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Dear readers,

In forging Jewish philosophies relevant to the 21st century, thinkers inevitably arrive at the intersection of two—or more—differing thought trajectories. The encounter with the tension held in the space that lies in between each path forward begs each of us not to stand still at the convergence or at the conundrum but to seek a reasoned resolution to the problem ahead.

Our issue opens with "*Al Parashat D'rakhim*: The Negotiated Crossroads as a Rabbinic Metaphor," in which Martin S. Cohen explores the talmudic trope of 'crossroads.' Cohen reimages rabbinic literature's presenting the splitting of pathways as not a challenge whereby one path proves correct and the other faulty but as the opportunity for drastically different courses of action to be harmonized by the seeker standing before life's options.

Responding to the dilemma among Reform clergy regarding the officiation of interfaith marriages, Reeve Robert Brenner presents an alternate route: a category of identity that is neither a converted Jew nor a gentile unaffiliated with Jewish life. In "The *Toshav Tzedek*: Identity, Weddings, and Co-Officiation: Halakhic Structural Connectives," Brenner traces the origins of his proposal for the integration of the partners he brings into the fold that has often left unenveloped those awaiting a communal embrace.

Also aspiring towards a greater acceptance of the disenfranchised along the path of traditional Jewish law, Lucia Pizarro Wehlen highlights the halakhic neglect of the husbands whose wives' biological children were conceived with the assistance of sperm donors. "Who's the 'Real' Father? Paternity and Maternity in the Case of an Infertile Couple Who Become Parents Through Donor Gametes or Donor Embryos" argues that the Conservative Jewish world has adopted so technical an understanding of fatherhood that Conservative practice, as it stands today, ritually allots undue psychological damage to the people whom the governing bodies of many of the world's largest Jewish populations consider the legal fathers in the 21st century.

Looking back to the last century, David Golinkin provides an intellectual biographical contextualization of Milton Steinberg, whose historical novel *As a Driven Leaf* continues to be reprinted in new editions and new translations. "*As a Driven Leaf* After 80 Years" attempts to locate the voices of Steinberg and his contemporaries

among the characters featured in his literary depiction of the juncture of Hellenism and Judaism taking place nearly two millennia before him.

Drawing anew on the polar tensions of 'faith vs. reason' illustrated in Steinberg's work, Richard L. Claman suggests that Steinberg's philosophic fiction may have placed stronger arguments into the mouths of the fictive Rabbi Akiva and Elisha ben Avuyah if only the author could have lived long enough to participate in contemporary philosophical discourse, which would have aided him in providing guidance to the perplexed. "A Philosophical Note On *As a Driven Leaf*" illuminates intellectual pathways most coherently constructed in the works of such thinkers as Catherine Elgin, Hilary Putnam, and Ruth Anna Putnam—writers whose most masterful treatises were only penned after Steinberg's soul had left this world, thus leaving *As a Driven Leaf* not-fully-equipped to argue for a cohesion of 'Greek' and Jewish thought.

As dichotomous trails approach their own meeting of ways, it becomes increasingly prudent to recognize the unpaved paths that may yet connect the disjointed points of discord and forge the coherence never before found. *Zeramim* (meaning "Streams")—representative of a variety of Jewish thought—is catalogued by ISSN, indexed by RAMBI (The Index of Articles on Jewish Studies), and archived on our website at www.zeramim.org. The editors of our journal are blessed to present in this issue—and all issues—the convergence of Jewish thoughts that never before coincided.

With gratitude,

Jonah Rank, Managing Editor & Designer

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The editors of Zeramim *receive and solicit submissions from a range of authors diverse in age, gender, and denominational identity. For information on how to submit original works to* Zeramim*, please see the back of this issue.*

AL PARASHAT D'RAKHIM: THE NEGOTIATED CROSSROADS AS A RABBINIC METAPHOR

Martin S. Cohen

The most important way that walking on a trail through a forest is different from living out the days of your life has to do with the ability to stop: you can stop to rest under a shady tree if you tire on your way through the woods and then start your journey anew later on, whereas you cannot put your life on pause and then resume living at a more convenient or appealing moment no matter how weary or frustrated you may feel. Another has to do with the concept of coming to a crossroads, but not always. Coming to a fork in the road in the forest and thus being able to move forward solely by choosing to go off in one direction or the other happens in life all the time. Which of us cannot recall many specific moments at which we were obliged to choose which of two paths to follow into the future? But rabbinic literature also describes a different kind of crossroads experience we encounter in the course of our lives: not one at which we must choose between two plausible paths into the future because the path we have been following is now splitting in two, but one at which we encounter the precise spot where two oppositional (or at least not easily reconcilable) concepts meet and we then grow into the next part of our lives by embracing them both and (somehow) making them fit together. It is this latter version of the crossroads experience, the one that has no specific parallel in the forest, that I wish to discuss in this essay.[1]

There are lots of regular forks in the road in ancient Jewish literature. The situation is untenable because the herds of Abraham

[1] The phrase *al parashat d'rakhim* in the title of this essay comes from a talmudic passage preserved in the Bavli, Sotah 21a, which I will discuss in detail below. It appears elsewhere in the Talmud as well, and also in a few other places in the rabbinic corpus.

and Lot are too large for their sheep to pasture on the same stretch of grassland and so, when they come to a fork in the road, Abraham sees a potential solution to their problem: "If you go to the left," Abraham says in a friendly, non-coercive way, "then I'll take the path to the right." But the reverse decision will work too: "And, if you go right," he adds, "then I'll just move off to the left."[2] Clearly, Lot and Abraham *could* conceivably choose to move forward together on the same path, on *either* of the paths now before them. But, traveling together wasn't working out well, and each choosing instead to travel forward on his own seems clearly to constitute the better option for them both.

Sometimes, however, the image evoked does not suggest the possibility of making no choice at all. "Behold," Moses quotes the Almighty as saying, "I have set before you on this day [a path of] life and goodness [and an alternate one as well, the path of] death and wickedness."[3] The text cited resumes an earlier oracle that evokes a similar image, but here the Torah pauses to make explicit how precisely one might go about choosing the path of life—by choosing to be obedient to the commandments of the Torah—and also to note *en passant* that the wrong choice will lead not merely to perdition but actually to the eventual embrace of alien gods and their contemptuous worship.[4] Still later, Jeremiah uses this very imagery to characterize

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2 Genesis 13:9. In his comment *ad locum* (*s.v. im has'mol v'eimina*), Rashi kindly imagines Abraham speaking simply about right and left (*i.e.*, rather than mentioning the specific destinations to which left and right would lead) to imply that their holdings will remain contiguous regardless of Lot's choice and that Abraham will therefore always be effectively nearby enough to watch over his nephew.

3 Deuteronomy 30:15.

4 The earlier passage is at Deuteronomy 11:26–28. Note that the point here is not that the embrace of idolatry will lead to abandoning the *mitzvot*, but precisely the opposite: rejecting fealty to God's commandments will lead eventually to rejecting faith in the uniqueness of God and thus to the embrace of polytheism. For a discussion of the rabbinic *midrash* on this earlier passage preserved at Sifrei D'varim §53 (ed. Finkelstein [1940; rpt. New York: Jewish Theological Seminary, 1969], p. 120) and an interesting comparison of the image evoked there with the famous fork in the road presented by Robert Frost in his "The Road Not Taken" (published first in the poet's *Mountain Interval* [New York: Harry Holt & Company, 1916], p. 9, and

the geopolitical choices facing the Kingdom of Judah as the hordes of Babylon were already gathering to the east, which literary development I have written about at length in my essay, "Choosing the Path of Life in Old Jerusalem and Today."[5] None of these images suggests the possibility of making no choice being an option: the path of dull-witted complacency has ended, each is saying, and there now exist only two options forward: obedience to the laws of the covenant or disobedience, life or death, blessing or curse.

This image underlies many biblical passages. For example, when the author of the octuple alphabetical acrostic that is the 119th psalm writes about the way he hopes to embrace as *derekh pikkudekha* ("the way of Your ordinances"), *derekh emunah* ("the way of faith"), and *derekh mitzvotekha* ("the way of Your commandments")—and contrasts those paths with the *derekh sheker* ("the way of falsehood")—he seems clearly to have in mind that same notion of the pious individual choosing to travel forward in life on one path as opposed to its alternative.[6] And some passages so clearly presume the image that they only mention the path being recommended and leave unnoted that any alternate path forward exists at all.[7]

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innumerable times since), see Richard Claman, "Mishnah as the Model for an Overlapping Consensus," *Conservative Judaism* 63:2 (Winter 2011), pp. 65–66.

5 Martin S. Cohen, "Choosing the Path of Life in Old Jerusalem and Today," in David Birnbaum and Martin S. Cohen (eds.), *U-vacharta Bachayyim* (New York: New Paradigm Matrix, 2019), pp. 87–101.

6 *Derekh pikkudekha*: Psalm 119: 27; *derekh emunah*: Psalm 119:30; *derekh mitzvotekha*: Psalm 119:32; *derekh sheker*: Psalm 119:29.

7 Examples of Scripture recommending the one path forward without noting an alternative: Psalm 101:2 or 143:8, or Proverbs 2:20 or 4:11, among many other examples. For the interesting notion of taking the biblical text *itself* as a path to be followed and its liminal moments of transition as crossroads to be negotiated by readers eager to grow spiritually and intellectually through the experience, see Nanette Stahl, *Law and Liminality in the Bible* (Sheffield, U.K.: Sheffield Academic Press, 1995 [=*Journal for the Study of the Old Testament* Supplement Series 202]). For an extended effort to discuss the traditions connected with a single biblical personality as a liminal crossroads to be negotiated by readers moving forward through the scriptural text, see Gregory Mobley, *Samson and the Liminal Hero in the*

When Rabbi Yoḥanan ben Zakkai was on his deathbed, his disciples gathered around him.[8] Looking past them across the looming chasm, however, Rabbi Yoḥanan saw two roads opening up before him. One, he intuitively understood, would lead to Paradise, whereas the other would take him straight to Gehenna, to Hell. Readers used to venerating Rabbi Yoḥanan ben Zakkai as one of the greatest rabbis of his or any day will wonder how such a saintly sage could possibly have been worried about possibly going to Hell. But the rabbi's reputation rested—at least fundamentally—on a decision that at the moment must have been morally challenging in the extreme: here was a man who allowed himself to abandon his friends and neighbors to their dismal fates in Jerusalem when the Roman siege of the city was at its harshest in order to make a separate peace with the Roman leadership—in talmudic legend, with Vespasian himself—in exchange for the apparently trifling favor of being allowed to open up a school in Yavneh.[9] Things worked out well in the end, and his actions allowed the Jewish leadership to regroup after Jerusalem and its Temple were destroyed. But one way to read the story of Rabbi Yoḥanan on his deathbed is to suppose that he never felt entirely certain that he had behaved well, that his decision was not at least in some minor way self-serving and thus morally questionable. And so, at the very end of his life, he saw not the road to paradise opening up for him to travel, but a crossroads… and, at that, the very one spoken of by Moses and Jeremiah, the fork in the road that leads either to blessing or to curse, to Heaven or to Hell, to life everlasting or to death eternal. It is easy to imagine how upsetting this final reckoning must have been for Rabbi Yoḥanan. But, when he looked up again and saw the ghost of saintly King Hezekiah coming forward personally to escort him from the world—that same Hezekiah who in his day negotiated a fretful peace with Assyria instead of going to war against a foe he knew he could not defeat, Rabbi Yoḥanan knew that the specific way he had been personally transformed by negotiating

Ancient Near East (New York and London: T. and T. Clark, 2006 [=Library of Hebrew Bible/Old Testament Studies 453]).

8 The source for this story is in the Bavli at Berakhot 28b.

9 The story is told in the Bavli at Gittin 56a–56b. What specifically Rabbi Yoḥanan meant by asking for "Yavneh and its sages" is a matter of scholarly debate. He also is quoted as having asked for some other favors as well.

the intersection of Separate-Peace Street and Secure-the-Future Road had been adjudicated positively in the heavenly tribunal.

Other sages are similarly depicted as growing spiritually through the successful negotiation of similar intersections. Abba Taḥnah—an obscure sage mentioned in ancient Jewish literature only once—had a similar experience, for example, when he once arrived in his hometown just as the sun was setting late one Friday afternoon.[10] He was carrying his things in a huge pack on his back when, at an otherwise unnamed crossroads, he found a diseased pauper collapsed on the ground.[11] The roads leading into town being mostly deserted that close to Shabbat, the man could not believe his good luck. "Do me a favor," the man implored Abba Taḥnah, "and help me get home."[12] And now Abba Taḥnah was facing a huge dilemma: if he set down his own burden to help the man and only returned after Shabbat to retrieve it, it would surely be stolen, which disaster would deprive him of his livelihood. (This was apparently a city of observant Jews *and* non-Sabbath-observing thieves.) But Abba Taḥnah would risk profaning the Shabbat if he were to help the man and then return immediately to retrieve his bundle so close to sunset. That option felt unthinkable—the conscious desecration of Shabbat being a capital offense—yet to refuse to help this pathetic soul at his feet was, at least

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10 Abba Taḥnah's story is told in Kohelet Rabbah 9:6. Mayer Fialkoff (see below, note 17) first drew my attention to the way this story is part of the larger rabbinic depiction of the crossroads as a place of potential spiritual growth.

11 For "diseased pauper," the text has *mukkeh sh'ḥin*, someone afflicted with the skin disease said to have constituted the sixth plague God brought against the Egyptians, as per Exodus 9:8–12. The text doesn't specifically say he was poor; that is just my interpretation. Note also that the detail that this takes place at a crossroads adds nothing to the simple meaning of the story—it could just as reasonably have been set in any location at all. But my sense is that there was a specific point to introducing the image of the crossroads into the story—and for the specific reason mentioned below.

12 The text merely says "*hakhniseini la'ir*" ("help me into the city"), but I'm imagining here that he wanted not just to get past the city limits but actually to get home. What else?

in Abba Taḥnah's mind, *also* to be guilty of a capital offense.[13] What to do? He had a moment to decide and he did decide. Allowing his innate kindness to overwhelm his fear of infringing even slightly on the sanctity of Shabbat, he decently and generously helped the afflicted man home, then returned just as dusk was upon the city to retrieve his parcel. Seeing this behavior, the townsfolk—instead of being moved by the man's intelligent, sensitive negotiation of the complex crossroads where Kindness-to-the-Afflicted Road crosses Obedience-to-the-Covenant Avenue—were unimpressed. "Is *that* the Abba Taḥnah we used to call 'the pious one?'" they asked acidulously. And it was just as Abba Taḥnah's own doubts began to rise within him as well that God suspended the sun in the sky for just as long as Abba Taḥnah needed to retrieve his bundle and make his way home with it.[14] And then, the icing on the cake: as Abba Taḥnah began to obsess about a new worry that suddenly struck him—that this kind of miracle might possibly have constituted the full reward due him from

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[13] The Hebrew has *mitḥayyeiv b'nafsho* (literally, "becomes liable for execution")—but without specifying the exact crime involved. Perhaps he feared the man would die in the street and that his death would be, not solely *de facto* but actually *de jure*, his fault. It is also true, however, that the rabbis used the phrase *mitḥayyeiv b'nafsho* figuratively as well as literally, cf., *e.g.*, in the Mishnah at Avot 3:5. Regarding the willing desecration of Shabbat being a capital offense, *cf.* Exodus 35:2 or Numbers 15:32–36.

[14] The city in question presumably had no *eiruv*, so carrying anything at all after sundown on Friday, let alone a huge pack, was going to constitute a profanation of the Sabbath. This notion of God stopping the sun in the sky to grant a worthy soul (or an army of them) some extra time in which to conclude a good deed—or, at any rate, not to profane the Sabbath—is also behind a well-known midrash from Pirkei D'rabbi Eliezer concerning the story in Joshua 10 about Joshua stopping the sun in mid-sky so as to permit the Israelites time to complete their military victory over an alliance of five Canaanite kings. In its biblical set-ting, the miracle has nothing to do with Shabbat (and appears to be merely about the Israelites not being able effectively to fight at night), but the retelling of the story in Pirkei D'rabbi Eliezer (at ch. 52, ed. Venice, 1544, p. 49a) recasts the story as though the imminent onset of Shabbat were the specific problem facing the Israelite army.

heaven for his life of piety and thus leave him unable reasonably to expect the posthumous reward for which he had striven his whole life, a portion in the World to Come—it was then that a voice came forth from heaven to reassure him in the words of King Kohelet—the persona adopted by the author of Ecclesiastes—that he was free to enjoy his Shabbat meal and to drink his Shabbat wine, "for God has already looked with favor on your deeds."[15] And so we see another story featuring an individual at a precise intersection—in this case the intersection of Kindness-to-the-Afflicted Road and Obedience-to-the-Covenant Avenue—*not* specifically choosing one over the other, but by negotiating the specific spot at which they meet and then moving forward into his own future transformed positively by the experience.

