Meorot

A Forum of Modern Orthodox Discourse

***Tevet* 5773**

CONTENTS

Introduction to the *Tevet* 5773 Edition
Eugene Korn

ARTICLES

A Reflection of Truth: The Rabbinate and the Academy in the Writings of A. S. Rosenthal on Violating the Sabbath to Save Gentile Life
Benjamin Lau

Naturalism and the Rav: A Reply to Yoram Hazony
Alex Sztuden

Hertz, Reason and Religious Education
Nick Zangwill

REVIEW ESSAY

New Books and Points of Discussion in the Halakhic Definition of Death: *Respiratory-Brain Death,* by Avraham Steinberg, and *Defining the Moment—Understanding Brain Death in Halakhah,* by David Shabtai
Noam Stadlan

BOOK REVIEWS

Strictly Kosher Reading: Popular Literature and the Condition of Contemporary Orthodoxy, by Yoel Finkelman
Reviewed by Rose Waldman

Sorrow and Distress in the Talmud, by Shulamit Valler
Reviewed by Chaya Halberstam

Meorot

A Forum of Modern Orthodox Discourse

Meorot 10
Tevet 5773

A Publication of
Yeshivat Chovevei Torah
Rabbinical School
© 2012

STATEMENT OF PURPOSE

Meorot: A Forum of Modern Orthodox Discourse

Statement of Purpose
Meorot is a forum for discussion of Orthodox Judaism's engagement with modernity, published by Yeshivat Chovevei Torah Rabbinical School. It is the conviction of *Meorot* that this discourse is vital to nurturing the spiritual and religious experiences of Modern Orthodox Jews. Committed to the norms of *halakhah* and Torah, *Meorot* is dedicated to free inquiry and will be ever mindful that "Truth is the seal of the Holy One, Blessed be He."

Editors
Eugene Korn, Editor
Nathaniel Helfgot, Associate Editor
Joel Linsider, *zt"l,* Text Editor

Editorial Board
Dov Linzer (YCT Rabbinical School), Chair
Saul Berman
Naftali Harcsztark
Norma Baumel Joseph
Simcha Krauss
Barry Levy
Adam Mintz
Tamar Ross (Israel)

Meorot publishes one online edition per year, and will be available periodically in hard-copy editions. Opinions expressed in the articles are those of the authors only and do not necessarily represent the views of YCT or the editorial board. YCT retains copyrights to all material published in the journal.

Directions for Submissions
Meorot invites submissions of original scholarly and popular essays, as well as new English translations of Hebrew works. Popular essays should be between 800-2000 words. The journal particularly welcomes halakhic, philosophic, and literary studies relating to *qedushah* in modern experience, the religious significance of the State of Israel, Jewish ethics, emerging Torah conceptions of and opportunities for women, *Talmud Torah* as an intellectual and spiritual discipline, pluralism, and Judaism's relation to gentiles and contemporary culture.

Submissions to *Meorot* should be sent online to meorotjournal@yctorah.org or mailed in duplicate to Editor, *Meorot*, c/o YCT Rabbinical School, 3700 Henry Hudson Parkway, Riverdale, New York 1043. Submissions should include a one paragraph abstract and a two line biography of the author. Paper submissions should be accompanied by a diskette with the essay in RTF, TXT or MSWORD format. Notes should appear as endnotes. Communications should be directed to the above email address.

Reader responses should be sent to the editor at meorotjournal@yctorah.org for possible electronic publication at the journal's website.

Graphic Design: Erica Weisberg

Introduction to the *Tevet* 5773 Edition

Eugene Korn

Welcome to the *Tevet* 5773 edition of *Meorot*. We note with great sadness the passing of our text editor and translator, Joel Linsider, *zt'l*. Joel died tragically at too young an age this June in Jerusalem, where he and his wife Rosemary had made *aliyah* just a few years ago. A lawyer by profession, Joel was also an accomplished philologist, scholar and expert in Semitic languages who had a deft feel for the nuances of Hebrew vocabulary and style. He was an essential part of *The Edah Journal* and *Meorot* from their beginnings. From his first remarkable translation of Moshe Halbertal's "*Ones Possessed of Religion: Religious Tolerance in the Teachings of The Meiri*" that appeared in the first edition of *The Edah Journal* to his subsequent translations in our journal of leading Israeli thinkers like Aviezer Ravitsky and Nahum Rabinovitch and Benjamin Lau, Joel established himself as the one of the foremost English translators of Hebrew works. It was through *The Edah Journal* and *Meorot* that Joel became known to the highest levels of Israeli academia, whose professors sought him out to translate their works. Not long before he died, Littman Library of Jewish Civilization published Joel's English translation of Avraham Grossman's seminal study, *Rashi*.

Joel's keen eye was invaluable in giving *The Edah Journal* and *Meorot* the professional style and bibliographical completeness for which it is known. We dedicate this edition of *Meorot* to him. It is most fitting that Joel translated this edition's lead article, *A Reflection of Truth: The Rabbinate and the Academy in the Writings of A. S. Rosenthal on Violating the Sabbath to Save Gentile Life* by Benjamin Lau. All of us in the Modern Orthodox community and at *Meorot* will miss Joel's wisdom and humanity. May his memory be a blessing for us all.

In "*A Reflection of Truth: The Rabbinate and the Academy in the Writings of A. S. Rosenthal on Violating the Sabbath to Save Gentile Life,"* R. Benjamin Lau relates the 1976 controversy surrounding the progressive thinking of Rabbi Professor Eliezer Samson Rosenthal regarding the proper way to understand the permissibility of violating the Sabbath to save the life of a gentile. Rosenthal argued that religious and halakhic thinking must incorporate the modern value of human rights that had become axiomatic in world culture. This value bestows an intrinsic value on gentile life, and thus saving a gentile life is a primary halakhic value that justifies violating the Sabbath *ab initio* and as an ideal. This contrasts with the traditional justification of "avoiding hatred"("*eivah*") or promoting "ways of peace" ("*darkhei shalom*"), which in the end are concessions rooted in Jewish self-interest. Rosenthal's argument was vehemently rejected by more traditional rabbis.

In his analysis Rosenthal raises the larger issue of the place of ethical considerations in valid halakhic argument, and laments the fact that in most halakhic deliberations moral values do not play the critical role that they should. Rosenthal also pleads for halakhically committed Jews to press rabbinic authorities to find solutions to the "severe" problems that modernity poses for traditional Jews.

While this controversy took place almost 40 years ago, its central questions are still being discussed in Modern Orthodox circles, namely whether and to what extent modern and universal values have a legitimate place in our contemporary halakhic decision making. The key to accepting tolerance, pluralism and gender equality as critical values within a modern halakhic framework seems to hang on this larger issue.

In our second essay, Alex Sztuden responds vigorously to Yoram Hazony's article in the April 2012 issue of *Commentary*. Hazony argued that R. Soloveitchik dropped a "bombshell" in *The Emergence of Ethical Man*" by accepting a thoroughgoing naturalistic understanding of the world, which in the end undermines supernatural revelation, prophecy and the traditional conception of immortality. Sztuden advances an alternative

reading of *Emergence* that includes the book's pronounced naturalistic strands and its non-naturalistic elements.

Sztuden rejects Hazony's claim that R. Soloveitchik was a naturalist and demonstrates through a balanced and careful reading of *Emergence*—as well as R. Soloveitchik's other writings—that R. Soloveitchik was a systematically dialectical thinker who cannot be understood by citing a small sample of his statements isolated from their contexts. A correct understanding of R. Soloveitchik's nuanced positions on critical subjects like revelation, prophecy, redemption and immortality can only be achieved by employing a larger lens on his entire *oeuvre*.

In *Hertz, Reason and Religious Education*, Nick Zangwill argues for the need to proffer reasons when presenting the case for tradition. Taking into account the sophistication of modern Jews embedded in our contemporary marketing culture where all of us can choose—or 'buy'—the best product from the vast array of religions and varieties of Judaism now available, Zangwill's article is a contemporary version of the classical argument for *"ta'amei ha-mitsvot"* that Jewish rationalists like Sa'adia, and Maimonides offered in the Middle Ages. And like Abraham Ibn Ezra, Zangwill contends that faith without reasons is a fragile defense against challenges to accepted belief: "When one comes up for air, who knows what one will breathe, or what will one choose to breathe?"

The acceptability of brain death in *halakhah* is once again in question after the Rabbinical Council of America issued a report in 2010 that appeared to back away from the RCA's earlier acceptance of brain death in the 1990's. The question is literally one of life and death, since rejecting brain death precludes the possibility of transplanting most life-saving vital organs. Perhaps in response to the RCA report, two books on the topic were published in 2012. Noam Stadlan pens a detailed review essay devoted to the two books and the brain death debate within *halakhah*. (A third extensive volume on this topic is scheduled to be published in 2013 by the International Rabbinic Fellowship.)

Avraham Steinberg's *Respiratory-Brain Death* presents a strong and unambiguous case for respiratory brain death (RBD)—the irreversible cessation of respiration in the context of irreversible cessation of brainstem function and consciousness—as the traditional and valid definition of death within *halakhah*. By contrast, *Defining the Moment—Understanding Brain Death in Halakhah* by David Shabtai claims not to advocate for either cardiac death or respiratory death and takes an encyclopedic approach that presents a wide spectrum of opinions and insights. Stadlan finds, however, that Shabtai fails to critique seriously the definition of death as "the cessation of 'vital motion," and that his presentation is sometimes misleading and inconsistent with biomedical knowledge. Stadlan contends that Shabtai's book, analyses and conclusions should be best understood as a partisan argument for cardiac death and if readers want a balanced analysis of the medical and halakhic issues relating to the definition of death, they will need to augment Shabtai's the book with other works on the topic.

Rose Waldman, a new contributor to *Meorot,* reviews Yoel Finkelman's book, *Strictly Kosher Reading: Popular Literature and the Condition of Contemporary Orthodoxy*. The book is important as the first analysis of the popular literary culture of the *Haredi* community. As such, it offers a window into both the mindset of *Haredi* laity and the power dynamics between the laity and the community's rabbinic authorities.

Unlike scholarly analyses of the community's official rabbinic literature that portrays a lofty ideal, Finkelman's analysis of the more mundane literature reflects the reality of *Haredi* life—and it is here that, despite professions of that life a mere "medieval tradition transplanted into the present," deep acculturation to Western life is evident in areas such as courtship, married life, and the acceptance of self-help and psychological strategies. How do *Haredi* authors—often women—justify this change? In three ways, claims Finkelman: denial, acknowledgement, and admitting the superiority of secular approaches.

Importantly, the fact that this popular non-Torah literature is permitted by communal authorities indicates that while *Haredi* luminaries claim unilateral authoritarian power, their rabbinic authority is in fact dependent upon how much power as the laity allows them.

In another review, Chaya Halberstam examines *Sorrow and Distress in the Talmud* by Shulamit Valler. Because law and emotion have long been seen as opposites in Western legal tradition and because of the male orientation of Talmud, the presence and influence of emotion in talmudic literature have been overlooked. To address this *lacuna,* Valler's book is devoted to revealing the emotional world that lurks beneath *Hazal's* Torah study and halakhic decision-making. The book is a rich compendium of talmudic stories about sadness experienced primarily by the talmudic sages, and Valler's perception of spiritual shortcomings in the rabbinic academy.

Valler paints pictures of the causes of the Sages' sorrow and the trying social and professional situations in which they struggled. She asks poignantly, "Can the meanings of talmudic texts be revealed without regard to the people who wrote it, edited it, and read it?" The study and practice of *halakhah*, even in talmudic times, is never indifferent or pristinely cerebral. Valler describes her methodology as "a critical reading approach whose purpose was to understand the harmony of content and form," and maintains that "the sacred nature of Torah study did not exempt its practitioners from egocentric concerns and competitive, even aggressive behaviors."

Halberstam questions why Valler does not draw on the vast scholarship available in the theory of emotion or the history of late antique Babylonian Judaism. Is the book an attempt—however benevolent—to "feminize" the Talmud and its actors? It is only late in the book that Valler lays bare the feminist project implicit from the beginning in the work: that most of the depictions of the Sages' anguish result from hyper-masculinized competitive values and that we do well to remember that these valorized male sages often felt sorrow and distress and wept openly wept. Ultimately Valler and Haberstam agree that it is people who determine *halakhah,* not an impersonal and emotionless system.

I hope you will enjoy the variety and depth of the articles in this edition of *Meorot,* and invite you to share your responses to the edition by emailing us at meorotjournal@yctorah.org.

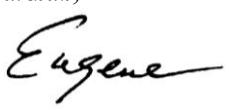
This is the last edition for me as editor of *Meorot*. After thirteen years of steering the ship of *The Edah Journal* and *Meorot,* I have decided that it is time to give over the helm to the capable leadership of a new generation.

Since we initiated *The Edah Journal* in 2000, we have been privileged to bring stimulating ideas to the Modern Orthodox community. We encouraged penetrating discussions of war, pluralism, Jewish-gentile relations, Israel, Jewish education, and the relationship of *halakhah* to ethical values. Yet by far the most important contribution our journals have made to Orthodox communal and intellectual life has been to re-examine the status and participation of women in our community. From our 2001 publication of Mendel Shapiro's groundbreaking essay on the possibility of women's Torah reading and *aliyyot* (*Edah Journal* 1:2), probing the halakhic boundaries for a dignified place for women in the Orthodox community has been a burning objective.

I have been truly blessed to have participated in these stimulating debates, to have helped open the minds of Jews committed to Torah and *halakhah*, and to have helped broaden the horizons of religious life over the past thirteen years.

Meorot is now in the visionary hands of *Yeshivat Chovevei Torah*, particularly its leaders Rabbis Avi Weiss, Asher Lopatin, Dov Linzer and Nathaniel Helfgot. I am certain that *Meorot* will continue to enlighten and sensitize us. May it go from strength to strength and continue "*lehagdil Torah u'leha'adirah*,"—to promote Torah and glorify it.

B'verakhah,



Meorot
A Forum of Modern Orthodox Discourse

A Reflection of Truth: The Rabbinate and the Academy in the Writings of A. S. Rosenthal on Violating the Sabbath to Save Gentile Life

Benjamin Lau

Biography: Rabbi Dr. Benjamin Lau is director of the Center for Judaism and Society and the founder of the Institute for Social Justice, both at Beit Morasha of Jerusalem. He is Rabbi of the Ramban synagogue in Jerusalem, and author of a multi-volume Hebrew series, *Hakhimim*, which was recently published in English as *The Sages*. His previous contribution to *Meorot* was "The Challenge of Halakhic Innovation" in *Tishrei* 5771 (2010).

Abstract: This essay examines the 1976 controversy in Israel over the proper way to understand the question of whether it is halakhically permitted to violate the Sabbath to save the life of a gentile. Rabbi Professor Eliezer Samson Rosenthal argued that in the modern era of human rights, the life of a gentile is a primary halakhic value that justifies violating the Sabbath, as opposed to considerations of "avoiding hatred"("*eivah*") or "ways of peace" ("*darkhei shalom*"). Rosenthal's argument was vehemently rejected by more traditional rabbis. The analysis raises the issues of the relation of ethics to *halakhah* and whether new universal values have a legitimate place in valid halakhic argumentation. Rosenthal ends his argument with a plea for traditional Jews to press rabbinic authorities to find solutions to the "severe" problems that modernity poses for traditional Jews.

Meorot 10
Tevet 5773
© 2012

A Publication of
Yeshivat Chovevei Torah
Rabbinical School

A Reflection of Truth: The Rabbinate and the Academy in the Writings of A. S. Rosenthal on Violating the Sabbath to Save Gentile Life*

Benjamin Lau

Introduction

"The New Shall Be Sanctified and the Holy, Renewed"

The attitude of religious Judaism toward the modern world (that is, the world since the Emancipation) has been shaped by the slogan coined by the *Hatam Sofer* in 1819: "The new is forbidden by Torah law."[1] The slogan provides a shorthand summation of classical orthodoxy's teaching: fundamental rejection of halakhic innovation; sanctification of customs, including the most trivial ("anyone who questions our customs requires scrutiny"[2]); absolute reliance on the rulings of R. Moses Isserles (Rema) for the Ashkenazi community ("all Israel discharge their obligations in accord with [the views of] Rema"[3]); concern for the faithful and lack of any worry about those who stray ("we are not responsible for transgressors").[4]

Rabbis and academics differ substantively in their approach to halakhah

About one hundred years later, Rabbi Abraham Isaac ha-Kohen Kook coined a slogan that, at first blush, seems to clash with the *Hatam Sofer*'s: "The old shall be renewed and the new shall be sanctified; together, they will become torches that illuminate Zion."[5] Rabbi Kook, who strictly adhered to the details of existing customs so as not to detract from the received tradition, nevertheless conveyed in this slogan his vision of spiritual and cultural renewal in Israel. As a *poseq* (decisor), he strongly opposed any effort to depart even slightly from traditional law and practice; as a thinker, he ranged all the way to utopian visions of a renewed prophetic spirit that would rouse all of religious life from its exile-induced torpor.[6]

Rabbi Kook's slogan "the old shall be renewed" became, with slight modification, "the new shall be sanctified and the sacred, renewed"—the slogan of "The Movement for Torah Judaism." It served as the title for that movement's first two publications, until being replaced by the title *Mahalakhim*.[7] The Movement was formed in 1966; its founders sensed an urgent need to guide religious Judaism in its confrontation with a changing environment, particularly with respect to nationalism.[8]

"The Movement for Torah Judaism"

Rabbis and academics differ substantively in their approach to *halakhah*. Academic research strives to ascertain objective truth through the application of empirical standards. Halakhic decisors, in contrast, must adhere to traditional interpretations that are regarded within the world of Torah as "the word of God."[9] An academic approach to halakhic decision-making could cut *halakhah* off from its roots and compromise its essential vitality. Prof. Ze'ev Falk has pointed this out in his critique of statements by the Law Committee of the *Masorti* movement in Israel:

> Is the historical analysis of sources a technique for ensuring consideration of all sources or does it change the *halakhah*? There is a substantive distinction between the historical approach to writing a halakhic *responsum* and the traditional, ahistorical approach. It is impossible to write a *responsum* in a historical manner without considering the meaning of "*Torah min ha-shamayim* [Torah from the Heavens]," the dynamics of *halakhah*, and similar matters.[10]

> Most members of the Movement for Torah Judaism were religious academics grounded in the intellectual world but taking halakhic guidance seriously. As individuals leading religious-halakhic lives, they had to account to themselves for the tension between their spiritual-intellectual world and their observance of the halakhic system. For example, Prof. Moshe David Har, a leading spokesman for the Movement, claimed that "our sages of blessed memory strove for a normative way of life in practice…a distinction was drawn between *halakhah* and thought…*halakhah* strives for the norm, but theoretical analysis is up to each individual."[11]

Avinoam Rosenak notes that this approach is characteristic of a "dualistic" stance (in sociological terms, "compartmentalization") between philosophical truth and the religious system: "Through a 'dualist stance,' a person can continue to adhere to his tradition, even while maintaining conflicting truth demands. It is the distinction between the world of actions—related to particularistic religion—and the universalistic realm of ideas…*this duality rests on the premise that there is no connection between the two realms, and accordingly, no possible contradiction between them.*"[12]

Rosenak himself sensed that this claim could prevail only as long the academics in question were involved in the study of ideas and processes (i.e., were historians and philosophers), but that "'duality' becomes more problematic when the truth-seeking research deals with philology, with the study of the halakhic texts themselves, when the realms of practice and research touch on each other."[13] One prominent individual who lived this sort of dualistic life but, unlike his colleagues, also assumed the responsibilities of a halakhic authority, was Rabbi Eliezer Samson Rosenthal.[14]

Rabbi E. S. Rosenthal—Biographical Sketch[15]

Rabbi Prof. Eliezer Samson Rosenthal immigrated to the Land of Israel from Germany in 1934, soon after the Nazis' rise to power. He studied for many years at Yeshivat Merkaz ha-Rav, where he was ordained a rabbi. Two years later, he was drafted into the Haganah and commanded a platoon defending the Bayit ve-Gan neighborhood, where he eventually built his own house. During the 1940s, he served as rabbi of a community that later became *Kibbuts Yavneh*. He led the seminary for religious counselors in the Youth Aliyah and figured prominently in the absorption of Holocaust refugees. Appointed to a Chief Rabbinate committee dealing with halakhic issues pertaining to "commandments contingent on the Land" (primarily agricultural), his ensuing need to combine expertise in *realia* with text study led him to discover, for the first time, the world of scholarly research. He became acquainted with Rabbi Saul Lieberman's book *Tosefet Rishonim* on the talmudic Order *Zera`im* (which deals primarily with agricultural laws) and was drawn into the world of the academy, where he eventually became, at a relatively late age, a leading talmudic philologist whose writings were carefully studied by talmudists around the world.

Halakhah *strives for the norm, but theoretical analysis is up to each individual*

Rabbi Rosenthal's meticulous academic work overshadowed his activities as a rabbi paving the way for a religious-Zionist movement that could grapple with the spiritual and practical questions raised by the encounter between Israel's national renewal and its adherence to its ancestral tradition. The founders of the Movement for Torah Judaism called on Rabbi Rosenthal to chair its *halakhah* committee and guide its work. An examination of that committee's deliberations discloses a multi-faceted figure: a man of the academy, bound by scholarly standards of careful and critical reading of texts, and a man of the *halakhah*, aware of his place in its unbroken chain and devoted to the hierarchical structure of the institutions responsible for its preservation and development. His deep involvement in philological research gives particular importance to his method in dealing with halakhic change and flexibility. Rabbi Rosenthal moved freely between academics able to live at peace within a regime of "duality" and non-academic rabbis, who lacked any literary or historical sensitivity.

I have selected for discussion here Rabbi Rosenthal's remarks at the founding conference of the "Movement for Torah Judaism," held on the intermediate days of Passover in 1976.[16] He delivered these remarks as chairman of the movement's *halakhah* committee, and, by their very nature, they provide background and guidance on the contemporary halakhic world. The particular subject to be considered is the *halakhah*'s treatment of Sabbath violation for the sake of an ill gentile.

Rabbi Rosenthal's Dicta on Sabbath Violations For The Sake Of an Ill Gentile—Halakhah and* Meta-*Halakhah

A. Background: Chief Rabbi Unterman's Position

Shortly before Passover in 1966, a story went around in Israel about Jews in Jerusalem declining to treat, lest they violate the Sabbath, a black man who had passed out on a Jerusalem street on Saturday morning. In time, it became clear that the story was a fictitious trial balloon, floated by Dr. Israel Shahaq in an effort to poison relationships between religious and secular Jews.[17]

In an article published in *Ha-Aretz* on Passover Eve of that year, Chief Rabbi Unterman wrote as follows[18]:

> Sad to say, recent comments have challenged the ethical values of Torah-adherent Judaism, particularly the Torah's view of gentiles and human beings, and have implied that the *halakhah* lacks a proper attitude toward gentiles. But when the critics are shown the explicit *halakhot* that refute their comments and demonstrate their total lack of merit, they seize on one specific claim: they argue that these *halakhot* do not represent the law *per se*, but were established only for the sake of peaceful relations ("*darkhei shalom*"). It therefore becomes necessary to explain the true meaning of the concept "*darkhei shalom*": it represents neither an attribute of gratuitous kindness nor a mechanism for self-defense; rather it flows from the essence of the Torah's ethical system.

Rabbi Unterman elaborates on the concept of "*darkhei shalom*," saying, among other things:

> Just as one who deprecates the *halakhot* established by the rabbis cannot be considered observant of the Torah and commandments, neither can one be considered observant if he declines to follow the enactments related to *darkhei shalom*. For all of it flows, via the oral Torah's chain of transmission, from our Torah's source of living waters.

Darkhei shalom *is not gratuitous kindness nor self-defense; it flows from the essence of Torah's ethics*

With specific reference to Sabbath violation for the sake of a gentile, Rabbi Unterman says:

> The leading later authorities (*aharonim*) permit tending to the medical needs of ill non-Jews on the Sabbath when the work involved is not forbidden *de-orayeta* [directly by biblical law]. But when the work is forbidden *de-orayeta*, it is permitted only if necessary to avoid hatred that might endanger Jews. See in this regard the *responsa* of *Hatam Sofer* (*Yoreh De`ah*, sec. 131, cited as well in *Pithei Teshuvah*, sec. 154), who says that one may rely on the view of Nachmanides, who himself assisted a gentile giving birth on the Sabbath when no labor forbidden *de-orayeta* was involved. [*Hatam Sofer*] adds: "But if the hatred [that would be incurred by not tending to the gentile] entails a risk of mortal danger, even labor forbidden *de-orayeta* should be permitted. [That is so] notwithstanding the comments of *Magen Avraham* (toward the end of sec. 334) implying that only extinguishing [the fire]—a labor not needed for its inherent product [and therefore involving a lesser degree of prohibition]—would be permitted, but not absolute, clear-cut labor; for an examination of *Eruvin* 44b and *Shiltei Gibborim* ad loc. shows clearly that even labor forbidden *de-orayeta* is permissible if it is impossible [to deal with the situation] in its absence."

Rabbi Unterman concludes:

> It goes without saying that nowadays, withholding medical care from a gentile can produce hatred entailing a great risk of mortal

danger that might, God forbid, reach [Jews in] all corners of the world. If one man's fictitious story can cause a furor and generate grievances on the part of anti-Semites in various countries, who can imagine the consequences of an actual case in which a Jewish doctor declined to treat a gentile.

Four days after the article's publication, the founding conference of "The Movement for Torah Judaism" met in Jerusalem. Chaired by Prof. E. E. Urbach, it was attended by hundreds of religious Jews, most of them academics. The establishment of the Movement was impelled in large part by principled opposition to stringent and extremist trends in the religious community (particularly in its political and legislative expressions). The Movement sought to present a tolerant Judaism, one dealing with social, economic, and political questions and fully sharing in responsibility for social systems and their functioning. In the context of the responsibility to instill the values of Torah and observance of *halakhah* throughout the nation, the Movement asked the halakhic authorities to deal with the practical issues related to the State of Israel and modern Israeli society.

In the conference's summary remarks, Rabbi Rosenthal gave prominence to the need for "*derekh erets*," which precedes the Torah.[19] As an example, he favorably cited Rabbi Unterman's comments on saving a gentile on the Sabbath. The following discussion, as noted, is based on that statement.

B. Between *Mishnah Berurah* and *Hatam Sofer*

Much praise to Chief Rabbi A. Y. Unterman, may he live long and happily, who, regarding the saving of a gentile on the Sabbath, moved, between Purim and Passover, from the statement of the Mishnah Berurah *to the view of the* Pithei Teshuvah...[20]

Rabbi Rosenthal begins with praise for Rabbi Unterman, who took a position seemingly at odds with the accepted halakhic view and based his ruling on the *Hatam Sofer*'s statement quoted in *Pithei Teshuvah*. That, at least, is how I understand his position, though others have taken it differently.[21]

Mishnah Berurah, 330:8, speaks as follows regarding desecration of the Sabbath to save the life of a gentile:

And know that nowadays, even the most worthy physicians are not the least bit cautious about this, for on every Sabbath they journey substantial distances to tend to idolaters and they themselves write and grind medicines, but they have no [halakhic] basis for doing so. For even if we say that it is permitted to violate the Sabbath with respect to a rabbinic prohibition in order to avoid hatred on the part of the idolaters (and even that is unclear; see *Peri Megadim*), all authorities agree it is forbidden to transgress a Torah-based prohibition; and those who does so are deliberate desecrators of the Sabbath, may God protect them.

