All articles should include their notes in the form of footnotes (*i.e.*, not endnotes). *Zeramim* does not publish appendices of cited sources. Authors may base their style of citation in any recognized methodology of citation (MLA, Chicago, Manual of Style, *etc.*) so long as the (not comprehensive) guidelines below are met:

 All citations of published works should include the full names of the referenced works along with the works' authors and dates of publication.

- BOOKS: Citations from books should include the names of the books' publishers.
- ANTHOLOGIES: Citations of works from anthologies should indicate the names of the anthologies' editors.
- JOURNALS: Citations from journals should include the journals' volume and issue numbers.
- WEB: Web citations should include a URL and date of access.

Languages

Submissions should be in English but may integrate terms and passages from non-English languages as long as the foreign language text is translated into English. Key characters, terms or phrases in languages written with characters other than those of the Latin alphabet (*e.g.*, Hebrew, Greek, Arabic, *etc.*) should appear in transliteration (and – if able to assist a reader – their native spellings). Authors may follow any system of transliteration (*e.g.*, SBL, Library of Congress, *Encyclopaedia Judaica*, *etc.*) but should be consistent within a single submission.

Biography

Every submission should include a 2-5-sentence biography of any and all of its authors.

Submitting

All submissions must be submitted to submissions@zeramim.org as .docx files, and all appendices to articles must be part of the same document submitted for consideration.

SPECIAL GUIDELINES FOR SUBMISSIONS TO MIDRASH ZERAMIM

Midrash Zeramim is a designated venue for publication of creative works that make use of artistic forms to illuminate ideas relevant to thoughtful Jewish lives — whether in the form of visual arts, creative writing or music.

Submissions for *Midrash Zeramim*, though artistic in nature, should include an introductory statement that addresses the point that the submission seeks to make and refers the reader/listener/observer to relevant sources that inspired the contribution and may provide further thought.

For all other matters related to style and format, please see the General Submission Guidelines above.

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