In a talmudic text preserved in Tractate Sotah, a slightly different image is evoked.[16] The *mishnah* under discussion, Sotah 3:3, is discussing the case of the suspected adulteress and notes that the results of trial-by-ordeal proposed by Scripture in Numbers 5:11–31 can be affected by the woman's personal merit and that, depending on the measure of her virtue, the results of the test can be deferred for one, two, or three years. Ignoring the obvious strangeness of the woman under discussion being both an adulteress (since falsely accused women would presumably not need any sort of personal virtue at all for the test not to produce any results) and *also* someone possessed of sufficient virtue to be able to alter her own test results through the sheer force of her personal merit, the talmudic passage under consideration appears simply to embrace the notion and merely offers some alternate theories about the specific amount of time the results of the test can be deferred by the personal merit of the suspect.[17] And then the text turns to the far more fascinating question of what kind of merit specifically has that kind of power.

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15 Kohelet 9:7. I am just imagining that the precise reward Abba Taḥnah feared might now not be his was his portion in the World to Come; the text leaves the reward unspecified.

16 B. Sotah 21a, regarding which text cf. Mayer Fialkoff, "On Fear and Choosing: Traditional Jewish Thinking on Choice Revisited," published in *Adult Education in Israel* 10 (2007), pp. 25–32.

17 B. Sotah 20b. The word translated here as "merit" or "virtue" is the Hebrew *z'khut*. The alternate suggestions are three months, nine months, and twelve months. What kind of adulteress would *also* be virtuous enough to defer the results of the test that will prove that she

In its traditional way, the Gemara conducts the discussion with itself. Could we be talking about the merit that accrues to women who study Torah? That seems unlikely given the fact that such women, so the Gemara, are doing so for the spiritual gain and intellectual pleasure such study affords but not in fulfillment of an actual commandment.[18] Could we then be discussing the merit that accrues from the performance of the commandments? That notion too the Gemara rejects, noting that the traditional way to understand Proverbs 6:23 ("For the commandment is a lamp, but the Torah is light…") is to understand that the power of religious observance is ultimately as temporary as the light of a lamp that cannot burn forever no matter how filled with oil it might be, whereas the salutary effect of Torah study can be permanent. And now we come to the parable I wish to discuss and which I present here in my own translation:

> [The situation here can be compared] to an individual who is out walking in the darkness and [impenetrable] gloom of night, and who [naturally] fears brambles, pits, thistles, and wild animals—and human predators as well—while not even being sure if he is on the right path. If he were [somehow] to be provided with a torch, he could stop worrying about the brambles, pits, and thistles but would still have to worry about wild animals and human predators while moving forward—and *still* not knowing that he is on the right path. Once dawn breaks, he can stop worrying about the wild animals and the human predators…but *still* without knowing for sure that he is on the right path. But then, when he comes [finally] to [a known] crossroads, *then* he [can finally feel reasonably certain that he] is safe from all [the above-

has sinned is not explored. Perhaps the idea is that women—in this, just like men—can be virtuous in some ways and sinful in others. When the Gemara goes on to discuss whether a sin can "extinguish" a *mitzvah*, it presumably has something like this in mind.

[18] The passage here presumes that women are exempt from the *mitzvah* of Torah study, *cf.* Maimonides' *Mishneh Torah*, Hilkhot Talmud Torah 1:1, based on a talmudic passage that appears at Bavli, Eiruvin 27a and Kiddushin 34a. Other opinions abound, particularly among more modern authors.

> mentioned terrors that attended his journey up until that point.][19]

The parable, presented as such in the text with the one-word heading *mashal*, presents a man out walking at night but who—either because of his own lack of familiarity with the route he is supposed to be taking or because of the gloomy darkness of the forest at nighttime (or some combination of both)—is unsure even if he is on the right road. But, although he finds it in him to persevere, he is assailed by entirely natural fears. He could fall into a pit. He could rip his clothing to shreds by falling in some brambles. He could cut himself on a thorn bush. He could be eaten by wild wolves or some other carnivorous predators. Or he could be attacked by the kind of cowardly thieves who prey on lonely travelers in the dark of night.[20] And then a new thought surfaces as the parabolist now wonders what would happen if the same lonely traveler were somehow to have a torch to carry along and illuminate the path ahead? In that case, such a traveler could naturally stop worrying about falling into pits or tearing his cloak or his skin on bramble bushes, but would still have to worry about wild animals and human predators, neither of which dangers would be lessened—and perhaps even would actually be heightened—by a light source that would illumine not only the way but also the wayfarer. And, of course, such a traveler would *still* have no way to know if he were on the right path.

When dawn breaks, he can stop worrying about predatory animals—presumed here to be nocturnal beasts who turn in at sunup—and also about human thugs, here imagined as vagabonds

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[19] B. Sotah 21a, with my own bracketed additions and italicized emphasis added. The text in the Talmud is about a male traveler, and my comments reflect that detail even though the same lesson would obviously apply equally reasonably to women as well.

[20] Is this why Rabbi Ḥananiah ben Ḥakhinai is cited at M. Avot 3:5 as being opposed to people going out walking alone at night? It could be! But the Gemara here leaves Rabbi Ḥananiah unreferenced, as it does also the incident regarding Rabbi Tarfon recorded at M. Berakhot 1:3 in which the latter is reported to have risked being attacked by hooligans when he literally lay down on the open road to recite the evening Shema in accordance with the teaching of the School of Shammai.

who rest during daylight hours so they can spend the night wandering around in the forest looking for new victims to rob. And then, finally, he comes to a crossroads and can now truly rest: the fears that assailed him have all been allayed, and he knows where he is and where he's going. Why he doesn't need to lie down and rest in the manner of the beasts and thieves he so feared is not explored. Maybe he had a good nap the afternoon before setting out!

But what *is* this crossroads at which the traveler has finally found himself, the one at which he found the courage to face the future fearlessly and without the sense of crippling anxiety that he felt during his nighttime journey through the forest?

Rav Ḥisda, the third-generation Babylonian amora, says that the traveler at dawn finds himself at the intersection of Scholarship and Mortality.[21] And it is precisely there, so Rav Ḥisda, that our traveler finally finds his peace. Presumably we are to understand that accepting the ephemeral nature of human life against the background of his intellectual training (and the emotional wherewithal that derives directly from it) enables the man in the story to understand that the finite nature of human life is far more opportunity than curse, far more a challenge to stand up *to* than a burden to feel crushed *beneath*. We are supposed to imagine that most find the brevity of life—to say the very least—off-putting and upsetting rather than challenging and stimulating. According to this line of thinking, travelers feel burdened by the various fears the text mentions by name as they make their way forward through the forest in the dark of night. But the true scholars in our midst—not those who merely have spent years at their studies but true scholars possessed of great erudition combined with the kind of supple intellect that enables and inspires real learning as opposed to the mere mastery of other people's lessons—*that* kind of Torah scholar finds in the ephemeral nature of life a platform successfully to stand on and, from the heights it affords, to see the world even more clearly. And that is why he finally feels safe when he arrives at the crossroads—because his learning has deprived death of its sting, thus enabling him to live life without

[21] This is my own, slightly quirky translation of the original, which reads *zeh talmid ḥakham v'yom mitah*, literally "this [is the intersection of] Scholar and Day of Death." (The words *talmid ḥakham* appear in the printed text as an abbreviation.) The word *amora* denotes a sage of the talmudic era.

endlessly fearing its natural end. The idea here, therefore, is not that the traveler should veer off his current path to embrace either of the cross streets he has come across, but that such a traveler can find peace by virtue of having negotiated the specific spot at which Fear-of-Death Street crosses Love-of-Learning Road.[22]

Rav Naḥman bar Yitzḥak, originally a disciple of Rav Ḥisda but eventually a great scholar in his own right, imagines our wayfarer to have found himself finally at the intersection of Scholarship and the Fear of Sin.[23] In other words, for Rav Naḥman, the ultimate solace available to those who spend their days traveling alone and afraid through the night (which is all of us) is finally to stand at the precise crossroads at which the scholarly discipline that derives from having devoted a lifetime to Torah study meets the ability, still retained even after all that intellectualizing and hair-splitting, to be repulsed by transgression. At such a crossroads, Rav Naḥman teaches that people can finally come to know inner peace. And this too will resonate with moderns burdened by their own inadequacies, by their own inability faithfully to obey the law, by their own endemic need to work at cross-purposes with their own best interests by feeling unable adequately to control the counterproductive—yet mostly irresistible—inclinations that lead them again and again to sin when all they really want (or think they want) is to be virtuous. Rav Naḥman's point, therefore, will be particularly resonant with moderns who relate easily to the notion that the anxieties that make life difficult to negotiate can be set aside the most easily by the scholar able to see the law *not* as a mass of countless rules that no one could possibly ever keep entirely straight, but *rather* as a system of observance that exists as an organic whole and that can be embraced as such. And the deep solace that derives from learning can thus create a context in which the occasional

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[22] For a very moving contemporary account of someone who uses the image of a crossroads as a metaphor for personal growth (and, at that, one featuring an encounter with death as one of the roads the author must cross on his way forward), see Bryant Keith Alexander, "Standing at the Crossroads," *Callaloo* 22:2 (Spring 1999), pp. 343–345.

[23] The text reads more literally that the traveler is standing at the intersection of Torah Scholar [Street] and Fear-of-Sin [Road]. The original reads *zeh talmid ḥakham v'yirat ḥeit*, literally "this [is the intersection of] Scholar and Fear-of-Sin." (The phrase *talmid ḥakham* here too appears as an abbreviation.)

instance in which one succumbs to a base desire or acts for a moment in an unprincipled way can be understood—without being rationalized away into unimportance—as part of the human condition, as what happens to even the most virtuous human beings when they live in the real world and spend their days encountering real people of all sorts, some of whom provoke poor behavior even in saints. And that is Rabbi Naḥman bar Yitzḥak's lesson: that inner peace can come from the successful experience of negotiating the *specific* spot at which Love-of-Learning Avenue crosses Fear-of-Sin Road and creates the possibility of virtue suffused not merely with intellectual achievement but also with moral integrity.

And then we come to the opinion of Mar Zutra, a younger contemporary of Rav Naḥman bar Yitzḥak's, who merely observes that the Torah scholar mentioned by the others is not merely one who is knowledgeable and well-trained, but one whose study invariably reflects not only the simple meaning of the words in whatever text is being analyzed but the actual *halakhah* as well. In other words, Mar Zutra is merely specifying that the kind of Torah scholar Rav Naḥman bar Yitzḥak and Rabbi Ḥisda are talking about is one whose obedience to the law flows directly from his studies. In other words, they are discussing neither the genius nor the merely well-behaved, but, rather, the true *homo religiosus* whose faith, learning, and conduct in the world are so tightly interrelated so as to make of such a one not merely an obedient soul with an excellent memory, but the rare individual whose piety is direct function of his or her learning.

In the end, the parable is thus inviting us to imagine our lives as night journeys through a dark, lightless forest. We can see nothing. Occasionally, some one or another of our fears is alleviated by circumstance when some unseen stranger unexpectedly hands us a torch so that, at least for as long as it burns, we can stop worrying about falling into a pit some earlier journeyer thoughtlessly dug in the middle of the path and then forgot to fill *in* or cover *over*. Sometimes the world is bright with daylight and we can stop worrying about nocturnal predators or human ruffians… but only until the sun sets again, which it inevitably does, and our terror of the world is ratcheted back up to its previous level. In the end though, there is a solution for those who find it unpleasant to live their lives in fear. Or, rather, there are two solutions: Rav Ḥisda's and Rabbi Naḥman bar Yitzḥak's.

There are other crossroads of this variety, one of which is told of in the context of a story featuring Rabbi Yehoshua ben Ḥananiah, one of the most famous disciples of Rabbi Yoḥanan ben Zakkai. It happened, so the anonymous story in the Talmud, that Rabbi Yehoshua once mused openly that he had only been trounced intellectually three times in his life, once by a woman, once by a girl, and once by a boy.[24] Readers interested in knowing how he was bested by the woman and the girl are directed to the source of the story in the Tractate Eiruvin. But the boy's story is the one that feels pertinent here, and so it is his alone that I will retell in detail.

In the story, Rabbi Yehoshua recalls that he was once out walking—on a country path, on a path through a forest, on the path of life…on *some* path—when he suddenly came to a crossroads featuring two alternate paths and was unsure which path to take forward. Pausing for a moment to get his bearing, he noticed a boy seated nearby and so, taking the child to be a local, Rabbi Yehoshua asked him which was the right path to take to the city toward which he was attempting to travel. The boy (I'm embellishing this a bit) looked him over, considered his options, then decided to speak only the truth. "This one," he said cryptically, gesturing towards one of the paths stretching out before the rabbis' feet. "This one is short and long." And then, waving vaguely at the other, he completed his own riddle. "But that one," he added mysteriously, "is long and short."

Rabbi Yehoshua, apparently in too much of a hurry to realize that he was being offered a puzzle instead of an answer, took the path that the boy had said would be "short and long." What does that even mean? But Rabbi Yehoshua, perhaps not realizing that this was one of "those" children that are always popping up in this kind of story, merely heard the word "short" and, having stopped listening, went off on what he took to be the shorter path. (And what reader will not easily recall having stopped listening in mid-sentence when an asked question had really only partially been answered?) In the end, though, Rabbi Yehoshua must have also thought that it hardly mattered what path he took since they both apparently led (at least eventually) to his desired destination! And, so, he sets off, only to find out what the boy meant exactly: that the path he qualified as "short and long" was shorter than the other path in the literal sense, but also longer in that

[24] Bavli, Eiruvin 53b.

it led directly into the vast orchards and huge formal gardens that surrounded the city and which had to be circumnavigated entirely rather than simply traversed by itinerants who wanted to enter the city.

Irritated by his own discovery (as happens so often in life, and to so many of us), Rabbi Yehoshua returned to the crossroads to give the boy a piece of his mind. "Didn't you say that was the shorter way?" he asked the boy, inadvertently revealing the degree to which he himself hadn't been listening carefully. But the lad was a cooler cucumber than his illustrious interlocutor. "Really?" the lad asked. "Because I remember saying it was the longer way too!"[25] And now we get to the good part. Most of us would explode at being sassed like that by a child. But, like any *true* sage would be, Rabbi Yehoshua ben Ḥananiah was delighted to learn something *even* at the expense of his own dignity. And so, chastened, he kissed the lad on the head and then, turning to address us, his audience over all these countless centuries of engagement with Tractate Eiruvin, exclaimed aloud, "Happy are you, O Israel, for you are all great sages… and not only your elderly scholars either but even your young children."[26]

It's a good story. (It is actually part of a terrific page of Talmud, one filled with clever riddles and good stories.) But what does it mean exactly—and, more to the point, what did Rabbi Yehoshua learn at this particular crossroads that prompted him to kiss the boy in the story and flatter him so deeply? Was the lesson not to stop listening when people answering our questions are still speaking? That would surely be one approach, but there could also be another: what if the story is meant to illustrate what it means to traverse one of "those" crossroads—the kind that offer, not merely a choice about how to

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[25] In my usual way, I have embellished the details of this sparse story. But the basic plot is as told in the Talmud and the dialogue is translated precisely (or almost precisely).

[26] The rhetorical flourish featuring a rabbinic storyteller stepping out of his own story to address some final words to the audience is a feature of ancient Jewish preaching and makes stories like this something of the Jewish version of the kind of pithy anecdote told to make a specific point known in the Greco-Roman world by the Greek term *chreia.* For the use of this specific genre in rabbinic circles, see Burton L. Visotzky's *Aphrodite and the Rabbis* (New York: St. Martin's Press, 2016), pp. 91–96.

proceed, but a transformational experience to be had by traversing the intersection of two roads and then continuing on, altered for the good, by having done so?

In my interpretation, the storyteller is suggesting what the correct way to approach religion should be. According to this model, the longer way is the way of exhausting ruminative contemplation of everything, the kind of approach to religion that promotes the endless consideration of everything so that nothing at all—even something as basic to Jewish life as lighting Shabbat candles or strapping on one's *t'fillin*—is merely done, but is always subjected to endless scrutiny, to thoughtful consideration and reconsideration. This will invariably take a very long time! But, since the proponents of this approach believe—not unreasonably—that the ritual-by-rote style of religious observance that is the alternative to theirs is just a cut or two above mere superstition and leads not to spiritual growth but to unwarranted complacency and unearned pride, it is also the shorter approach because the alternate leads nowhere at all.