Rabbi Rosenthal gave prominence to the need for "derekh erets," *which precedes the Torah*

As already noted, the *Hatam Sofer*'s comments are quoted in *Pithei Teshuvah* on *Yoreh De`ah* 154:2:

See *Resp. Hatam Sofer*, sec. 131 regarding the Turkish prince's directive that each town and village hire a skilled midwife who had studied specifically with their experts. And even if they already had talented midwives, they would still be required to hire one who had passed the test imposed by the physicians.

In some villages, the only midwife so qualified was a Jewess, and the question was asked whether she could be employed as midwife, to serve on both weekdays and the Sabbath.

He [*Hatam Sofer*] replied that since there were several otherwise qualified midwives, it was certainly permissible, even without the rationale of [avoiding] hatred, as the author of *Bet Yosef* [R. Joseph Karo] wrote in *Bedeq ha-Bayit*, "Nachmanides acted…" And, as a matter of practical *halakhah*, there is reason to rely on Nachmanides' determination to act in a particular way. And if that is so, in our case it is permissible even on the Sabbath [for the midwife] to [tend to the mother] in ways that do not involve desecration of the Sabbath, as when the mother is

sitting on the birthing stool and the infant has begun to emerge, as *Magen Avraham* has written in sec. 130, par. 106.

But the midwife should direct a competent gentile assisting her to cut the umbilicus, which is a labor prohibited by biblical law; but if doing so would cause hatred that might bring about mortal danger, even biblically prohibited labor should be permitted. And even though *Magen Avraham*'s statement at the end of sec. 134 teaches that only extinguishing a fire is permitted, for that is labor whose direct product is not needed, and that a full-fledged labor would indeed be prohibited, an examination of the *mishnah* at *Eruvin* 44b and *Shiltei Gibborim* ad loc. clearly shows that even biblically prohibited labor is permitted if there is no way around it. Thus far his comments; *q.v.*

Hatam Sofer's innovation was that when hatred entailing mortal danger may exist, even biblically forbidden labors are permitted. A reading of the passage from the *Mishnah Berurah* quoted above suggests that *Hatam Sofer* objected to expanding the "avoiding hatred" exemption beyond rabbinic prohibitions. From that point of view, it was Rabbi Unterman's reliance on *Pithei Teshuvah* rather than on *Mishnah Berurah* that Rabbi Rosenthal found praiseworthy.[22]

Rabbi Rosenthal saw *Hatam Sofer*'s statement as an important departure, both in the specific law of saving a gentile on the Sabbath and in halakhic dynamics generally. In another article,[23] Rabbi Rosenthal provides a comprehensive analysis of *Hatam Sofer*'s comments, comparing two of his *responsa*, one on *Hoshen Mishpat* (supplement, sec. 194) and one on *Yoreh De`ah* (sec. 131). I here present his principal ideas.

In the *responsum* on *Hoshen Mishpat*, *Hatam Sofer* considers a Jewish physician traveling in a gentile's cart to treat both Jews and gentiles. After identifying all the prohibitions there entailed and weighing the pertinent factors, he writes:

But, as said earlier, where there is merely [a need to avoid] hatred [of Jews], he can offer the excuses noted above [and decline to violate the Sabbath]; but [it is different] where there is reason to be concerned about the danger [flowing from the hatred] to which we are exposed, for we live amongst them, and they may increase their hatred and strife, saying that we treat gentile blood lightly, and they will not accept explanations related to Sabbath observance. Moreover, in most places the physicians are gentile, and they may come to treat Jewish blood lightly. And it is possible that the Talmud spoke only of its times, when it was uncommon for Jews and gentiles to live together, as *Tosafot* said (*Avodah Zarah* 15a, s. v. *Imur*), their times differ from ours, and Rosh ad loc. (*Avodah Zarah*, chap. 1, sec. 1) likewise said that commerce with gentiles differed then [in his day, compared to talmudic times]…

It may be that even nowadays it is forbidden [to assist in birthing, because of idolatry concerns unrelated to the Sabbath], but to travel in a wagon driven by a gentile to provide medical treatment to a gentile may be permitted nowadays, for there is reason to be concerned about the ways of peace and the possibility of danger to all. (From a ms.)

With specific reference to Sabbath violation for the *Hatam Sofer* directs the physician to avoid forbidden travel to the extent possible. If there are people needing care within his town, he should try to treat them and thereby avoid traveling, for that avoidance entails no danger since "it is very common for physicians to be delayed because they are treating other, earlier, patients." But if he cannot get out of traveling, he should go on the carriage of a gentile who has already set out for some other purpose. Moreover, he is forbidden to return after treating the patient, for that differs from setting out to save him. But when all is said and done, he allows the journey (which involves only rabbinic prohibitions) because of concern about danger.

Hatam Sofer's innovation was that if hatred entailing mortal danger may exist, even biblically forbidden labor is permitted

In the *responsum* on *Yoreh De`ah* 131 noted above (the later of the two *responsa*[24]), *Hatam Sofer* adds an important determination: if withholding medical treatment creates a risk of mortal danger, then even if the treatment entails transgression of biblical prohibitions, it should be permitted just like any other labor permitted on the Sabbath where there is a risk of mortal danger.

In his article, Rabbi Rosenthal takes the view that these *responsa* represent a revolution in Jewish-gentile relations:

> [These *responsa*] demonstrate both the wisdom and the courage of [their author]. He was moved to uncover, in the recesses of the halakhic tradition, textual support (*asmakhta*) for a halakhic innovation: the idea that mortal risk to a gentile should be considered "nowadays" under the same rubric as mortal risk to a Jew, "because of the ways of peace and the possibility of danger to all" (from the ms.).

In analyzing *Hatam Sofer*'s position, R. Rosenthal strives to hear in it echoes of the Emancipation sweeping at full force through early-nineteenth-century Europe. He attempts by close reading to distinguish between the terms "ways of peace" and "danger to all" as *Hatam Sofer* uses them. The underlying authorization to provide medical treatment to gentiles (that is, without regard to Sabbath-related issues) "because of the ways of peace" goes back all the way to Nachmanides, as Rabbi Unterman noted in his article.

But *Hatam Sofer* went further, supplementing "the ways of peace" in the contemporary context with "danger to all." Rabbi Rosenthal explains that move as follows:

> This juxtaposition seems to suggest that not only did our forebears already inform us, as is their way, of the principles of equality now being introduced and instruct us that they derive their force from "the ways of peace" and "the peace of [God's] creatures"; they also taught us that nullifying these principles and rights would be, God forbid, a real sort of "danger to all." For without "human rights" and respect for them, man would consume his fellow alive.
>
> Precisely because of the modern, liberal shape of Jewish and gentile intermingling that has gone on since the Tolerance Patent of Joseph II, we have reason to be concerned about danger that would not have arisen earlier, in talmudic times or in the dark Middle Ages.

This interpretation, it seems to me, does not fall wide of the mark of *Hatam Sofer*'s meaning in these *responsa*; and, if that is so, the *responsa* are of particular interest in the halakhic history: *they provide a very striking example of how a socio-political principle whose entire force flows from the heritage of the European Enlightenment found its authentic halakhic expression.* The principle of equal rights for all, with no religious discrimination, gains the force of a halakhic ruling *because of the ways of peace and as a sort of danger to all* [if disregarded].

We cannot believe that the law of the Torah requires us today to abandon any person's life, even to preserve the sanctity of the Sabbath

---

But all that being as it may, we today have no choice but to act in accordance with the principal of equality, considering all persons fully equal even to the point that the Sabbath may be displaced when they face mortal danger, "because of the ways of peace and as a sort of danger to all!" For we Jews in particular have tasted the cruel reality of that danger in almost every generation, and certainly in the most recent. When they rose up to destroy us, we stood against them in the dark of night, defending ourselves and crying out: "Are we not your brothers, not the sons of the same father or the same mother—how have we differed from every other nation that you persecute us harshly?" But we were not answered, and nothing was of use. And so we cannot believe that the law of the Torah requires us, in our present situation, to abandon any person's life, even to preserve the sanctity of the Sabbath.

And if one tells us that we do not concern ourselves with the life of a gentile on the Sabbath, we do not heed him, for many already have the practice of being concerned. And all of this flows from the force of our juridical understanding. To be sure, we drew it from the

world in which we have been planted, the culture in which we were raised; *but we have acquired it with our blood, and it is impossible for us now to deny it without denying ourselves and our very essence.* And how fortunate are we that one of our greatest *a<u>h</u>aronim*, Rabbi Moses Sofer, author of *<u>H</u>atam Sofer*, has already gone forth and lent support to our recognition of this development in his own manner, *and found an honored place for this conception in the array of practical halakhah* (from the ms.; emphasis supplied by the author of this article).

Rabbi Rosenthal speaks out of a profound attachment to modern society, suffused with the values of democracy—first and foremost, that of human equality. It is from that stance that he approaches *halakhah*; but does he operate as a quintessential halakhist, or rather does he subordinate the *halakhah* to his beliefs and views?
It should be noted that in the early 1960s, even before Rabbi Rosenthal's statement, this position was taken by R. Eliezer Waldenberg, then rabbi of Sha`arei <u>Z</u>edek Hospital.

R. Waldenberg has no need for theory; he is motivated by the practical consequences of not living up to the "physicians' oath."

In his *Resp. <u>Ziz</u> Eli`ezer*, he published summaries of the *halakhah* classes he had taught to the hospital's physicians. In the course of those classes, he considered the *Mishnah Berurah*'s rulings cited above:

> These comments of the *Mishnah Berurah* are not only a harsh indictment of physicians generally; they are like flint swords drawn against worthy physicians who fear God's word, subjecting them to severe perplexity inasmuch as the rule today for physicians throughout the world is that they sincerely undertake, as a condition of entering their profession, to devotedly treat any patient coming to them without regard to race or religion, and a physician found to have treated a patient with laxity because of his race or religion would be expelled from his profession. Moreover, such laxity would arouse a great and widespread outcry, generating intense animosity toward Jews, whose ultimate consequences cannot be foreseen. And it is mere fantasy to think that the nations today would accept our excuse were we to say that we desecrate the Sabbath on our own behalf [where necessary to avoid mortal danger to our health] because we also observe the Sabbath, but for you, who do not observe the Sabbath, we also do not desecrate it. This excuse would be particularly unavailing if offered by licensed physicians; indeed, it would simply compound the hatred. And it is impossible to sweep this away by saying that our generation is unworthy and that even the most pious physicians disregard their [religious] guides, as argued in *Responsa Yaskil Avdi*, part 6, supplements, on *Tur, Ora<u>h</u> <u>H</u>ayyim* sec. 9, *q. v.*[25]

Rabbi Waldenberg's position differs from Rabbi Rosenthal's only in its wording. Rabbi Waldenberg's frame of reference is his work with physicians at Sha`arei <u>Z</u>edek Hospital, and he writes out of a sense of responsibility to provide practical guidance for a hospital in the State of Israel. He has no need for theory; he is motivated by the likely practical consequences of failing to live up to the "physicians' oath." He does not engage here in theology or moral philosophy; he works on a practical level as a halakhic decisor striving for a clear goal and applying all the tools of his trade to achieving it, without taking any stance as a matter of moral theory.[26] Other contemporary decisors considering the issue followed in R. Waldenberg's path,[27] and the remainder of this article will consider the differences between the ideological and the pragmatic approaches to halakhic decision-making.

C. Politics and Ethics as Halakhic Rationales

In his article,[28] Rabbi Rosenthal emphasizes the importance of Rabbi Unterman's statement and points to a central problem in the halakhic world:

> The Chief Rabbi's statement as published four days ago in Ha-Aretz on Passover Eve comprises practical halakhic guidance combined with intellectual and ideological rationales. But the importance of the statement lies primarily in its halakhic ruling; the ideological rationale it reflects

may not be entirely to our liking (relating more to politics than to ethics).

The halakhic decisor's mode of discourse relies on talmudic concepts and analytical tools, focusing on the practical aspects of the question and often omitting any value-based consideration of its aesthetic and ethical aspects. Most rabbis who dealt with the matter at issue here never raised the question of the gentile's status and the sanctity of his life; they simply accepted the halakhic literature's formulation that the Sabbath may be violated to provide medical treatment to a gentile where failing to do so might endanger Jews. Given that, a broader conclusion follows: because danger nowadays is an omnipresent concern, it follows that violating the Sabbath to save a gentile is permitted. But do these *poseqim* really mean that where there is no risk of danger to Jews, the Sabbath is not to be violated and the gentile is to be left to die? As a general matter, *poseqim* avoid asking theoretical questions of that sort. The overwhelming majority apply halakhic categories and extend them no further than necessary.

Most poseqim *do not open the* halakhah *to ethical questions as Rabbi Rosenthal wished*

Nevertheless, the halakhic world is occasionally penetrated by a new mode of analysis, drawn from the world of ideas, that seeks to examine the content of the categories and draw operative conclusions. Any such intrusion raises difficult questions, however. If a gentile may be saved on the Sabbath only "to avoid hatred," what would be the ruling in case where avoiding hatred was not a consideration? Should the Jewish physician in that instance not tend to the gentile patient? The issue was in fact posed in Rabbi A. Ronetzky's book on military *halakhot*, which suggested that if a soldier found himself in a situation where "avoiding hatred" was not at all a concern (as, for example, where there were no witnesses), refusing to desecrate the Sabbath for the sake of wounded gentile might be an acceptable result. That ruling promptly elicited a sharp outcry from the humanistic flank of the religious community.[29]

The fact is that most halakhic decisors do not open up the *halakhah* to ethical questions, as Rabbi Rosenthal might wish them to. In that respect, Rabbi Unterman is no different from other great decisors (including Rabbi Waldenberg). From their point of view, it is enough to rely on the *Hatam Sofer* to lead the *halakhah* to a point that avoids any desecration of God's name, and there is no need to embark on a substantive, value-based deliberation on the worth of human life *per se*.

Coming to this issue from the opposite orientation, A. Sagi called attention to what he saw in it as an esoteric expression of an ethical stance substantively different from, and counterpoised against, the more typical one. In various articles dealing with *halakhah* and ethics, he quotes Rabbi Jacob Avigdor, who writes, "Those who believe the Jew is not to save the gentile [believe] a lie. Saving a gentile is not a matter of the Torah's law or statute; it is a matter of man's good, human, attributes."[30] That quotation enables Sagi to present a halakhic source that associates the Jew with a universal ethical community and that does not rely on the aesthetically problematic rationale of "to avoid hatred." Of course, Rabbi Rosenthal's position is related to Rabbi Avigdor's; both are distinguished by their dissatisfaction with the *halakhah*'s ability to solve problems and by their quest to renew *halakhah* from within.

D. "An Elder Has Already Ruled"—The Significance of Hierarchical Decision-Making

As noted, Rabbi Rosenthal praises Rabbi Unterman's approach, despite his ideological reservations. He goes on to focus on the halakhic side of the question:

> Nevertheless, this cannot detract from their decisional importance. For an elder has now ruled publicly, explicitly, and without reservation that it is permissible—indeed, it is fitting—for a Jew, and a fortiori a Jewish physician, to save the live of a non-Jew on the Sabbath, even where a labor forbidden by Torah law is involved. But his rationale and explanation are consistent with his point of view.

I imagine Rabbi Rosenthal was happy to read Rabbi Avigdor's statement noted above, but I doubt he

would have relied on it, given Rabbi Avigdor's relatively low standing in the intra-halakhic hierarchy. In contrast, Rabbi Unterman's ruling carries considerable weight in view of his governmental role as Chief Rabbi of the State of Israel; and his express ruling—though lacking a proper ethical foundation—creates a situation in which "an elder has already ruled." Rabbi Rosenthal in his writings often stresses the need for "an elder [to have] ruled," that is, for a ruling by the community's senior halakhic authorities and not merely by students. The phrase "an elder has already ruled" expresses institutional deference, even where the individual acting "deferentially" is himself very learned; this is evident from the talmudic source of the expression (*Shabbat* 51a):

> [We have learned that] Rabbi [Judah the Prince] sat down and said: It is forbidden [on the Sabbath to] place cold food where it will be kept cold [or warmed slightly; the passage is variously understood***—translator's note***]. R. Ishmael the son of R. Yosi said before him: my father permitted so placing cold food. [Recanting, R. Judah] said: An elder [i.e. R. Yosi] has already ruled. R. Papa said: Come and see how much they cherish one another. For if Rabbi Yosi had still been alive, he would have deferred and sat as a student before Rabbi [Judah the Prince], for Rabbi Ishmael the son of Rabbi Yosi was as great a scholar as his father had been, yet he deferred and sat as a student before Rabbi [Judah the Prince]; nevertheless, [R. Judah recanted and] said "an elder has already ruled."

Rabbi Rosenthal applied this policy to himself as well; that is, he saw himself as subservient to the institutional authority of the established rabbinate, which was authorized to rule even though he was not pleased with its actions. After the Six-Day War, the "Movement for Torah Judaism" considered the status of the fast days observed in commemoration of the destruction of the Temple. They agreed that Israel's repossession of the Temple Mount and the greater consolidation of the State of Israel should be given halakhic expression, but the limits of the required change were the subject of debate:

> Immediately after 28 Iyyar 5727 [7 June 1967, the day Jerusalem was reunified], it was determined that it was no longer necessary to observe the fasts of "the fourth month, fifth month, and tenth month" as a matter of pure *halakhah*, as determined in tractate *Rosh ha-Shanah* (18b), but opinions remain divided on how those days should be treated. Should they be days on which fasting is permitted though not required, or should they already be treated as days of rejoicing? It is clear that those taking the former position are influenced by the continuation of the war, which claims victims almost daily, while adherents of the latter position take account only of the fact that the Jewish state has unimpeded sovereignty over the entire holy city.[31]

On the fast day of 17 Tammuz of that year (25 July 1967), a group convened at the home of Rabbi Immanuel Hartom and prayed in accord with the usual weekday liturgy, without *Tahanun* (prayers omitted on days of even slight festivity) and without the Torah reading for fast days. A year later, a similar group convened for prayer at the Western Wall. The following year, the group met at Prof. E. E. Urbach's home. They omitted the Torah reading for fast days (it was a Thursday, when Torah is read in any event, so they read the usual reading for that week), but they accepted Urbach's view and recited *Tahanun*.

"Saving a gentile is not a matter of the Torah's law or statute; it is a matter of man's good, human, attributes"

In 1970, the Movement's *halakhah* committee, chaired by Rabbi Rosenthal, renewed its consideration of the question. Rabbi Rosenthal recounts that with regard to the Fast of the Ninth of Av, "it was clear…that even in the future it should be observed with all stringency as a public fast day."[32] Opinions differed, however, regarding the Fast of the Seventeenth of Tammuz. Rabbi Rosenthal sets forth the talmudic sources, analyzes them on the basis of the mss. and the early literature, and reaches a practical conclusion:

> Today, as we witness a transformed era…we are certainly *obligated* to determine…that "there is no persecution," and therefore we are no longer

obligated to observe the days of fasting and prayer… (Id., p. 23; emphasis in original).

He reaches this conclusion as a halakhic researcher and as one wishing to declare the conclusion that properly follows from his research. He is convinced that the dynamics of *halakhah* demands revocation of the obligation to fast in view of "the transformed era." But while he has no doubt of the ruling indicated by the texts, he does not stop there:

> Nevertheless, there was a view that opposed abolishing these public fasts. Not because it was improper to do so—it certainly was!—but because it was far from clear that we had the authority to do so. At present, Jews observe these days as public fasts—not with all the associated stringencies, but "in principle, they are public fasts." *Accordingly, the question is whether our small group is permitted to abrogate something that most Jews observe as a sort of public fast.* I, for one, believe we are not so authorized, *for only the community abrogates the community's determination].*
>
> But we must question and provoke, explain and interpret, write and declare that the time has come for those who are empowered to lead the community in all matters of religion and law—that is, the official or chief rabbinate—to be truthful with themselves and with us and cancel the communal nature of these fasts, declaring that they are no longer obligatory but that, as the Talmud enacts and the *ge'onim* rule, "if they wish to, they fast; if they wish not to, they do not fast," for, God be praised, there is no more persecution. (Id., pp. 23-24, emphasis supplied by the author of this article.)

Here, Rabbi Rosenthal returns to the halakhic arena and suggests people "question and provoke, explain and interpret, write and declare." There is a clear intention to work "from below," so that the authorized powers "above" respond to the hue and cry and take the steps needed to reconcile the two worlds. From his point of view, only the authorized powers "above" are qualified to effectuate the halakhic change, and dissatisfaction with the rate of progress does not justify resort to self-help. Rabbi Rosenthal does not exclude himself from the group of rabbis who can provoke, but he acknowledges that his determinations lack the force of "an elder has ruled."[33]

E. "It All Depends on Opinion"

Let us return to our subject. Rabbi Unterman's statement enables Rabbi Rosenthal to identify a principle important to the understanding of halakhic decision-making:

> The lesson—if we compare the statement to the rulings on the matter issued by some rabbis—is that everything depends on opinion and that even halakhic ruling in accordance with the *Shulhan Arukh* and in accordance with opinion derives its textual support from the decisional literature.

In this paragraph, Rabbi Rosenthal gets to the essence of the halakhic concept that "it all depends on opinion," or that "*derekh erez* precedes Torah"—the primary point of view applied by Rabbi Rosenthal in determining the *halakhah*. It should be noted that this position is disputed by many decisors, who see the *halakhah* as "God's word" ("God's word is *halakhah*—*Shabbat* 138b), having absolutely nothing in common with the decisor's worldview.[34]

F. The Law of Persons and the Law of the Sabbath

Rabbi Rosenthal next turns to a fundamental examination of the starting point for halakhic rulings regarding gentiles:

> Our relationship to people who are not of the Covenant [i.e., non-Jews] is, first and foremost, a question of opinion and proper conduct. A person—including a Torah sage—must determine his understanding of "the law of persons" before moving on to the *halakhot* of the Sabbath, for the latter determination depends on the former, rather than the other way around. A person must choose in this regard between two fundamental and comprehensive opinions. On the one hand, he may adhere to the fundamentalist position, includes nothing (except, perhaps, for a greater or lesser measure of Jewish chauvinism, perhaps mystical and certainly archaic) beyond what is written in the usual halakhic decisional literature, construing its simple words broadly. Alternatively, he may take the informed and autonomous position of a man of culture, whose education and understanding

make it clear to him that "this is the book of human history" [Gen. 5:1] is a great principle from which there is no ethical or intellectual escape.

This passage is based on the famous dispute between R. Akiva and Ben Azai (*Sifra Qedoshim* 2:4):

"You shall love your fellow as yourself"—R. Akiva says this is the great rule of the Torah; Ben Azai says "this is the book of human history" is a still greater rule.

R. Akiva's view [taking "fellow" as "fellow Jew"—***translator's note***] has always been seen as the dominant one. The attitude of the Talmud and the usual halakhic literature (that is, the central corpus of halakhic writings) toward the gentile rests on clear statements that define the gentile as inferior to the Jew, not only with respect to Sabbath observance, but also with respect to the sanctity of his life. The leading statement is that of R. Simeon bar Yohai: "You are called "person [*adam*]" but gentiles are not called human" (*Yevamot* 60b).[35]

The halakhic result was more a matter of theory than of practice, for a Jew in the Diaspora was not required as a practical matter to consider the sanctity of a gentile's life; in general, it was all he could do to protect his own life from the enemy's sword. Only in modern times, when Jewish physicians began to need guidance in this matter and when humanistic currents began to waft through Europe, did rabbis and thinkers begin to deal with the subject. A. Sagi analyzed the attitude of *poseqim* and commentators over the ages to R. Simeon bar Yohai's statement,[36] dividing them into two principal groups: a group that saw the matter ontologically, embodying a substantive difference between Jew and gentile; and a group that confined the statement to a given concrete situation rather than seeing in it a comprehensive conception of Jewish-gentile relations. Sagi concludes, in light of his researches, that the tendency to limit the radical implications of R. Simeon bar Yohai's statement is particularly widespread among modern sages exposed to the world outside Jewish society. Rabbi Rosenthal expresses his own, non-scientific, sense that "the usual halakhic writings" fall into the former category, seeing an ontological difference between Jew and gentile. His attitude toward that view is unambiguous; he sees it as "Jewish chauvinism—perhaps mystical and certainly archaic." He has no interest in probing the intellectual basis for that approach but simply emphasizes his own determined view that "this is the book of human history," stressing the biblical passage that serves as the main source for the humanistic position that negates any hierarchy in Jewish-gentile relations. Using his sharp pen, Rabbi Rosenthal decisively distinguishes between "the forces of light" and "the forces of darkness"—between Jews exposed to general culture and Jews still "imprisoned" by the bonds of the archaic tradition.

"This is the book of human history" is a principle from which there is no ethical or intellectual escape.

Rabbi Rosenthal here takes a humanistic stance, not a political one. He wants to change the point of departure with respect to the sanctity of a gentile's life, and, from that new point of departure, to begin dealing with the issues on his agenda. He takes the novel position that saving a gentile on the Sabbath is not in the first instance a question of Sabbath law; it is, rather, under the rubric of laws that follow from "this is the book of human history."

To state it differently: only a humanistic point of departure, which sees the image of God in every human being, enables one to deal honestly with this question; for if the life of a gentile lacks sanctity, the Sabbath should never yield to it. Whether to desecrate the Sabbath for a gentile is a question that can genuinely be struggled with only if one starts from the position that the gentile's life is sacred. And if we return to the beginning of Rabbi Unterman's comments, we see that they reflect a humanistic point of departure: "Sadly, recent

comments have challenged the ethical values of Torah Judaism, particularly the Torah's view of gentiles and human beings, and implied that the *halakhah*'s attitude toward gentiles is improper."[37]

One can find many writers whose moral sensibilities regarding a gentile's life lead them, like Rabbi Unterman, to speak of the halakhic obligation to save that life. None, however, are as vocal as Rabbi Rosenthal, who attempts to ground the halakhic decision on Ben Azai's position regarding "this is the book of human history." One authority who spoke to the issue was Rabbi David Zevi Hoffmann, head of the Hildesheimer Rabbinical Seminary in Berlin, who spoke sharply of the desecration of God's name that could be occasioned by Jews who act in a manner that dishonors Judaism in gentile eyes.[38] With regard to the talmudic law (quoted in *Shulhan Arukh*, *Hoshen Mishpat* 425:5) that "it is a commandment to kill" heretics, Rabbi Hoffmann writes:

> All will acknowledge that at the time the *Shulhan Arukh* was written, when Christians would kill non-believers in cruel and unusual ways, this law could be publicized throughout the world without thereby diminishing the honor of Judaism in the eyes of gentiles. Quite the contrary; for that law in no way conflicted with then-regnant standards of justice. But we are confident that the *Shulhan Arukh* itself would have strictly forbidden persecution of heretics if principles of tolerance had then prevailed among the nations as they do today…The prohibition against desecrating God's name, regarded by Jewish law as the gravest sin identified in the Torah, strictly forbids an action not justified under our contemporary juridical and moral consciousness.[39]

G. "Examine It and Re-Examine It, For All is Within It"

Rabbi Rosenthal sees particular importance in the decisor's efforts to find a supporting textual peg for his approach:

> And even if he finds a clear, unambiguous contradiction with the sanctified sacred books, he cannot rest until he locates, in the hidden resources of the rich and variegated halakhic tradition, an authorized textual peg that can reconcile his opinion with his learning. And he will even try to improve on it through his overpowering halakhic-interpretive skill. That is the way of halakhic wisdom and that is its praise. That has always been and always will be the way of sages in their learning, even if some pietists now come and try in their piety to cast doubt on it.

Rabbi Rosenthal claims that the decisor's worldview, which is basic to his very existence and with which he approaches every halakhic question he sets out to decide, impels him to find authorized sources on which he can base his practical halakhic determination. This method implies that the decisor knows, more or less, the direction in which he is headed, and that he combs the halakhic sources for the earlier decisor or decisors who are

---

"If the life of a gentile lacks sanctity, the Sabbath should never yield to it"

---

consistent with his general leaning. He does not engage in systematic, comprehensive study of the entire decisional tradition (as one might in an encyclopedia entry); rather, he conducts a focused study that seeks to extract from the inner world of the *halakhah* the particular voices that comport with his own spirit and to amplify those voices above all the others.

The Academic Rabbinate—Critique and Assessment

The halakhic approach presented by Rabbi Rosenthal generated opposing reactions from both flanks—the rabbinic-*haredi* and the *dati*-modern side. The former produced an article by Rabbi Kalman Kahana, which dealt with the Movement for Torah Judaism's first publication and delivered a frontal attack on Rabbi Rosenthal's statement. On the latter side, Prof. Menahem Kahana, one of Rabbi Rosenthal's leading students, wrote an article on the difference between yeshiva-style and academic study and expressed reservations about applying Rabbi Rosenthal's approach in the realm of *halakhah*.

These two attacks represent two very different critical perspectives on Rabbi Rosenthal's approach. In what follows, I consider his method in light of both perspectives.

A. Is "Opinion Precedes *Halakhah*" Valid?—Rabbi Kalman Kahana

Rabbi Rosenthal's underlying principle that "all depends on one's opinion" infuriated Rabbi Kalman Kahana[40]:

> We rule not according to our wills, not according to our desires, and not even according to a "culture" of uncertain origin. We have only clear words of *halakhah* and clear Torah-opinion ("*da`at Torah*"). And so, we accept as the halakhic way only devotion to a fundamentalist method. We have only the opinion of our sages of blessed memory and the earlier and later authorities (*rishonim and aharonim*), and we have only the broad and simple meaning of their words. We do not take words out of context in order to win the approval of gentiles or of Torah-deniers, and it is the way of Reform to set itself up as supra-halakhic judge…We do not argue; we determine. To our sorrow, separate determinations have been made. But the simple meaning of the *Shulhan Arukh* decides for them, and what use is the *Shulhan Arukh* for those whose culture decides for them?

The issue of whether a prior ethical-cultural position underlies the decisor's work has been widely investigated,[41] and I intend here not to add to that inquiry but only to situate Rabbi Rosenthal *vis a vis* other rabbis of his time. The position represented by Rabbi Kalman Kahana is usually seen as the classical *haredi* position of intense opposition to any consideration of time and place in halakhic decision-making. But while that reaction certainly typifies the *haredi* world, it can be found as well among those firmly planted within modernity, such as Yeshayahu Leibowitz or Rabbi J. B. Soloveitchik.[42] Rabbi Rosenthal's position, which declares so openly that opinion precedes *halakhah*, is almost unknown in the halakhic world. Some investigators confirm that *halakhah* has always functioned in that manner and that many disputes among the talmudic sages are based on pre-existing worldviews,[43] but the decisors themselves avoided saying so.

Does that silence negate Rabbi Rosenthal's view? Not necessarily; for it seems to me that the decisors' presentation only of objective decisional considerations, and their avoidance of any reference to their inner thoughts, cannot be said to demonstrate conclusively a total estrangement between their cultural context and their halakhic decisions or a failure on their part to take cultural context into account.

"What use is he Shulhan Arukh for those whose culture decides for them?"

Let me offer as an example the comments of one of the great rabbis in twentieth-century Galicia, Rabbi David Menahem Monish Babad, chief judge of the Jewish court in Tarnopol[44]:

> At the outset, let me say what I heard directly from the *ga'on* Rabbi Berish Rappoport, chief judge of the community of Rawa, who had heard from his teacher, the renowned *ga'on*, the chief judge of the community of Lublin, that when a question came before him, he would first assess the matter in accordance with the human mind, and if the human mind suggested to him that the claim was true, he would then examine it in accordance with the laws of the holy Torah to determine how to rule. And so it is with me: when a question comes before me regarding an *agunah* [a woman whose husband cannot (because he is missing or incapacitated) or will not divorce her and who therefore cannot remarry] or a similar case, if it is clear to me through the application of the human mind and thought that the matter is true, then I toil to find a way to permit [the indicated action] in accordance with the statutes and laws of our holy Torah.

Contemporary decisors quote these words as they try to defend their rulings, reached on the basis of reason and logic. The quotation is used, for example, by Rabbi Jacob Bereish[45] in the context of

an effort to permit the remarriage of an *agunah* whose soldier-husband's ship went down during the Second World War. Most of his arguments are based on international law and current political and security-related circumstances; in light of those circumstances, he tries to depart from the ruling of the *Shulḥan Arukh*, which is based on the significantly different circumstances that prevailed at the time of the Talmud. To bolster his position, he cites the foregoing statement by Rabbi Babad in *Resp. Ḥavaẓelet ha-Sharon*.

The statement is cited as well by Rabbi Y. Y. Weiss, rabbi and chief judge of the Jerusalem *ḥaredi* community, in a *responsum* dealing with whether a particular *mamzer* (the offspring of a forbidden union, barred from marrying anyone except another *mamzer*) should be permitted to marry. Rabbi Weiss cites *Resp. Ḥavaẓelet ha-Sharon* to demonstrate that a decisor can have a point of departure as he begins his consideration of the issue.[46] Rabbi Babad's statement was likewise discovered by Prof. E. E. Urbach, who cited it as an example of a decisor being influenced by local (in time as well as place) intellectual currents.[47] The use of this quotation in such diverse areas demonstrates two things: First, this one statement is widely cited because virtually no other statement like it can be found in the halakhic decisor's "workshop." Second, Rabbi Babad attests to a normative decisional tradition widespread in Poland and Galicia, not an exception to the rules of decision-making.

If halakhic thinking depends on inner personal considerations, it loses all objectivity and deteriorates to the level of insubstantial subjectivity

---

Against this background, it is interesting to read Rabbi Joseph Dov Soloveitchik's comments on the influence exercised by the environment on the man of *halakhah* and on the need to separate that influence from the halakhic decisional process itself:

> The [historical] event certainly leaves its imprint on the man of *halakhah*, stimulates his intellectual powers, guides his observations, whets his curiosity, feeds his thought, directs his attention to horizons illuminated by the event, and compels him to grapple with ideas that can help resolve the event's perplexities. But the mutual influence of *halakhah* and event is manifested not in the arena of pure halakhic analysis but only in the inner depths of the halakhic man's soul. The event is a psychological motivator that impels the pure analysis on its course, but once it sets out on its specific course, it is steered not by the event but by its unique normative-idealist rules.
>
> For example, the rabbis always shared the sorrow of the despairing *agunah* and therefore ruled leniently in her case. But when a rabbi sits down to decide the case of an *agunah*, he is not pressured in his decision-making by his feelings of sympathy, even though he takes pity on the poor woman, but reaches his decision in accordance with theoretical halakhic principles… Psychologizing or sociologizing the *halakhah* is an assault on its soul…If halakhic thinking depends on inner, personal considerations, it loses all objectivity and deteriorates to the level of insubstantial subjectivity.[48]

Does the decisor's awareness of the socio-cultural background and its influence on his halakhic stance generate a sense that the decision is merely a human creation rather than a revelation of God's word in the world? One might say that a *poseq* deliberating on a halakhic question fundamentally sees himself not as *creating* the ruling but as in effect discovering the divine truth. That has been the basic posture of the rabbinical world for many generations, from Rabbi Judah ha-Levi and Nachmanides to the *Ḥafeẓ Ḥayyim* and Rabbi Soloveitchik.[49] But that sense of discovering God's word as one rules on a halakhic question does not contradict the fact that the decisor is on a mission, with cultural connections that guide his thought and incline him in particular directions.

Rabbi Soloveitchik and Rabbi Rosenthal differ only in the degree to which they are prepared to fully recognize the influence of the cultural environment on their halakhic decision-making. Each will acknowledge that the environment, including changing values, influences and even alters the decision-making process. But Rabbi Soloveitchik will conceal that awareness (even from himself)

when he sits in judgment, while Rabbi Rosenthal will strive to reveal it.[50]

Like the decisor's cultural background, so, too his ethical world: the rabbinic world sees autonomous, human-generated morality as an expression with no grounding in Judaism. Jewish morality is theonomous, derived from the Holy One Blessed Be He. Rabbi Shlomo Aviner comments on the subject as follows:[51]

> It is clear that our morality is not a morality that man created for himself, "autonomous morality." It is, rather, "heteronomous" morality, drawing its strength from outside the human being, or, more precisely, "theonomous morality" whose source is in the will of God, who created the moral and spiritual order that we face.
>
> Accordingly, one must be very wary of any pretense to give up God's word for the authority of society or for religious norms created by man.[52]

Given that, Rabbi Rosenthal's words must be examined with great care. Did he write from the point of view of an investigator surveying halakhic processes from the outside or as one fully engaged in that process from within? Rabbi Kalman Kahana's critique is striking in its referring to Rabbi Rosenthal as "professor," without the title "rabbi." Rabbi Kalman Kahana knew Rabbi Rosenthal well, as a member of the Chief Rabbinate's committee on *halakhah* related to commandments contingent on the Land. In characterizing Rabbi Rosenthal as "professor" rather than "rabbi," he intended to rule out the possibility of any rabbinic foothold for the viewpoint that places *derekh ereẓ* (in the sense of general culture) before Torah (in the halakhic sense).

This combining of a man of the *halakhah* with a man of the academy generates many difficulties, among them the different points of view regarding the subject here at hand: the halakhic man is situated within it, while the academician observes it from outside. A halakhic man who is also an academician finds himself simultaneously at two viewpoints, each of which demands to be fully taken into account. The academic eyes seek wide-ranging inquiry (be it philological or historical-intellectual), while the halakhic eyes want to set out on the sea of *halakhah* and search directly for practical solutions to the issue at hand. In that sense, Rabbi Prof. Rosenthal's article serves as a remarkable example of an intra-halakhic reading, one that elicits as well the ethical-historical reading of the *Ḥatam Sofer*'s *responsum*.[53]

R. Soloveitchik conceals that awareness, while R. Rosenthal strives to reveal it

---

And so, Rabbi Rosenthal's observation that "this has always been and always will be the way of sages in their learning" has not generally been accepted among Torah scholars and halakhic decisors. It has been accepted in the academy, the source of voices calling for a renewal of *halakhah* in accordance with contemporary values.[54] But the approach more accepted in the rabbinic world holds that the *halakhah* in no way depends on changing circumstances. The Torah's eternal spark stands far above all considerations of time and place, and any attempt to interject such considerations into the halakhic world stems from reformist tendencies seeking to undermine the fortress of believing Judaism.[55]

B. Prof. Menaḥem Kahana' Critique

Prof. Menaḥem Kahana, a prominent student of Rabbi Rosenthal,[56] had reservations about the application of his teacher's halakhic method. In the course of describing the difference between Talmud study in the yeshiva and in the academy, Prof. Kahana presents the dilemma confronted by a religious researcher[57]:

> The problems of theology and authority that the religious Talmud researcher grapples with are made more biting by his *awareness* of the subjective and relative nature of the commandments he is observing. The religious community's *internalization* of the academic researcher's conclusions will make it harder for them to accept *the halakhah's authoritativeness* (emphases in the original).

As an example of this difficulty, Kahana cites Rabbi Rosenthal's remarks analyzed in this article. He

raises doubts regarding Rabbi Rosenthal's concluding statement that "this has always been and always will be the way of sages in their learning"[58]:

> Even if we start from the premise that the decisor can, in fact, find an authoritative textual peg that will support his effort to reconcile his opinion with his learning on all basic issues—a premise I regard as questionable—we still face a difficult question of heuristics and authority.
>
> The development of *halakhah*, as noted, is a continuous process, but excessive awareness of that process—on the part of the rabbi and the community alike—could undercut, for reasons noted above, the continuation of that process in the future. If a rabbi who has internalized a critical mode of thinking adopts a clear and decisive view that his cultural context requires him to set aside an earlier decision—itself growing out of an earlier culture and its circumstances—his reliance on a reinterpreted textual support peg may become intellectually and ethically deficient and be regarded derisively by the knowledgeable community.

Kahana sees the self-awareness of the rabbi-investigator as closing the door on the development of *halakhah* via reinterpretation. Nor is the method of concealing information from the masses (common in the Middle Ages) any longer possible in a modern community devoted to equal and open education, a community continually diminishing the intellectual gap between itself and its spiritual leaders. With those two courses of action eliminated, Kahana falls back on what he takes to be the only remaining possibility: "to occasionally favor conscious innovation over questionable supporting precedent."[59] The implication of Kahana's suggestion is to forgo the interpretation of sources that permit preserving the tradition along with practical innovation, and instead to innovate (*ex nihilo*) on the basis of overall cultural considerations.

If that is so, it appears that Rabbi Rosenthal's innovation here is the effort to blend the world of the academic researcher, aware of the cultural environment's influence on the *halakhah*, with the world of the halakhic man, who strives to interpret *halakhah* from within. He is unwilling to forgo the accepted mode of decision-making, in which the *halakhah* interprets itself, and he is supremely confident of the *halakhah*'s vitality and its power to find solutions within itself.

The religious community's internalization of the academic's conclusions makes it harder for it to accept halakhah's *authoritativeness*

Between the two Kahanas, Rabbi Rosenthal is situated as rabbi and academic researcher, clinging to the accepted decision-making policy that never favors novelty without a supporting peg but also is unwilling to forgo innovation in the absence of one. Rabbi Prof. Rosenthal's confidence in both the Torah's eternity and its capacity for adaptation and interpretation made him a beacon of optimism and hope regarding continuation of the halakhic tradition in modern society.

Concluding Thoughts: Creating Communities Along With Rabbis

Rabbi Rosenthal reiterated his views at the conference of the Movement for Torah Judaism held in the summer of 1970.[60] The conference was considering the Movement's effort to establish an institution to train secularly educated rabbis equipped to grapple with current questions. Rabbi Rosenthal dedicated part of his comments to the negative view of secular learning held by both the yeshiva rabbinate and the government rabbinate. As an example, he cited the question of Sabbath violation for the sake of a gentile and Rabbi Kalman Kahana's reaction (discussed above) to his comments at the Movement's founding conference. He determined that

> Our ethical and cultural perceptions in no way correspond to the fundamental perceptions set before us by the rabbinate. If the sense of unease has reached that point, we must say: change is needed.

But the mode of change to which Rabbi Rosenthal was moving did not involve rending the *halakhah*. The model he proposed was the creation of scholars, steeped in both Torah and secular

knowledge, and the creation of communities seeking rabbis of that sort:

> Communities will be formed, because the opposition I have attempted to present will require new organization.

The key to that new organization is cooperation between community and rabbi, and the question considered here—Sabbath violation for the sake of a gentile—offers a good example of the process. The *poseqim* permitted a physician to violate the Sabbath (even performing a labor forbidden by biblical law) as a result of changed circumstances (improved telecommunications, the physicians' oath, and other matters). The physicians who requested a rabbinic ruling were religious doctors (as can be seen in the passage from *Mishnah Berurah* cited above) seeking a way out of the conflict between their obligation to *halakhah* and their obligation to humanity.

Operating within a halakhic rubric will produce frustration, but it will be the salvation of Israel

---

The halakhic innovation did not arise independently but drew from earlier sources, as the *halakhah* has always done. There are many analogous instances in which the *halakhah* has changed, consistent with its rules, in reliance on earlier rulings and their analysis. These changes are generated within a community that is loyal to the *halakhah* and that intensely experiences both religious life and modern environment. The change is not created by the community but by the rabbi asked to rule; the role of the halakhically committed community is to raise the question suggested by the changing times and circumstances and to spur orderly halakhic change.[61]

The issues of the day in the modern religious community are varied, but they are focused primarily on the individual's standing *vis a vis* halakhic authority. One such issue is the role of women in religious life—the extent to which they can become involved in public worship, Torah reading, the call to joint recitation of the blessing after meals, etc. The community's independent resolution of the issues, in the absence of cooperation with the halakhic world, will produce an internal rift and undermine relations with the halakhic decisors.[62] Practical solutions not tempered by substantive halakhic opinion convey an air of reform and ruination of *halakhah*. Of course, operating cooperatively within a halakhic rubric will delay matters, slow the pace of progress, and even produce a sense of frustration; but it will be the salvation of Israel.

In that spirit, Prof. E. E. Urbach concluded his article on revitalizing the *halakhah*[63]:

> The prospect of revitalizing the *halakhah* depends on the *halakhah* itself, on the history of its growth and development, and it is part of its essence; but the condition precedent to its realization is that Jews who are observant and trained in Torah and who genuinely want revitalization of the *halakhah* find the strength to pose the questions in accordance with their understanding and the knowledge to create a rear guard to be reckoned with in the community, one that by its devotion to the authority of the *halakhah* and its institutions will be prepared to battle to raise their level and independence.

Many modern Orthodox individuals find themselves situated between the audacity to raise the questions arising from discontinuities between *halakhah* and changing circumstances and the reticence demanded of individual and community alike, which forecloses efforts to put immediate answers into place. From that vantage point, they pray for the development of the *halakhah* together with the growth of Israel in its land.

Let us conclude with Rabbi Rosenthal's closing remarks to the founding conference of the Movement for Torah Judaism:

> We still lack the ability to decide with finality all those large halakhic questions or the perplexities raised here. We have problems, severe problems. But do we not know how to solve them? Our discussions in committees and in the plenary session appear to have taught us that we see the image of an idea, a reflection of truth, but nothing more. But even this reflection is bright enough to deny us rest, and to impel us to join together and seek, by the light of this reflection, the truth of the Torah.[64]

NOTES

*****[1]This article was translated by Joel A. Linsider. It was originally published in Hebrew in the Israeli journal *Aqdamot* (Edition 16) as "The Coming of Truth."

[1] It was Moshe Samet who introduced the characteristics of Orthodox society as a subject of sociological study. See his article "*Haredi* Judaism in Modern Times," *Mahalakhim* 1 (Adar 5729): 29-40; *Mahalakhim* 3 (2 Adar 5730): 15-27 (Hebrew). Jacob Katz also broke new ground in the study of Orthodoxy. I here note only his article "Orthodoxy in Historical Perspective," *Kivvunim* 33 (Fall 5747): 89-100 (Hebrew).

[2] *Resp. Hatam Sofer*, part 1, sec. 51.

[3] Id., part 1 sec. 103; part 3, sec. 98. [The quotation referring to Rema translates "*yoze'im be-yad Rema*," a play on the description of the Israelites' departure from Egypt in Exod. 14:8—"*u-venei yisrae'l yoze'im be-yad ramah*"; "the Israelites went out with a hand raised high."***—translator's note***]

[4] Id., part 4, sec. 53.

[5] *Iggerot ha-Re'ayah* [Letters of R. Abraham Isaac ha-Kohen Kook] (Jerusalem, 5745), letter 164, 1, p. 214.

[6] On Rabbi Kook's halakhic decisional process, see Rabbi N. Gotel, *Halakhic and Meta-Halakhic Considerations in Rabbi Kook's Jurisprudence*, doctoral dissertation, Hebrew University of Jerusalem (5761) (Hebrew). On his devotion to custom, notwithstanding his vision of renewal, see my article "Preservation of Community Customs vs. Halakhic Unity," *Aqdamut* 10 (Kislev 5761): 273-276 (Hebrew).

[7] Publication No. 1 (Jerusalem, 5726) and No. 2 (Jerusalem, 5728) are complemented by nine pamphlets under the title *Mahalakhim*, published between 1969 and 1975; together, they form the Movement's principal publications.

[8] An account of the movement, its origins, and its goals can be found in Me'ir Roth's and Yo'el Yarden's interview of Prof. M. D. Har and Ms. Hannah Urbach, published as "'The Movement for Torah Judaism'—A Utopia of Religious Intellectuals," *Gilayon* (Bulletin of the Torah and Labor Movement), Elul 5756. The Lavi Conference, held at Kibbutz Lavi in 1975, can be seen as a direct continuation of the Movement for Torah Judaism's activities; the conference brought together educators, intellectuals and political leaders form the religious kibbutz movement as well as rabbis identified with Yeshiva University. Twenty-five years elapsed before the next Lavi Conference, and for the last five years, they have been held with the participation of the religious kibbutz movement, *Beit Morashah* in Jerusalem, Bar-Ilan University, and Yeshiva University. The participants in these conferences sought to give a voice to the community interested in the ideas of the old "Movement for Torah Judaism." An examination of the proceedings of the first Lavi conference in *Lavi Conference-5735 [1975]* (Tel-Aviv, 5735) and of the second conference, in 1999, in H. Goldberg, ed., *Ka-Lavi Yaqum* (Tel-Aviv, 2000) shows that the "Movement for Torah Judaism" was completely forgotten. Not one speaker at these conferences so much as mentioned the movement that was without doubt their precursor in both mode of analysis and conceptual direction.

[9] See M. Kahana, "Talmudic Research in the University and Traditional Study in the Yeshiva," in M. Kahana (ed.), *Tribulations of Tradition and Change—Essays in Memory of Aryeh Lang* (Rehovot, 5750), pp. 113-142. I will refer to Kahana's approach below.

[10] Z. Falk, "A View From Outside," *Responsa of the Law Committee of the Rabbinical Assembly in Israel* 6 (5755-5756), p. 337.

[11] M. Roth and Y. Yarden (above, n. 8), p. 32; cf. M. D. Har, "The Significance of *Halakhah* in Shaping Jewish History," in Y. Eisner, ed., *Thought and Halakhah* (Jerusalem, 5728), pp. 139-140 (Hebrew).

[12] A. Rozenak, "*Aggadah* and *Halakhah*—Reflections on Trends in the Study of the Philosophy of *Halakhah*," in A. Berholtz, ed., *Journey to the Halakhah: Inter-Disciplinary Studies in the World of Jewish Law* (Tel-Aviv, 5763), p. 296 (emphasis in the original) (Hebrew).

[13] A. Rozenak, id. pp. 297-298. At note 78, Rozenak notes that difficulties along these lines are apparent among some members of the "Movement for Torah Judaism" as well as in the writings of R. Jacob Jehiel Weinberg, author of *Seridei Eish*.
[14] R. Rosenthal's halakhic teachings can be found in the archives of the religious kibbutz movement at Kibbutz Yavneh.
[15] The biographical details are taken for the pamphlet *Professor Eliezer Samson Rosenthal, of blessed memory*, Hebrew University—Institute for Jewish Studies (Jerusalem, 5741)(Hebrew).
[16] Eleizer Samson Rosenthal, "Concluding Remarks at the Founding Conference (Third Intermediate Evening of Passover)," *The New Shall Be Sanctified and the Holy, Renewed—The Movement for Torah Judaism* 1, Jerusalem, 5726.
[17] Dr. Shahaq, a lecturer in chemistry at Hebrew University, was a frequent writer of anti-religious letters to the editor.
[18] Different versions of the article appeared in other publications: *Or ha-Mizrah* 10 (5725-5726): 227-231; *Qol Torah*, Year 20 (5726), 6, pp. 3-7; *Morashah* 1 (Sivan 5731): 5-10.
[19] See, e.g., *Leviticus Rabbah* 9:3—"R. Ishmael son of R. Nahman said, *derekh erez* preceded the Torah by twenty-six generations. The term "*derekh erez*" is variously used to mean "worthy, proper conduct" or "worldly labor," among other things.***—translator's note.***
[20] See above, n. 16. Quotations in italics here are from that article.
[21] Then Minister of Education Rabbi Kalman Kahana, a member of *Kibbutz Hafez Hayyim* and a leading spokesman for *Po`alei Agudat Yisra'el*, understood Rabbi Unterman's statement differently. In a review of *He-Hadash Yitqadesh*, published in the newspaper *She`arim* on Sukkot Eve 1966, Rabbi Kahana wrote, "With sarcasm ill-befitting a professor lecturing *ex cathedra*, he praises Rabbi Unterman…" On Rabbi Kahana and his critique, see further below.
[22] *Mishnah Berurah* itself (334:26), however, also suggests a different result from the one quoted above. R. Rema had written that "Where there is uncertainty regarding the danger, it is permissible even to extinguish a fire in a gentile's house, and that is our practice, but it applies specifically to extinguishing the fire, which is a labor whose product is not needed, and there will be danger if he fails to extinguish; but it is forbidden to desecrate the Sabbath to save [property]." In commenting on that passage, *Mishnah Berurah* says: "Even if extinguishing [the fire] were a labor needed for its product, it would still be permitted, for he wrote that danger is present." This implies that where there is a possibility of danger ensuing from a failure to aid, the actions that may be taken to rescue a gentile are not limited to those that transgress only rabbinic prohibitions, and that even biblical prohibitions are waived—precisely the point made by *Hatam Sofer*. The seemingly conflicting passages in *Mishnah Berurah* may be distinguishable, however, in that he does not see the risk of danger in the context of withholding routine medical treatment, but where danger definitely is present, there is no alternative to transgressing even biblical prohibitions. See further below, in Rabbi Rosenthal's analysis of *Hatam Sofer*'s comments.
[23] As far as I know, this article was never published. I received a copy of it (and many hand-written drafts) from his sons, my teacher Prof. David Rosenthal and Dr. Abraham Rosenthal, and I want to thank them for their help and good will. The article has no heading or date, but it likely was written around the time R. Kalman Kahana's review was published (Sukkot 1966).
[24] It bears the date 21 Menahem Av 5539 (1 August 1839)—about two months before *Hatam Sofer*'s death.
[25] *Resp. Ziz Eli`ezer*, part 8 (Jerusalem, 5725), sec. 15.
[26] I elaborated on this in my article "Don't Judge a Book By Its Cover," *Meimad* 22 (2001): 24-27 (Hebrew), and see further below.
[27] Rabbi Sh. Z. Auerbach, as quoted by his student, Rabbi Y. Y. Neubart in the latter's book *Shemirat Shabbat ke-Hilkhatah* (Jerusalem, 5739), chap. 40, par. 14, n. 42: "[This is] especially [so] nowadays, when word can spread instantaneously from one end of the world to the other, and withholding treatment from a gentile certainly entails great danger." See also, e.g., Rabbi Ovadiah Yosef, *Qobez Halakhah ve-*

Refu'ah, part 1, p. 147. They quote *Hatam Sofer* but do not go into ideological questions of equality and human worth.