The shorter way, in the opinion of its proponents, is a life of service in which obedience to the commandments and fealty to their Author is the key element in Jewish life. The unending, byzantine meandering through the various philosophical and aggadic principles imagined to undergird the larger system detracts far more than it enhances the spiritual life of the individual seeking wholeness in God through devotion to the *mitzvot*. These are the people who favor the "how-to" questions over the unanswerable "why's," and whose bookshelves are filled with detailed manuals explaining how correctly to behave when Erev Pesaḥ falls on Shabbat or how properly to *daven* when you are on a spacecraft orbiting the earth so quickly that the familiar sun-up and sun-down rules relating to the correct times for daily prayer simply cannot rationally apply.[27] For these people, the

[27] Readers of a certain age will recall the once well-known joke about the hapless Jewish astronaut who can't get anything done because each "day" in space is only ninety minutes long and his obligation to *daven* three times each day makes it impossible to find time for anything else. For a more serious analysis of the astronaut's halakhic situation (including a retelling of the joke), see David Golinkin's "A Responsum Regarding Space Travel," poignantly written before the death of Col. Ilan Ramon, Israel's first astronaut, and available online at www.

shorter way is the path forward to fulfillment and to God. And it is the shorter path forward for pilgrims on their way to their private Jerusalems as well, for, in the end, what matters on a journey far more than the pleasure or opulence of the journey is actually arriving at the destination. So the shorter way actually *is* the longer way as well, for the alternative way—the longer way described above—will only lead to endless discussion and debate without any movement forward ever actually taking place at all. And on a journey, moving forward is what counts!

And so Rabbi Yehoshua ben Ḥananiah faced this crossroads. He chose one, then regretted it and chose the other. But what he learned from the experience is what counts here and that was that—since neither path took him where he was going—in the end he needed to accept both principles in order actually to progress towards the city, in this interpretive context representing the City of God, Jerusalem. He understood that ritual without the deep ruminative substructure that can only result from long hours spent pondering its intricacies and their greater meaning is wasted effort and foolishness. But he also understood that endless contemplative study that never actually concludes—and so from which also no one ever learns anything definitive—absent a willingness to embrace the commandments without feeling crippled by indecision or intellectual inadequacy is also pointless and, finally, an exercise in self-aggrandizement rather than in the worship of God. And so he realized, finally, that both were the same way: the shorter longer way and the longer shorter way… and that the only way to move forward was *not* to travel both at once (which at any rate would be impossible), but to understand that they were the same road, that you can't actually take one and not the other, and that attempting to separate them will never lead anyone to anywhere good at all and least of all to Jerusalem.

In other words, here too we have the concept of a crossroads that leads those who negotiate its challenges on their way forward on their own paths through their own lives. The Greeks sacralized the crossroads they negotiated by imagining Hecate not solely as the goddess of sorcery and pharmacology, but also as Hekate Trioditis (Hekate of the Crossroads); the concept was simply to invoke the

schechter.edu/a-responsum-regarding-space-travel/ (from June 2002, accessed on October 17, 2018).

goddesses' watchful assistance when the road one is traveling suddenly splits in two and one must therefore choose which fork in the road to follow.[28] That idea is part of Jewish culture too, but the deeper concept is that the truly profound crossroads we face in life are not choices between one path and another, but opportunities to grow, to learn, and to mature by stepping over and through them… as one walks forward through life to a city surrounded by orchards and gardens, to one's final destination in paradise, to the redemptive moment that will seal the deal for all humankind at some indistinct messianic moment in the future… but which awaits us all in the smaller sense as we finally come to accept that life is a journey with a destination towards which the experience of each crossroads negotiated brings us closer and closer. And that is how the rabbis developed the concept of crossroads and turned it from a symbol for the opportunity life occasionally offers to go off in a different direction into a far more profound metaphor for real spiritual, intellectual, and emotional metamorphosis through the resolution of paradox—here conceptualized as the confluence of two roads that, although they could surely also *not* meet, somehow nonetheless do.[29]

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[28] *Cf.* the reference in Virgil's *Aeneid* (at 4:609; trans. Robert Fagles [New York *et al.*: Viking, 2006], p. 149) to Hekate being "greeted by nightly shrieks at city's crossroads." And *cf.* also Ovid's line in the *Fasti* (at 1:141, trans. James G. Frazer [London: William Heineman and Cambridge, MA: Harvard University Press, 1959], p. 13) to seeing "Hekate's faces turned in three directions that she may guard the crossroads where they branch three several ways." According to Pausanias in his *Description of Greece* (Book II 30:2, trans. William Henry Samuel Jones [London: William Heineman and Cambridge, MA: Harvard University Press, 1918], p. 409), Hekate was first portrayed as a three-faced deity by the fifth century BCE sculptor, Alkamenes.

[29] Others think of these transitional growth moments in life not as crossroads to negotiate but as something more akin to thresholds to step over and, indeed, the Latin word for "threshold" (*limen*) has yielded the modern concept of liminality, regarding which, see the recent book by Bjørn Thomassen, *Liminality and the Modern: Living Through the In-Between* (2014; rpt. London and New York: Routledge, 2018) or, coming at the concept from a very different angle, Sang Hyun Lee,

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From a Liminal Place: An Asian American Theology (Minneapolis: Fortress Press, 2010).

THE *TOSHAV TZEDEK*: IDENTITY, WEDDINGS, AND CO-OFFICIATION: HALAKHIC STRUCTURAL CONNECTIVES

Reeve Robert Brenner

Introduction

In a lecture delivered in 1970 in Jerusalem to a convention of American Reform rabbis—and talking about his brother's daughter, who wished to be counted as Jewish notwithstanding that her mother was not halakhically Jewish—Gershom Scholem taught that Judaism is a

> living and undefined organism. It is a phenomenon which changes and is transformed in the course of its history… *Jewish identity is not a fixed and static but a dynamic and even* dialectical *thing*.[1]

So too, I suggest, as to non-Jewish identity, in relation to Judaism.

Consistent with Scholem's observation, in recent years, both in the United States and elsewhere, we have seen the emergence of a new category of non-Jewish identity: persons who wish to participate in Jewish life but who, out of loyalty to their own birth family, do not

[1] See Gershom Scholem, "Who Is a Jew," in Scholem, *On the Possibility of Jewish Mysticism in Our Time and Other Essays,* ed. Avraham Shapira, trans. Jonathan Chipman (Philadelphia, PA: Jewish Publication Society, 1997), at pp. 93 and 98–99 (emphasis added). This talk is described in David Biale, *Gershom Scholem: Master of the Kabbalah* (New Haven: Yale University Press [Jewish Lives Series]; 2018), at pp. 194–195. I had the privilege to study with Prof. Scholem at the Hebrew University in Jerusalem, 1960–1961.

wish to undergo a formal conversion to Judaism. Some famous examples of persons residing in Jewish homes and raising their children as Jewish include baseball player Rod Carew and actress and political candidate Cynthia Nixon.

I previously, in a few informal blog posts, proposed that it would be helpful, as a first step towards analyzing this phenomenon, to give it a name. In English, I have suggested that these persons are looking, not for conversion, but for *convergence*. And in Hebrew, I have suggested that we apply to persons in this category the designation *toshav tzedek* (male) or *toshevet tzedek* (female).

In a recent article titled "Interfaith Families," Rabbi Rachel Gurevitz endorsed my proposal as indeed helpful.[2] Particularly in light of this encouragement and endorsement, I would like here to provide some background for my proposal and to illustrate how *identification* of this category might be useful in considering the question of officiating at a wedding between a *toshav tzedek* and a 'halakhic' Jew (whether in accordance with 'traditional' or Reform Movement *halakhah*).

Ger Tzedek, *Ger Toshav*, and *Toshav Tzedek*

The concept of conversion to Judaism is a post-biblical concept, emerging perhaps during the Hasmonean period (around 150 B.C.E.).[3] Accordingly, when the Torah uses the term '*ger*,' it is referring to a "stranger," just as the Israelites were strangers in Egypt. In the Rabbinic period, the term '*ger*' was often used to refer to a person who formally converted in accordance with the prevailing halakhic standards. For purposes of clarity, such a convert was also referred to as a '*ger tzedek*,' a "righteous convert."[4] Thus, in the daily Amidah, in the 13th blessing, we thank God for sustaining the righteous, including

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2 Rachel Gurevitz, "Interfaith Families," in Dana Evan Kaplan (ed.), *A Life of Meaning: Embracing Reform Judaism's Sacred Path*, (New York, NY: CCAR Press, 2018), at pp. 439–450.

3 See generally, *e.g.*, Shaye J.D. Cohen, *The Beginnings of Judaism: Boundaries, Variations, Uncertainties* (Berkeley, CA: University of California Press, 1999).

4 See, *e.g.*, Babylonian Talmud, Gittin 57b and Yevamot 48b.

the Elders of the House of Israel, and the '*gerei ha-tzedek*' (the definite plural form of '*ger tzedek*').[5]

The Rabbis also identified another category, '*ger toshav*.'[6] In doing so, they drew upon the references, at a number of points in the Torah, to a category of persons often translated today as 'resident alien.' See, *e.g.*, Gen. 23:4 (á la the New Jewish Publication Society translation—henceforth NJPS), when Abraham, in seeking to purchase a burial plot for his deceased wife Sarah, identifies himself as a *ger vetoshav* amongst the local Hittites. See also Lev. 25:35 and 25:47 (NJPS), discussing the obligation of an Israelite to redeem a

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[5] I will not further address herein the debates within the Rabbinic literature as to whether conversion should be encouraged and/or whether converts tend to be beneficial or harmful to the Jewish people—a debate plainly affected by the social-political environments of particular times and places. Moshe Zemer, *Evolving Halakhah: A Progressive Approach to Traditional Jewish Law* (Woodstock, VT: Jewish Lights, 1999), pp. 142–143, summarizes the debate as follows: early on, Jewish law in general objected to a conversion for marriage, based upon a concern for the "insincerity" of the prospective convert and so determined that a conversion must not be conducted if there is "a suspicion that the purpose of [the conversion] is to marry a Jew." A conversion which requires the acceptance of the yoke of the commandments [*kabbalat ol ha-mitzvot*] must be out of "pure conviction of the truth of Judaism, and not for any ulterior purpose, such as marriage to a Jew." In the case of many converts, however, it is acknowledged and obvious that the "purpose is marriage to a Jew." A Mishnaic law states that if a man is suspected of living with a gentile woman, he may never marry her if she ever converted "because such a marriage would confirm the suspicion" that she converted with an improper motive. It is recognized today, however, that many, if not most, interfaith conversions prior to marriages are not out of conviction (of the truth of 'Torah Judaism')—although a considerable number of converts do grow in measurable development into that sort of conviction, as most practicing rabbis will relate. Accordingly, Rabbi Solomon Freehof writes that "these objections (of insincerity) have been losing ground in recent decisions." For example, the Orthodox Rabbi Jehiel Weinberg (in 19th–20th century Europe) arrived at the determination to permit a "*conversion* [for the sake of] a Jewish marriage." See *ibid.*.

[6] See, *e.g.*, Babylonian Talmud, Avodah Zarah 64b.

kinsman who has become forced, due to poverty, to indenture himself to a resident alien. (The *ve* prefix in the phrase *ger vetoshav* introduces the semantic form known as a hendiadys. Like the 'and' in the phrase 'I am good and angry,' the prefixal conjunctive *ve* ["and"] comes here to combine two concepts to create a new concept.)

Rabbinic literature was fascinated with the concept of the '*ger toshav*' and connected it with a second Rabbinic concept—*viz*., the so-called 'Seven Commandments incumbent upon all descendants of the sons of Noah'—that is, upon everyone. A '*ger toshav*' thus became identified with a non-Jew who fulfilled the Seven Noahide Commandments (and did so by virtue of, among other forms of obedience, a belief in God).[7]

A number of thinkers have proposed re-visiting, and revising, this category of '*ger toshav*,' to try to expand it to address our modern context.[8] However, I suggest that, as the Rabbis expanded their conception of the Noahide commandments, this category conversely became relatively narrow and inflexible and, hence, is not useful for our purposes.

Accordingly, I have proposed a new designation: '*toshav tzedek*,' or '*toshevet tzedek*,' to refer to persons who wish to live a Jewish life in *convergence* with the other members of a Jewish family, but do not wish to formally convert. More specifically, in the Reform context, such a person expects to be the parent of a child who will in due course identify and qualify as Jewish in accordance with the principles of 'patrilineal descent'—or, as I prefer to call it, 'equalineality.'[9]

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7 See generally, *e.g.*, David Novak, *The Image of the Non-Jew in Judaism: The Idea of Noahide Law* (Oxford, UK: Littman Library of Jewish Civilization, second ed., 2011). '

8 See, *e.g.*, Shaul Magid, "Should Rabbis Proselytize Non-Jewish Spouses? A Response to JTSA Chancellor Eisen," in *Zeek*, (August 20, 2014), citing an unpublished proposal by the late Rabbi Zalman Shachter-Shalomi. See also Mordecai M. Kaplan, *Judaism as a Civilization* (New York, NY: MacMillan, 1934) (paperback reprint, New York, NY: Jewish Theological Seminary of America, 1981) at pp. 418–419; and Mark Washofsky, *Jewish Living: A Guide to Contemporary Reform Practice* (New York, NY: UAHC Press, 2001) at p. 208.

9 Sometimes spelled 'equilineality' in the literature.

The concept of *toshav tzedek* thus comes about as the synthetic (as in synthesis or put-together) offspring of the highly original Reform Movement evolving *halakhah* that we have been referring to, in a kind of shorthand, as "presumptiveness"[10]—the assumed Jewish identity of children of a Jewish and non-Jewish parent.

A *toshav tzedek* is one who takes up residence in—and now abides permanently instantiated and incorporated (physically as well as spiritually) within—the people, by virtue of "ascending lineality," or "retrojected identity," from child to parent, brought about by that 'presumptiveness.' Just as the *halakhah* of *chazakah* ("presumptiveness") does, the *halakha* of the *toshav tzedek* recognizes the sociological reality that raising a Jewish child in an affirmatively Jewish home, for all intents and purposes, makes for a Jewish parent. More precisely, a converged non-Jew's identity is that of a spouse or parent of Jews, partnering in raising Jewish children in a committed Jewish home, who self-identifies as a *toshav/toshevet tzedek*.

As such, the *toshav tzedek* might care to, and might be encouraged to, participate in Jewish rites, and, if she or he elects to do so, might invoke the words "us" and "we" when employed in our liturgy. Indeed, such a declaration would serve further the solemn and sincere intent of having *converged* by committing to upholding and affirming a Jewish way of life. Such an affirmation would translate into being actively supportive of the Jewish identity of the family. His or her self-identification would be that of a parent of Jewish children, a *toshav* or *toshevet tzedek*, a 'righteous resident;' and "a resident" is a person, one dictionary offers, "A resident is one having residence... present or existing, not migratory; a person who lives in a place, not just a visitor."[11]

On "non-lineal descent," see Zev Eleff, "Patrilineal Descent & the Shaping of Intermarriage Discourse in American Judaism," in *Zeramim* III:1 (Fall 2018), pp. 27–38, esp. pp. 34–35.

10 For a review of the Reform Movement's 1983 Resolution on Patrilineal Descent, and the idea that "the child of one Jewish parent is under the presumption of Jewish descent," see Washofsky, *Jewish Living*, *supra* at p. 137.

11 *Webster's New World Dictionary* (New York: Prentice Hall, 1983), p. 817.

Officiating At the Wedding Of a *Toshav Tzedek*

In many cases, the first time that such persons encounter a rabbi is in connection with their marriages to a halakhic Jew. How should we respond?

Can a Reform, Reconstructionist, or Renewal Rabbi co-officiate with a non-Jewish clergy colleague at a wedding, any wedding? According to traditional *halakhah*, and according to Reform and Reconstructionist Jewish law as well, can a wedding be co-officiated? The answer is beyond dispute. There is no such thing as co-officiation. Priests and Christian ministers, with whom I have discussed the matter in considerable detail, concur from their own traditions. The question does not occur in any known documented halakhic presentation—apart from arguably in Reform responsa, and the idea is, at best, minimally referenced there as well. That is because there is no reality to co-officiation, regardless of (i) how the wedding might be characterized, or (ii) who else besides the *mesadder* (the person giving 'order' to the ceremony) *participates* in the ceremony.