[28] Above, n. 16.

[29] See the exchange of letters between Yoska Ahituv and Rabbi Ronetzky, *Itturei Kohanim* 180 (Kislev 5760): 26-41.

[30] The quotation is from a book by Sh. Z. Shragai, *Practical Problems in the Light of Halakhah* (Jerusalem, 5753), pp. 1-12 (Hebrew). Sagi quotes him whenever he wants to invoke the *halakhah*'s ethical tone. I have come across no contemporary rabbi who cites Rabbi Avigdor in any context, and evidently no one had heard of him until Shragai published his essay. It is clear that Rabbi Avigdor carries less weight in the halakhic decisional process than do other, far more renowned decisors. Sagi's effort to alter this balance by presenting all the voices on a level plane fails to reflect the true halakhic dynamic. (To avoid any unintended deprecation of Rabbi Jacob Avigdor, let me note that my father was acquainted with him in the Buchenwald concentration camp, where they were assigned to the same block, and recalls him as one who worked mightily to preserve the divine image in man. Among the incidents recounted by my father was one of a Passover on which Rabbi Avigdor recited *qiddush* over a piece of bread he happened to have, adding a learned explanation for his action. After the liberation, Rabbi Avigdor emigrated to the United States and then to Mexico, serving as rabbi in Mexico City, where he died in 1967.

[31] "Editors' Comments, *Mahalakhim* 2 (Menahem Av 5729): 45.

[32] A. S. Rosenthal, "From the Deliberations of the *Halakhah* Committee," *Mahalakhim* 4 (Marheshvan 5731): 21 (Hebrew).

[33] I commented on this aspect of Rabbi Rosenthal's statesmanship in a review of halakhic writings by the Conservative Movement: "*Halakhah* Has Been Abandoned," *De`ot* 6 (Tevet 5760): 22-26. Rabbi David Golinkin responded to my article in his "*Halakhah* For Our Day," *De`ot* 7 (Nisan 5760): 36-38. He maintains that Rabbi Rosenthal exemplifies the "fear of ruling" that has characterized Orthodoxy since the days of *Hatam Sofer* and that demonstrates the failure of Modern Orthodoxy.

[34] See Avi Sagi, "An Examination of Two Models of the Concept of Halakhic Truth and Their Meaning," in A. Berholtz (ed.), *Journey to the Halakhah—Interdisciplinary Studies in the World of Jewish Law* (Tel-Aviv, 5763), pp. 221-241 (Hebrew). This article is an adapted and corrected version of an articles published in *Higgayon* 1 (5749): pp. 69-90.

[35] For a socio-historical examination of this aphorism, see Y. Kohen, *The Attitude Toward Gentiles in Halakhah and in Practice in the Time of the Tanna'im*, doctoral dissertation, Hebrew University (Jerusalem, 5735) (Hebrew).

[36] A. Sagi, *Judaism: Between Religion and Morals* (Tel-Aviv, 1998), chap. 8 (Hebrew).

[37] See above, n. 18.

[38] Rabbi Hoffmann is quoted by Rabbi Rosenthal in his unpublished article (see above, n. 22) and is mentioned in his comments in *Mahalakhim* 5 (Elul 5731): 19. Rabbi Hoffmann's German essay is titled *The Shulhan Arukh and the Decisors on the Attitude of Jews to Gentiles* (Berlin, 1894), pp. 64 et seq. Rabbi Rosenthal translated a part of this essay, and I quote from that translation. [The English here translates the Hebrew translation rather than the original German.]

[39] Rabbi Rosenthal comments on this: "Would that you could arise and witness, Rabbi David Zevi Hoffman, that a later generation would conceal what you had discovered and that your students' students today act as if they had never seen the light." Rabbi Rosenthal is referring to the critique by Rabbi Kalman Kahana (see below), who was an alumnus of the Rabbinical Seminary in Berlin.

[40] Rabbi Kalman Kahana studied in Rabbi David Zevi Hoffmann's rabbinical seminary and was ordained a rabbi and awarded a doctorate. He immigrated to the Land of Israel, joined Kibbutz Hafez Hayyim, and was a pre-eminent student of the *Hazon Ish*. His article was published in the newspaper *She`arim*, Sukkot Eve 1966, pp. 3, 6. At the time, he served as Deputy Education Minister on behalf of *Po`alei Agudat Yisra'el*.

[41] A. Sagi's book *Judaism: Between Religion and Morals* is devoted to examining this subject. The author's inclination to accentuate morality that does not stem from divine command is prominent throughout the book.
[42] See A. Sagi's article "Rabbi Soloveitchik and Prof. Leibowitz as Halakhic Theoreticians," *Da`at* 29 (Summer 5752): 131-148.
[43] Recent studies have examined the concepts involved in "philosophy of *halakhah*" and the meta-halakhic norms implicit in the halakhic process. See the collected articles of Eliezer Goldman in his *Inquiries and Studies—Jewish Thought Past and Present* (Jerusalem, 5757) (Hebrew).
[44] Rabbi David Menahem Monish Babad, *Responsa Havazelet ha-Sharon* (Bilgorai, 5698), sec. 28.
[45] Rabbi Jacob Bereish served as rabbi of the *Haredi* community in Zurich from 1934 (when he fled the Nazis) until his death in 1977. The quotation below is from his *Responsa Helqat Ya`aqov* (Tel-Aviv, 5752), *Even ha-Ezer*, sec. 56.
[46] *Resp. Minhat Yizhaq*, part 9, sec. 150.
[47] E. E. Urbach, "Tradition and *Halakhah*," *Tarbiz* 50 (5741): 163 (Hebrew).
[48] Rabbi Joseph Dov Soloveitchik, "*Mah Dodekh mi-Dod*" in *Sod ha-Yahid ve-ha-Yahad* (Jerusalem, 5736), pp. 223-224.
[49] In his article (above, n. 33), Avi Sagi seeks to prove the dominance of the concept that the *halakhah* is the decisor's creation. In my judgment, however, the decisors experienced the matter differently. See, for example, R. Judah ha-Levi, *Kuzari* 3:41—"'Do not stray [from the sages' directives; cf. Deut. 17:11]'…for they are assisted by God's presence…so that they do not err"; Nachmanides, *Commentary on the Torah*, Deut. 17:11—"In accordance with their [the sages'] views, He gave me [Moses] the Torah…for the spirit of God is on his servants"; *Hafez Hayyim on the Torah*, ed. Rabbi S. Grayman (Benei-Beraq, 5703), p. 30—"One whose opinion is the opinion of Torah (*da`at Torah*) can resolve all the problems of the world…on condition that his opinion be pure, with no distraction or diversion whatsoever"; Rabbi Soloveitchik, *Divrei Hagut ve-Ha`arakhah*, p. 12 (in the context of a eulogy for R. Hayyim Ozer Grodzhinsky)—"That priest whose brain was suffused with the holiness of the Torah…would see by the holy spirit the answer to all current political questions." See also the article by L. Kaplan, "*Da`at Torah*—A Modern Understanding of Halakhic Authority, in Z. Safrai and A. Sagi, eds., *Between Authority and Autonomy in Jewish Tradition* (Tel-Aviv, 1997), pp. 105-145 Hebrew).
[50] This tendency of Rabbi Soloveitchik has been discussed by his son-in-law, Rabbi A. Lichtenstein, in "Human Dignity," *Mahanayim* 5 (Iyyar 5753): 14-15 (Hebrew).
[51] Rabbi Sh. Aviner, *Am ke-Lavi*, part 2 (Jerusalem, 5743), p. 65.
[52] For a fuller consideration, see Y. Twersky, *Introduction to Maimonides' Mishneh Torah* (Jerusalem, 5751), pp. 338 et seq. (Hebrew).
[53] Let me add a minor note to the debate on this matter between Prof. D. Statman and Rabbi Y. Cherlow. In an interview ("Seeking the [??]," *De`ot-Amudim* 12 [Tevet 5762]: 6-10), Rabbi Sharlow set forth a critique of religious academics. Prof. Statman responded in a letter ("Let Us Have Rabbis Who Study in the Academy," *De`ot-Amudim* 13 [Iyyar 5762]: 39), in which he described, as one of the modern religious community's features, its positive attitude toward general learning and its interest in having its children obtain an academic education. Statman wants rabbis who study history, literature, cinema, and psychology, and who do so not merely to be able to respond to anti-religious challenges from those quarters, but for the greater glory of Torah. Rabbi Sharlow replied forcefully in an ensuing article ("Let Us Have Rabbis Who Are Not Academics," *De`ot-Amudim* 14 [Elul 5762]: 4-6), raising several arguments. He begins, under the heading "Why I Have No Desire For an Academic Rabbi," by citing the aloofness and disengagement of academic writing: "This aloofness seeps through from academic method to life-ethos. The academician is usually a disinterested third party, observing from the side as analyst and investigator rather than participating himself." It strikes me that this is the most substantial of his arguments. At issue are two human states-of-mind—that of the investigator and that of the rabbi—and the modern religious person is indeed influenced by both, despite their contradictoriness and occasional

rivalry. The essence of the modern person, rooted in a world centered on individual autonomy, stands at odds with the world of the religious person, who sets God at the center of existence. Much has been written on the subject, particularly around the complex image of Rabbi Soloveitchik. See A. Sagi, ed., *Faith in Changing Times* (Jerusalem, 5757), Part 4: "Between Old and New—Judaism and Modernity" (especially M. Sokol's article, "Master or Servant—On Human Autonomy Before God in the Thought of Rabbi Joseph Soloveitchik," pp. 403-444) (Hebrew). See also Z. Safrai and A. Sagi, eds., *Between Authority and Autonomy in Jewish Tradition* (Tel-Aviv, 1997) (Hebrew), which includes numerous articles on this divisive issue in modern religious life.

[54] See, for example, E. E. Urbach, "On Revitalizing the *Halakhah*," *Publication of the Movement for Torah Judaism* 2 (Jerusalem, 5728), pp. 68-76 (Hebrew). Urbach reviews two longstanding and widespread halakhic currents: first, the tendency that dares to decide halakhic issues by legislation or actions that take account of the environment and changes in it; and, second, the tendency of "those fearful of ruling," who reject all change. Urbach tried to show the latent potential of *halakhah* in pre-modern times, before "those fearful of ruling" gained the ascendancy ("precisely in an era of change in all areas of social and individual life").

[55] See, for example, the comments of Rabbi E. Waldenberg, *Resp. Ziz Eli`ezer*, part 5, introduction.

[56] See, for example, the esteem with which he eulogized his teacher in the memorial booklet cited above, n. 15, pp. 27-39. At the end of his remarks, Prof. Kahaha says: "We are indebted to you for most of our Torah, bottom to top: from the proper treatment of texts, through the attitude toward sources, all the way to the formulation of our worldview on fundamental dilemmas of research and education, critical approach and religious faith, humanism and Judaism, man and God."

[57] M. Kahana (above, n. 9), p. 129

[58] Id., p. 131.

[59] Id., p. 133. One gets the sense that Kahana fully understood the meaning of his words but toned them down considerably in an effort to diminish somewhat the daring nature of his suggestion.

[60] *Mahalakhim* 5 (Elul 5731): 16-21.

[61] For example, the "Zomet" Institute, led by Rabbi Israel Rosen, resolves questions of technology; the "Pu`ah" Institute, led by Rabbi Menahem Burstein, deals with questions of fertility and family; and the "Institute for Imparting *Mishpat Ivri* [Jewish civil law]," headed by Rabbi Razon Erusi, resolves questions related to the legal system. They all participate in the effort to build bridges between societal reality and the world of *halakhah*.

[62] See, for example, Tamar Ross, "Orthodoxy, Women, and Halakhic Change—Theological Analysis and Interpretive Perspectives," *Journey to the Halakhah*, above, n. 12, pp. 422 et seq. (Hebrew).

[63] E. E. Urbach, above, n. 53, p. 76.

[64] Above, n. 16, p. 20.

Meorot
A Forum of Modern Orthodox Discourse

Naturalism and the Rav: A Reply to Yoram Hazony

Alex Sztuden

Biography: Alex Sztuden has taught philosophy at Fordham University and recently spoke on Rav Soloveitchik's thought at the Yeshiva University/Bar-Ilan University International Conference: "Reflections on the Thought and Scholarship of Rabbi Joseph B. Soloveitchik." He holds a J.D. from Columbia Law School and an M.A. in philosophy from Fordham University.

Abstract: In the April, 2012 issue of the journal *Commentary*, Yoram Hazony provided an interpretation of one of R. Soloveitchik's recently published manuscripts entitled "The Emergence of Ethical Man." Hazony argued that *Emergence* is "an entirely naturalistic" work that constitutes "The Rav's Bombshell." This essay proposes an alternative reading of *Emergence*, one that does justice to both the book's pronounced naturalistic strands as well as its non-naturalistic elements. This essay argues that Hazony's reading of *Emergence* is unwarranted and that R. Soloveitchik was not a thoroughgoing naturalist, either in his major works, or even in *The Emergence of Ethical Man*.

Meorot 10
Tevet 5773
© 2012

A Publication of
Yeshivat Chovevei Torah
Rabbinical School

Naturalism and the Rav: A Reply to Yoram Hazony

Alex Sztuden

In the April, 2012 issue of *Commentary*, Yoram Hazony, founder of the Shalem Center in Jerusalem, published an assessment of a posthumously published book by Rabbi Joseph B. Soloveitchik called *The Emergence of Ethical Man* ("*Emergence*").[1] The book is part of The *Toras HoRav Series* and is based upon manuscripts of lectures that R. Soloveitchik delivered in the early 1950s. In his article, Hazony alleges that *Emergence* is an "entirely naturalistic" work, characterizes it as "The Rav's Bombshell" and believes it represents R. Soloveitchik's "posthumous revision of some of the orthodoxies of Orthodox Judaism." Hazony's article provoked an avalanche of letters to the editor, many of which were published, along with Hazony's response, in the September, 2012 issue of *Commentary*.[2]

It is my contention that Hazony's analysis of *Emergence*, however provocative, is deeply flawed. To be sure, *Emergence* is the most naturalistic of R. Soloveitchik's works, but the naturalism is mitigated—explicitly and at some length—in ways that Hazony ignores. Apart from this critique of Hazony, I hope to shed light on aspects of *Emergence* that cannot be understood, and are in fact obscured, if the book is read solely through the prism of 'naturalism.' *Emergence* is surely one of R. Soloveitchik's most fascinating works, but not for the reasons Hazony provides.

Hazony's reading is meant to demonstrate how Rav Soloveitchik re-interpreted traditional concepts along naturalistic lines.

Throughout his essay, Hazony attempts to show how R. Soloveitchik re-interpreted traditional concepts like revelation, prophecy, miracles, immortality, and redemption, and proceeded to naturalize them. For Hazony, this move towards naturalism generally involves claims that: 1) human beings are situated squarely within the natural, biological world of animals and plants and are continuous with that world—there is nothing supernatural, magical or "transcendent" about human beings as such; 2) nature's laws are never violated; 3) human reason can, on its own, discover and ground the most important truths about how to live; 4) human beings can on their own realize those norms in this world, i.e., they can redeem this world and themselves; and 5) the focus of our attention should be on this world, not on some spiritual afterlife.[3]

Hazony's reading of *Emergence*, meant to demonstrate how R. Soloveitchik re-interpreted traditional concepts along naturalistic lines, is at times insightful. Unfortunately, his attempted reduction of the range and depth of the ideas found in *Emergence* to the abstract philosophical category of 'naturalism' cannot be sustained when we look closely at the text itself.

Abraham and Moses

Consider the following 'bombshell' from the lyrical passages in *Emergence* describing the background to Abraham's eventual encounter with God:

> "In fact, Abraham discovers the ethos himself. As a free personality, he goes out to meet the moral law…he chances to find it within himself."

Hazony thinks this startling passage is naturalistic through and through, for human beings are here portrayed as freely discovering the moral law within them.[4] But Hazony doesn't mention, or seem to be aware, that R. Soloveitchik here is describing only one side of a dialectic—that between the *natural* religious consciousness and the *revelational* consciousness, a distinction he elaborates upon in his major work *And From There You Shall Seek*. Having depicted Abraham as the

model of the free and natural religious consciousness, R. Soloveitchik switches tracks, and contrasts him with Moses:

> "While the father of the nation voluntarily undertakes a historical mission…the redeemer [Moses] is forced by apocalyptic command into a historical situation. He did not discover God…The apocalyptic revelation surprised him and took him prisoner. He encountered apocalyptic necessity." (182).

Hazony ignores this starkly non-naturalist passage, which R. Soloveitchik deliberately places in dialectical balance with the Abraham passage.[5]

Abraham, Prophecy and Relationship to God

Even within the Abraham narrative itself, Hazony ignores important phrases. For instance, Hazony cites R. Soloveitchik: "As a natural being, man is arrested within concreteness, and, as such, can never reach a transcendent God…Man discovers God within finitude."[6] Yet that is not the whole passage, which also includes these words: "In order to meet man (i.e., revelation) God descends from transcendental infinity into concrete finitude and confines Himself…"[7] What happened to those words in Hazony's rendition? Hazony places ellipses in their stead, thereby effacing the word 'revelation' and the decidedly non-naturalist theme of God's descent to man.

To say the least, this alters the meaning of the passage.[8] In other words, Abraham both discovers the moral law *and* subsequently God reveals Himself to Abraham (i.e., prophecy), but Hazony collapses this dual movement. Hazony does mention God's entreaty to Abraham to go forth from his land, but he proceeds to discuss only one aspect of this entreaty, namely, that God wants Abraham to uproot himself from the corrupt society around him. From Hazony's depiction, one cannot know that God entreats Abraham to go into the desert because:

> "God does not share His beloved person with society…The human being acting under divine orders is portrayed as a forsaken person whose only friend is God…"

and

> "God Himself appears here under two aspects: as master and owner of the entire being…to whose absolute will and authority man must surrender;[9] and as friend, comrade and confederate who wanders with His chosen person. God takes His friend along…The motif of the Song of Songs prevails throughout the narrative…" (152).

Abraham and God here enter into a relationship of mutual love and friendship. It is hard to see how all this fits comfortably into the naturalist theme.[10]

God's Will and the Moral Law

Moreover, in Hazony's rendition, there is a subtle but significant shift that occurs when Hazony translates R. Soloveitchik's statement that Abraham encounters a unique being, a God who commands Abraham. Hazony writes that yes, truth is not simply subjective, here Abraham is encountering an objective reality, so moral autonomy does not mean that you can make anything up:

> The moral law that Abraham discovers on his own must conform to an objective truth. No, he discovers something real that is both "from beyond and within his own personality." But R. Soloveitchik stresses: "God came to man after the latter had sought and found him. Only then did he contact Abraham."
>
> Knowledge gained through prophetic insight is thus presented here as something that man "seeks and finds" even before God's role in this process becomes evident. This makes biblical prophecy sound very much akin to the natural human effort to attain knowledge: That effort, too, is a search that ends with some kind of confirmation from beyond.[11]

But R. Soloveitchik *didn't* write that Abraham encountered "something real" "which is akin to the natural human effort to attain knowledge," and "which ends with some kind of confirmation

from beyond." R. Soloveitchik wrote that Abraham encountered *God*, and Hazony shifts the profoundly personal, experiential nature of this encounter to an encounter with an objective reality, the way a scientist might receive confirmation of his hypothesis from an objective reality from "beyond."

Hazony's subtle shift in terminology is noteworthy, for the problem is analogous to what the scholar Jon Levenson has pointed out in his review of Hazony's book on the philosophy of the Bible. As Levenson writes:

> The point is this: the focus of Hazony's History, and of most of the Hebrew Bible, is not on "discover[ing] the true and the good in accordance with man's natural abilities," as he thinks. The focus, rather, is (to invert and adapt Kass' words) on what happened, not on what always or naturally happens. It lies on the world-transforming acts of the unique and unparalleled God in covenant with the unique and unparalleled people he has formed for himself. And it is within that covenantal framework of love, service, and obedience that the laws propounded in the name of Moses find their rationale….
>
> [A]ccording to the biblical narrative, the norms of the Torah are embedded within the covenant, and observing them is an act of covenantal service, of loyalty to the Lord alone in an ongoing relationship to which he is not dispensable. Break them loose from that relationship and they mean something very different from what the Hebrew Bible intends. In other words, whatever value these norms may have as expressions of abstract reasoning, in the Hebrew Bible they are cast as *commandments*—vital elements in the intensely personal relationship of the one who commands and those who are commanded.[12]

Levinson points out that the Bible's laws mean something very different when removed from their status as God's commandments. For Hazony, saying that "God commands x" is shorthand for saying that "x is true." The *commanded* nature of the law in which God serves as author and which helps to establish a relationship between God and His people is rendered superfluous in Hazony's re-description.

Hazony shifts the profoundly personal, experiential nature of the encounter to an encounter with an objective reality

---

Similarly, here in *Emergence* it is not simply 'reality' that makes the moral laws true. It is God and His commands that make them true. As presented in *Emergence*, reason alone is insufficient to ground the moral law. It is true that reason can discover the moral law, but the source of the laws' validity is also to be located in God's will. [13] In both his readings of the Bible and of *Emergence*, Hazony seeks to minimize the role of the *commanded* nature of the laws and to "break them loose" from the critical role they play in "an intensely personal relationship of the one who commands and those who are commanded."[14]

Immortality

To buttress his naturalistic interpretation of *Emergence*, Hazony cites passages from R. Soloveitchik that seem to indicate a radical departure from Orthodoxy with respect to the doctrine of immortality. R. Soloveitchik writes:

> [The] concept of immortality as coined by Judaism is the continuation of a historical existence throughout the ages. It differs from transcendental immortality insofar as the deceased person does not lead an isolated, separate existence in a transcendental world. The identity [of the individual] persists on a level of concrete reality disguised as a people....Metaphysical immortality is based upon historical immortality. Whoever does not identify himself with the historical ego and remains at the natural level cannot attain immortality.

Thus according to Hazony:

> One does not overcome the natural limit of man's biological mortality by some supernatural means. It is rather by merging one's own consciousness with that of a historical existence or ego, which is to say, a people.
>
> If the biblical concept of man offers immortality only through the merger of one's living consciousness with the unending life of one's people, what kind of salvation or redemption can man hope for? Clearly, the Bible does not offer the individual salvation through the redemption of his soul in a transcendental world. What, then?[15]

As others have pointed out,[16] Hazony omits the word "first" when citing R. Soloveitchik's claim that "The concept of immortality" is a natural-historical-communal one, implying that there are no other concepts. But surely R. Soloveitchik also believed that there is a *second* concept of immortality, namely, personal immortality, which is clear both from his use of the word 'first'—which implies a second—and from the language that follows, where R. Soloveitchik explicitly states that personal immortality "is based" on natural-historical-communal immortality. Hazony never explicitly claims that R. Soloveitchik denies personal immortality as a biblical concept, but his inexcusable omission of the word "first", along with much of the rest of what he writes, implies it. Nevertheless, Hazony is correct that in *Emergence* R. Soloveitchik wishes to emphasize and highlight the natural-historical-communal meaning of immortality.

Miracles

Consider also R. Soloveitchik's bold interpretation of miracles. According to R. Soloveitchik, miracles involve no violations or suspensions of natural laws. Rather, the miraculous event represents the merger of nature and ethics, of bending nature to realize ethical purposes. In refusing to see miracles as violations of natural laws, R. Soloveitchik is following in the footsteps of Maimonides. And what does this merger of nature and ethics entail? As R. Soloveitchik points out, this bending of nature to God's ethical will implies that God does, at times, *interfere* with history. In other words, R. Soloveitchik's treatment of miracles includes the doctrine of divine intervention (170-171), albeit working within natural and historical processes, and also includes the corollary guarantee that the promises contained in the covenant will eventually be realized (171). There is no possibility of 'radical tragedy.'[17] Maybe this is naturalism, but it is an extraordinary form of naturalism, one that includes divine intervention in history and divine guarantees regarding the fulfillment of an ancient covenant. Further, it is through the agency of Moses that God proceeds to initiate the process of liberation from Egypt. As R. Soloveitchik continues: "God endows him with supernatural power to perform certain miraculous deeds. Moses here attains a new stature."[18] (183). In R. Soloveitchik's understanding of how God acts in history through natural processes, there is hardly any bombshell.

But surely R. Soloveitchik also believed that there is a second concept of immortality, namely, personal immortality

---

It is important to recognize that these doctrines of divine intervention and divine guarantees are not stand-alone ideas, but are rather woven into the entirety of R. Soloveitchik's narrative on redemption and the unity of nature and ethics, and that these doctrines do not fit into any recognizable version of naturalism.

Redemption

Is redemption "entirely naturalistic" as presented in *Emergence*? Only if one ignores this: "God acts here in the role of co-participant in the historical destiny of His confederates and is duty-bound to bring the covenant to full realization. There is no other alternative. The promise must come true regardless of the willingness of the chosen clan." (183) Or this: "That is why Moses' prophetic

career [as redeemer] began with an apocalyptic experience. For had providence waited for Moses, the shepherd would never have found God." (187). [19] This passage is the culmination of R. Soloveitchik's argument that during the dark days of the "interim period," the period in which nature and ethical-historical purposes are split, human beings would not have been able to overcome this division on their own. God therefore, *must have* initiated the process of redemption, which is why He seizes Moses.[20]

The Unity of Nature and Ethics

Hazony focuses much of his argument on R. Soloveitchik's naturalistic account of how human beings move from mere biological beings to ethical beings:

> Soloveitchik's man is entirely "of this world," a part of nature. True, man comes into conflict with the order of nature through his capacity to distinguish between right and wrong and his yearning for God. But Soloveitchik argues that the possession of such qualities does not require a departure from the order of nature….[21]

The account in *Emergence* of man-as-animal[22] and of the conflict between nature and ethics, and of their eventual unity, constitutes one of R. Soloveitchik's most interesting and original contributions to Jewish thought. But Hazony's depiction ignores some crucial points and collapses key distinctions. R. Soloveitchik depicts a three-stage process with respect to the relationship between nature and ethics. At first, both are unified (the pre-lapsarian stage). In this initial stage, R. Soloveitchik provides a narrative of how natural being becomes ethical being. But, as Daniel Rynhold has pointed out, it is God's command that initiates the process of self-transcendence,[24] and Hazony ignores this non-naturalist claim.

R. Soloveitchik's account of the unity of nature and ethics is that it arises from the unity of nature and ethics in the divine consciousness.