Having said this, however—and to see what room there *might* nevertheless be for Jewish clergy in connection with the marriage of a *toshav tzedek*—I suggest that it is necessary to ask both what a wedding is and what is it not. In the Catholic tradition, a wedding is a 'sacrament;' it is a formal ceremony permitting an action—cohabitation between a man and woman—that would otherwise be forbidden, and indeed that *is* forbidden to a priest. By contrast, marriage for Jews "is not a Jewish sacrament. It is not sacred."[12] The only ceremony in Judaism that resembles such a 'sacrament' is the *berit milah* ("covenant of circumcision"), the initiation into the covenant.

As for the idea of a 'wedding'—that is an ancient Anglo-Saxon word meaning 'sealing a contract.' Here, there is an analog in Judaism, for the *ketubah* (the wedding "document") is a contract. It is not primarily a religious document despite the layers of ritual heaped upon it; a *ketubah* evidences a change in status of a couple legally in the eyes of society.

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[12] George Foot Moore, *Judaism: In the First Centuries of the Christian Era* (Cambridge, MA: Harvard University Press; 1958), p. 1.

A Jewish wedding, by contrast, consists of two steps: (a) the *kiddushin*, when the woman is declared precluded from relations with any other person (and indeed with the prospective spouse, until the marriage), and (b) the marriage, as effected by something of value being given to the wife by the husband, and evidenced by the *ketubah*. As noted by the Conservative Rabbi Isaac Klein (in the 20th century U.S.A.) in his *Guide to Jewish Religious Practice*, "since marriage is not an affair of the state in Jewish law, but a private transaction between the bride and groom, the requirement of an officiant is not obligatory"[13]—but, in the U.S.A., some recognized figure is required to officiate.

As a matter of history, rabbis became involved in weddings because rabbis, schooled in the law, were presumptively the most knowledgeable and qualified persons to be called upon to arrange such things legally among Jews. They could read, understand and explain the conditions of the contract. However, as a technical matter, according to Jewish law, anyone learned and capable could *officiate* a wedding. Whoever presides over the exchange of rings (or any other consideration of value) is the officiant. That is, any Jew can act as the arranger, the *mesadder*, of the couple's *separation* from others, which is the *ur*-meaning of *kiddushin*, rendering the couple ineligible to other unions. And the persons who establish the validity of the marriage are the (two) *witnesses* who sign the ketubah.

Note that whoever presides over that specific wedding element, *i.e.*, with either the husband and wife presenting rings to each other, or the husband alone giving something of value to the wife (depending upon their particular practice), validating the contractual arrangement is the officiant. It can't be done by more than one person. Even if there is more than one person under the *huppah*, only one is considered the officiant. There can be no co-officiant, although there may be additional witnesses.

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[13] Isaac Klein, *A Guide to Jewish Religious Practice* (New York, NY: Jewish Theological Seminary of America; 1979), at p. 397. Compare Washofsky, *Jewish Living*, *supra*, at p. 160, explaining that

> [t]he rabbi does not 'marry' the couple, even if the law of the state grants that power to the rabbis. The couple marry each other, and they can do so only according to the religious traditions of Moses and Israel,' that is, as Jews.

In *Contemporary American Reform Responsa*, published by the Central Conference of American Rabbis, the question of the non-Jewish clergy participating in a Jewish wedding with a rabbi was addressed with great skill and scholarship. Chairman Walter Jacob concludes the responsum in question by saying that

> it would be improper for a Christian minister to co-officiate with the Rabbi in equal terms. The *central portion* [italics added] of the wedding ceremony must be performed by the Rabbi; the minister may, however, participate . . . in such a fashion as to preclude any inference that he or she is performing or validating a Jewish rite."[14]

Walter Jacob further observes:

> in the case of a wedding… (T)he officiating individual (*Mesader Kiddushin*) must be Jewish. Nothing would prevent a non-Jewish clergymen or friend from participating . . . as a social, nonreligious gesture. He might add a prayer (without Trinitarian references), give a homily, or be included in the wedding party. This would be considered appropriate and within the bounds of Jewish tradition.[15]

If appropriately arranged, Rabbi Jacob informs, "no one would have the impression that the Gentile participated in the actual ritual."[16]

In accordance with the meaning of "separated out," *kiddushin* is basically social and economic at its core. The transmission of the consideration along with the words attached as expressed by the couple to one another in the presence of witnesses establishes the couple as having wed. The non-Jewish partner, and parent-to-be of a presumptive Jewish child that we are identifying as a *toshav* or *toshevet tzedek*, a "righteous resident," would have, I propose, the option of invoking the words "traditions of Moses and heritage of Israel" to

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[14] Walter Jacob, *Contemporary American Reform Responsa* (NY: CCAR, 1987), pp. 475–476.

[15] *Id.*, p. 476.

[16] *Ibid.*.

signify openly by declaration the "converged" non-Jewish partner's intention of taking on the role of a presumptive parent of Jewish children.

Keiruv ("Outreach") vs. *Shimmur* ("Preservation")

Approaches to intermarriage today tend to fall within two broad categories. Some stress the imperative of *shimmur*, in which the rabbi's role is primarily understood as "guardian," *i.e.*, "preserver of Judaism," or "keeper of the faith/tradition." A rabbi committed to this view will likely not act as interfaith wedding organizer. Preservers seek to strengthen and conserve the essence and integrity of the heritage, as they understand that heritage, over which they stand sentinel.

By contrast, some rabbis stress the imperative of *keiruv*, of "outreach." Such a rabbi would more likely take upon himself or herself to act as the wedding organizer and officiant for an interfaith couple. *Kiruv* advocates are incorporators, enfolders, who seek to draw others near and to include, integrate and socialize.

Given that Reform has committed itself to favoring *kiruv*, over *shimmur* (but without neglecting *shimmur*,) one would expect that there would be some discussion in the Reform responsa concerning the marriage of a converged non-Jewish parent, but none has been published.[17]

If, however, we accept that a parent of presumptively Jewish children, a *toshav/toshevet tzedek*, is prepared to and desires to say "*anu*" (and, thereby, to mean "*us*" and "*we*"), and to wed as "consecrated according to the traditions of Moses and heritage of Israel," one might expect that the Reform Movement *keiruv*-oriented rabbis would embrace that individual and happily officiate at the marriage ceremony as an expression of welcome and would offer friendship, guidance, and support (and many sessions of counseling.)

According to Jewish law, although there are blessings recited and ceremonial rituals performed, the Jewish wedding is nevertheless fundamentally a secular matter, despite attempts in all rabbinic

[17] See, however, noting the continued debate, Washofsky, *Jewish Life*, *supra*, at pp. 159–161.

movements to enhance and to augment the religious elements of the ceremony. Reference to the sacred aspect of what are commonly referred to as the "sacred bonds of marriage" may be added appropriately, but not as importantly. The contract, the financials, the caregiving responsibilities, living arrangements and prenuptial agreements register as the important practical priorities for the protection of all parties, as rabbis writing responsa have shown in reasoned detail over the recent decades. However, should the non-Jewish partner wish to commit to *convergence* in the presence of the company of family and guests—that is, to take on the status of a *toshav tzedek* at the transformative life passage that is the wedding ceremony—the *keiruv*-oriented officiating rabbi would happily support that decision, and the *toshav tzedek* might be offered the opportunity to invoke the classic words "with this ring be thou consecrated unto me as my wife/husband according to the traditions of Moses and heritage of Israel."

Conclusion

Perhaps as an inadvertent byproduct of the 'equalineality' decision by the Reform and the Reconstructionist movements, a new category of non-Jew, relative to Jewish identity, has come into existence—unobtrusively, without fanfare and rather subtly.

My proposal is that once we have identified persons in this category as a *toshav/toshevet tzedek*, we can better deploy that concept, to help identify the obligations and responsibilities that come with this status.

A yeshivah*-educated Brooklyn native ordained at the Hebrew Union College–Jewish Institute of Religion (at the New York campus) in 1964, Reeve Robert Brenner has served as Chaplain in the U.S. military and as Senior Staff Chaplain at the National Institutes of Health; as a professor of Jewish Studies at St. Vincent College and Seminary; in the Israeli Army reserves; and as a congregational rabbi. The father of three Israeli children and the grandfather of eight grandchildren, Brenner is the inventor of*

wheelchair-accessible Bankshot basketball. His American Jewry & The Rise of Nazism *was recognized with the YIVO award of 1968. His other books include* While the Skies Were Falling: The Exodus and the Cosmos *(Cleveland, OH: Divrei Piv, 2013),* The Faith & Doubt of Holocaust Survivors *(New Brunswick, NJ: Transaction, 2014); and* Jewish, Christian, Chewish or Eschewish: Interfaith Marriage Pathways for the New Millennium *(Cleveland, OH: Divrei Piv, 2007). His columns on sports and recreation, "Reeve's Peeves and Obsessions," are published in* Play and Playground Magazine.

WHO'S THE "REAL" FATHER? PATERNITY AND MATERNITY IN THE CASE OF AN INFERTILE MARRIED COUPLE WHO BECOME PARENTS THROUGH DONOR GAMETES OR DONOR EMBRYOS

Lucia Pizarro Wehlen

The present paper is an exploration of the emotional implications of Jewish law regarding paternity, maternity and parenthood in the case of a child conceived through donated gametes. The present paper came from a desire to explore the option of embryo donation for the purposes of reproduction through a Jewish lens. This topic is important to me because my husband and I achieved our dream of becoming parents through the gift of an open embryo donation. Thus, what Jewish Law has to say about this method of achieving parenthood is of extreme importance to me.

The problem I address here is the problem of gender inequality in the Conservative stance towards third party reproduction. In particular, according to the Conservative movement, a sperm donor is the Jewish father of a child conceived through donated gametes, while the bearing mother is the Jewish mother of a child conceived through donated gametes. I explore briefly how this is the case, and I highlight the emotional difficulties that this approach entails. In the end I advocate for upgrading Jewish Law to match current ethics and morality.

Throughout this paper, I devote much attention to Rabbi Elliot N. Dorff's paper, "Artificial Insemination: The Use of a Donor's Sperm,"[1] which is part of Dorff's lengthy work which was approved

[1] Elliot N. Dorff, "Artificial Insemination: The Use of a Donor's Sperm," in Aaron Mackler (ed.) *Life & Death Responsibilities in Jewish Biomedical Ethics* (New York: Louis Finkelstein Institute, The Jewish Theological Seminary of America, 2000), pp. 37–74.

by the Rabbinical Assembly Committee on Jewish Law and Standards in March 1994.

According to Rabbi Elliot N. Dorff, "when the husband cannot provide sperm capable of impregnating his wife … the obligation to procreate ceases to apply to the man, for one cannot be legally obligated to do that which one cannot do."[2] Thus, according to Dorff, donor insemination is permissible according to Jewish Law, though by no means required. From the first few pages of Dorff's second paper addressing the issue of artificial insemination, "Artificial Insemination: The Use of a Donor's Sperm,"[3] it is evident that he believes in human worth and dignity. According to Dorff, "divine worth … comes from being created in God's image, which is true of each of us from the moment of birth to the moment of death, whether or not we manage to have children in between."[4] These two principles taken together (that no one is obligated to do that which one cannot do—combined with that each of us is intrinsically worthy irrespective of our ability to procreate) can be potentially helpful from a spiritual or emotional perspective when a man faces infertility. While I'm not sure that these principles can assuage a man's potential feelings of failure, at least Jewish law does not condemn the victim.

However, the fact that one is not obligated to have children in the case in which one cannot have them does not address the issue of the desire to have children and the frustration felt when one is not able to do so. In the face of this desire and this frustration, there is the prescription that "the couple … *should* investigate alternatives

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2 Elliot N. Dorff, *ibid.*, p. 37.

3 In Aaron Mackler (ed.), *Life & Death Responsibilities in Jewish Biomedical Ethics*, Dorff's lengthy work addressing issues of artificial insemination is divided into three papers/chapters (Aaron Mackler (ed.), *ibid.*, p. 15). Dorff's paper was approved by the Rabbinical Assembly Committee on Jewish Law and Standards in March 1994 (Aaron Mackler (ed.), *ibid.*, p. 47).

4 Elliot N. Dorff, "Artificial Insemination: The Use of a Donor's Sperm," in Aaron Mackler (ed.), *Life & Death Responsibilities in Jewish Biomedical Ethics*, p. 38.

such as adoption before trying [to have children through donated gametes]."[5]

Dorff does a good job of setting aside the worries of adultery, illegitimate children, and unintentional incest raised by some rabbis. By addressing all these worries he is able to allow the use of donated gametes for the purpose of reproduction,[6] while urging "that the identity of the donor, or at least, substantial parts of his [and/or her] medical history, be known."[7]

There is a problem, however, when it comes to Dorff's opinion regarding the personal status of the child conceived through donated gametes. As Dorff explains:

> if an orphan child is the child of a kohen but his adoptive father is a yisra'el [a Jew who is not—traditionally patrilineally—descended from supposed 'priestly' or levitical lineage], the father retains his natural father's status at birth, [and] the same would presumably be true for the child born through [donated semen].[8]

Dorff writes that, "if the donor's status as a kohein, levi, or yisra'el is known, the child inherits that."[9] On the other hand, "Jewish law

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5 Elliot N. Dorff, "Artificial Insemination: The Use of a Donor's Sperm," in Aaron Mackler (ed.), *Life & Death Responsibilities in Jewish Biomedical Ethics*, p. 38. (My emphasis).

6 Elliot N. Dorff, "Artificial Insemination: The Use of a Donor's Sperm," in Aaron Mackler (ed.), *Life & Death Responsibilities in Jewish Biomedical Ethics*, pp. 15–16 and 37–63.

7 Elliot N. Dorff, *ibid.*, p. 41 (and the same would be true for an adopted child).

8 *Ibid.*, p. 42.

9 *Ibid.*, p. 43. Conservative and Orthodox Jews still, in varying ways, acknowledge the threefold division of ancient Israel into *Kohanim* (descendants of Israelite priests), *Leviyyim* (non-priestly-descendants of the tribe of Levi) and *Yisre'elim*. Reform Jews do not believe any congregant should have a different status than another, and therefore do not acknowledge these divisions. (See, *e.g.*, CCAR Responsa Committee, "Priestly and Levitical Status in Reform Judaism" [5771.4; from circa 2011] accessed online at https://www.ccarnet.org/ccar-

determines a person's Jewish identity according to the bearing mother"[10] and not according to the egg donor.

Thus, according to Mackler, "the sperm donor… should be viewed as the father… with regard to technical issues of Jewish identity."[11] Yet, when it comes to egg or embryo donation, "the woman who gestates and gives birth to the child is to be treated as the child's mother for purposes of Jewish law, including the determination of Jewish identity."[12]

This discrepancy carries tremendous psychological and emotional implications. In my personal case, my husband had an extremely difficult time wrapping his head around the idea of raising someone else's child (the donor's) as his own. The fact that he would not experience the prenatal bonding that I would experience through pregnancy made it even more difficult for him. And now it turns out that the personal status of our known donor will be passed down to our child, yet if we would have chosen a non-

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responsa/priestly-levitical-status-reform-judaism/ on March 12, 2019.)
These groupings began with the division of the Jewish nation among the twelve children of Jacob, one of whom was Levi and the *Kohen* subgroup of Levi. Levi and Kohen were singled out to be the ones to work in the Temple. There are special laws relating to them. The main difference nowadays in traditional synagogue practice is that the first person called to the Torah is always a Kohen, and the second a Levi (unless there are none in the Synagogue, in which case anyone may be called up). Tribal affiliation is passed down through the father; therefore, someone is a *Kohen* or *Levi* if their father was. Otherwise they are called *Yisra'el*, which is the generic name for everyone else. Heterosexual married women traditionally take on the tribal affiliation of their husband. If a woman marries a *Kohen* or a *Levi*, she (and her children) will become part of her husband's 'tribe.' Until the Temple is rebuilt this doesn't make much practical difference.

10 *Ibid.*.

11 Aaron L. Mackler, "In Vitro Fertilization," in Aaron Mackler (ed.), *Life & Death Responsibilities in Jewish Biomedical Ethics*, p. 108.

12 Aaron L. Mackler, *ibid.*, p. 109. Mackler's paper was approved by the Rabbinical Assembly's Committee on Jewish Law and Standards in December 1995. Aaron Mackler (ed.) *Life & Death Responsibilities in Jewish Biomedical Ethics*, p. 97.

Jewish couple, I would have passed down to the child his or her Jewish identity! One can see how, in this respect, Jewish law, as rendered by Dorff and Mackler, is not only unhelpful but can be potentially detrimental for the already difficult situation that my husband and I were facing when trying to conceive through an open embryo donation. While we were dealing with all of the feelings around third-party reproduction through donor embryos—including the grieving of our dream to have genetic children, as well as wrapping our heads around the fact that our donor is known and our potential child(ren) would have a known genetic siblings—issues of personal status in Jewish law added to the emotional tumult and even caused us to feel resentful against *halakhah* and Judaism as a whole.

But Dorff goes even further in removing the parent-child connection between what he calls the "social father" (in my case—my husband) and the child.[13] According to Dorff, the semen donor is the father of the child for the purposes of the commandment of propagation.[14] By regarding the semen donor to be the father for the purposes of the commandment of propagation, Dorff unwittingly undermines one of his own main values that he uses to support third-party reproduction: the very continuation of the Jewish people. If the commandment to procreate was intended to guarantee the continuation of the Jewish people, how can a Jew who merely ejaculates in a cup and doesn't want to know if any children came out of such action be the father for the purposes of the commandment of propagation?[15] Does a Jew who merely ejaculates

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13 It must be noted that in the United States and in Canada, what Dorff calls the "social father" of the child is deemed the "legal father" of the child in every respect. See below.

14 Elliot N. Dorff, "Artificial Insemination: The Use of a Donor's Sperm," in Aaron Mackler (ed.), *Life & Death Responsibilities in Jewish Biomedical Ethics*, p. 46.

15 This is, of course, not at all the case in the case study that I am using for this paper: my personal situation. However, this would be one of the cases that Dorff is including on his paper about artificial insemination with the use of a donor's sperm, for he is proposing "that the identity of the donor, or at least, substantial parts of his [and/or her] medical history, be known," thus allowing for the possibility of anonymous donation. *Ibid.*, p. 41.

in a cup and his semen produces a child that is not Jewish fulfil the commandment of propagation? Can a Jew just go to a sperm bank and donate anonymously in order to fulfil the commandment of propagation not knowing whether a child would come out of it or whether the child will have a Jewish identity at all? All of these questions are ludicrous. Of course a donor cannot fulfill the commandment of procreation by purely ejaculating into a cup and hoping for the best. Even the dated Orthodox *posekim* ('decisors'— those who decide in matters of Jewish law) who considered a child resulting from donor semen insemination to be the offspring of the donor in all respects (inheritance, support, custody, incest, living in a specific area, etc.) do not consider that the semen donor has fulfilled the commandment of procreation.[16]

This is problematic also from a psychological perspective. In the case of my husband, he feels alienated and even angry by being first of all called the "social father" and, even more, to be told that "for the purposes of the commandment of propagation, we must see the semen donor as the father of the child."[17] It is hard enough to know that his own child is not genetically related to him, and that his child will know his genetic family. If, on top of that, one adds that the genetic father is "the father for the purposes of propagation,"[18] we are simply adding more layers of difficulty to this already complex relationship.

Moreover, the already existing biological discrepancy between the ability of the mother and the father to bond with an unborn child is made even worse when we tell the father that "the semen donor" is "the father for the purposes of the commandment of propagation."[19] Dorff's opinion, in a way, would mean that I would be the Jewish mother of our child conceived through embryo donation, but the embryo donor would be the Jewish father of said child! We begin to see here the consequences of gender inequality

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16 In Fred Rosner and J. David Bleich (eds.), *Jewish Bioethics* (Hoboken, NJ: 1979 and 2000), see Fred Rosner's Chapter 9, "Artificial Insemination in Jewish Law."

17 Elliot N. Dorff, "Artificial Insemination: The Use of a Donor's Sperm," in Aaron Mackler (ed.), *Life & Death Responsibilities in Jewish Biomedical Ethics*, p. 46.

18 *Ibid.*.

19 *Ibid.*.

in the issue of parenthood: Dorff's opinion could potentially help me, in theory, to feel that I would be the mother of a child conceived through embryo donation, but it just makes things a lot worse for my husband.

The official language of the Reform Movement in this respect is diametrically different. Reform Judaism does not hold that procreation is a duty more incumbent upon males than upon females.[20] Thanks to the Reform movement's egalitarian approach to reproduction, the Reform movement is able to maintain that a child conceived through embryo donation would be the biological offspring of the man and woman who donated the sperm and the egg, but those who raise the child are his or her "ultimate" and "real" parents. *The child has no legal or religious relationship to the donors of the egg and sperm*, although for personal, medical, and genetic reasons the child or his/her guardian should be permitted to discover the identity of the biological parents at an appropriate time.[21]

Dorff's ruling that, for the purposes of the commandment of propagation, the semen donor is the father of the child is motivated by the fact that the child's genetic heritage is that of the semen donor. However, basing a ruling on genetics complicates the issues halakhically because the genetic contribution of both biological parents would have to be accounted for.[22] Mackler's paper, approved by the Rabbinical Assembly Committee on Jewish Law and Standards on December 1995,[23] claims that recognizing "*both* the genetic and birth mothers as having maternal status… would

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20 Ruth Landau and Eric Blyth (eds.) *Faith and Fertility: Attitudes Towards Reproductive Practices in Different Religions from Ancient to Modern Times*, p. 30.

21 Central Conference of American Rabbis, "In Vitro Fertilization and the Status of the Embryo" (5757.2: circa 1997), in Mark Washofsky (ed.), *Reform Responsa for the Twenty-First Century: Sh'eilot Ut'shuvot*, vol. 1 (Central Conference of American Rabbis 2010), pp. 159–168.

22 Ezra Bick, "Ovum Donations: A Rabbinic Conceptual Model of Maternity," in *Jewish Law and the New Reproductive Technologies*, edited by Emanuel Feldman and Joel B. Wolowelsky, pp. 83–106 (chapter 4).

23 Aaron Mackler (ed.,) *Life & Death Responsibilities in Jewish Biomedical Ethics*, p. 97.

impose unnecessary complications for the use of donated ova."[24] Mackler's justification for this discrepancy is that these "complications do not seem to be avoidable with sperm donation, and may be avoided here simply by following the position most clearly suggested by halakhic precedent."[25]

I don't believe, however, that such discrepancy is halakhically necessary. Dorff himself is willing either to ignore or to amend Jewish law in other instances in the same paper when compliance with the law has worse consequences than non-compliance. For example, according to Dorff, "Jewish law does not govern inheritance in the United States or Canada," and, thus, "the implications of [reproduction through donated gametes] for inheritance within Jewish Law need not concern us."[26] Another example:

> According to traditional sources, one who raises another person's biological child does not assume the biblical prohibitions associated with one's own child. Thus, intercourse between an adoptive parent and the adopted child is not a violation of the biblical laws of incest, and adopted children raised in the same home may, according to the Talmud, marry each other.[27]

Here Dorff uses a different halakhic category, the category of secondary relationships, in order to advocate a "stringency over the traditional sources"—thereby prohibiting sexual relations between adopted children and their adoptive parents.

Thus, a re-interpretation of the sources is both possible and also needed in order to uphold current views of ethics and morality. The laws in the United States and Canada uphold current ethics and morality when they deem what Dorff calls the "social father" of the child as the "legal father" of the child in every respect.

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24 Aaron L. Mackler, "In Vitro Fertilization," in Aaron Mackler (ed.), *Life & Death Responsibilities in Jewish Biomedical Ethics*, p. 108.

25 Aaron L. Mackler, *ibid.*, p. 121, n. 55.

26 Dorff, "Artificial Insemination: The Use of a Donor's Sperm," in Aaron Mackler (ed.), *Life & Death Responsibilities in Jewish Biomedical Ethics*, p. 43.

27 Dorff, *ibid.*, p. 47.

In the United States, the National Conference of Commissioners of Uniform State Laws approved a new Uniform Parentage Act (UPA) in 2002. Although all states have some sort of uniform parentage act, no state has enacted the latest law verbatim.[28] Like, in Jewish law, in the United States, the legal mother is the one who carries a child to birth, except in the cases of adoption and gestational surrogacy. In these two exceptional cases, the woman who carried the child to birth is not the legal mother. Article 7 deals with parentage when there is assisted conception and incorporates the earlier Uniform Status of Children of Assisted Conception Act into the 2002 Uniform Parentage Act almost without change. If a man and a woman consent to any sort of assisted conception and the woman gives birth to the resultant child, they are the legal parents. Unlike Dorff's opinion, according to the Uniform Parentage Act (UPA), a donor of either sperm or eggs used in an assisted conception may not be a legal parent *under any circumstances*.[29]

Therefore, Jewish law must catch up to the morals and the ethics of our times and end the halakhic uncertainty regarding who are the parents of children conceived through donated gametes.

It is absolutely necessary for Jewish law to be in alignment with present ethics and morality. For, as Dorff himself claims:

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[28] Drafted in 1973 by the National Conference of Commissioners on Uniform State Laws and approved by the House of Delegates of the American Bar Association in 1974, the Uniform Parentage Act, 9A U.L.A. 592 (1979), has been passed in whole or in part by the following states: Alabama, California, Colorado, Delaware, Hawaii, Illinois, Kansas, Minnesota, Missouri, Montana, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Rhode Island, Washington and Wyoming. Aaron Mackler (ed.), *Life & Death Responsibilities in Jewish Biomedical Ethics*, p. 66, note 13.

[29] The National Conference of Commissioners on Uniform State Laws, 2015, http://www.uniformlaws.org/ActSummary.aspx?title=Parentage%20Act. Moreover, as early as 1968, the California Supreme Court held that the sperm donor had no more responsibility for the use of his sperm than a blood donor had for the use of his or her blood. Aaron Mackler (ed.), *Life & Death Responsibilities in Jewish Biomedical Ethics*, p. 66, note 13).

> positive law and morality are one undifferentiated web, where each can and should influence the other. That is especially true in a religious legal system like the Jewish one, where a fundamental assumption is that the law must express the will of a moral—indeed, a benevolent—God. Thus, the moral concerns that donor insemination raises are not… "merely" moral, but fully legal.[30]

If, as Dorff asserts, we "want to acknowledge the importance of fathers in the rearing of children," as well as "to preserve the tie between children and loving families,"[31] then halakhah should find a way to strengthen such tie by following the same principles of the law in the United States and Canada. After all,

> The law… must be interpreted with full cognizance of the specific context to which it is to be applied, for otherwise it risks… the greater danger—it could be obeyed despite the personal, social, and moral havoc it wreaks on the situation it was meant to guide with sensitivity and wisdom. . . . Jewish law, which tries to delineate the will of God as we understand it, must… pay attention to the welfare of the Jewish community and of the specific people involved as any good God would. Moreover, the Conservative movement, with its commitment to historical analysis, must… take the responsibility to meet the needs of Judaism and the Jewish community in its responsa of the present.[32]

The commitment to gender equality must be an essential tenet in the Conservative movement's belief and practice. As such, both the legal mother and the legal father according to the law in the United States and Canada, should also be the legal mother and the legal father according to Jewish law in every single respect. A child

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30 Dorff, "Artificial Insemination: The Use of a Donor's Sperm," in Aaron Mackler (ed.), *Life & Death Responsibilities in Jewish Biomedical Ethics*, p. 49.

31 *Ibid.*, p. 50.

32 *Ibid.*, p. 60.

conceived through the donation of gametes should not have any legal or religious relationship to the donors of the gametes. And, of course, Dorff's opinion against total anonymity of the donors is not only morally and medically sound, but it is also the tendency of the world; Sweden, Austria, the Australian state of Victoria, Switzerland, the Netherlands, Norway, the United Kingdom, New Zealand, Germany, Ireland, and Finland already have mandates that donors be identifiable to their genetic offspring.[33]

Conclusion

As we have seen, according to the Conservative movement, a sperm donor is the Jewish father for the purposes of the personal status of the child conceived trough donated gametes and for the purposes of the *mitzvah* of propagation of the father, while the bearing mother is the Jewish mother of said child. This creates unnecessary emotional difficulties for the "social" father. Moreover, the Conservative movement has upgraded, amended, or ignored Jewish law in other areas in order to match current ethical and moral standards.[34] It is important that the Conservative movement follows

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[33] See Glenn Cohen, Travis Coan, Michelle Ottey, and Christina Boyd, "Sperm donor anonymity and compensation: an experiment with American sperm donors," in *Journal of Law and the Biosciences* 3:3 (December 2016), pp. 468–488 as accessed at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5570712/ on March 13, 2019.

[34] Conservative Judaism effectively upgraded its halakhic outlook in its acceptance of women's counting in a minyan. See *e.g.*, David J. Fine, "Women and the Minyan" (Committee on Jewish Law and Standards of the Rabbinical Assembly, 2002), as accessed at www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/oh_55_1_2002.pdf on March 14, 2019. The movement accepted a major altering of previous norms in Jewish law in the Committee on Jewish Law and Standards' permitting the sanctification of same-sex relationships and in ordaining gay clergy—as per the responsa of Elliot N. Dorff, Daniel S. Nevins, and Avram I. Reisner, "Homosexuality, Human Dignity & Halakhah: A Combined Responsum for the Committee on Jewish Law and Standards" (Committee on Jewish Law & Standards, 2005), as accessed at

suit in the case of a child conceived through donated gametes. Jewish law should follow civil law so that the semen donor is not viewed as the father of the child conceived through donated gametes for any purpose whatsoever. The semen donor should be viewed as just that: the semen donor, and nothing else. It may well be that abolishing altogether all traditional tribal distinctions is the only way to catch up with our modern egalitarian values, the way most Reform and Reconstructionist Jews have done.

Rabbi Lucia Pizarro is the spiritual director of the Jewish Liberation Theology Institute in Hamilton, Ontario. She was born in Mexico City, where she became qualified to practice law. She completed an M.A. and a Ph.D. in Philosophy at the University of Essex in the UK. She followed her academic passion for Jewish thought with four years working for social justice in the Land of Israel. She recently became a mother and a Rabbi.

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www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/dorff_nevins_reisner_dignity.pdf on March 14, 2019. On Conservative Judaism's *ignoring* Jewish law for the sake of betterment, see: *e.g.*, Elie Spitz regarding the legal precedent of assuring proper lineage prior to marrying two Jews and (refraining from) certifying an absence of *mamzerut* (*i.e.*, improper ancestry):

> We render *mamzerut* inoperative, because we will not consider evidence of *mamzerut*. We will give permission to any Jew to marry and will perform the marriage of a Jew regardless of the possible sins of his or her parent. (Elie Spitz, "*Mamzerut*" [NY: Committee on Jewish Law & Standards of the Rabbinical Assembly, 2000], p. 56, as accessed at https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/conservjud._mamzerut-_spitz_2018.pdf on March 12, 2018.)

As a Driven Leaf After 80 Years[1]

David Golinkin

As a Driven Leaf by Rabbi Milton Steinberg, which recounts the tragic story of Elisha ben Abuyah, is one of the most successful Jewish historical novels of all time. Since its publication in 1939, it has been reprinted many times and has sold some 750,000 copies—and perhaps many more—with few marketing, advertising, or public relations

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1 This article is based on my Introduction to the new, Hebrew edition of *As a Driven Leaf—Ke'aleh Nidaf* published by Yediot Aharonot and The Schechter Institute, 2015, pp. 15–20. The initial English translation of this article was done by Ilana Kurshan. I have revised the article for *Zeramim* since this is now a stand-alone article and not an Introduction. I have also omitted the end which talks about the Hebrew translation and thanks those who worked on the book.
This article is based on the following sources: Arthur Cohen, "Introduction" to: Milton Steinberg, *Anatomy of Faith* (New York: 1960), pp. 11–60; Simon Noveck, *Milton Steinberg: Portrait of a Rabbi* (New York: 1978); Chaim Potok, "Foreword" to *As a Driven Leaf* (Springfield, New Jersey: 1996), pp. 5–10; Jonathan Steinberg, "Milton Steinberg—American Rabbi—Thoughts on His Centenary," *Jewish Quarterly Review* 95/3 (Summer 2005), pp. 579–600; Ari Goldman in Milton Steinberg, *The Prophet's Wife* (Springfield, New Jersey: 2010), pp. xi–xvii; Phil Cohen, "As a Driven Leaf" at *Jewish Ideas Daily* (March 28, 2013), accessed at www.jewishideasdaily.com/6210/features/as-a-driven-leaf on February 5, 2019; Mel Scult, *Judaism Faces the Twentieth Century: A Biography of Mordecai M. Kaplan* (Detroit: 1993); and *idem.*, editor, *Communings of the Spirit: The Journals of Mordecai M. Kaplan*, Vol. II (Detroit: 2016). My thanks to Rabbi Jonathan Schnitzer of Rockville, Maryland, who showed me Noveck's excellent book and even lent me his personal copy until I was able to purchase my own. Brief references below refer back to this note.

campaigns.[2] Most of the critics were of one mind regarding the book's literary merit and its emotional force, and they showered praise upon it when it first appeared: "Imposing… remarkably effective" (*The New York Times*); "A windswept novel of a turbulent age strangely like our own" (*The Chicago Daily News*); "Perhaps so completely frustrated a life has never before been presented in fiction. Sheer beauty!" (*The Christian Herald*).[3] Writing in *The New York Herald-Tribune,* literary critic Alfred Kazin called it "a rare and moving book, creative in its thought, sensitive, scholarly without being a document—It has a warmth of conception and intellectual intensity that are exciting."[4]

Who was Milton Steinberg? Why did a successful congregational rabbi decide to write a historical novel about the most famous heretic of the Talmudic period? And why did this novel become a bestseller that has retained its relevance for eighty years?