In the second stage, a rupture between ethics and nature is effected by man's sin. We are living in this stage, which R. Soloveitchik terms "the interim period"—that stage in history prior to the messianic era. During this interim period, the rupture between nature and ethical-historical purposes (that is, nature's indifference to ethical purposes) can be partially healed either: a) intermittently—during "miraculous" events, when nature and ethics align themselves; or b) "for the most part" in the character of the charismatic personality. But the full and complete re-unification of nature and ethics must await the third stage, the messianic era, when nature and ethical-historical purposes will be completely aligned. And the crucial point in R. Soloveitchik 's account of the unity of nature and ethics—and the point which Hazony misses—is that this unity between the natural world and the ethical world, i.e., this teleological view of nature, arises from, and is dependent on, the unity of nature and ethics in the divine infinite consciousness. As R. Soloveitchik writes:

> "Yet in the divine infinite consciousness, the cosmic law is at the same time a moral law and morality is natural…God reveals Himself through the cosmos in the natural law and through the ethical universe. The unity of God warrants the unity of both orders: the natural and the moral." (189-190).

That is why,

> "Faith in the inevitable fulfillment of the covenant is unshakeable, a passionate, optimistic faith in the ultimate sensibility and meaningfulness of the historical process….in spite of the horrifying length and monotony of the antithetic interim, the synthesis must finally come true." (186)

So yes, on the one hand R. Soloveitchik is no doubt trying to show how ethics can arise as part of the natural world, as Hazony points out. But on the other hand, the possibility of their complete unity, of the overcoming of the rupture

and dualism between the natural and normative worlds, *is only intelligible* for R. Soloveitchik as a result of the more basic and primal unity of God, of the infinite consciousness in which there are no divisions.

R. Soloveitchik's faith that nature is slowly but surely moving towards ethical purposes, that the ancient covenant with the patriarchs will be realized, is grounded in his faith in the unity of God, where all dualisms are overcome. In other words, teleological 'naturalism' is unintelligible without the existence of a supernatural God who is guiding nature, however slowly, to its final re-unification with ethics. This, at least, is R. Soloveitchik's doctrine as found in *Emergence* and it can hardly be described as "entirely naturalistic." More problematic, the misleading label of naturalism actually covers up R. Soloveitchik's three-stage account of the relationship between nature and ethics and the complete dependence of their unity on the supreme unity of a supernatural God.

Thus R. Soloveitchik's 'naturalism' as presented in *Emergence*, includes the following elements:

1) the dialectic between Abraham and Moses, or that between the natural and revelational religious consciousness;
2) the idea that man owes unqualified and absolute allegiance to the Sovereign;
3) the claim that a divine command is needed to initiate the movement from natural to moral being;
4) the claim that the moral law is made true, not simply by an objective reality, but by God's command.
5) the dual movement between Abraham and God. While Abraham discovers the moral law, God also descends to him and reveals himself (i.e. prophecy);
6) the claim that divine contraction is ultimately a mysterious act;
7) a depiction of a relationship of love and friendship between God and Abraham;
8) the doctrine of divine intervention and interference with the course of history, albeit working through natural processes;
9) divine guarantees regarding the fulfillment of the covenant;
10) the necessity for God to have initiated the process of redemption; and
11) the doctrine of the unity between nature and ethics, which flows from the ultimate unity of nature and ethics in the divine infinite consciousness.

Maybe there are ways of jerry-rigging the concept of naturalism to accommodate the elements above.[25] But a more accurate assessment of *Emergence* would see these elements as *non-natural properties that take place in, or are part of, the natural world*. None of this negates the naturalistic bent of *Emergence*, it only complicates it. I certainly do not mean to imply that Hazony is completely wrong in his *general* thrust that *Emergence* is an attempt to naturalize aspects of Judaism. But R. Soloveitchik, with his penchant for dialectic, is much too complicated and multi-faceted a thinker to be reduced to simplistic labels like "entirely naturalistic." Hazony's manner of selectively citing passages that support his thesis, but ignoring or suppressing those which constitute a departure from a "thoroughgoing naturalism" is particularly problematic when applied to R. Soloveitchik, who was *systematically* a dialectical thinker and often presented conflicting claims. Selective citations from his works distort his methodology and cover up the multi-faceted nature of this thought.

Naturalism and *The Lonely Man of Faith*

In his *Jerusalem Letters*, a revised version of his original article,[26] Hazony spreads the naturalism canopy not only over *Emergence*, but over the rest of R. Soloveitchik's writings as well:

> Moreover, so far as I have been able to tell, nothing in R. Soloveitchik's published works in any way contradicts the naturalism of *Emergence of Ethical Man*. These issues are

deftly sidestepped, as in *Lonely Man of Faith*. But the naturalist standpoint of *The Emergence of Ethical Man* is never contradicted.[27]

It is ironic that Hazony singles out *The Lonely Man of Faith*[28] as in no way contradicting naturalism. This is profoundly mistaken, for in the latter part of *The Lonely Man of Faith* what we encounter is actually a sustained attack on the project of (completely) naturalizing Judaism.

As is well-known to readers of R. Soloveitchik's works, in *The Lonely Man of Faith* R. Soloveitchik contrasts two different personality types—Adam I and Adam II. Adam I is a conqueror, triumphant, optimistic, a builder and creator, full of dignity and majesty. Adam II is humble, subservient to the will of God, longing for genuine connections with others in relationships of love, and lonely. As R. Soloveitchik's narrative progresses, he writes that the particular historical loneliness experienced by Adam II arises from modern Adam I's *complete* appropriation of the language and categories of Adam II, into the language and categories of Adam I. In other words, in the modern, secular age, Adam I has penetrated into the inner sanctums of organized religion. He has recognized the need for the concepts of Adam II and has therefore taken them over by translating them completely into his own terms.

The essence of prayer for Adam II cannot be naturalized, unless naturalism includes total devotion and submission to the will of God

For instance, consider prayer. Adam I also prays, for he recognizes in prayer its majestic and uplifting nature. Nevertheless, he has missed the essence of prayer, which only Adam II retains. The essence of prayer for Adam II is that one is standing before God, that there is an encounter and a submission before God and his infinite will. Adam I has appropriated prayer, but he has *naturalized* it completely, re-imagining prayer in naturalistic and humanistic terms. But the essence of prayer for Adam II cannot be naturalized, unless by naturalism one includes total devotion and submission to the will of God. As R. Soloveitchik writes:

> Prayer, for instance, might appeal to majestic man as the most uplifting, integrating and purifying act, arousing the finest and noblest emotions, yet these characteristics…are of marginal interest to Adam II, who experiences prayer as the awesome confrontation of God and man…and at the same time being aware that he fully belongs to God and that God demands complete surrender and self-sacrifice. (95)

How is this passage consistent with an "entirely naturalistic" understanding of Judaism? As R. Soloveitchik writes: "The act of faith is unique and cannot be fully translated into cultural categories." (96). For R. Soloveitchik:

> [T]he magnitude of the commitment is beyond the comprehension of the *logos* and the *ethos*. The act of faith is aboriginal, exploding with elemental force as an all-consuming and all-pervading passional experience…The commitment of the man of faith is…immediately accepted before the mind is given a chance to investigate the reasonableness of this unqualified commitment…The man of faith has to give in to an "absurd" commitment. The man of faith is "insanely" committed to and "madly" in love with God." (94-95)[29]

How can these passages be read in a naturalistic light?[30] This passage stands in obvious tension with a naturalism in which the 'moral law is discovered within', an echo of Kant, whom R. Soloveitchik in *The Lonely Man of Faith* classifies as an example of how Adam I appropriates the language of Adam II (92).[31] *The source of the ultimate commitments of Adam II is simply not consistent with philosophical naturalism.*

Hazony links his reading of R. Soloveitchik with the larger project of naturalizing Judaism, starting with the Bible. Hazony writes that the Bible is full of accounts of what people philosophize about, of topics that are of universal human concern:

The things that we *do* find in Hebrew Scripture, by contrast, are in many respects similar to materials that are found in the books of philosophers and historians—whose subject matter is presumed to be the *natural* world: histories of ancient peoples and attempts to draw political lessons from them; explorations of how best to conduct the life of the nation and the life of the individual; the writings of individuals who struggled with personal persecution and failure and their speculations concerning human nature and the search for the true and the good; attempts to get beyond the sphere of the here and now

> and to try to reach a more general understanding of the nature of reality, of man's place in it, and of his relationship with that which is beyond his control.[32]

What Hazony purports to find in the Bible is precisely that which R. Soloveitchik attributes to Adam the first:

> However, the idea of majesty which Adam the first is striving to realize embraces much more than the mere building of machines…Successful man wants to be a sovereign not only in the physical but in the spiritual world. He is questing not only for material success, but for ideological and axiological achievements as well. *He is concerned with a philosophy of nature and man, of matter and mind, of things and ideas.* [emphasis added] (89)

Of course, R. Soloveitchik affirms this central, majestic aspect of Judaism:

> The idea that certain aspects of faith are translatable into pragmatic terms is not new. The Bible has already pointed out that observance of the Divine Law and obedience to God lead man to worldly happiness, to a respectable, pleasant and meaningful life. Religious pragmatism has a place within the perspective of the man of faith. (93)

But it cannot be the whole of Judaism. The project of "religious pragmatism" is in fact exemplified in Hazony's project of naturalizing Judaism. And for R. Soloveitchik, such a project, while laudable, is radically incomplete. Philosophical naturalism is disavowed by R. Soloveitchik in *The Lonely Man of Faith*.

In the writings of Yoram Hazony, we are treated to stirring portraits of the religion of Adam I. Yet it is with disappointment to discover that Adam II and his commitments are nowhere to be found, and this lacuna is especially disconcerting when a scholar is engaged in interpreting the works of R. Soloveitchik. Of course, we cannot, and should not, read *The Lonely Man of Faith* back into R. Soloveitchik's other works. R. Soloveitchik's *oeuvre* is not susceptible to such treatment. Indeed, I have highlighted one aspect in which the Kantian theme of discovering the moral law in *Emergence* is inconsistent with the act of faith as presented in *The Lonely Man of Faith*. Yet it is Hazony himself who has overreached, by claiming that nowhere does R. Soloveitchik contradict the doctrine of philosophical naturalism. This claim is simply mistaken, not only with respect to R. Soloveitchik's major works, but even with respect to *The Emergence of Ethical Man*—a bold and original work—but hardly the bombshell that Hazony would make of it.

NOTES

[1] Joseph B. Soloveitchik, *The Emergence of Ethical Man* (New York: Ktav, 2005).
[2] For the original article, see Yoram Hazony, "The Rav's Bombshell," *Commentary* (April, 2012) pgs. 48-55. The subsequent letters, along with Hazony's response, appear in "An Exchange on The Rav's Bombshell," *Commentary* (September, 2012) pgs. 69-76. It should be noted that many of the letters to the editor were significantly truncated. Hazony also published a somewhat revised version of his original article online. See Yoram Hazony, "A Bombshell from the Rav," *Jerusalem Letters* (April 2, 2012), accessible at: http://jerusalemletters.com/jletters/articles/a-bombshell-from-the-rav.
[3] Point 5 is uncontroversial with respect to R. Soloveitchik, as it occupies a central place in *Halakhic Man*.
[4] See Hazony, "The Rav's Bombshell," p. 52. It should be noted that R. Soloveitchik here is following the well-known *midrash* in which Abraham discovers God on his own, a view which Maimonides adopts and which, coincidentally, is at odds with the plain meaning of the Biblical verses, where God suddenly appears to Abraham and commands him. Further, R. Soloveitchik here slightly changes the *midrash* by depicting Abraham as discovering the moral law.
[5] The contrast between Abraham and Moses with respect to how they each come to meet God can be found in Maimonides' *Mishneh Torah*, *Sefer Mada, Hilchot Avodat Kochavim,* Ch. 1, 1-17. In the first few laws Maimonides describes how Abraham discovers God, while in halakha 17, Maimonides writes that it is God who initiates the movement towards Moses in order to uphold His oath to Abraham.
[6] Hazony, "The Rav's Bombshell," p. 52.
[7] *Emergence*, pp. 61-62. Note that the discussion in *Emergence* of infinity contracting into finitude is a repetition of a theme that occupies several pages in *Halakhic Man* - and R. Soloveitchik even cites the same *midrash* in both works. And for R. Soloveitchik, this divine contraction is full of mystery and paradox, as he describes it in *Emergence*:

> "In this wonderful prayer, Solomon formulated the most powerful mystery of divinity. Infinity and universality on the one hand, and self-contraction on the other… According to the Midrash, God revealed to him [Moses] the mystery of *tzimtzum* ("contraction")." (*Emergence*, pgs. 51-52)

This emphasis on the mysterious nature of infinity contracting into finitude, i.e., of creation, revelation and prophecy, is not consistent with naturalism.
[8] See also n. 9 for Hazony's unsuccessful attempt to naturalize the encounter between God and Abraham.
[9] See also this quote: "*All* life is considered by Judaism as belonging to God. He has exclusive, absolute ownership rights to all living creatures…there is no contractual legal protection of the tenant against the will of the owner….On the contrary, the living being owes Him unequivocal allegiance…Murder is the usurpation of something belonging not to me…" (42-43). As this passage shows, for R. Soloveitchik, the most basic commandment in ethics, the prohibition of murder, stems in part from God's absolute dominion over his created beings. The idea that God has absolute ownership rights over human beings is not always associated with naturalism, although some accounts of natural law do incorporate it. I doubt, however, that Hazony would be inclined to label this idea part of what he means by naturalism.
[10] R. Soloveitchik is clearly describing what in his mind is a genuine relationship of love and friendship between two beings, one of whom is surely supernatural. In his response to Lawrence Kaplan's letter in the September, 2012 issue of *Commentary*, where Kaplan argues that according to R. Soloveitchik, humans can in fact have knowledge of a transcendent God, Hazony unsuccessfully attempts to naturalize the encounter between God and Abraham, by asserting that Abraham utilizes his finite mind to hear God. Hazony's attempt to place prophecy under the banner of 'naturalism' by asserting that Abraham heard God through his finite mind renders the term overly expansive, thereby draining it of much of its

explanatory force. If the term 'naturalism' includes prophecy whereby God speaks to Abraham and commands him, where is the bombshell? Finally, in *Emergence*, R. Soloveitchik presents the encounter between God and man—which requires a divine contraction—as laden with "mystery" and paradox, language that is hardly consistent with philosophical naturalism. See n. 7. Where is the mystery according to Hazony? The scholar Dov Schwartz has provided an ingenious reading of the doctrine of divine contraction in *Halakhic Man,* a reading which ultimately seeks to explain away the mystery. See Dov Schwartz, *Religion or Halakha: The Philosophy of Rabbi Joseph B. Soloveitchik, Volume 1,* trans. Batya Stein (Leiden: Brill, 2007). However, Schwartz's reading depends on a highly controversial thesis regarding the esoteric nature of *Halakhic Man*. See my forthcoming review of Schwartz's book titled "Hermann Cohen in Disguise," in *Modern Judaism* (February, 2013).

[11] Hazony, "The Rav's Bombshell," p. 52.

[12] See Jon Levenson, "Category Error*," Jewish Review of Books* (Fall, 2012).

[13] R. Soloveitchik here essentially asserts that the moral laws are made true by *both* human reason and God's will. He does not explain how this can be so, but Hazony's translation of God's will into something akin to the world outside of us confirming our truth-claims renders God's will superfluous as that which forms the basis of the moral law. Ordinarily, if one discovers the moral law through reason, one is also necessarily engaged in the project of justifying or grounding that law. R. Soloveitchik's treatment of the relationship between ethics, reason and God's commands requires further exploration.

[14] While we can sometimes know God's 'will' through the commands that are issued, Maimonides had famously argued that we cannot know God's essence. So it is puzzling that Hazony then seems startled by R. Soloveitchik 's claim that "we cannot have knowledge of a transcendent God." But what exactly, is the bombshell here? That R. Soloveitchik was following Maimonides? Or that R. Soloveitchik was a neo-Kantian thinker who recognized that unfettered access to a transcendent world is problematic?

[15] Hazony, "The Rav's Bombshell," pp. 52-53.

[16] See various letters to the editor in the September, 2012 issue of *Commentary*, cited in n. 2. There are two issues here, what Hazony implies that R. Soloveitchik himself believed, and what Hazony implies that R. Soloveitchik believed about what the Bible itself says. Hazony clearly meant to imply that for R. Soloveitchik the Bible does *not* endorse the doctrine of personal immortality. As Hazony writes: "If the biblical concept of man offers immortality only through the merger of one's living consciousness…" What does Hazony mean by the word "only"? Hazony backpedals here in his response to some letters.

[17] To see this point more clearly, it is worth contrasting R. Soloveitchik's position in *Emergence* with David Hartman, whose writings come much closer to religious naturalism than R. Soloveitchik's. Naturalism is ill-equipped to explain why an ancient promise to an ancient people must be realized. Hartman recognizes this and therefore seriously entertains the possibility of 'radical tragedy,' that is, the possibility that Israel could in principle one day be wiped out and the promises never realized.

[18] This statement must be understood against the backdrop of R. Soloveitchik's understanding of miracles that do not violate natural laws and against his further statement that Moses's mission as an agent is a fully human mission. What is supernatural about his powers is not that he can perform miracles that violate nature but that he can effectuate an almost complete alignment of nature with ethical purposes as God's agent.

[19] This sentence is not technically inconsistent with what Hazony says about redemption, where Hazony's focus is on the fact that redemption takes place in this world, and not in some spiritual afterlife. But surely that isn't sufficient to claim that a concept is a naturalistic concept. If God must seize Moses through an apocalyptic command in order to initiate the process of redemption, and God must also do His part in guiding nature to its ultimate ethical goal, we cannot claim that redemption is an entirely naturalistic process.

[20] See n. 5.

[21] Hazony, "The Rav's Bombshell," p. 50.

[22] In the general philosophical literature, Kantian morality is often *contrasted* with naturalistic approaches to ethics. Insofar as R. Soloveitchik affirms that the *natural* desires of human beings are legitimate from a moral point of view and that they play a role in shaping the moral law, he is more "naturalistic" than Kant, as that term is often used.
[24] See Daniel Rynhold, "Review of *The Emergence of Ethical Man*," *Religious Studies* (Sep., 2006) 364-68.
[25] Hazony seems to partially pursue this strategy in his *Jerusalem Letters*. But how far can we stretch the meaning of "naturalism"? I note that *none* of the elements above could be accommodated by, for example, John McDowell's version of 'relaxed' naturalism in his *Mind and World*, or even Thomas Nagel's recent advocacy of 'teleological naturalism' as found in his *Mind and Cosmos*. R. Soloveitchik in *Emergence* moves far beyond even the most expansive versions of naturalism championed by contemporary philosophers (although a comparison to Nagel's views is complicated given the problems Nagel points out with the emergence of mind from matter. In *The Halakhic Mind*, R. Soloveitchik espouses a kind of qualified dualism; much less so in *Emergence)*. I note McDowell here simply because in his *Jerusalem Letters*, Hazony himself references McDowell and makes the connection. But the connection between McDowell's naturalism and R. Soloveitchik's ideas in *Emergence* is limited. See John McDowell, *Mind and World* (Cambridge, MA: Harvard University Press, 1996) and Thomas Nagel, *Mind and Cosmos: Why the Materialist Neo-Darwinian Conception of Nature Is Almost Certainly False* (New York: Oxford University Press, 2012).
[26] See n. 2.
[27] "A Bombshell from the Rav" in his *Jerusalem Letters*. This statement is surprising, to say the least. What about the central contrast between the natural and revelational consciousness in *U'bikashtem Mi'sham*? Or the sacrifice of the intellect in *Catharsis*? Or the centrality of apocalyptic, revealed religion in *The Halakhic Mind*? Hazony's claim leads one to question just what he means by "naturalism." If the above can be accommodated by naturalism, as Hazony might maintain, the term has become so expansive as to have become drained of its bombshell potential.
[28] Joseph B. Soloveitchik, *The Lonely Man of Faith* (Doubleday: New York, 1965).
[29] R. Soloveitchik sharply differentiates his position from Kierkegaard, so this quote needs to be read in light of the footnote on pgs. 101-02. See the discussion of R. Soloveitchik's criticism of Kierkegaard in Reuven Ziegler, *Majesty and Humility: The Thought of Rabbi Joseph Soloveitchik* (Boston: Maimonides School, 2012), pp. 168-69. This qualification does not alter the main point above.
[30] As noted above in the text, there are at least five general senses of Hazony's use of the term 'naturalism' in his article. One of the components of naturalism—the moral-rational component, which includes claims that man discovers the moral law within himself (i.e., Abraham in *Emergence* and Kant) and that the Bible is a philosophical attempt to illuminate what constitutes the good and just life—insofar as Judaism is seen only in that light, is rejected by R. Soloveitchik as leaving no room for the commitments of Adam II. Autonomy and religious pragmatism have their place in Judaism, an important and even central place, but they are not the whole of Judaism and their ultimate worth (for R. Soloveitchik) is derived from Adam II's more primal commitments.
[31] It is a misreading of Adam I's personality to claim that he is not an ethical being. In the first 'pure' stage maybe he is not, but as he borrows and appropriates the categories of Adam II, he certainly becomes an ethical being. As R. Soloveitchik writes: "Furthermore, as I commented previously, Adam [the first] distinguishes himself not only in the realm of scientific theory but in that of the ethico-moral and aesthetic gestures as well. He legislates norms which he invests with validity and great worth." (90) As noted above, R. Soloveitchik references Kant in *The Lonely Man of Faith* (92) as an example of how Adam I appropriates the language of Adam II, so it is clear that R. Soloveitchik views Kant as a noble embodiment of Adam I. Further, R. Soloveitchik's reference to "worldly happiness" in the text is meant to link Adam I's project of religious pragmatism to that of *eudaimonia.*
[32] Hazony, "The Rav's Bombshell," p. 55.

Meorot
A Forum of Modern Orthodox Discourse

Hertz, Reason and Religious Education

Nick Zangwill

Biography: Nick Zangwill is Professor of Philosophy at Durham University, UK. He is the author of *The Metaphysics of Beauty* (Cornell, 2001), *Aesthetic Creation* (Oxford, 2007), and is co-editor of *Scruton's Aesthetics* (Palgrave Macmillan, 2012). His forthcoming book is on the philosophy of music. He has published more than ninety papers on a variety of philosophical subjects.

Abstract: This essay argues that former Chief Rabbi Dr. Joseph Hertz of the United Kingdom was correct to offer reasons in his *Humash* for Jewish beliefs and practices from the point of view of someone who did not already accept them. His approach is opposed to the 'immersion' strategy, which only exposes Jews to Jewish sources and traditions. Hertz understood that in the marketplace of ideas of contemporary culture, the immersion strategy offers only fragile security when modern Jews have religious alternatives.

Meorot 10
Tevet 5773
© 2012

A Publication of
Yeshivat Chovevei Torah
Rabbinical School

Hertz, Reason and Religious Education

Nick Zangwill

One common approach to Jewish education in many strands of contemporary Judaism is what we might call the *immersion* strategy. The idea is that in order to get Jews to embrace Judaism and increase their observance of *mitsvot,* Jews should be immersed in the wisdom of the Sages and be exposed to Jewish ways of life. The assumption behind this—perhaps more tacit than explicit—is that when Jews have familiarity with Jewish views and traditions, they will gravitate towards Judaism by a kind of osmosis. The strategy is to provide a kind of intellectual *mikvah;* deep immersion is supposed to lead to the opening of a Jew's eyes. Often this immersion strategy involves exposing the person to expressions of awe towards the great scholarship and wisdom of various sages, and we hope that this awe is transmitted to the aspiring Jew. According to the *mikvah*/immersion approach, all Jews need do is *deepen* their knowledge of Judaism, and other things being equal, this will lead them to follow the ways of Jewish tradition.

I believe this approach to be a mistake, one with roots in a misunderstanding of the pluralism of the modern world—and probably that of other cultures and eras too. It may also get something wrong about Judaism itself. It is not that knowledge of Judaism and its traditions is not important, but the immersion approach omits the project of engaging in *reasons* and *arguments* for the whole system from a perspective outside the system.

A different approach than the immersion strategy is to give more of a sales-pitch in a busy and noisy market-place of ideas. This was the approach of the pre-war British Chief Rabbi Dr. Joseph Hertz's *Humash* (*Pentateuch and Haftorot*). Hertz got it right, because in the market-place of ideas, one cannot rely on a monopoly of supply, nor should Jewish religious educators desire to have such a monopoly. In today's world there is a choice: one can be a Buddhist Jew, a Christian Jew, a Moslem Jew, a Behai Jew, an atheist Jew, a Marxist Jew or a New Age Jew. (The last is particularly popular). Even when one opts to be Jewish Jew, he has a choice among Reform, liberal, Conservative, Masorti and various Orthodox brands of Judaism. There is a lot on the shelf! The fact that my parents and their ancestors used Persil washing powder does not mean that I should use Persil washing powder now. That is a different question. Brand loyalty cannot be relied upon.

Tradition makes for nice songs and comforting food; but without reasons tradition is fragile security for the future.

We need to hear *reasons* in the contemporary world. By reasons, I mean non-circular reasons, ones that do not appeal from one Jewish authority to another. Tradition makes for nice songs and comforting (if somewhat unhealthy) food; but, without reasons, tradition is fragile security for the future. To his credit, Hertz tried to give us reasons in his *Humash*. He is sometimes criticized for offering 'apologetics' for Judaism. But Hertz provides a more solid foundation for future practice than a strategy of deference and rote. The immersion approach is the more insecure one, for when one comes up for air, who knows what one will breathe, or what will one choose to breathe?

Hertz's *Humash* contrasts with much of the *Artscroll* series. There are many good aspects of the *Artscroll* series, in particular the typeface, layout and translation. Yet the commentary is very different from Hertz's *Humash*. The

Artscroll series pursues the immersion approach as opposed to the reasons approach. It assumes that the reader is on board with the general project of Judaism—and Judaism of a particular genre. Indeed, it assumes that it is obvious that one should be on board. Thus, a reader finds few non-circular reasons, and apparent difficulties are rarely confronted. But this does not work when there is a plurality of choices in a market-place of ideas. This is why I believe that Hertz's approach is superior.

When one comes up for air, who knows what one will breathe, or what will one choose to breathe?

One reason that Islam is a fast growing religion today is precisely because reasons are offered by Muslim religious educators and authorities, and they are reasons that do not appeal only to their own religious system. My point is not that they are good reasons, but they *are* reasons. Moreover, they are reasons that most Muslim teenagers (not sophisticated intellectuals) have at their disposal and can and will produce them when challenged. Other faiths should envy and emulate this. For example, try telling a young Muslim woman who covers her hair that Islam is sexist; you will be assailed by arguments to the effect that it is the very opposite. This is impressive. Reasons and logical arguments are what are needed in the market-place of ideas. Saying that one must simply penetrate further into the Jewish religious texts, study more and more and revere—that is defer to—the wisdom of Sages does not work as an approach for Jews who have alternatives.

There are consequences of this. Instead of trying to ban people who proselytize to Jews, Jewish religious educators and authorities should supply effective counter-arguments against Christian claims and those of other faiths or ways of life. ("Jews for Jesus" is the most notable organization that does this.) The attempt to ban such activities in Israel or elsewhere exhibits a patronizing attitude to ordinary Jews, who can make up their own minds *and* or who should be empowered to do so. Also Buddhism of a Westernized variety kind is immensely popular among Jews—and constitutes a far greater threat than Christianity. But the Jewish case against it, or against those elements of Buddhism that conflict with Judaism, is rarely heard. Presumably educators and authorities could supply such reasons. Yet I have the impression that they don't think it is a priority. This is to be expected, given the standard assumption that Jewish education is about immersion, not reasons and arguments.

The assumption seems to be that it is only a matter of competing for *airtime*, as it were, and that if Christians, Buddhists or others have more time for their commercials than the airtime allotted for Jewish 'education', then the Jew's loyalty will inevitably fall prey to conversion. On the other hand, if there is a Jewish monopoly of the doctrines to which Jews are exposed (like state-controlled television in a totalitarian regime), then Judaism will win their hearts.

Is not the average Jew less docile than this picture suggests? They can and should decide for themselves on the case that is put to them, and on the basis of their own reflections and observations. If so, there should be those who offer non-question-begging reasons and arguments.

"Are there any neutral reasons?" you might ask, philosophically. Are not reasons only reasons given assumptions, which are likely to be the doctrines of one outlook or another? While there is some truth to this objection, it is an exaggeration to suppose that there is no reflective standpoint from which we can ask what we have reason to believe. Embracing, abandoning, reaffirming an old or converting to a new way of life are often conscious decisions.

Of course we are sometimes passive and allow ourselves to conform to a set of norms from habit or rote, or to lapse through inattention. But when we choose a way of life, that choice is not a real choice unless we have reasons for choosing. People who consciously chose to embrace, abandon, convert to, or reaffirm, a way of life have their reasons. Like choosing a spouse or career, choosing a religion is done for reasons, even though it may become passive or a matter of habit thereafter. Without reasons we cannot choose; we can only be passively religious. But passively religious people are easy prey for those who have an arsenal of arguments. With what can they defend their way of life?

Jewish educators should not strive for monopoly control on the supply of religious ideas

---

I have been emphasizing the existence of a market-place of ideas, and that educators and authorities should not strive or wish for monopoly control on the supply of religious ideas. Given that there are alternatives, it is unlikely that mere deep immersion in the tradition will be effective. This strategy is a mistake today—and, I suspect, it always was. What is needed is a sales pitch. Jews, quite reasonably, want a good bargain! In this respect, ideas are not fundamentally different from washing power.

Rabbinic tradition contains a *midrash* that tells the story of God offering the Torah to the Jewish people, who took it as a good deal. The question in the contemporary world is: even if the Torah was a good deal at Sinai, is it still a good deal today? According to the *midrash*, God "hawked" the Torah around to several nations to see which would accept it. But it was difficult to sell, and only the Jews bought it.

What is omitted from this story is what the competing products were. It is surely wrong to think that the choice was just a question of accepting or rejecting the Torah. The question is whether to accept the Torah rather than other intellectual products that are available. The Torah, many Jews thought at Sinai, washed whiter than rivals brands. Were they right then? And does it still wash whiter today? Since that time, many new intellectual products have come on the market. We need good reasons to continue to buy Jewish or to buy some particular brand of Judaism. Either individual Jews come up with them for themselves or they are given good ones from rabbis, religious educators or Jewish leaders. Lacking reasons, Jews will certainly shop around. This is why regarding effective Jewish education, Hertz's approach was the right one.

Meorot
A Forum of Modern Orthodox Discourse

REVIEW ESSAY

New Books and Points of Discussion in the Halakhic Definition of Death: *Respiratory-Brain Death* by Avraham Steinberg, and *Defining the Moment—Understanding Brain Death in Halakhah* by David Shabtai

Noam Stadlan

Biography: Noam Stadlan is a neurosurgeon and Assistant Professor of Neurosurgery at Rush University, Chicago IL. He has written on the definition of death both in *halakhic* and medical literature. His article, "Conceptual and Logical Problems Arising from Defining Life and Death by the Presence or Absence of Circulation" appeared in *Meorot* 8, 5771 (2010)

Abstract: Two recent books advance different halakhic definitions of death. Avraham Steinberg presents a strong case for Respiratory Brain Death (RBD)—the irreversible cessation of respiration in the context of irreversible cessation of brainstem function and consciousness. Despite some flaws, RBD appears to the more logically valid definition and its consistency with halakhic sources is as good as that of other definitions. David Shabtai takes an encyclopedic approach, presenting a wide spectrum of opinions and offering valuable insights, but ultimately fails to critique adequately the definition of death as "the cessation of vital motion." His representation of the scientific data is at times misleading and inconsistent with biomedical sources. While Shabtai's book is a valuable collection of halakhic material, his analysis and conclusions should be understood as a partisan argument. Ones seeking a balanced analysis of the topic will need to augment the book with other sources.

Meorot 10
Tevet 5773
© 2012

A Publication of
Yeshivat Chovevei Torah
Rabbinical School

REVIEW ESSAY

New Books and Points of Discussion in the Halakhic Definition of Death: *Respiratory-Brain Death* by Avraham Steinberg, translated by Fred Rosner (*Merhavim*-Torah Center for Judaism and Education, 2012), and *Defining the Moment—Understanding Brain Death in Halakhah* by David Shabtai (Shoresh Press, 2012)*

Noam Stadlan

When is a person considered dead? Prior to the medical achievements of the mid 20th century, there was no practical need to address this question in depth. When the person stopped breathing and the heart stopped pumping, every bodily function, including neurological function ceased as well. In the era of modern medicine, ventilators can make air move in and out of lungs, hearts can be replaced with machines or transplants, and many different organs can be moved from one body to another. The cessation of a heartbeat and respiration are no longer irreversible and no longer imply the loss of every other function. With the medical advances came the need to develop a theory and criteria defining why a person should be considered alive or dead, and how to make that determination.

A vigorous discussion has taken place over the last 45 years both in the bioethical world and the halakhic world. The bioethical approach contains two broad positions: one defines the human being as a thinking being(perhaps with an identity) and therefore death is based on the brain/neurological criteria, the other position defines a person as a biological organism, and therefore death is the cessation of integrated function or some function in the body as a whole. This second approach does not give neurological function any privileged position.

While the basis and underlying theory may be different, the above two positions are reflected in the current halakhic discussions, but the halakhic discussion also includes a third position: the irreversible cessation of spontaneous respiration in the context of irreversible cessation of brainstem activity (ICSR) and consciousness. While the specific tests mandated by this definition overlap those mandated by the neurological definition, the difference in underlying justification has significant ramifications.

Two recently published English books address the halakhic definition of death. Avraham Steinberg[1] in "*Respiratory-Brain Death*" presents the case for defining halakhic death as the irreversible cessation of respiration in the context of irreversible cessation of brainstem activity. This is the standard first defined by the Israeli Chief Rabbinate in 1987 and reiterated in the recent Knesset bill in 2008.

David Shabtai[2] takes a different approach. In "*Defining the Moment- Understanding Brain Death in Halakhah"*, his goal is to create a 'conversation' between the various definitions of death. He pledges to ask the difficult critical questions necessary to fully understand the debate, and conduct a no-holds-barred exploration of the issue. He sees his book not as supporting a particular point of view, but as a resource, presenting a large amount of relevant data in a balanced fashion. Given this goal, it is essential to assess not only the quality of the information, but whether the presentation is indeed unbiased.

Shabtai uses two concepts to assist in evaluating the various definitions of death. The first is a concept taken from the bioethics literature[3]. He quotes Dr. James Bernat's suggestion that a definition of death requires three parts: a concept of life and death that identifies what exactly it is that makes us an alive human being; criteria for death indicating the state we can identify that corresponds with a person who has fulfilled the definition of death; and tests for death indicating what specific observations or medical tests need to be done and what results need to be obtained for there to be certainty that the criteria have been fulfilled. Shabtai applies this framework to the halakhic sources and tries to identify which parts of the sources refer to which specific levels of the definition. As we will see, this approach may impose a reading on the sources not necessarily intended by the author. On the other hand, it is a very valuable tool for evaluating current definitions of death, and will be even more helpful if future authors consciously fill out the outline and precisely identify exactly what they mean for each part of the definition.

Ideally, each part of the definition should be logically consistent with the other levels. For example, if the concept of life defines a person as a thinking human being, the criteria for death should be cessation of thinking and someone who fulfills the tests would not have any signs of thought. While the concept of life is not the domain of science or logic, science and logic are necessary to identify if the levels of the definition are logically consistent with each other, and if the tests accurately fulfill the criteria. This has been termed "internal validity."

Unfortunately the early halakhic sources do not address the realities produced by modern medicine

---

The second concept involves comparing the results of a definition to results of a situation where the determination is already known, i.e., "external validity."[4] The known outcomes can be halakhic or common sense. If the results of a definition of death conflict with an accepted halakhic position, the correctness of the definition is obviously called into question. Alternately, there may be situations where common sense tells us that someone should be defined as alive, but a definition of death defines them as dead. This would not necessarily be a halakhic problem, since the halakhic determination can be accepted and the consequences accepted. Questioning the halakhic determination under this circumstance is actually an appeal to consequences argument, not necessarily one of *halakhah*. I will later illustrate these possibilities.

The above methods of analysis create challenges to every definition of death. In addition to meeting the challenges of validity, halakhic

opinions obviously have to be based on the halakhic sources. Unfortunately, the early halakhic sources do not directly address the realities produced by modern medicine. Unless the rabbinic authors had prophetic knowledge, they based their opinions on pre-modern concepts of medicine and anatomy. The interpretation of the opinions requires assumptions, and it is influenced by the interpreter's position on (1) the impact of modern science on *halakhah*, (2) the fallibility or infallibility of earlier decisors[5], and (3) whether to understand opinions in the historical context in which they were written, or to impose on them an ahistorical understanding.[6]

Steinberg states his definition of death at the outset:

> "when it is medically obvious that a person has no spontaneous respiration at all and is lying motionless like a stone without any consciousness and no movements or reactions (to stimuli), and if there is clear evidence from the medical testing which is reliable and unanimous in proving complete and irreversible cessation of the functioning of the brain and especially the brain-stem, which is the central control of respiration, one has established the condition known as 'respiratory-brain death', and this is the *halakhic* moment of death of a human being according to this opinion."[7]

In this statement it appears necessary to show 'complete…cessation of the functioning of the brain'. However, the next paragraph states:

> "there is no special importance attributed to the whole brain, but only to show that the brain is essential for respiratory activity. Therefore, even if there are individual cells in certain parts of the brain that are still alive, this does not matter nor does it change the basic definition of death according to this approach. In this way, this approach…differs from brain death as defined medically and legally, called 'whole brain death', according to which the brain, which is the center of the central nervous system, determines whether a person is alive or dead."[8]

Finally, he states that this

> "is not a change in *halakhah*...there is no change in the *halakhic* definition of the determination of death since the days of Moshe Rabbenu…the determination of the moment of death ….is based on the complete and irreversible cessation of all spontaneous respiration. Only the instruments and tests by which we determine and prove the irreversibility of the situation have changed: In those days, confirmation of the irreversibility of the cessation of respiration was the absence of a pulse or heartbeat or the case of decapitation in which there is complete separation of the head and the brain from other parts of the body; Nowadays we can also prove this irreversibility by showing complete and irreversible destruction of the brain-stem which controls respiration."[9]

It is important to emphasize that the cessation of circulation is not necessary in and of itself, but serves only as a means of confirming irreversibility.

There is no change in the halakhic definition of death since the days of Moshe Rabbenu

---

After a brief review of the history of death in *halakhah* and a review of the methodology of determining death, Steinberg states:

> "Currently it is widely accepted that the determination of death according to the criteria of respiratory-brain death (RBD) also requires proof of the cessation of function of the cerebral hemispheres and of the brain-stem…it is…not necessary to show the cessation of function of the various endocrine glands, including the hypothalamus."[10]

Many definitions of 'brain death' mandate that all functions of the brain have to be absent for a person to be considered dead. A number of studies have shown that in some patients, some endocrine function of the pituitary gland and some hypothalamic function (in the form of support for the endocrine function and/or maintenance of stable temperature) can persist.[11] If the cessation of all functions is necessary for brain death, these patients cannot be defined as dead.

Steinberg specifically addresses and eliminates these concerns with the above statement. He goes on to write that: "RBD can be determined only in the presence of three clinical findings: coma and absence of any movement whatsoever in response to external stimuli and no spontaneous movement whatsoever; complete absence of all brain-stem reflexes; and complete cessation of spontaneous respiration."

The above paragraph seems to contradict the wording of the RBD act of 2008, section 4(3) and (4)[12] that states that among other necessary conditions, "there is clear clinical proof of the complete and irreversible cessation of the whole brain function, including brain-stem function; and test by devices has proved the complete and irreversible cessation of brain function, including brain-stem function."

No patient who has fulfilled the criteria has ever regained neurological or respiratory function

---

How does Steinberg justify stating that it is not necessary to show cessation of the function of various endocrine glands including the hypothalamus, while at the same time mandating that there needs to be complete cessation of the whole brain function?[13] The most likely explanation is that the usage of 'whole brain' in the RBD act is shorthand for what he outlined above. Another option is that the key lies in the words 'clinical proof'. The output of the endocrine glands goes into the blood stream, and so the function of the endocrine glands could be classified as not clinically obvious. The function of the hypothalamus is not manifested in movement of the body, only control over temperature and other internal bodily functions[14]. Therefore hypothalamic function could similarly be classified as not clinically obvious depending on how the word 'clinical' is defined. As a matter of anatomy and physiology the function of the hypothalamus is classified as function of the brain, and it would be beneficial for Steinberg to be more precise. Regardless of the above discussion, the possible presence of endocrine and hypothalamic function has no impact on the coherence of the definition. Under Steinberg's underlying theory, death is the cessation of respiration in the context of absent consciousness and absent brain related movement. The cessation of brain function is only an indicator that these criteria have been fulfilled; it is not, in Steinberg's view, an underlying mandate. Endocrine function and hypothalamic function do not contribute to respiration, consciousness or movement, so persistence of endocrine/hypothalamic function has no impact at all.

Steinberg's definition of death fits well with established medical facts. Patients commonly defined as 'brain dead' will be classified as dead under these criteria. In addition, no adult patient who has fulfilled the criteria he outlined has ever regained any neurological or respiratory function. The question of how it works philosophically and with the halakhic sources will be discussed in conjunction with Shabtai's discussion.

Shabtai's book is more inclusive, covering opinions favoring many differing definitions of death. It can be divided into four parts. The first contains an overview of the medical and bioethical discussions of brain death and a discussion of organ donation. This section is nicely organized, and for the most part understandable to the non-medical reader.

Similar to the RCA's *Va'ad Halakhah* report published in 2010[15], Shabtai uses large portions of the scientific information section in the Report of the President's Council on Bioethics (2008)[16]. He also attempts to rebut some of the criticism of the *Va'ad Halakhah* report, which did not include any of the medical and scientific data that supported the concept of brain death. Shabtai mentions the existence of this data, but dismisses it in a short paragraph. The biomedical literature contains hundreds of papers on this topic, and Shabtai's dismissal is entirely without foundation or support from the literature. In addition, he misinterprets some key studies, repeats erroneous assumptions regarding areas of brain function, and assumes that areas of uncertainty are resolved against the support of brain death. One result of his misunderstanding of the scientific data is that his references to the data in the rest of the book (especially regarding blood flow, hypothalamic function, and implications of pathology reports) are frequently inaccurate.[17]

The second section of the book reviews the current bioethical discussion of the definition of death. Shabtai reviews the various approaches to defining death by neurological criteria: whole brain death (the entire brain needs to be dead), higher brain death (the cerebral hemispheres, the seat of thinking and consciousness have to be dead, but the brainstem can still function), and brainstem death (the brainstem has to be dead but the hemispheres can still have cellular function). He points out the practical drawbacks of a strict interpretation of the whole brain definition (it is difficult if not impossible to be sure that every cell in the brain is dead) and the various ways that this has been addressed. He notes the philosophical and practical problems associated with the higher brain definition (how to define loss of consciousness, those in a persistent vegetative state could be defined as dead). The British definition of brainstem death mandates irreversible loss of consciousness and loss of brainstem function including respiration. The critique here consists of pointing out that there is no underlying rationale stated for choosing this combination of findings. In fact, the idea of brainstem death is quite similar to Steinberg's RBD definition, and some philosophical responses will be discussed in that context.

The Va'ad Halakhah report did not include any of the medical and scientific data that supported the concept of brain death

---

Also included is the current debate on whether neurological function in fact defines human life. The positions taken are very similar (but not identical to) the halakhic positions, and so the discussion is relevant. One point of view, represented by both Truog/Miller and Alan Shewmon, views the essence of life as integrated biological function. While they are somewhat vague as to what exactly constitutes this 'integrated function'[18], they are clear that neurological function is not accorded any special status. The other point of view is that of John Lizza, who states that a human life is more than just integrated biological function, and that neurological function is primary, and in fact controlling.

While the discussion was initiated by the new definition of life given in the President's Council on Bioethics (2008) report[19], it ultimately moves to a discussion of the life and death status of a decapitated human being. Truog/Miller admit that a functioning human body without a head should be considered a human being. In a subsequent paper[20] Lizza presents the thought experiment of a decapitated person named Waldo whose head is sustained with artificial circulation and the body is destroyed. Lizza states:

> "Miller and Truog could not identify Waldo with the artificially sustained head and maintain that Waldo has continued to exist as an integrated human organism as a whole. They could not say that Waldo had simply acquired a substantially altered circulatory

respiratory system, again similar to someone surviving a heart transplant but only more extensive. Since such a system would be entirely mechanical and not organic, Waldo could not be an integrated human organism as a whole in any sense…. Waldo would therefore be dead. However, since Waldo is still *ex hypothesi* conscious, this implication is highly counterintuitive….what Miller and Truog miss is how the decapitation gambit challenges their assumption that human death can be understood in strictly biological terms as 'the cessation of the functioning of the organism as a whole.' The biological paradigm of death assumed in their view entails that Waldo's life would continue in the artificially sustained decapitated body and not in the artificially sustained conscious head of Waldo…because this conclusion is absurd, the decapitation gambit is a strong reason for rejecting the biological paradigm of death that underlies their view." [21]

Lee and Grisez take a slightly different approach. It had been noted that the advocates of defining death using neurological criteria have difficulty in identifying which neurological functions have to be present or absent and why.[22] In response, they articulated the concept of the radical capacity for sentience. They note:

"Since a human being is a rational animal, anything that entirely lacks the capacity for rational functioning is not a human being. Since rational functioning in an animal presupposes sentient functioning, anything that entirely lacks the capacity for sentient functioning also lacks the capacity for rational functioning and so is not a human being."

And further:

"when an organism dies, its remains usually include many things of different kinds…when someone undergoes total brain death, many things have come to be in place of the individual. One of those things is alive and much larger and far more complex than any of the usual living parts of the remains of an organism. Nevertheless, that living part of a human being's remains no longer has the capacity for sentient functioning that is presupposed by the capacity for conceptual thought, reasoning, and free choices….the human being has passed away, and the remains are not a human organism."

While it appears that Lee and Grisez are arguing for a higher brain definition, in fact they state that death mandates the loss of the radical capacity for sentience, leaving the specifics undefined. They also reference a decapitation model, but with a twist:

"Imagine dicephalic twins (a baby born with one body and two heads- considered in American law and *halakhah* as two people) called Adam and Ben. They have only one abdomen… and two heads. Significantly, their circulatory systems are merged; there is only one circulatory system serving both individuals. (They then imagine a situation where Adam's head is removed). Ben survives, marries and has children. No one would say that Adam is still alive. But….when a body with its organs continuously functioning remains alive even though it no longer has any brain, the very same individual continues to live. But Adam's body remains alive with all its organs continuously functioning. Therefore the ongoing continuity of functioning of a big part of what had been an organism does not show that the brainless entity that remains after brain death is the individual it was before becoming brainless."

The authors then consider organ transplantation, starting with a lung. The lung

"is a living organized unit, and it is human in the sense that it comes from a human being and its cells have the human genome. But it is not part of the individual from which it came, and is not a member of the human species, or any animal species…one can easily imagine that increasingly larger parts

of a donor's body will be transplanted as a unit into a single recipient. One can even imagine a case in which identical twin brothers...Jim suffers fatal brain damage and Joe suffers fatal damage to the torso. But after Jim's death the team transplants his body from the neck down to Joe. After Jim's death and before the transplantation, what was Jim's body?.It is an entity of the same sort as the living remains of a brain dead individual."[23]

These critiques apply to all definitions of death that are not based on neurological function (Steinberg's RBD definition, since it incorporates brainstem function, avoids these challenges). As will be seen, they are a major and so far unmet challenge for those who define life and death as the presence of circulation, integrated function, or vital motion.

How is the reader to know if a strong point is made on one side that the opposing opinion is quite weak?

The third section of Shabtai's book is an analysis of the classic sources in the Talmud and the *responsa*. He brings lengthy quotes, addresses a particular point in the source, and then presents the opinion of one side and the other. It is indeed beneficial to see the opinions side by side and he discusses many of the standard and some non standard sources. He brings much depth and sometimes neglected sources, and tours some side issues that have bearing on the topic. The amount of material is impressive.

Steinberg also quotes many of the same sources and analyzes them. He mentions alternate understandings, but focuses on his own understanding and in general his analysis is more straightforward and direct. Shabtai includes greater focus on parsing words and phrases. While it seems that Shabtai tries for equality, ultimately his presentation is unbalanced. In the majority of cases, the side opposed to brain death/ICSR is given the final word. While the conclusion usually includes a statement of uncertainty, the discussion preceding the conclusion more often than not rejects brain/respiratory definitions of death. One reason for this is the limited sources. Much has been written in support of cardiac criteria and in support of neurological criteria. In addition, there have been a number of papers opposing neurological criteria. However, not much has been written pointing out the lacunae in the positions of those supporting cardiac criteria. Shabtai cannot be blamed for the lack of sources. Yet the imbalance is caused not only by the lack of sources, but by his analysis.

The conversation is woven together by Shabtai's comments—and some questions need to be asked: Do all opinions have the same worth? Are some more logically compelling than others? How is the reader to know if a strong point is made on one side and that the opposing opinion, although also presented, is quite weak?

The Babylonian Talmud, Tractate *Yoma* (85a) presents two options to determine the presence of life: checking the nose (for breathing), or checking somewhere on the chest/abdomen (either for breathing or perhaps for heart pulsations). Rashi there opines that checking the chest is the sign of life- interpreted by many as stating that circulation is the ultimate sign of life. Shabtai interprets the *gemara* to discuss the *tests* for death, and Rashi as establishing that circulation is the *criterion* for death. Two of the main sources for *halakhah*, Maimonides and the *Shulhan Arukh*, also cite the nose in their discussion of death, without any mention of the heart or circulation or Rashi. Steinberg and those supporting respiratory and/or brain criteria take these sources at their word: The definition of death is the irreversible lack of respiration. However, Shabtai states that:

"neither Rambam [Maimonides] nor Shulchan Aruch, in codifying these rulings, explicitly argue with Rashi, leading to the conclusion that Rashi's approach is and has always been normatively accepted."

In other words, Shabtai wants us to think that opinions that don't even mention the term 'circulation' are in fact arguments in favor of using circulation as the definition of life. While this argument from silence is a possibility, it is certainly not compelling. Nevertheless, Shabtai presents it towards the end of the section as a statement of fact and the uncritical reader will naively accept it as well. This problem is repeated throughout the book.

Opinions that don't even mention the term 'circulation' are arguments in favor of circulation as the definition of life.

It may be useful to identify all the unstated assumptions that have to be true for Shabtai's conclusion to be valid:

1. Rashi's opinion is based on the term '*libo*' in the *gemara*. There are actually variant texts of the *Gemara;* one does not mention '*libo*' at all. So we would have to assume that the text with the term *'libo'* has to be the halakhically meaningful one. This is by no means clear- only the Meiri in addition to Rashi among the *Rishonim* have that particular text. In addition, the *Yerushalmi* does not contain it. [24]
2. We would have to assume that the *Gemara* meant heart when it stated '*libo*.' R. Daniel Reifman notes[25] "a survey of instances of the term *libo* in tannaitic sources shows that in virtually every other context in which it refers to a part of the body (as opposed to a state of mind)……. *libo* is always used idiomatically to refer simply to the external chest area, with no connection to the heart organ that lies beneath."
3. We would have to assume that Rashi meant heart, rather than signs of respiration at the chest[26]. It is very reasonable to understand Rashi as indicating the movement of the chest is testing for breathing rather than heart function.
4. Rashi's understanding of physiology placed the heart as part of the respiratory system.[27] Therefore, if Rashi indeed meant heart function, he could have been referring only to the respiratory function that was connected to the heart as he understood it. Circulation produced by the heart had not yet been described, and automatically interpreting Rashi's 'heart' as circulation is imposing today's knowledge on a 1000 year old position.
5. Dr. Bernat's paper delineating the three aspects of death was published in 1981. In the ancient world, it may not have been clear that a specific delineation of definition/criteria/tests was necessary. Shabtai assumes that Rashi was aware of this, specifically identified the Gemara as describing tests(and not criterion- see discussion above), and established circulation specifically as the criterion for death
6. We would have to assume that the Rambam and the *Shulhan Arukh* were similarly aware of the nuances of Rashi's position regarding tests and criteria, and how he differed from the plain reading of the *gemara.*
7. And finally, we would have to assume that Rambam and the *Shulhan Arukh,* by not mentioning Rashi at all, indicate that they agree with him. We would have to assume that by mentioning only respiration in their discussion of death, the Rambam and the *Shulhan Arukh* have agreed that the criterion for life and death is circulation. This is obviously quite a logical stretch. The most straightforward assumption is that Rambam and *Shulhan Arukh* meant what they wrote, and if they had wanted to include circulation they would have explicitly done so.

Thus Shabtai's statement could be true, but clearly it is not the most logically compelling understanding of the sources, and requires many poorly founded assumptions.

The first section of part four is an analysis of the opinion of Rabbi Moshe Feinstein. R. Feinstein published four *responsa* on the topic and also issued a letter which was published posthumously. The *responsa* have been understood in various ways, and Shabtai tries to bring them together to make a coherent whole—ultimately concluding that his position is in doubt ("*safek*"). However, the letter explicitly states that a patient fulfilling Harvard criteria for brain death is halakhically dead. In addition, the letter states that continued heart function in this context is not halakhically relevant. The position of the letter is quite clear.

Shabtai states that "some have questioned the authorship of the letter."[28] The authors of the RCA document go significantly further, writing that "It is generally agreed and uncontroversial that this letter was not penned by Rav Moshe."[29] The documentation is a reference to some correspondence although the contents of this correspondence is not revealed or offered for inspection.