Milton Steinberg was born in Rochester, New York in 1903. His father Samuel was born in Lithuania and even studied at the famous Volozhin Yeshiva but then became a secular intellectual and a Socialist. His mother Fannie was born in Rochester to an observant immigrant family. Steinberg absorbed a love of books from his father and a love of Judaism from his mother's parents. From an early age, Milton distinguished himself as a brilliant student who read an astonishing number of books in English and remembered much of what he read by heart. He also learned Hebrew, Bible, and Mishnah with a private tutor.[5]

In 1919, Steinberg's family moved to Harlem in New York City, where Milton continued his secular education at the well-known DeWitt Clinton High School. He particularly excelled in Latin, Greek, and literature and soon established himself as one of the best students in the school. For example, at the end of the third term, the English teacher, not knowing how else to express her admiration for his work, gave him the unprecedented mark of 105. The whole school buzzed

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2 According to Jonathan Steinberg, p. 580, in 2005, the book was selling at the rate of 5,000–15,000 copies per year.

3 These quotations appear on the page facing the title page of *A Prophet's Wife*. For a selected list of book reviews of *As a Driven Leaf*, see Noveck, p. 336.

4 Quoted by Noveck, p. 106.

5 *Ibid.*, pp. 1–7.

for days over this unusual event.[6] He graduated high school in January 1921 as class valedictorian and won first prize in the poetry contest.[7]

Steinberg also became active in the Conservative synagogue Ansche Chesed in New York and was strongly influenced by Rabbi Jacob Kohn, who convinced him that it was possible to bridge the gap between religion and philosophy. Kohn pointed to the indispensable role that faith must play, not only in religion, but also in science and other areas of life.[8]

In February 1921, Steinberg enrolled as an undergraduate at City College, where he studied Greek, Latin, English literature, public speaking, algebra, logic, and philosophy. He especially enjoyed the courses of Professor Morris Raphael Cohen, a brilliant lecturer who started out as a professor of mathematics and logic but then became a professor of philosophy. Cohen made a concerted effort to undermine the faith of his students, most of whom were Jewish. Steinberg decided to react to Cohen's relentless attacks; they had many long battles in class, with Steinberg quoting the Bible and passages from Graetz's history.[9] Recognizing that he needed more knowledge in the philosophy of religion, Steinberg turned to Rabbi Kohn to organize a study group in order to help him and his Jewish friends respond to Cohen's harsh criticisms. In other words, as Simon Noveck wrote in his biography of Stenberg, the matter developed into an intellectual clash between Cohen and Kohn.[10] Rabbi Kohn bolstered Steinberg's faith and encouraged him to study for the rabbinate.

In February 1924, Steinberg graduated from City College *summa cum laude*. He was awarded the Ketchum Medal in philosophy, and he received the highest grade point average of all 300 students in his class. Beneath his photo in the yearbook, his classmates wrote, "Prodigy of prodigies, genius of geniuses."[11]

In 1924–1928, Steinberg went on to study for rabbinical ordination at the Jewish Theological Seminary of America (JTSA), where he was also awarded a long list of prizes. He especially enjoyed

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6 *Ibid.*, p. 11.
7 *Ibid.*, p. 13.
8 *Ibid.*, p. 16.
9 *Ibid.*, pp. 18–21.
10 *Ibid.*, p. 21.
11 *Ibid.*, pp. 21 and 23–24.

his courses with Professor Mordecai Kaplan. Steinberg had a deep appreciation for Kaplan's approach to Jewish peoplehood, but he was disappointed that Kaplan had little to say about the nature of God, the problem of evil, or of faith and its relation to reason.[12]

During the course of his studies, Steinberg received prizes for his papers on "Reason and Faith in Saadia [Gaon]" and "Revelation and Prophecy in Philo." He concurrently completed a Master's degree in philosophy at Columbia University, where he was heavily influenced by Prof. John Dewey.[13]

The first congregation where Steinberg served following his rabbinic ordination was in Indianapolis (1928–1933). In 1929, he married Edith Alpert, whom he had met earlier in New York. They spent their honeymoon in Israel and visited Jaffa, Jerusalem, Shechem (Nablus), Nazareth, and Tiberias. The descriptions of the Land of Israel in *As a Driven Leaf* were undoubtedly influenced by that visit.[14]

Steinberg's second and final pulpit was at Park Avenue Synagogue in New York City (1933–1950). There, he transformed a small Reform synagogue of 120 families into a flourishing Conservative synagogue of 700 families. He became particularly well-known for his sermons, which drew upon the weekly Torah portion, Jewish sources, philosophy, and secular literature. For example, in a sermon entitled "Power of Faith," he quoted Tolstoy, Pappini, Schlegel, Novales, Goethe, Hardy, Anatole France, Bertrand Russell, Descartes, Hume, Royce, Bergson and others—all in a single sermon![15] Two months before he died of heart disease in March 1950, Steinberg gave a series of four weeknight lectures on "New Currents in Religious Thought," which he envisioned as a seminar for 25–30 people. Yet 300 people came to the first lecture and 400 to the second![16] In other words, in an era before television and the internet, Steinberg was one of the most brilliant and famous rabbis in the United States.

Milton Steinberg wrote eight books, some nonfiction and some fiction, some of which were published during his lifetime and some posthumously. All met with commercial success and critical acclaim,

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12 *Ibid.*, p. 29. For Steinberg's admiration for Kaplan, see Scult, 1993, p. 274.

13 See Noveck, pp. 32–34.

14 *Ibid.*, pp. 41–49.

15 *Ibid.*, p. 291, note 13.

16 *Ibid.*, p. 239.

and many are still in print.[17] But the question remains: What motivated Steinberg—a very busy pulpit rabbi who also lectured all over the country in an era before commercial air travel—to devote so much effort to writing a historical novel about Elisha ben Abuyah, who is referred to as *Aher* (The Other) in Talmudic literature?

As noted, Steinberg was an expert in Greek and Latin literature and philosophy, as well as in rabbinic literature. In 1928, he began writing his doctoral thesis on "Hellenism and Rabbinic Thought" or "Hellenistic Influences on Rabbinic Judaism" with Professor Salo Baron at Columbia University, and he worked on it intermittently for many years.[18] Indeed, in June 1934 he told his teacher Rabbi Mordecai Kaplan that he could not collaborate with him on the writing a series of special prayers because he needed to work on his dissertation. Kaplan complained in his diary that this was the third time Steinberg had turned him down for the same reason.[19]

In 1937, Steinberg published an article on the difference between "Judaism and Hellenism," no doubt based on his doctoral research, in an anthology about the holiday of Hanukkah.[20] There he expressed a tremendous appreciation for Hellenistic culture—based on affluence, methods of government, architecture, sculpture, science, geometry, zoology, botany, literature, and philosophy. On the other hand, he noted its "deep and fundamental voids" that caused the Jews to reject this culture, namely the lack of: a living religion, respect for the life of every human being, chastity, charity, compassion for the underdog, and sympathy for the oppressed. "In the very moment of its flowering, Hellenism was doomed, because the intellect and the sense of the aesthetic are not sufficient for man," wrote Steinberg.[21]

Indeed, these motifs recur throughout *As a Driven Leaf*, which Steinberg wrote during the years 1936–1939. An unpublished article by his wife Edith entitled "Midwife to a Novel" describes his decision to harness the knowledge he had accumulated about Judaism and

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17 See Noveck, p. 330, for a list of his books until 1978 and add *The Prophet's Wife*, which was finally published in 2010.

18 The two different titles are cited by Noveck, p. 55 vs. p. 97. The second title is much closer to the themes of *As a Driven Leaf*.

19 See Kaplan, Vol. II, p. 13.

20 Milton Steinberg, "Judaism and Hellenism," in Emily Solis Cohen, ed., *Hanukkah: The Feast of Lights*, Philadelphia, 1937, pp. 5–16.

21 *Ibid.*, p. 14.

Hellenism for his doctorate and to use it to write a novel about Elisha ben Abuyah.[22]

Steinberg told one of the college students in his congregation that he put a lot of himself into Elisha.[23] Even so, I believe that he put in the mouths of Elisha and Rabbi Akiva some of the very arguments between Cohen and Kohn, which had shaped him as a student and as a rabbi. Elisha ben Abuyah is Professor Cohen, who dismisses any belief that cannot be proven by logical means, whereas Rabbi Akiva is Rabbi Kohn, who believes in God and in Judaism, despite all the challenges of his own era.

Steinberg worked on the novel day and night during his "free time" and he was receptive to the criticism of his wife and his editors at Bobbs-Merrill publishing house. The book was finally published in late 1939 to great critical acclaim.

What led this novel to survive the test of time and to remain relevant to readers in our own day as well? I believe there are two answers, one primary and one secondary.

The primary reason is that every modern Jew has to confront the tension between logic and philosophy on the one hand, and faith and religion on the other. Every young Jew is searching for proofs of the existence of God and the authenticity of the Torah and of the Jewish tradition. By means of the tragic biography of Elisha ben Abuyah, Rabbi Steinberg teaches us that we cannot rely on logic and intellect alone; everything in the world, even geometry, is based to a small or large degree on faith, and every Jew and every human being needs to find a way to combine faith and religion on the one hand, with logic and intellect on the other. This is a message that speaks to **every** modern Jew, but especially to young people who are searching for their path in life.

The secondary reason is that *As a Driven Leaf* managed to turn the Sages of the Mishnah—the Tannaim—such as Rabbis Gamliel, Joshua, Eliezer, Akiba, Elisha and Meir, into living, breathing people, not just literary characters. Rabbi Steinberg's description of the debates in the Sanhedrin about the study of Greek wisdom, the descriptions of the four who entered "Pardes," Rabbi Joshua's speech at the valley of Beit Rimon, the arguments between Elisha ben Abuyah

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22 See Noveck, pp. 98 ff.

23 *Ibid.*, p. 105.

and Rabbi Akiva, and the horrifying description of the Ten Martyrs[24]—all these bring the Mishnaic period and its heroes to life, and give readers the sense that they are there alongside them.

I hope and pray that Milton Steinberg's *As a Driven Leaf* will continue to influence generations of young Jews in the Western world. I also hope that, now that it has been published in modern Hebrew along with my endnotes by Yediot Aharonot and the Schechter Institute,[25] it will succeed in captivating the Israeli readership, and will serve as a beacon of light in the quest for a balance between religion and philosophy, as it has served for hundreds of thousands of English, Spanish and Russian-speaking Jews for the last three generations.[26]

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24 See Milton Steinberg, *As a Driven Leaf*, Prologue and Part I, Chapter 14; *ibid.*, Chapters 18, 20, 24 and more; 22; 25; and Part II, Chapter 19. (I have referred to the chapters and not the page numbers, since different editions have different paginations.)

25 See my endnotes in the back of the Hebrew edition (above, note 1), pp. 455–493. (For an English version of my Notes and Sources, see "Responsa in a Moment," Volume 9, Number 7, July 2015, at http://www.schechter.edu/as-a-driven-leaf-by-rabbi-milton-steinberg-notes-and-sources/), which was also published in my book *Responsa in a Moment*, Vol. IV, Jerusalem, 2017, pp. 288–340.) For reviews of the new Hebrew edition, see the reviews of Itamar Merilos, *Shevi'i* (June 12, 2015); Gadi Eidelheit (August 9, 2015), accessed at www.shavua-hasefer.co.il on August 9, 2015; Admiel Kosman, *Makor Rishon*, No. 991; and in the *Shabbat* magazine (August 8, 2016), pp. 18–19.

26 The Spanish edition—entitled *Como Una Hoja al Viento*—was published in 1952, 1961, and 1994 and is well-known among South American rabbis and educators. The Russian edition was published in 1982 and reprinted in 1989. I met with Olivier Bosseau of Paris in December 2018; he is now in the process of translating *As a Driven Leaf* into French.

A PHILOSOPHICAL NOTE ON *AS A DRIVEN LEAF*

Richard L. Claman

David Golinkin's new introduction (printed in this issue of *Zeramim*) to Milton Steinberg's classic historical novel, *As A Driven Leaf* (hereinafter, *AADL*),[1] differs from the 'introductions' by David Wolpe and Chaim Potok, prefacing the most recent American re-releases of *AADL*, in that Golinkin invites the new reader to focus on Steinberg's theme of the relationship between 'faith' and 'reason.'

That theme was certainly central to Steinberg's own philosophic thinking.[2]

And, indeed, *AADL* presents us, through the mouths of three of its principal characters, three different proposals for reconciling faith and reason.

As noted herein, the 'resolution' that *AADL* appears to favor, however, is one that Steinberg elsewhere acknowledged was *not* one that the Rabbis of the Talmud would have even considered Moreover, Steinberg himself observed near the very end of *AADL* that the apparently favored 'resolution' was itself problematic.

Accordingly, this note will first review the three proposals for 'reconciliation of faith and reason' set forth in *AADL*. We will then suggest that Steinberg might have been—and in any event *we*, today,

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1 All references herein are to the pagination in the New York Berman House paperback edition of 1980.

2 See, *e.g.*, Arthur Cohen's "Introduction" to *Anatomy of Faith* (NY: Harcourt, Brace & Co.; 1969)—a collection of articles and speeches by Milton Steinberg as compiled/edited by Cohen. See, *e.g.,* Cohen's introduction therein (at p. 63), to Steinberg's 1942 essay, "Toward the Rehabilitation of the Word 'Faith,'" noting that that essay "was a preliminary study in what was to have been a volume to be called THE ANATOMY OF FAITH."
See also Jonathan Steinberg, "Milton Steinberg, American Rabbi—Thoughts on his Centenary", *Jewish Quarterly Review* 95:3 (Summer 2005), pp. 579–600.

might be—interested in a relatively recent development in the 'neo-pragmatic' philosophic analysis of 'objectivity,' exemplified in the recent writings of Catherine Elgin,[3] and of Hilary (*z"l*) and Ruth Anna (*tibbadel lechayyim*) Putnam,[4] which might offer a fourth, and more satisfactory, path.

We are plainly *not* addressing herein features of the novel that have appealed to the vast majority of *AADL*'s readers over the years—and we do not mean to dissuade anyone from focusing on these many other attributes of *AADL*. Just as, however, we have learned much in the past 80 years about, *e.g.*, the history of the rabbinic movement in the years 70 CE–220 C.E., and about how to read critically the different layers of rabbinic literature, to see how the image of *AADL*'s central character, Elisha ben Avuyah, was transformed therein over time, so too, I suggest, there have been important developments in philosophic understanding these past 80 years, which warrant notice.[5]

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[3] See Catherine Elgin, *True Enough* (Cambridge, MA: MIT Press, 2017).

[4] See Hilary Putnam and Ruth Anna Putnam, *Pragmatism as a Way of Life*, edited by David McArthur (Cambridge, MA: Harvard University Press, 2017) (hereinafter: Putnam, *Pragmatism*). Hilary Putnam was the author, late in his life, of *Jewish Philosophy as a Guide to Life: Rosenzweig, Buber, Levinas, Wittgenstein* (Bloomington, Indiana: Indiana University Press, 2008). At the time of his death in 2016, he was a University Professor Emeritus at Harvard University. Ruth Anna Putnam, Professor Emerita of Philosophy at Wellesley College, is now 91. (It is traditional, when listing together one whose 'memory is for a blessing' with one who is still living to 'differentiate for life.')

[5] Steinberg, in his 'Author's Note' at the end of *AADL* (at p. 479), stated that "the author has attempted throughout to be true in spirit to the ancient world both Hellenistic and Jewish." And, as Cohen noted ("Introduction" to *Anatomy of Faith*, at p. 49), *AADL* reflects the research that Steinberg had undertaken when he was contemplating writing a doctoral thesis "on the influence of classical culture on rabbinic Judaism." While, indeed, Steinberg's setting reflected the historical understanding of his time, there have been subsequent changes.