Rambam and the Shulhan Arukh do not mention Rashi at all

This is a serious accusation of fraud and should not be made or taken lightly. If it was fraud, the perpetrators would have had to come from the circle close to R. Feinstein. If evidence exists for fraud, it should be made public. If there is no evidence, the accusation should be retracted and apologies made. Furthermore, if the letter accurately reflects R. Feinstein's position, it actually makes no difference for the purposes of the discussion who in fact penned the actual words.

Shabtai also cites the opinion of Rav Shlomo Zalman Auerbach regarding the letter. R. Auerbach interpreted the letter as indicating when 'life support' machines could be removed, and not indicating when a person was dead. Daniel Reifman cogently points out that this interpretation likely reflects R. Auerbach's own position being projected onto the letter, rather than the real meaning of the letter.

R. Feinstein's third *teshuvah* also supports the concept of brain death. Shabtai writes about the possibility that the case under discussion involved not a patient with a heartbeat, but someone without a heartbeat, and therefore it doesn't apply to a brain death patient whose heart is still beating. However, the *responsum* mentions injecting a radio-isotope to determine if there is still a connection between the head and the body. Blood flow is required to move the isotope around the body. Therefore, if R. Moshe had even rudimentary knowledge of how the isotope study worked, the possibility that Shabtai raises makes no sense.

The above is another example of how opinions are stated without making the reader aware of the plausibility or implausibility of the opinion. Steinberg's analysis of R. Feinstein's opinions and others such as Reifman's[30] are less detailed, but do not require dismissing parts of R. Feinstein's work and do not require significant suspension of logic.

The middle portion of part four discusses other opinions from the 1980's up to the current time. The final section presents the case for a non-neurologic definition of death and ends with critiques of the neurological/respiratory definitions of death. The table of contents gives a hint of where the author's presentation will lead. The chapter discussing the non-neurological definition is entitled: "Cardiac Function and Vital Motion", whereas the following chapters are titled: "Challenging ICSR as Determinant of Death" and "Opposing Brain Death."

The idea of defining *halakhic* life as the presence of vital motion was first posited by Rabbi J. David Bleich, and his position is the central topic of that chapter. The passage in *Yoma* suggests that breathing is the definition of death, and for some, Rashi's commentary adds the suggestion of circulation. The *Mishnah Ohalot* 1:6 suggests that decapitation (absence of the head) is the definition of death. Shabtai states his opinion that "The definitions and criteria that *Hazal* (the Talmudic Sages) employed to determine death are therefore relevant, accurate, and obligatory today—even while the practical applications of these principles is perhaps more complicated than in the past."

This would seem to indicate that the three criteria under consideration are respiratory, neurological and circulatory. However, in the beginning of the book, Shabtai identifies the three main suggestions for defining death halakhically as: the complete and irreversible inability to breathe on one's own (irreversible cessation of spontaneous respiration), the complete and irreversible cessation of all bodily motion (including heartbeat), and the complete absence of the head. This classification represents a very significant difference. What exactly is "the complete and irreversible cessation of all bodily motion" and how did it wind up in Shabtai's list?

Shabtai accurately notes that defining life and death by circulation alone no longer makes sense. Circulation can be provided to any tissue by artificial hearts and pumps, so that if the definition is to have validity, a pump attached to any piece of tissue, be it an arm, leg or big toe would have to be considered alive. He further states that "Those who posit strict cardiac criteria for death rarely analyze their positions from this perspective. It is likely, however, that in the final analysis, they would agree with and adopt R. Bleich's (concept of vital motion)."

Without references, further discussion, or a stated basis for his opinion, Shabtai assumes that rabbis over hundreds of years would change not only their tests for death or criteria to determine death, but their actual concept of what life and death really mean. It is quite a sweeping statement of opinion with no stated justification. Furthermore, some of the authorities quoted in the book who define death using circulation, such as Rabbis Shmuel Wosner, Yosef Shalom Elyashiv and Herschel Schachter, have never issued any such statements. Finally this idea contradicts Shabtai's statement that the definitions of death established by the rabbis of the Talmud are obligatory and therefore cannot be changed. If the rabbis felt that the definition of death as the cessation of circulation was based in the Talmud, an argument from consequences should have no effect.[31]

Shabtai accurately notes that defining life and death by circulation alone no longer makes sense

As Shabtai noted, one way to salvage the circulation definition of death is in fact to change it to the position of R. Bleich's concept of vital motion[32]. This is defined as "any clinically observable or perceivable movement that promotes the continued viability or health of an organism." This concept has very little to do with circulation (other than circulation may be needed to have 'vital motion', but circulation by itself is not enough to be considered life). Shabtai explains that R. Bleich "capitalized upon the Mishnah's unstated assumption that motion is always a sign of life."

This is the *Mishnah Ohalot* 1:6, which describes a decapitated body as dead, even if there is still some movement in the body. Since it is possible for there to be movement in a dead body, R. Bleich concludes that the *Mishnah* assumes that motion is a sign of life, and therefore it was necessary to explain how motion in the case of decapitation is not a sign of life. In addition, it is not just any motion, but R. Bleich assumes the unstated principle is 'vital motion'. While

this is a possible explanation, there are a number of other 'unstated assumptions' that would fit just as well. For example, the unstated assumption could be that muscular jerking movements of the body when not controlled by the head are not a sign of life. It could also mean that anything that the body does below the head is not significant to human life.

R. Bleich assumes that the *mishnah* was teaching that body movement that is not 'vital motion' is not a sign of life. One problem with this concept is that despite his explanations of blood gushing out through cut arteries, circulation of oxygenated blood still exists in the decapitated body, at least for a few seconds, and muscle function and heart contractions continue for at least a few seconds. Therefore the 'vital motion' does not cease contemporaneous with the decapitation.

Another problem is that as far as we know, the internal circulation and interaction of vital motion was not known to the rabbis of the Talmud in the same way that they were probably unfamiliar with the specifics and details of neurological function.[33] More problematic is that Shabtai accepts R. Bleich's statements and construct without asking 'the difficult critical questions."

Shabtai accepts R. Bleich's construct without asking the difficult critical questions

Defining life by the presence of 'vital motion' raises numerous questions, some asked by Shabtai, but none of them discussed as problems in any detail. What exactly is "vital motion"? R. Bleich states that vital motion has to be present in an organism- what does that mean and what anatomy or function has to be present for there to be an organism? Is the vital motion equal to the organism? In other words, if the implications of vital motion depend on the presence of an organism, what is the definition of an organism and how can one be identified?

Furthermore, what exactly are the tests to determine if 'vital motion is present? Rabbi Bleich has never stated which particular tests need to be done in order to determine if vital motion is present or absent... The closest he seems to get to specific tests is to state that someone is dead when the heart has ceased to pump long enough for vital motion to cease. This is tautological. Vital motion is never precisely defined, and the tests and results necessary to know that 'vital motion' is absent cannot be stated without including the concept of 'vital motion.' Essentially, the statement reduces to "the patient is dead when the heart has stopped long enough for him to be dead." Obviously, this does not provide significant guidance.

Shabtai mentions some of the logical problems with R. Bleich's idea, noting that according to R. Bleich a body without a head, as long as it had circulation and air was pumped into its lungs, would be identified as a still alive human being.[34] But how would he address the other challenges of Lizza and Lee/Grisez? Could one produce two Waldo's from one person, one a head and one a body? On a more simple level, it seems that the heart and lungs provide vital motion. When the heart and lungs are transplanted from the collection of tissue that is Reuven to the collection of tissue that is Shimon, does the recipient become the donor? What tissue exactly is necessary for Reuven to be and remain Reuven? R. Bleich's concept in fact fails to address this and other identity related problems. Unfortunately the book does not acknowledge any of these as significant problems.

In contradistinction to the easy pass he gives R. Bleich, Shabtai examines the idea of defining death as the absence of respiration and asks appropriately difficult questions. He notes that if the absence of spontaneous respiration

(ICSR) is the concept of death (breathing supplied by a ventilator machine doesn't fulfill the criteria for life), then anyone who has suffered a spinal cord injury, is on a breathing machine, and cannot breathe on their own has to be considered dead. He devotes an entire chapter to this discussion, mentioning the actor Christopher Reeve as an example.

Shabtai asks: How can someone who is conscious, talking and moving his head be considered dead? This is a valid question. Definitions of death, when applied to situations where we have a good idea of what the results should be, need to correctly predict those results, or else be modified or discarded. In addition, a definition of death should identify a person who is conscious and talking, i.e., has clinically identifiable brain function, as being alive.

One approach would be to apply the *mishnah* in *Ohalot* and conclude that any function below the head does not qualify as function. Therefore, the only cessation of respiration that counts is if it is caused by damage to the respiratory centers in the brain. Steinberg offers an alternate solution: There are entry criteria for being considered dead. In other words, if we find that a person exhibits certain functions, there is no possibility for them to be considered dead. Based on a number of sources, Steinberg states that a person is a candidate to be considered dead only when there is an absence of consciousness and an absence of voluntary movement. Shabtai criticizes this contention, and provides alternative explanations for the sources brought. Even though Steinberg's position is grounded in sources, the logical problem remains. He claims that respiration is the ultimate and only criterion for life and death. However, in order to be dead, one also has to unconscious and lack brainstem activity. This still appears to be a contradiction.[35]

Shabtai's point is based on a reductionist concept of life and death, i.e. there is one and only one ultimate concept of life. However, other options exist. Winston Chiong[36] defined a non-reductionist concept, where life is defined as a number of intersecting circles of characteristics of life. As long as the person maintains at least one of the characteristics, he is considered alive. Hence a person is alive if he has one of the following: consciousness, brainstem activity/movement, or respiration. He is only dead if he lacks all three.[37] If Steinberg maintains a reductionist approach, he will need to address Shabtai's excellent question.[38]

How can someone who is conscious, talking and moving his head be considered dead?

Every definition of death faces challenges. The RBD outlined by Steinberg fits very well with the plain meaning of the *gemara,* Rambam and *Shulhan Arukh*. Support can also be found in the *teshuvah* of the Chatam Sofer (who does not mention Rashi at all). The plain reading of Rav Moshe Feinstein's third *teshuvah* as well as the letter also support this. Logically, it is necessary for Steinberg to decide if he indeed uses a reductionist position identifying respiration as the sole criterion for life. If he does, he needs to answer Shabtai's challenge. Aside from this challenge, RBD has both excellent internal validity and external validity. The criteria and tests proposed identify a population as dead that coheres well with expected results.

The definition of death as the cessation of vital motion requires the assumption that Rashi's view is halakhically controlling. It requires accepting the unstated assumptions that Rambam and *Shulhan Arukh* agreed with Rashi despite the lack of any mention of circulation or heart function in their discussion of death. The *teshuvah* of the Hakham Tzvi supports this view (although he also had a premodern idea of medicine and the same questions asked of Rashi regarding the implication of heart function- respiratory or circulatory- can be asked of him). Support can also be found in the Hatam Sofer's

teshuvah[39]. Many recent *poseqim* support defining death by the cessation of circulation, but it is not at all clear that they would support R. Bleich's concept of vital motion. From a practical point of view, R. Bleich has not identified the tests required to determine if vital motion is present. In fact, he has not given a full definition of vital motion that can be applied in various clinical situations. His definition of death is actually useless as a matter of practical *halakhah*. If and when he fills out all three tiers of the definition completely (concept, criteria, tests), the full internal validity of the definition can be assessed.

Shabtai's point is based on a reductionist concept of life and death—there is one and only one ultimate concept of life

The approach also suffers from problems with external validity. As presently constituted, it lacks a basis for identifying a person or what is an organism, and therefore is vulnerable to the critiques of Lizza and Lee/Grisez. In the halakhic realm, it fails to distinguish why a baby born with two heads is considered twins, how to address which is the donor or recipient in a heart/lung transplant (it could be claimed that the vital function of one person is being transferred to a new body, and that the person who is the source of the vital function continues to live), as well as other personal identity issues. Lastly, it fails to address the prospect of creating two people out of one[40].

The positions of the current Sephardic Chief Rabbinate and Rav Ovadiah Yosef illustrate another aspect of the complex nature of this issue. In his book, Steinberg includes a letter of support from Rav Amar that is also signed by Rav Yosef. The letter states that death occurs with the death of the brain in its totality, including the brain-stem and the irreversible cessation of respiration. Rav Yosef also required that "any person…be given the...right to request that…no organs be removed from him…until after the cessation of the heartbeat."[41] The clear implication of the added paragraph is that they realized that patients declared dead by the first approach would and could donate organs. In addition, the council of the Chief Rabbinate issued a protocol confirming that the RBD act approved by the Knesset meet the requirements of the Chief Rabbinate dating back to 5747, the date of the first ruling of the Chief Rabbinate on this issue.[42].

Despite this seeming support for RBD and organ donation, Shabtai quotes R. Ovadiah Yosef's grandson as making it quite clear that R. Yosef absolutely forbids organ transplants[43] In addition, he quotes R. Amar as stating in a lecture that a beating heart would appear to preclude a determination of death[44]. On the other hand, R. Amar was widely and publicly quoted as supporting organ donation by Avi Cohen, a brain-dead soccer player.[45] It is difficult to understand how these variant understandings have appeared. It is reasonable to expect that in a matter literally of life and death there would be some control over the message and some desire for consistency.

One possible explanation was supplied by Ha'aretz.[46] Ultimately, if these rabbis felt that RBD was not death and that organ donation was not allowed, it is reasonable to assume that they would stand up and state that it constitutes murder, and publicly and vocally disassociate themselves from the RBD act as well as any statements suggesting support for organ donation. Yet they have not done so, thus it is reasonable to conclude that in fact they support the act, and that the other statements are fueled by non-halakhic concerns.

Steinberg has written a straightforward book laying out the case for RBD. Shabtai has assembled a very impressive collection of facts and analysis. The use of concepts from bioethics in analysis is a great step forward in the halakhic discussion. His book is an excellent source of information and some

opinions, but as has been illustrated, the presentation and analysis is biased and uneven.

Shabtai included a number of letters of approbation both in the book and on his website. One is written by his teacher, R. Bleich, who is a vocal and vigorous critic of brain death. R. Bleich writes:

> "…The author has succeeded in presenting positions he knows to be erroneous in the most plausible light possible, in present arguments he knows to be specious in as cogent manner as possible, and in presenting purported facts that strain credulity in as credible a manner as possible…. the reader cannot attain edification by simply reading the work…. (But) must read every word with care and reflect diligently upon what he has read."

R. Bleich need not to have worried, but his concerns are actually reversed. Despite the statement in the Epilogue that "it was not my intention to advocate or adopt any particular approach", the uncritical reader without outside knowledge will be led to the erroneous conclusion that there is little support for defining death using respiratory or neurological criteria. He will not know of the biomedical information supporting brain death; he will lack the critiques of organismal definitions of life; he will not examine the assumptions or ask the unasked questions. The reader who *does* ask the questions that do not appear in the book, and who *has* outside knowledge will be the one to identify the problems in presentation and analysis and challenge the positions of R. Bleich.

The halakhic analysis of the definition of death depends a great deal on the person providing the analysis[47]. If Shabtai is indeed committed to a dispassionate presentation of the data, it is reasonable to expect that his future writings and recordings will address the shortcomings identified here. On the other hand, if R. Bleich is correct, and Shabtai has a point of view that he has attempted to overcome, it is in the best interests of the reading public that he divulge his biases and pre-existing attitudes, and let the public decide if he has been dispassionate or not. On a topic as momentous as this, a presentation labeled as unbiased needs to be exactly that, and the reader deserves to know where the author truly stands.

Appendix

Many papers have been published describing various findings in patients who have been determined to be 'brain dead.' While there are no universal criteria for 'brain death,' all mandate a clinical finding of irreversibly absent brainstem reflexes and an absence of breathing (apnea). Some criteria mandate blood flow testing, others do not. Some mandate testing for electrical activity in the brain (such as EEG or BAER), others do not.

Patients can fulfill the criteria for being brain dead but retain some blood flow to the brain

---

Patients can become 'brain dead,' i.e., lose all necessary neurological function to fulfill a set of criteria, through a variety of processes. The majority have large amounts of brain damage that result in swelling of the brain. This swelling causes increased pressure in the skull (intracranial pressure - ICP). Because of the increased pressure, it is more difficult for blood to flow into the skull, resulting in less blood flow (cerebral blood flow - CBF). When the blood flow is not adequate to sustain all the cells in the brain, more damage occurs. When this process is unchecked, a positive feedback mechanism ensues, wherever increasing ICP causes ever diminishing blood flow until there is no observable blood flow, and massive brain damage ensues, to the point that the patient fulfills criteria for being 'brain dead.'

Other patients do not enter such a cycle, but suffer damage to the neurons via lack of oxygen, transient decreases in blood pressure (such as patients whose hearts stop and the

circulation is restarted after a time via CPR), poisoning, or other mechanisms. In these situations the damage to the neurons can be out of proportion to the damage suffered by the supporting cells (the glial cells) in the brain. Since damaged glial cells contribute most to swelling, the amount of swelling in this circumstance does not always rise to a level sufficient to enter the positive feedback loop of increasing pressure and decreasing blood flow. However, if enough of the brain cells have been damaged, these patients can still fulfill the criteria for being brain dead, but retain some blood flow to the brain.

It should be kept in mind that the purpose of brain death criteria has always been to identify the patients who have suffered the irreversible loss of key brain functions and apnea. Most criteria for brain death are not designed to identify patients who in addition to the above, also lack blood flow, lack EEG activity, hypothalamic activity and endocrine activity. By performing additional tests, it is possible to identify patients who lack all these functions and findings. Instead of addressing this 'ideal' group of patients and asking the question "are they halakhically dead?", Shabtai addresses the data generated from patients determined brain dead by lesser criteria. He argues against the general concept of brain death by using data and results generated by what could be termed non-ideal or non-maximalist criteria.[48]

As noted, the criteria for brain death focus on determining the irreversible loss of functions of the brain, they do not focus on the status of individual cells. However many articles have been published that attempt to characterize the cells in the brain of the brain dead patient. Are the cells in the brain 'alive' or are they 'dead'? A live neuron requires blood flow, uses energy (and therefore produces heat), consumes glucose and oxygen, and produces waste products and carbon dioxide. Neurons are extremely sensitive to lack of blood flow and in situations where there is a lack of blood flow, permanent damage begins within five to ten minutes or less. It is also important to keep in mind that the brain contains billions of neurons, and it is impossible to investigate each one. Studies therefore usually focus on detailed descriptions of small groups of neurons, or descriptions of the brain as a whole. The descriptions of the brain as a whole may or may not apply to each and every specific neuron, but they can describe the condition of the vast majority of neurons.

Another method of determining the status of a cell is via staining at autopsy. Sections of the brain are immersed in various chemicals, and then examined under the microscope. It should be kept in mind that the cells in the brain usually are already dead prior to staining. Through various staining methods, the pathologist tries to determine what happened to those cells prior to the person dying, i.e., the point when all would agree that the patient is dead, which does not require a specific definition for the purposes here. For example, there are a certain set of changes that the neurons undergo over time when a person has suffered a stroke. By identifying those changes, the pathologist can determine the age of the stroke (within limits) and which cells would be expected to be alive and functioning, and which would not.

Not every cell identified as 'not dead' by staining is actually alive

---

Shabtai references a particular report on the neuropathology of brain death four times[49]. Published in 2008[50], this study reported on the pathology findings in the brains of 41 patients who fulfilled the criteria for brain death. The brain tissue samples were stained with a standard stain (Hematoxyin and Eosin, (H and E)), and moderate to severe changes in the neurons in various parts of the brain were identified, with percentages of ischemic (due to lack of circulation/oxygen) changes ranging

from 37% in the midbrain to 68% in the occipital lobe. In other words many of the cells did not exhibit staining characteristics usually identified with dead cells. Up to 63% of the midbrain cells did not appear to be dead by this staining method.

Yet this finding does not imply that the 'normal' appearing cells were alive. The microscopic changes that result in a cell being identified as dead sometimes take time to develop[51]. In the 2008 study, less than 36 hours elapsed between the determination of death and the discontinuation of the ventilator. In patients where more time had elapsed between the determination of death and the cessation of ventilation, there were findings of greater neuronal damage, and in fact the amount of damage correlated with the time after the determination of death but prior to discontinuation of the ventillator. The patients whose bodies were supported for a longer period of time after brain death exhibited greater amounts of cellular damage in the brain. Changes in cells that are interpreted to mean that the cell has died actually take time to develop before they are noticeable with this particular staining method. The cell can be dead but only later does it stain as if it was dead.

Hence not every cell identified as 'not dead' by H and E staining is actually alive. The authors of the study in fact state specifically: "we recognize limitations with the use of routine staining methods, and more specific stains may have uncovered more cellular injury." It should be kept in mind that the criteria for neuronal damage seen on H and E staining were developed in the context of conventional brain injury, not in the context of the situation of brain death. One paper reviewing staining options stated: "because progression of post ischemic changes depends on the severity and duration of ischemia, the pathology observed can only be reliably interpreted under their specific standardized experimental conditions"[52] In other words, in 'normal' situations such as stroke when circulation continues to the rest of the brain, accurate conclusions can be drawn from how a cell stains.

However, under the circumstances of cerebral circulatory arrest, which usually (but not always) accompanies the determination of brain death, the usual progression of staining changes does not always occur, or can occur at a different rate. So the usual conclusions drawn from how a cell stains cannot be drawn under this different set of circumstances. It is probable that in the specific unique physiological context of cerebral circulatory arrest and accompanying brain death, many cells identified as 'not dead' on H and E staining are actually dead, but the staining method is not adequate to identify it accurately. An accompanying editorial to the report states exactly that:

> "The assessment method used by the authors is a fairly late development in the course of neuronal necrosis [the changes they were looking for occur over time]. More advanced techniques (a list is given) could provide earlier indications of irreversible neuronal damage."[53]

Shabtai references this editorial and comments:

> "Those authors do not, however, offer a philosophical, ethical, or medical basis for selecting one set of criteria over another."

Shabtai's statement is wrong. The authors are correctly noting that 'not dead' on H and E staining does not necessarily mean alive, and that other staining methods may be more accurate in this context. Many staining methods are in fact available that would be theoretically more accurate and a study of their use in examining brains after brain death would shed much light on the topic.[54]

The correct conclusion to be drawn from the paper is also stated: "It has become much less likely for the neuropathologist to confirm brain death."[55] This paper illustrates that H and E staining using this time window shows that a significant number of neurons are classified as 'not dead'. The pathologist cannot confirm brain death, and given the constraints of the

study timing and choice of stains, he can say that a certain average percentage of neurons are dead. Whether the rest of the neurons are alive or not is unstated, and the conclusion that the rest of the neurons are alive is an unsupported assumption. There is good reason to believe that the staining method used under these specific circumstances significantly underestimates the number of actually dead neurons. Pathological staining is only one way to determine the life/death status of a cell. Others measures include looking at the metabolic activity of the cell, energy usage of the cell, heat production, biochemical composition and milieu, and blood flow.

Shabtai also states "A number of reports purport[56] to demonstrate that the brain cells of 'dead' brains should be described as dead." Indeed, studies have identified the following conditions in the brain dead patients with no blood flow to the brain on studies:

1. absent brain tissue oxygen levels (oxygen is necessary for the cells in the brain to survive)
2. zero or near zero brain tissue glucose levels (glucose is the fuel used by the cells, and no fuel means that the cell cannot survive)
3. no oxygen utilization and no carbon dioxide production (Functioning cells use oxygen and produce carbon dioxide. The absence of this process indicates that function has ceased as best as can be determined)

These findings are consistent with a metabolically dead brain. For a cell to keep itself alive and maintain the integrity of the cell membrane (the outer wall), it needs to use energy. Under normal and near normal temperatures, and in the absence of any drugs that protect the cells, the cells die quickly when they are not metabolically active. Therefore, it is reasonable to conclude that cells with zero levels of oxygen and glucose, high levels of accumulated waste products, and an absence of molecules that the body utilizes in energy use and production, are either dead, or in the process of dying. And, if the blood flow is not quickly reestablished, those in the process of dying will complete the process.

However Shabtai states that 'these studies probe only the outermost 1-3 cm. of brain tissue', and that 'the[se] outermost layers of brain tissue would logically 'die' first given low or even apparently absent cerebral perfusion….none of these biochemical studies have any relevance to deeper brain structures…..". This claim is patently wrong and is contradicted by anatomy, physiology, and multiple studies.

The question is whether these findings can be generalized to the brain as a whole

---

One study of oxygen levels in brain tissue, making a statement based on previous animal studies, contradicts Shabtai specifically: "when PbtO2 (oxygen level in brain tissue) is measured in normal-appearing white matter the value appears to reflect global brain oxygenation"[57]. In other words, the findings from one part of the brain actually do reflect the findings in the entire brain. The study also states that "all patients who developed brain death had PbtO2 of 0 mmHg at the time of brain stem testing, and when PbtO2 decreased to 0 mmHg it did not recover in any of the cases." In short, there was a perfect correlation in this study between absent oxygen levels in the brain tissue, and loss of all observable brain function of the brain as a whole. Again, the tissue oxygen levels correlated with the function of the brain as a whole, including the brainstem.

Another study not cited by Shabtai concludes that, "It is remarkable that at the moment of…brain death, a sharp decrease of PbrO2 (levels of oxygen in the brain tissue) to levels just higher than zero is seen…SjO2 (the amount of oxygen in the jugular vein[58]) increases at the cessation of circulation."[59] There was a correlation between the loss of brain function

and the levels of oxygen in a small sample of tissue decreasing down to essentially zero. Additionally, this was accompanied by increased oxygen in the venous blood which indicates that the brain ceased to extract oxygen from the blood.

Shabtai also misstates a fundamental aspect of blood flow to the brain. The vessels enter the brain from the surface and then travel deeper. Therefore, if the blood flow is so inadequate that the cells on the surface have died, the cells which are deeper, even further away from the source of blood flow, will receive even less blood flow, and will certainly have died. This is actually the reverse of what he claims. He states that the cells on the surface logically die first when the flow is absent. While there are a number of factors determining rate of cell death (e.g., susceptibility to low/no blood flow, availability of collateral flow, etc.), if the cells at the surface are not receiving blood flow, the cells further down the arterial river are certainly not receiving blood flow. There are further important aspects of blood flow that will be discussed later. But there is also an absence of a discussion of the underlying pathophysiology, and an understanding of how those cells have come to be dead.

The cells in the reports Shabtai references didn't spontaneously die. In all or the vast majority of the cases, the cells died because the blood flow was not adequate to supply the needs of the cells. He is accurate in stating that some of the tests look at only a small sample of cells and these are found to be dead, but the question is whether these findings can be generalized to the brain as a whole. The studies referenced earlier supply clinical proof that the findings indeed can be generalized.