For one view of recent developments in understanding the historical context of the rise of the rabbinic movement after 70 C.E., see, *e.g.*, Catherine Hezser, *The Social Structure of the Rabbinic Movement in Roman Palestine* (Tübingen: Mohr Siebeck, 1997), esp. at pp. 186–187, summarizing the current scholarly consensus that "[t]here is no …

Steinberg's First Proposal: Faith

Steinberg places in the mouth of the venerable sage Rabban Yochanan ben Zakkai (hereafter RYbZ) (in the "Prologue," at p. 13, reprised as Elisha's realization at p. 473) the position that

> There is no Truth without Faith. There is No Truth unless first there be a Faith on which it may be based.

I am not aware, however, of RYbZ—nor indeed any of the other rabbinic sages—asserting this position.[6]

Indeed, writing ten years later, in his 1949 essay "Kierkegaard and Judaism,"[7] Steinberg explains that 'faith vs. reason' was simply *not* an issue for the rabbis of the Talmud:

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evidence for the existence of a sanhedrin/great court/national council in the period 70–220 [CE]." See also E. P. Sanders, *Judaism: Practice and Belief, 63 BCE–66 CE* (London: SCM Press, 1992) at pp. 472–481, arguing that in that earlier period as well, "there was no body that combined judicial and legislative powers [with, *e.g.*,] appointments for life [and] majority vote. …. This whole picture is a scholarly invention …." See also my essay "*Takkanot* of Mattityahu ben Yohanan and David Ben-Gurion," *Conservative Judaism* (hereafter *CJ*) 59:2 (Winter 2007), pp. 68–84, esp. at pp. 70–76.

For those interested in pursuing further the characters of Elisha ben Avuyah, and Rabbi Akiba, as understood in current scholarship, see Alon Goshen-Gottstein, *The Sinner and the Amnesiac: The Rabbinic Invention of Elisha ben Avuya and Eleazar ben Arach* (Stanford: Stanford University Press, 2000), and ch. 7 in Azzan Yadin-Israel, *Scripture and Tradition: Rabbi Akiva and the Triumph of Midrash* (Philadelphia: University of Pennsylvania Press, 2015).

Whether or not *AADL* is still "true in spirit" in light of current historiography, however, there is certainly still value, as a philosophical thought-experiment, in seeing how various alternative philosophical ideas play out, even in an imagined context.

6 David Golinkin, in his "*As A Driven Leaf* by Milton Steinberg—Notes and Sources," *Responsa in a Moment* 9:7 (July 2015) (Schechter Institute) (available online), does not proffer any citation therefor. See http://www.schechter.edu/as-a-driven-leaf-by-rabbi-milton-steinberg-notes-and-sources/ as accessed on March 12, 2019.

7 Reprinted in *Anatomy of Faith*, *supra* (quotation from pp. 144–145).

Least clearly definable is the position of Judaism on the first of [Kierkegaard's] five antinomies, that between faith and reason. Of conflicts on the philosophy-*versus*-religion or science-versus-religion level Jewish thought has its quota. Such is the purport of the first chapter of Saadya's *Emunoth v'Deoth* and of the entire Maimunist controversy. Like other men professing a revealed religion, Jews have debated whether speculative inquiry is necessary or permissible and, if so, what may be the status of its conclusions vis-à-vis religious verities. But the possibility that faith and reason should be ideally exclusive of each other, has little troubled traditionally minded Jewish thinkers.

They neglected to consider that possibility for one simple reason: they had no reason to. Paradox may inhere in all religious affirmation, but where Christianity must glory in it, Judaism need not. Its central position is neither "absurd" nor an "affront" to reason. It is involved in no mysteries like that of the Trinity-Unity, of which one has no choice but to say *credo quid absurdum est* ("I believe because it is absurd"). It sets forth no Gods who are yet mortals. It does not rest on the premise that the death of one man can atone for the sins of other men. All these are notions truly impenetrable to reason. Against them Jewish theology is purely of God, an object of faith to be sure, but by no means of faith against reason; of revelation, miraculous of course, but scarcely a scandal to rationality; of the election of Israel and human redeemability by moral effort, positions complex and difficult enough, and undemonstrable to boot; but in every case, compared to Christian dogma, comprehensibility itself. As is attested by the fact that "natural religion" approaches many of these basic Jewish positions.

Historic Judaism does include some elements totally impenetrable to the intellect—such a tenet, for example, as Resurrection; such a ritual as the *Parah Adumah* (the red heifer, Numbers 19). But even with these, neither virtue

> nor principle is made of obscurity or mystery. To the contrary, the prevailing effort has always been to rationalize.

Note also that the first of the *bakkashot* ('requests') that we make in the weekday *Amidah*—the quintessential rabbinic prayer—is *not* for faith, but rather for *understanding*.[8]

(The closest 'source' for the statement attributed to RYbZ of which I am aware is the mistranslation of Isaiah 7:9 in the Septuagint, later relied-upon by Augustine and Anselm, construing the latter half of that sentence *as if* it said: "If you will not believe, then neither will you understand."[9])

I would suggest that the problem that Jewish philosophers often now call 'the problem of faith vs. reason' entered medieval Jewish thought by, rather, a *different* route than the one associated with Christian theology. Following Sarah Stroumsa's account: it appears that so-called 'freethinkers' in early medieval Islam began to advocate a theory to the effect that (in our terms) a functioning 'civil society' *could* be constructed based solely upon rational civil law, backstopped by a rather minimalist conception of a deity—so that the Koran's revelation of the detailed rules for Moslem society was

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[8] Jules Harlow, in *Siddur Sim Shalom* (NY: Rabbinical Assembly, 1985), translates:

> You graciously endow mortals with intelligence, teaching wisdom and understanding. Grant us knowledge, discernment and wisdom. Praised are You, Lord, who graciously grants intelligence.

[9] See Glen Menzies, "To What Does Faith Lead? The Two-Stranded Textual Tradition of Isaiah 7.9b," *Journal for the Study of the Old Testament* 80 (1998), pp. 111–128. The traditional Jewish reading of that phrase, following RaDaK (Rabbi David Kimchi, 1160–1235, Provence), and adopted in the *old* Jewish Publication Society translation, focuses on the context—in which Isaiah is warning King Ahaz to avoid an alliance with Assyria. Accordingly, on this reading, Isaiah was saying to Ahaz: "If ye will not have faith (*ta'aminu*) [*i.e.*, in this prophecy], surely ye [*i.e.*, your kingdom] shall not be established (*te'amenu*) [*i.e.*, firmly maintained)"—playing on two senses of the verbal root *alef-mem-nun*.

unnecessary.[10]

That 'freethinker' position correspondingly posed a challenge to medieval Jewish philosophy's understanding of the need for the revelation to Moses of the rules for Israelite/Jewish society. This challenge—to the need for revelation as a basis for political society—is, however, plainly, very different from the Christian 'individualist' challenge noted by Steinberg in his 'Kierkegaard' essay, *supra*.[11]

Having said this, however: Steinberg was not, it seems to me (and others)[12], interested in the 'political' version of the question, but rather indeed was interested in the 'Christian' version. Steinberg accordingly criticized Mordecai Kaplan for adopting a sociological understanding of religion generally, and of Judaism in particular, without sufficiently addressing the need (as felt by Steinberg) for how an individual Jew could think about (and address) a transcendental

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[10] See, *e.g.*, Sarah Stroumsa, "Prophecy versus Civil Religion in Medieval Jewish Philosophy: The Cases of Judah Halevi and Maimonides," pp. 79–102 in Sara Klein-Braslavy, Binyamin Abrahamov, and Joseph Sadan (eds.), *Tribute to Michael: Studies in Jewish and Muslim Thought Presented to Professor Michael Schwarz* (Tel Aviv: Tel Aviv University, 2009).

[11] See also Hilary Putnam, in his commentary on selections (from Saadiah Gaon, Judah Halevi and Maimonides) on the topic of "Revelation and Reason" in Michael Walzer, Menachem Lorberbaum, Noam J. Zohar, and Yair Lorberbaum (eds.), *The Jewish Political Tradition: vol. 1, Authority* (New Haven: Yale University Press, 2000). Putnam explains:

> Since the seventeenth century, the central question about reason and revelation has usually been, Is it possible rationally to prove the existence of God? But that isn't the question that these selections address. All these thinkers… philosophized within a classical tradition in which the possibility of establishing the existence of God… was assumed. The question they deal with here is what are we to do *after* we have accepted the existence of a supreme being. (At pp. 73–74; Putnam's italics.)

[12] See Jonathan Steinberg, *supra*, fn. 2, at p. 599: "I believe that the late theology of Steinberg slid imperceptibly into a Protestant theological frame without his knowing it."

deity.[13] Arguably, this concern is symptomatic of thinking of Judaism as a 'religion' in Protestant terms—as Batnitzky had described that phenomenon.[14] And it is a consequence, I suggest, of Steinberg's abandonment of the concept of Israel as God's 'chosen people'[15]—a theme that, of necessity, focuses on Israel as a people or ethnicity, and not (just) as a religion.

Moreover, the 'start with faith' position is itself problematic, as Steinberg himself noted near the very of *AADL*. Thus Elisha is presented as saying to Rabbi Meir (at p. 474) that he cannot rejoin the existing 'faith' community of Israel, for they "insist, at least in our generation, on the total acceptance, without reservation, of their revealed religion", without any *room* for "the liberty of my mind."

'Faith' unrestrained by reason and ethics can also lead to unjustifiable violence and other misconduct towards others, as reviewed recently by Alan Mittleman.[16]

In any event, even if Steinberg—in 1939, in *AADL*—endorsed 'faith,' it seems that, by 1949, by the time of his 'Kierkegaard' essay, he had at least moderated his view in that regard. As Neil Gillman observed, in his essay "In Appreciation – Milton Steinberg,"[17] "Steinberg changed his mind, late in life, on a whole series of significant issues of personal meaning." "Where would he have ended up if he had been granted another five, ten or twenty years of life and thought?"[18]

Steinberg's Second Proposal: Foundationalism

The central figure in *AADL*, Elisha ben Avuyah, is pictured by

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13 See, *e.g.*, Steinberg's 1950 lecture, "New Currents in Religious Thought," in *Anatomy of Faith* at pp. 247–249; and see fn. 43, *infra*.

14 Leora Batnitzky, *How Judaism Became A Religion: An Introduction to Modern Jewish Thought* (Princeton: Princeton University Press, 2011), esp. ch. 1.

15 *Cf.* Jonathan Steinberg, *supra* fn. 2, at p. 600.

16 See Alan L. Mittleman, *Does Judaism Condone Violence? Holiness and Ethics in the Jewish Tradition* (Princeton: Princeton University Press, 2018), esp. ch. 3.

17 *CJ* 59:4 (Summer 2007) at 66–72.

18 Quotes from pp. 70 and 69.

Steinberg as seeking to anchor all of metaphysics on the foundation of 'truth' as derived from Euclid's geometry. Thus Steinberg attributes to his fictional Elisha authorship of an essay titled

> Prerequisites for All Metaphysical Systems Derived from the Methods Suggested by Aristotle in his ['logic' writings], and more particularly from those implied in Euclid's Elements of Geometry.[19]

Elisha is told by a Greek philosopher that such a search for a 'certain' foundation is futile—but Elisha chooses to pursue the search anyway.[20] Of course, in the end, Elisha learns that the search is futile—for he realizes that Euclid's basic assumption that two parallel lines never meet is itself uncertain.[21]

Now, Steinberg was well aware that the 19th century Russian mathematician Lobachevsky had already shown that there are non-Euclidean geometries, where 'parallel' lines behave in all sorts of different ways.[22] Steinberg must have also been aware that Spinoza, in his *Ethics*, had sought to establish a foundation for all metaphysics

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19 At p. 359.

20 At pp. 366–370.

21 At pp. 462–467.

22 In his final lectures, in 1950, Steinberg explained (*Anatomy of Faith* at p. 217):

> So far as inductive reasoning is concerned, it has never been supposed to yield more than a high measure of probability. The fact that the sun has risen each morning for countless mornings in the past is in itself no reason why it should rise tomorrow. Classic deductive logic, fashioned as it was upon the model of Euclidean geometry, afforded certainty only so long as its geometric character remained uncompromised. We have learned, however, since the days of Lobachevsky that the principles of geometry are no longer as self-evident as we once thought them to be.

See also the reference to "Lobachevsk[y] and his non-Euclidian geometry" in Steinberg's 1949 speech, "The Theological Issues of the Hour" (*Anatomy of Faith* at p. 160).

using a geometric method—although Spinoza's system, it turns out, requires some additional unarticulated and questionable assumptions.[23] Steinberg would also have been aware of how Godel's Incompleteness Theories, published in 1931, undermined Bertrand Russell's effort to establish a foundation for mathematics in logic.[24]

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[23] See Rebecca Newberger Goldstein, *Betraying Spinoza* (NY: Schocken [Nextbook], 2006), esp. at pp. 57–63. Goldstein explains (at p. 57) that

> the fundamental intuition underlying Spinoza's thinking was simply this: all facts have explanations. For every fact that is true, there is a reason why it is true. There simply cannot be, for Spinoza, the inexplicably given, a fact which is a fact for no other reason than that it is a fact. In other words, no inexplicable dangling threads protrude from the fabric of the world.

But, as Goldstein reviews (at pp. 57–58), Spinoza never *proves* this assumption. This assumption was revived, in our day, when Einstein rejected quantum mechanics because of its essential randomness (at pp. 61–62), but, in this regard, at least as science stands today, Einstein was wrong.

[24] Strikingly, there do not appear to be any references in *Anatomy of Faith* to logical positivism, the Vienna Circle, Wittgenstein, Carnap, Tarski, or Godel. Yet, Steinberg was back in New York City (following a first pulpit in Indianapolis) in 1933 (see Cohen, "Introduction" at pp. 42–43) when Steinberg's favorite teacher in college (Steinberg graduated summa cum laude from City College in 1924, see Jonathan Steinberg, supra fn. 2 at p. 583), Morris Raphael Cohen—who was certainly familiar with these developments—published (together with a student, Ernest Nagel) a well-regarded text, *An Introduction to Logic and Scientific Method* (NY: Harcourt, Brace & Co, 1934). Also, Wittgenstein's '*Tractatus*' was published in 1921, and translated into English in 1922 (by C. K. Ogden, London: Routledge & Kegan Paul), when Steinberg was still studying in college with Morris Cohen; and Godel was a visiting professor at Princeton in 1933–1934 and lectured there on his Incompleteness Theories in Spring 1934 (and these lecture notes were subsequently published).
While Steinberg does refer to Bertrand Russell in a 1947 essay, "The Common Sense of Religious Faith" (in *Anatomy of Faith*—see at pp. 93–96), he discusses only Russell's classic 1903 essay endorsing atheism,

In short, Steinberg dealt his fictional Elisha a losing hand in picturing him as searching for a 'certain' foundation for all knowledge. Yet, we *do* feel a need for some 'objectivity,' for some relatively secure method for thinking about religious concepts.

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and not any of Russell's subsequent work seeking to establish a foundation for mathematics in logic—which work Morris Cohen endorsed in his own thinking at the time, but which, Godel showed, could never achieve that goal .

Having said this: a comment that Steinberg made in his 1942 essay "Toward the Rehabilitation of the Word 'Faith'" may allude to Godel and Wittgenstein. Steinberg asserts (in *Anatomy of Faith* at p. 69) that 'science' cannot be invoked to challenge theology, since even "the sciences are shot through with acts of faith, with assumptions and affirmations which admittedly are not and cannot be established in logic."

Elsewhere, Steinberg seems to take a different approach, trying to separate the domains of science and religion in his 1947 essay "The Common Sense of Religious Faith" (in *Anatomy of Faith*, at pp. 85–88), where Steinberg contends:

> Let religionists leave to science the enterprise of photographing realty. Let scientists admit that even when their job is finished, another task awaits doing, that of construing and evaluating.

The 'neo-pragmatism' discussed in the second part of this essay aims to *overcome* this naïve insistence on a dichotomy between 'pure observation' and interpretation/judgment/understanding. See, *e.g.*, Hilary Putnam, *The Collapse of the Fact/Value Dichotomy and Other Essays* (Cambridge, MA: Harvard University Press, 2002), esp. at pp. 33–45.

The inference I draw from all this is that Steinberg in the 1930s and 1940s did not yet foresee how the 'neo-pragmatism' that first developed beginning 50 or so years *later* could help his position. Steinberg cannot be blamed for not being a prophet in these regards; however, his apparent puzzlement suggests that he would have welcomed the recent developments reviewed below.

Steinberg's Third Proposal: Naïve Pragmatism

Steinberg attributes to Rabbi Akiva (as Steinberg characterizes him) what might be called a 'naïve pragmatic'[25] position:

> "The purpose of life", said Akiba softly, "is to live well. Whatever contributes towards that end is right and true. My first and last criterion concerning my proposition is: Does it help man to live better? . . . If any doctrine enlarges life, then it possesses truth in realms beyond Aristotle's logic."[26]

And as applied to the people Israel, R. Akiva insists, "What can enable such [a downtrodden] people [as Israel] to persist except a conviction of a special relationship to God?"

Elisha is frustrated with this view of 'truth' (*id.*):

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[25] See, *e.g.*, McArthur's "Introduction" (at p. 3) in *Putnam, Pragmatism*, explaining (fn. omitted):

> The present volume also represents the Putnams' defense of pragmatism from a more widespread and insidious misreading—one that has blocked access to the texts of James and Dewey in major philosophy departments for too long. For many readers, pragmatism is inextricably associated with a hopelessly inadequate version of James's idea that "the truth is what works"—so that, according to conventional wisdom, pragmatists identify truth with success or usefulness or wishful thinking. This egregious misreading then sets up the pragmatist theory of truth—indeed, pragmatism itself—as an object of derision: So it is no surprise that here we find Hilary Putnam providing a detailed defense of the powerful motivations and philosophical sophistication of James's theory of truth—which is not to say he does not have his own criticisms of that view…

[26] At pp. 241–242. Again, I am not aware of the rabbinic literature attributing any such statements to R. Akiva.

> "Why, every fool who cherishes some superstition, every rogue who seeks to persuade someone else of a lie, can justify himself by insisting that so he will live the better."[27]

In short (at p. 242), Elisha asks, in reference to R. Akiva's conviction in the Election of Israel: where is "the objective truth of that conviction?"[28]

And R. Akiva has no good answer—nor did the early pragmatists, such as William James, have any good answer, when their 'pragmatic' definition of 'truth' was attacked as indeed having no good basis.[29]

Towards A Neo-Pragmatism

There has been a revival, in recent years, of interest in 'pragmatism' as an American philosophy.

That interest has led to two different readings of the pragmatic tradition—which we might associate with, on the one side, Richard Rorty[30] (1931–2007), and the other side, Hilary Putnam. In short, Rorty has pushed towards a subjectivist relativist world-view while Putnam has found in a revised pragmatism a basis for seeing both scientific inquiry and moral inquiry as each capable of reaching objective—albeit pluralist—resolutions.

Putnam sought to summarize this divergence as follows:[31]

Not surprisingly, Rorty frames all of this in terms of his

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27 At p. 242.

28 *Id.*.

29 See fn. 25.

30 Rorty's principal work, written when he was teaching at Princeton, was *Philosophy and the Mirror of Nature* (Princeton: Princeton University Press, 1979).

31 Hilary Putnam, "Reply to Richard Rorty," in Randall E. Auxier, Douglas R. Anderson, and Lewis Edwin Hahn (eds.), *The Philosophy of Hilary Putnam* (Chicago: Open Court, 2015) at p. 884 (italics by Putnam).

> own version of pragmatism. "The culminating achievement of Dewey's philosophy," Rorty tells us, "was to treat evaluative terms such as 'true' and 'right' not as signifying a relation to some antecedently existing thing—such as God's Will, or Moral Law, or the Intrinsic Nature of Objective Reality—but as expressions of satisfaction at having found a solution to a problem: a problem which may someday seem obsolete, and a satisfaction which may someday seem misplaced." But Rorty misreads Dewey here. First of all, Dewey insists that "satisfaction" by itself is not a good criterion for being valuable; what *is* a good criterion, Dewey argues, is *intelligently evaluated* satisfaction. Secondly, although Rorty insists that "although objectivity is a useful goal when one is trying to calculate means to ends by predicting consequences of action, it is of little relevance when deciding what sort of person or nation to be," it was Dewey who claimed that "plans of remedial procedure (for 'moral evils') can be projected in objective terms." No notion is more central or more insistent in Dewey's writing than the notion of the *objective* resolution of a problematical situation.

For a concrete example (mine, not Elgin's or Putnam's, but borrowing in spirit from, in particular, Elgin) of the new methodology that this new approach is advocating, consider Gordon Wood's path-breaking (if controversial—as featured in the 'Hah-vahd bar' scene in *Good Will Hunting*[32]) inquiry as to whether we should understand the American Revolution as involving social, as well as political, change, and his argument that the American Revolution "was as radical and social as any revolution in history, but it was radical and social in a very special eighteenth-century sense."[33]

Wood is asking a question, and then seeking to answer it, by calling for an *understanding*, providing us with a new *perspective*, using general comparisons to call attention to specific facts, and broader

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[32] 1987, directed by Gus Van Sant, produced by Miramax.

[33] Gordon S. Wood, *The Radicalism of the American Revolution* (NY: Alfred A. Knopf, 1992), at p. 5.

patterns, to which we may have not paid attention.

Wood's methodological approach is not, however, unique to the domain of history: for a scientist seeking to *understand* whether a particular chemical might be harnessed to cure a particular disease proceeds in very much the same way, using idealized experiments (*e.g.*, on a particular strain of mice) to imagine how the drug might affect humans.

Nor, finally, is this search for *understanding* very different from how we go about addressing a moral/ethical problem—such as the permissible scope of civil disobedience in an overall-relatively-just democratic society.[34]

What is common in all these examples is that our search is not for knowledge of facts but, rather, for *understanding*—encompassing facts, but viewing them from a particular pragmatic perspective.

What allows these different types of inquiry, in their different domains, to share nevertheless a sense of objective solution to the problem posed is a methodology for deliberation known as "reflective equilibrium." (The term was coined by John Rawls in *A Theory of Justice*,[35] with due citation to Nelson Goodman, who had previously advocated such a procedure in connection with 'inductive logic' but did not name it.)

The idea here is that we all start with various beliefs and principles, but as we try to think about them systematically, and discuss them with others, and/or play-out in our minds how those beliefs would work in practice, in real life, we may discover that some of our beliefs or principles contradict others, or cannot be defended by good reasons, or would lead to practical chaos if everyone adopted them. Having discovered such internal inconsistencies, we may revise our starting-point beliefs in view of such reasons, or we may revise our overall system of commitments, until we reach a point when our considered judgments yield a stable, balanced understanding.

Because this back-and-forth process involves a balancing of competing considerations, it may be that different persons may end-up at different stable balancing-points—but this pluralism in outcomes is *not* the same as relativism, because inherent in the process

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[34] See, *e.g.*, John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971) § 55.

[35] *Ibid.*, at pp. 20–21 and fn. 7.

is the element of public discussion and shared criticism, and an insistence on a connection to 'reality,' and to reasons.

An *understanding* that is in reflective equilibrium—whether it is an understanding of the American Revolution or of the efficacy of a medication, or of the morality of a course of conduct—may thus attain objectivity, in the sense that we can all understand how this reflective equilibrium can be justified, and connected to the real world, even if you or I would balance certain considerations differently.[36]

* * *

I have not (yet) seen the methodology of reflective equilibrium expressly applied in the context of Jewish theology—but, I suggest, it may be productive. Suppose I believe that a commitment to 'holiness,' as a value, plays an important role in actually living a moral and meaningful life. In particular, the Torah teaches that the holiness of the Shabbat somehow reinvigorates both humans (Exodus 23:12) and God (*ibid.* 31:17, *vayyinnafash*),[37] to pursue their efforts to create a

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[36] The foregoing is my adoption of the endorsement of reflective equilibrium by, *e.g.*, Elgin, at pp. 66–90 and Ruth Anna Putnam, "Weaving a Seamless Web," (ch. 5) in Putnam, *Pragmatism*, *supra*. See also T. M. Scanlon, Being Realistic About Reasons (NY: Oxford University Press, 2014), at pp. 76–84.

[37] Exodus 23:12, part of the 'Covenant Code,' provides that (in accordance with the New Jewish Publication Society translation—hereafter NJPS):

> Six days you shall do your work, but on the seventh day you shall cease from labor, in order that your ox and ass may rest (*yanu'ach*), and that your bondsman and the stranger may be refreshed (*veyinnafesh*).

Exodus 31:17, part of the *Veshameru* text that we sing at Kiddush on Shabbat (and elsewhere in the liturgy), states (NJPS):

> It shall be a sign for all times between Me and the people of Israel. For in six days the Lord made heaven and earth, and on the seventh day He ceased from work and was refreshed.

morally good world during the other six days of the week.[38] Or, more generally, suppose I believe that holiness somehow works together with goodness but yet can strengthen goodness.[39]

And this is not just an abstract belief—I *feel* strengthened, and inspired, at the end of Shabbat, to resume the struggle for a more just society.[40]

Next, suppose I believe that, perhaps paradoxically, the source of this refreshment, and inspiration, lies in the never-ending search to express, whether in music or art or mathematics or poetry or even prayer—some focal point that can never quite be grasped yet that somehow has the capacity to unite us by way of this search. (I think this is what Michael Fishbane was seeking to articulate in *Sacred Attunement: A Jewish Theology*.[41])

While the image of God being refreshed may seem surprisingly anthropomorphic, it is consistent with the overall theology of the source known as 'P.' See William Propp, *Exodus 19–40* (NY: Doubleday [Anchor Bible], 2006) at p. 494. Mark S. Smith, *The Priestly Vision of Genesis 1* (Minneapolis: Fortress Press, 2010), at pp. 105–106, adds:

> The priestly notion in Exodus 31:17 that the Sabbath is a day to refresh or restore oneself may build on earlier nuances of the word, such as the king's rest from enemies following victory. . . . It is this victory that leads to divine enthronement and rest, the ideal condition for a king.

Further, see Smith's footnotes, for references to Ancient Near Eastern parallels.

38 See my discussion of holiness in "Judaism and American Civil/Political Society in the Age of Trump," *Zeramim* vol. II, issue 2 (Winter 2017–2018), pp. 111–129, esp. at pp. 125–128.

39 See Mittleman, *supra*, ch. 2. I have learned much from Prof. Mittleman, but I split off in respect of the possibility of a secular, non-holy, but yet ethical, society. *Cf.* Mittleman, p. 197, fn. 11.

40 Mittleman, at pp. 102–112, argues that there is, indeed, an 'evolutionary' basis for the development of a sense of holiness, within our interpersonal relationships.

41 Michael Fishbane, *Sacred Attunement: A Jewish Theology* (Chicago: University of Chicago Press, 2008). Fishbane argues that: (a) "theology must be grounded in earthly experience and understood from within

Finally, suppose this line of reasoning about holiness makes sense to, and is meaningful to, a *community*, after discussion and shared criticism of the concept, and is reflected in the moral and meaningful lives and expressions of the community.

Then, I would suggest, the conditions for a theological reflective equilibrium have been met, and 'holiness' can be identified as an objective value.

Does 'holiness' then 'exist,' as something 'real?' I would rephrase the question: does 'holiness' play a role in the shared *understanding* of my community as to how to relate to the real world, and to the real problems of other human beings? And the answer to that, I suggest, is—yes.[42]

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its forms" (at p. 13); (b) having said that, we certainly experience, via art, music and poetry, concepts of meaning and understanding (at pp. 22–32); in Fishbane's words, "[i]n and through their agency, we are implacably seized and thrown toward the void—silenced by the silence beyond words. This brings us to theology" (at p. 32); (c) theology then "arises within mortal finitude, but yearns for more" (*id.*), and "[t]heology tries to transform this perception of elementariness into a sustained way of life and thought." (at p. 33); and so (d)

> A task of theology is therefore to *attune the self* to the unfolding occurrence of things in all their particularities and conjunctions, and help one remain steadfast at each new crossing point where raw elementariness, radically given, becomes human experience. Theology is thus situated at the border of the known and unknown, of the manifest and concealed. (P. 34. Italics by Fishbane.)

My proposal is that we can regard 'holiness', or '*kedushah*,' as the border-crossing link, and that in choosing to endorse a value of 'holiness' as part of our understanding of what makes our lives in this world meaningful, we are 'attuning' ourselves to a shared yearning that we can identify with the 'divine.'

See also "A *CJ* Forum on Michael Fishbane's *Sacred Attunement," CJ* 62:3–4 (Spring–Summer 2011) at pp. 136–191.

[42] Compare Niek Brunsveld, *The Many Faces of Religious Truth: Hilary Putnam's Pragmatic Pluralism on Religion* (Leuven: Peeters;, 2017) at pp. 250 and 252.

Conclusion

Does the foregoing differ enough from Rabbi Akiva's naïve pragmatism to satisfy both Steinberg's criticism thereof (as put into the mouth of Elisha) and Steinberg's criticism of Mordecai Kaplan's pragmatism?[43]

Does the method of reflective equilibrium provide enough stability to satisfy Elisha's search for an objective methodology?

Would Steinberg have been satisfied with such a sense of religious—and in particular, a distinctly Jewish—*understanding*, that could not, however, point to any particular, foundational, 'true' fact about God, and yet did not require any predicate assumption of 'faith?'

I like to think that Steinberg would have felt that these new developments in contemporary philosophy are at least helpful and suggest a path forward for continued theological reasoning.

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[43] Steinberg (see *Anatomy of Faith* at p. 249) criticized Kaplan for avoiding what Steinberg believed was the critical question:

> it is terribly important to know whether God is anything in Himself or whether He is merely a name by which I have described virtues purely natural in origin and lacking in ultimate status in the universe?

I think that Elgin, and the Putnams, would argue that their model of *understanding* in effect resolves, and/or rejects, the dichotomy proposed by Steinberg. See also my essay, "Is Theological Pluralism Possible?" in *CJ* 64:4 (Summer 2013), pp. 49–70, esp. pp. 57–63.

Zeramim: An Online Journal of Applied Jewish Thought

presents

a call for papers for our Spring 2019 issue on

BIBLICAL SCHOLARSHIP AS A MODERN JEWISH HERMENEUTIC

Although Bible scholars continue to ask new questions regarding the historicity, origins, and implied subtexts of the Hebrew Bible's contents, something of a Jewish "folk religion" that espouses a nearly fundamentalist understanding of Jewish sacred texts still permeates many Jewish communities. But, when Jews seek to engage with tradition through a critical lens, the veritable challenges academicians have posed demand coherent responses that are intellectually honest and religiously sensitive. In the Spring 2019 issue of Zeramim, we would like to highlight problems and proposals, and questions and answers that work towards the formation of a 21st century Judaism that has embraced (or otherwise attempted to respond adequately to) the complexities highlighted by biblical scholarship.

For this upcoming special issue, we invite submissions that relate to any of the following themes:

- To what extent has biblical source criticism constituted a Jewish enterprise? (Whereas, nearly a millennium ago,

Abraham ibn Ezra hinted at late interpolations into Biblical texts, many rabbinic dicta preceding and following him have confidently asserted that "one shepherd" gave the entirety of the Torah. In recent years, James Kugel has written of the compartmentalization of his religious identity and his scholarship, and Benjamin Sommer has written of his integration of his theology with his scholarship. Can reconstructing original texts help Jews encounter preferable, coherent, and compelling lessons learned from textual layers—and, if so—how?)

- What lessons can the Jewish community learn from, or in spite of, the Hebrew Bible's exclusion or underrepresentation of certain contemporary (and presumably ancient) phenomena (miscarriages, gender-non-conforming persons, conversations between non-male humans, the domestication of animals, disabilities, pacifism, and adoption, to name a few)?

- How can Jews today reconcile their modern moral compasses with the sanctification of biblical passages that, in text or subtext, may condone actions commonly perceived as unethical (for example, genocides, physical abuse of partners or children, or capital punishment as a response to certain transgressions that do not physically harm others)?

- What outcomes do anthropology, philology, and cultural studies provide Jews today when exploring the myths, narratives, and peoples described in the Hebrew Bible? (What folk practices, linguistic tendencies, and societal norms ought Jews today, as the heirs of an ancient culture, accept or reject?)

Please send your submissions to submissions@zeramim.org by **April 12, 2019** in accordance with the following guidelines:

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.

Format

English texts in English should be typed in the font Book Antiqua—with Hebrew in the font Shofar. (Fonts for other languages should be recognizable and legible.) The main text of submissions should be in size 10, and footnotes should be in size 9.5.

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.
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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.

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