There are two other reasons for answering this question in the affirmative. As noted, the blood supply to that area of the brain under investigation was inadequate, leading to the death of the cells. It is reasonable to assume that anywhere the blood flow is similarly inadequate, the same process will occur, and the cells will die in those areas as well. So in patients where the blood flow studies reveal absent (within the technical limits of the study) flow, it is reasonable to assume that all the cells (with possible exceptions to be discussed) have died. And indeed many types of blood flow studies have been done documenting inadequate blood flow to the brain in situations of brain death.

The second rationale is the data from measuring the function of the brain as a whole. The functioning brain extracts oxygen from the blood and puts carbon dioxide into the blood stream. Therefore the overall function of the brain can be determined by measuring these chemicals in the blood going in and out of the brain.

A brain dead patient can be identified by measurements of the oxygen and carbon dioxide levels in the blood going to and from the brain

---

In addition, the overall energy expenditure of the body can be measured, and in brain death it is decreased by the amount of energy the brain uses. Many other studies of the brain, including MRI and PET have examined the brain as a whole and documented the lack of metabolic function in the brain dead brain[60]. The studies are not adequate to document the death of each and every cell[61], but these studies document the irreversible cessation of metabolic function of the brain as a whole. The paragraphs below are a much more accurate depiction of the metabolic state of the brain dead patient suffering from cerebral circulatory arrest.

Without blood supply, the brain is metabolically dead; it will not receive or use oxygen, it will not generate carbon dioxide, and the supply of glucose will be depleted. Indeed, measurements of brain tissue oxygen levels are zero in brain dead patients,[62] and every patient in whom the brain tissue oxygen level reached zero and

stayed there for more than half an hour became brain dead. The level of glucose in the brain tissue reaches near zero in 'brain dead' patients, far below the glucose level of patients who maintain function.[63] A 'brain dead' patient can be identified by measurements of the oxygen and carbon dioxide levels in the blood going to and from the brain. These measurements reveal that the brain is not using oxygen and is not producing carbon dioxide.[64] The cells of the body, including the brain, need to manufacture the chemical phosphorus in a particular form (ATP) in the utilization of energy. A small study using MRI scanning revealed that patients who were brain dead did not have any phosphorus in this form in their brain.[65]

Cells that are alive use energy and produce heat. Normally the brain is warmer than the rest of the body, partly because of blood flow and partly because the brain is very metabolically active. The brain receives approximately 20% of the blood flow coming out of heart. The brain of the patient who is brain dead is significantly colder than the normal brain, indicating a lack of metabolic activity and blood flow. [66] Patients who are brain dead also use approximately 25% less energy (resting energy expenditure-REE) than would be predicted, again corresponding to the total cessation of metabolic activity in the brain.[67] In fact, the REE decrease correlated with worsening blood flow. As the blood flow (measured by TCD) decreased, the REE decreased, until the REE reached a nadir when the blood flow ceased.

Despite the finding of CCA, there is one area of the brain, mentioned frequently by Shabtai that sometimes retains function: the hypo-thalamus/pituitary area. The anatomic explanation for this possible function of the hypothalamus lies in the way blood flows to the brain and surrounding structures. There are arteries that travel into the skull but not usually to the brain, namely the external carotid arteries[68], and since these arteries travel in the linings of the brain (dura), they may be protected from the increased pressure in the skull. Branches of the external carotid artery can supply blood to the pituitary gland. In addition, once the first branches of the internal carotid arteries enter the skull they travel to the hypothalamus and the pituitary gland. If, therefore, there is even a small amount of forward travel of the blood (when the heart pumps the blood surges forwards, when it relaxes, the blood goes back to its place, a finding described as 'to and fro flow'), it could reach just the pituitary and the hypothalamus. Because of these unique advantages regarding blood flow, function in the hypothalamus does not imply the presence of function or blood flow in any other part of the brain.[69]

No patient who fulfilled clinical brain death criteria and had documented lack of flow on any of the studies has ever regained function

---

What is the function of the hypothalamus and how do we know it is functioning? Some of the output of the hypothalamus is *via* the pituitary gland, and so either the blood levels of those hormones can be measured or the hormonal effects on urine concentration can be measured.

The hypothalamus is also involved in temperature regulation. Shabtai repeats an erroneous assumption that a stable temperature implies a functioning hypothalamus. An elegant study showed that this is in fact not correct. The only way to be certain that the hypothalamus is actually controlling temperature is to deliberately cool the patient and measure how the body corrects itself.[70] It is theorized that there are temperature regulation control systems in the spinal cord and/or the body, outside of the brain. This is correlated by Alan Shewmon, who identified a large number of patients whose bodies were maintained for a long time after brain death. He testified that a patient who survived for many years had a stable body temperature and did not require any special temperature monitoring or support. [71] At autopsy, the patient did not have a single

identifiable neuron in his brain, much less a hypothalamus.

From a physiological point of view, the hypothalamus controls temperature by secretion of a thyroid hormone and shivering. Brain dead patients usually have low levels of thyroid hormones (illustrating that this hormone is not being manipulated by the brain to control temperature), and have not been documented as shivering in response to cold. Hence the assumption that a stable temperature is a sign of a functioning hypothalamus is not accurate. Shabtai mentions that stable temperature regulation may have halakhic significance and therefore achieving precision in this discussion may be quite important.

The final point concerns blood flow, what exactly can be determined with tests, and what the tests imply. Shabtai is disturbed by reports that sometimes studies show the presence of blood flow when others show an absence of blood flow.[72] Each blood flow study has a lower limit of accuracy, and thus blood flow can be present even if the test does not detect it. An animal model of brain death showed that even with very high ICP, a few radioactive microspheres can flow into the brain.[73] Therefore, the more accurate depiction is not absent flow, but inadequate flow. Inadequate flow is defined as flow that is not adequate to support the function of the target tissue. The purpose of measuring blood flow in the testing for brain death is to confirm that the finding of absent function is irreversible.

All the tests mentioned by Shabtai in fact are accurate enough to serve that function. There has not been a single patient who fulfilled clinical brain death criteria, had documented lack of flow on any of the studies, and who subsequently regained function. Shabtai's concern is misplaced. In fact it is unreasonable to expect that all blood flow tests utilizing different technologies will have the same sensitivity. As long as they accurately predict inadequate flow, they are useful. As a result, the halakhic question becomes "What exactly is the definition of circulation?"[74] Is circulating water adequate for the presence of life? If the blood flow is infinitesimally small, but present (perhaps using a pump, rather than a heart made of tissue) is the person still alive? Is there a minimum pressure, an amount of oxygen, an amount of glucose that needs to be present in the circulation in order for it to be considered present by *halakhah*? After consideration of these questions it should be clear that while the idea of adequate flow seems to be a new concept in the discussion of blood flow to the brain, in reality it has been an unstated assumption all along when circulation has been used as a criterion for life and death. Essentially, the word 'circulation' has been assumed to mean adequate circulation. Were that not the case, then a body attached to a pump that pushes water through the body needs to be considered a living human being. Hence circulation that is not adequate to support the function of the target tissue may not fulfill the halakhic requirements to be considered circulation.

As I noted at the outset, a patient can lose all neurological function due to lack of oxygen, poisoning, infection or other process, and still maintain blood flow to the brain. Therefore some patients who fulfill criteria for brain death (based on criteria that do not require absent blood flow) will exhibit the presence of cerebral blood flow. The finding that some brain dead patients still maintain cerebral blood flow reflects the various pathologies that result in loss of brain function. From a halakhic point of view, it may be desirable or mandated for the criteria for brain death to include documentation of lack of blood flow, in which case the study needs to be done and exhibit a lack of flow.

Perhaps more important questions are, "What are the implications of absent (or inadequate) flow?" "What are the characteristics of the group of patients who exhibit no flow on

studies?" A study of 39 patients who were deeply comatose but not brain dead revealed that all but one had blood flow present on exam. The one patient without blood flow exhibited weak breathing on apnea testing, and 24 hours later fulfilled clinical criteria for brain death.[75] Another study examined blood flow in patients who were either brain dead, in a coma, or in a persistent vegetative state. Six of the patients did not fulfill clinical criteria for brain death, and significant blood flow was found in all six, despite the poor neurological condition. In 15 of the 17 brain dead patients, flow was absent.[76] Persistent lack of blood flow leads to loss of function and death of the cells affected by that lack of blood flow[77].

If the blood flow is infinitesimally small, but present, is the person still alive?

Shabtai states that it is wrong to assume that a negative perfusion scan implies that the non-functioning brain stem is irreversibly lost.[78] However there has never been a case where an adult patient who had a negative scan and who fulfilled clinical criteria for brain death has regained function. He quotes the 2008 pathology study to illustrate that less than half of the patients determined to be brain dead showed evidence of neuronal ischemia. It should now be clear how the use of the study in this context is entirely unfounded. The fact that not all the cells appeared dead by H and E staining does not imply that they are capable of returning to function, and there is very good evidence, both theoretical and clinical, that a patient who fulfills criteria for brain death and suffers from absent flow on studies will never regain any function.

The final use of the pathology report occurs on page 328 of Shabtai's book, where he states that "pathology research has shown that up to a third of patients diagnosed as 'brain dead' do not show any signs of moderate to severe sings of cell death in their cerebral cortices." He then states that "these data preclude recognizing the clinical diagnosis of 'brain death' as the 'death of each and every cell of the brain'". This again is a misuse of the study, since the cells that stain 'not dead' may not all be alive. He is accurate in stating that it is not possible to claim with certainty that all the cells in the brain are dead in patients who fulfill the criteria for brain death. However, if *halakhah* mandates that death is declared only when every cell in the brain is dead, standard cardiopulmonary criteria are not adequate either.[79]

Moreover, a case has been reported where the autopsy failed to identify a single neuron, yet the patient's body was supported for many years after the determination of brain death.[80] By his own terms, Shabtai would have to agree that this patient was dead for many years, which illustrates that even though 'vital motion' persisted in the body, the person was dead. This is obviously problematic for those who maintain that 'vital motion' is the criterion for life.[81]

Dependency on summaries is a problem if it results in a failure to read the literature and understand the anatomy, physiology, blood flow and pathology of the brain

Shabtai fails to mention a number of other important points of informationt: He cites Shewmon's[82] reports of patients whose bodies were supported for a long time after the determination of death, but he fails to mention that despite the prolonged support, not a single one ever regained any neurological function or the ability to breathe. He similarly fails to mention the many reports where the body was supported until the heart stopped but still there was no return of function.[83] He fails to mention that live brain cells are found in the brains of people who are determined to be dead via 'usual' criteria, even more than eight hours after death.[84] If his position mandates that a person is not dead until every brain cell is dead, this

necessitates that death should not be pronounced until at least eight hours after the heart has stopped 'irreversibly.[85] Shabtai expresses concern regarding inaccurate determinations of death, but fails to mention that inaccurate determinations of death occur with the use of circulatory and respiratory criteria[86].

Shabtai's book and the RCA report before it, depend heavily on outside summaries for their discussion of the scientific aspects of brain death. This is not a problem *per se*. However, it *is* a problem if that dependence results in the failure to comb the literature, read the literature, and understand the intricacies of the anatomy, physiology, blood flow and pathology of the brain.

In response to a question posed during a recorded lecture[87] Shabtai discusses patients who are brain dead but are maintained on the ventilator for possibly an extended period of time. He states: "we don't really have really good studies as to how long this person can continue…we don't really know." In fact, we do have good studies and reasonably good data on this topic. One of the studies that Shabtai cites in a slightly different context contains significant data relevant to this topic[88]. In addition, a number of studies address this point specifically[89], including one considered a classic in the field that has been cited 80 times[90]. Lastly, a number of experimental studies give reasonable explanations as to why the bodies of some patients can be supported after brain death and some cannot as well as the possible pathological changes that make it difficult to support these bodies over the long term[91].

A book author controls the message of the book by selecting what data to include and what not to include. Some authors, including Shabtai, also present their own interpretations of the data. Perhaps by definition, a book author presents himself as an expert on the topic of the book. An expert is someone who, through the investment of time and effort, has mastered the requisite body of knowledge, and/or has significant personal experience relevant to the topic[92]. It is reasonable to expect that an expert will present facts that are actual facts, and that the conclusions presented by an expert are reasonably supported by facts.

Some may read this appendix and want to conclude that this discussion represents a simple difference of opinion. That would be a misunderstanding. Quite simply, it is an issue of facts and what are or are not reasonable interpretations of facts. Differences of opinion can exist, but all the relevant facts need to be known and considered prior to forming opinions, and the opinions need to be supported by a reasonable interpretation of the facts. Some opinions are not supported by the facts.

Some may conclude that this presentation is overly critical. That was not the goal of this review essay. When a book is touted as "The authoritative work on the subject"[93] and articles state that "His skilled summation and analysis of the existing material will probably make this the book of record for some time"[94], it is necessary to clearly and unequivocally illustrate why these statements should be reconsidered.

Shabtai's website for the book states that "All modern halakhists rely on the same medical facts." In a matter that is literally one of life and death, we can agree that we all have a sacred obligation to ensure that those facts are stated, presented, and interpreted as accurately as is humanly possible.

NOTES

*This essay is dedicated to the memory of my father, *avi mori*, Dr. Emanuel Mordechai Stadlan a'h, who passed away during the completion of the essay. He was a man of science, learning, reason, and deep faith, an example of true *Torah u'Madda*. Even as he pursued truth and was true to his principles, his words were always gentle.

[1] Professor/Rabbi Steinberg is a pediatric neurologist and has written copiously on medicine, Halacha, and the intersection of medicine and *halakhah*, including the multi volume Encyclopedia Hilchatit Refuit. He was a consultant to the Chief Rabbinate in the 1980's when the first guidelines were established, and his involvement has continued to the present

[2] Rabbi Dr. David Shabtai is a fellow of the Wexner Kollel Elyon of the Rabbi Isaac Elchanan Theological Seminary at Yeshiva University. He is a graduate of NYU medical school. It is unclear from his available biographical information if he has completed internship or residency, or if he has practiced medicine.

[3] Steinberg was perhaps the first to use this paradigm in the Halakhic realm in his presentation of the definition of death in his Encyclopedia. However Shabtai uses it systematically not only to present ideas, but to analyze sources and other opinions. I also employed this system in a previous publication available here: http://text.rcarabbis.org/problems-with-defining-death-as-the-irreversible-cessation-of-circulation-what-would-we-measure-and-why-by-noam-stadlan-md/

[4] This approach was used in the article referenced in note 3 as well as the previous article published in Meorot.

[5] Many early opinions (and even some current ones) contain scientific information that is demonstrably wrong. For example, R. Shmuel Wosner states that a beating heart is proof that there is some connection between it and the brain. Hearts can beat when entirely removed from the body, and donor transplanted hearts beat without any connection to the recipient brain. Some opinions interpret previous positions based on the knowledge of the day which is now known to be incorrect. How to take this information into account has very significant influence on the decisions of current *poseqim* (decisors).

[6] Shabtai has noted that the 'consensus of *poseqim*' is against defining death by brain or respiratory criteria. While outside the scope of this review, this deserves a brief note. Who is counted in the consensus? Is one obligated to count a *poseq* whose underlying approach to the sources is entirely at odds with ones beliefs?? Is a scientist obligated to count a *poseq* who discounts science? If one believes that the science of the Gemara was based only on the science of the time, does one have to take into account a psak based on the belief that the science of the Gemara is timeless? This question is sharpened by the discussion of the definition of death, but applies to many halakhic questions raised in the modern era.

[7] Steinberg, "*Respiratory-Brain Death,*" p.14

[8] Ibid, p. 15

[9] Ibid, p.15

[10] Ibid, p. 39

[11] I discuss this in detail in the Appendix

[12] Ibid, p.130

[13] This problem is very similar to issues raised in the secular legal realm, where the Uniform Determination of Death Act specifies death of the whole brain, while the criteria usually applied ignore EEG and hypothalamic activity. See discussion in a paper in press by the International Rabbinical Fellowship, Noam Stadlan, "Defining Death in the 21st Century-the Intersection of Science, Logic, and Halacha."

[14] It can be clinically obvious if it is not functioning properly. See Appendix for an in depth discussion of the hypothalamus, its function, and the implications of its function.

[15] "Halachic Issues in the Determination of Death and in Organ Transplantation" available at http://www.rabbis.org/pdfs/Halachi_%20Issues_the_Determination.pdf
[16]" Controversies in the Determination of Death" available at http://bioethics.georgetown.edu/pcbe/reports/death/Controversies%20in%20the%20Determination%20of%20Death%20for%20the%20Web%20(2).pdf
[17] The Appendix contains a detailed presentation of the actual data and an analysis of Shabtai's statements.
[18] Alan Shewmon Probably Comes The Closest To Establishing Parameters For Death Under This Construct, And Even Those Are Still Vague. See The Discussion In Reference 13 Above.
[19] *Controversies in the Determination of Death: A White Paper by the President's Council on Bioethics,* The President's Council On Bioethics, Washington, D.C., December 2008, found at http://bioethics.georgetown.edu/pcbe/reports/death/index.html.
[20] Lizza, JP "Where's Waldo? The 'decapitation gambit' and the definition of death" *Journal of Medical Ethics* 2011; 37:743-746. The paper came out in 2011 so Shabtai cannot be faulted for not including it.
[21] Shabtai briefly touches on how this argument affects the position of Rabbi J. David Bleich, but does not identify it as a significant problem or develop the ramifications.
[22] Perhaps the most cogent response to this problem has been that of neurosurgeon Peter Black who wrote: "it is simply...that without a brain, even minimal human life does not exist. The body by itself does not constitute a living person." Black, PM. "Conceptual and Practical Issues in the Declaration of Death by Brain Criteria" *Neurosurgery* Clinics of North America. 1991. 2:2; 493-501. In other words, the difficulty in establishing exactly what about the brain makes it the vital component of human life does not negate the argument that the brain IS the vital component of human life. It should be noted that those who define life as vital motion or organized biological function have a similar difficulty in establishing an exactly what they mean.
[23] Lee, P and Grisez, G. "Total Brain Death: A Reply to Alan Shewmon," *Bioethics*, ISSN 0269-9702 (print); 1467-8519 (online)
[24] See the in depth discussion by R. Alexander Tal available here: http://www.hods.org/pdf/Nostrils,%20Navel%20or%20Heart(1).pdf
[25] unpublished paper
[26] Many, including Reifman and Steinberg note that the most straightforward interpretation of Rashi's reference to '*libo*' is looking for the respiratory movement of the chest
[27] Reichman, E "The Halakhic Definition of Death in Light of Medical History" available here: http://www.hods.org/pdf/The%20Halachic%20Definition%20of.pdf
[28] Shabtai, "*Defining the Moment*" page 250
[29] RCA Va'ad Halacha—"Halachic issues," p. 55
[30] Reifman, D "The Brain Death Debate: A Methodological Analysis" Parts I, II IIIa and IIIb *On the "Text and Texture*" website available at http://text.rcarabbis.org/tag/daniel-reifman/
[31] Furthermore, if an argument from consequence is allowed to override a halakhic determination in this case, it would seem that for those *poseqim* who use it, there is precedent for an argument from consequences to override halakhic determinations in other cases.
[32] Another way to salvage the circulation definition of death would be to change it to circulation that supports neurological function. It is not clear why those who are going to jettison circulation alone would automatically embrace R. Bleich's approach
[33] Some have claimed that the definition of death cannot be based on neurological function because neurological function was not known by the rabbis of the *gemara*. This is difficult to accept for a number of reasons: the details of 'vital motion' were equally unknown. The decapitation and respiratory criteria can be understood as referring to neurological function. The most troubling issue is perhaps the theological one: That the Divine definition of life and death, as understood by *halakhah*, is limited by what science had been able to achieve by the close of the 5th century CE.

[34] R. Shabtai notes that R. Bleich (and R. Auerbach) may allow for more than one definition of death- the standard loss of circulation/vital motion, and a special circumstance of decapitation. This violates the framework of Dr. Bernat, where there is only one concept of life and death. It also is in sharp disagreement with the authors of the Va'ad Halacha report, where they state that there is only one definition of death. The logical way to combine the two accepted determinations of death is to accept that death occurs when the cessation of circulation/vital motion results in the cessation of neurological function. R. Auerbach may have been willing to accept that, given that he accepted death as the death of every cell in the brain.

[35] R. Yosef Carmel (email conversation) notes that there are situations where it is obvious the person is alive, and that the discussion of determining death does not apply in those situations. Therefore, the concept of respiration being the definition of life only applies in situations where the patient otherwise qualifies as dead. This does not accord with the logical construct established by Shabtai. Whether *halakhah* requires such rigid adherence to overarching logical constructs is a topic beyond the scope of this review.

[36] Chiong, Winston (2005). "Brain Death without Definitions," *Hastings Center Report* 35 (6):20-30.

[37] It should be noted that this approach but using different content usually results in incoherent unanticipated consequences. For example, some define death as the cessation of all three of respiration, circulation and neurological function. This has the outcome of granting life to a corpse with blood flow.

[38] It should be clear that the only definition of death that avoids these problems is one that is based on neurological function. Then the criteria would be loss of neurological function to a certain extent, and the tests would follow. Any other concept of death, including that of vital motion, will entail some variation of the problem that Shabtai has identified. Therefore, the only halachically based definition of death that survives is that of physiological decapitation and the permutations that stem from it.

[39] R. Daniel Reifman has written an excellent analysis of this that is awaiting publication- showing that it is likely that his mention of circulation was simply as a test for the irreversibility of respiratory function

[40] Some have maintained that personal identity is an issue separate from the definition of life and death. Regardless of the philosophical approach, there are unavoidable practical ramifications. When the criteria for personal identity are the same as the definition of life and death, there is complete concordance of the life of the person with the identity of the person. However, if life and death is defined in one way, and personal identity is defined in another, then life and identity will not always overlap. Therefore, there will be collections of tissue who qualify as alive human beings but do not fulfill criteria to be a specific human being (perhaps a functioning body without a head), and/or there will be collections of functioning human tissue who have a personal identity, but who are defined as dead(perhaps a functioning head/brain preserved on a pump). If a definition of life and death is going to allow for the creation of these new categories, then it should also address the halakhic definitions and ramifications. This is not a problem for neurological and RBD definitions of death, but clearly is a challenge for those who define life and death as the presence of vital motion and/or circulation.

[41] Steinberg. p. 109

[42] Steinberg, p. 119

[43] Shabtai, p. 296, note 22

[44] Shabtai, p. 295.

[45] See website here: http://www.israelnationalnews.com/News/News.aspx/141407 accessed 7/15/2012. This was reported by many news sources

[46] The article is available here: http://www.haaretz.com/print-edition/news/at-90-ovadia-yosef-can-still-raise-hackles-and-politicians-hopes-1.314251 accessed 7/15/12. They attribute the change in position of R. Yosef to pressure applied by the Lithuanian yeshiva community led by R. Elyashiv.

[47] There is an unfortunate history of a paper being present as "an unfettered search for the truth" only in reality to have an agenda hidden from the reader. The document authored by Rabbi Asher Bush and

published by the RCA is a case in point. When asked why the presentation in the paper was skewed heavily against brain death, R. Bush wrote the following:

> "As we got further and further into our research it became clear that the "popular" opinion was far from a simple one in Halacha, being at best one of several possibilities. Additionally, the arguments made for it in the Halachic literature tended to be weak, often based on forced readings of the rabbinic sources and in more than a few cases basic misunderstandings of biology and the workings of the human body.
>
> So I guess you could say that much of our study was a "corrective" to show that this popular approach is not a very strong one in Halacha, not just because of "who" says it, but because of how it fits with the sources. Accordingly, we felt the need to show that this is not only the case from a Talmudic point of view, but that many of the issues are far from simple from the medical view. The fact that there are multiple points of view/disagreements in the medical literature is clear for those in that field, our goal was to show to the rabbis that this was the case"

Nowhere in the introduction or anywhere in the publicity was there any indication that R. Bush was presenting this as a 'corrective' or anything more than an 'educational paper'. It was labeled as an objective presentation of the evidence. Obviously he was trying to accomplish something more than just a presentation of facts, yet this goal was hidden from the public. By hiding all the arguments supporting brain death, R. Bush denied the reader the facts necessary to come to their own conclusion.

I also asked R. Bush to correct the misrepresentation that there was no medical data supporting brain death. He responded with the following:

> "With this in mind I am bothered by the fact that you call upon us to correct what you call/consider misinformation/mis-impressions we have given off. Was this same call made to Rabbi Tendler when he has done that? Was there a call for an honest accounting of the Bondi letter written by a family member after Rav Moshe was no longer capable of such rulings? Was Dr Steinberg asked to correct the misimpression given in his encyclopedia that almost all Rabbis support bsd (brainstem death- addition made by the author) and only a small few do not? If the omission of certain medical information might be considered misleading, it surely pales in comparison to what has preceded in this topic."

Aside from the issue of 'two wrongs make a right', the readers of the paper had no idea of R. Bush's position on all of the above matters. They were simply presented with a paper that was ostensibly "'just the facts.'

[48] For example, as noted above, some standard criteria do not require testing for electrical function on EEG. Not surprisingly, some patients determined to be brain dead retain some electrical function on EEG. If one included a negative EEG in the mandated testing for brain death, it would result in a group of patients with an absence of electrical function on EEG. So the finding of electrical function on EEG in patients determined to be brain dead can be an argument against that particular set of criteria, it isn't a valid argument against the concept of brain death. Shabtai conflates the two.

[49] p. 32 note 28; p. 104 note 26; p. 303 note 43; and p. 328 note 26. In the first usage, he states the findings as noted but does not point out that the findings may not accurately reflect the actual life and death status of the neurons. The second citation is used to challenge Rabbi Moshe Tendler's assertion that the brain begins to lyse 48 hours after the determination of brain death. I will not go into detail regarding the accuracy of R. Tendler's assertion. However, in this study, 12 of the autopsies were done within 12 hours of brain death, and the other 29 were done within 36 hours. Thus this study does support Shabtai's notation that patients are no longer being supported on the respirator for long periods after determination of brain death, but it does not support his assertion that "these results are no longer observed." The other two instances will be discussed in the body of the paper.

[50] Wijdicks EM, Pfeifer EA "Neuropathology of brain death in the modern transplant era," *Neurology* 70(2008): 1234-7.

[51]Schroder R., "Later Changes in Brain Death. Signs of Partial Recirculation," *Acta Neuropathologica,*(Berl) (1983) 62:15-23.
[52] Zille M, Farr, TD, Przesdzing, I, et al. "Visualizing cell death in experimental focal cerebral ischemia: promises, problems, and perspectives" Journal of Cerebral Blood Flow & Metabolism (2011), 1–19.
[53] Saposnik G, Munoz DG. "Dissecting brain death: Time for a new look, *Neurology* 70(2008): 1230-1.
[54] see reference 4
[55] Wijdicks EM, Pfeifer EA "Neuropathology of brain death in the modern transplant era". *Neurology* 70(2008): 1234-7.
[56] The first definition of this word (dictionary.com) is "to present, especially deliberately, the appearance of being; profess or claim, often falsely: *a document purporting to be official."*
[57]Figaji, AA, Kent SJ, "Brain Tissue Oxygenation in Children Diagnosed With Brain Death" *Neurocrit Care* (2010), 12:56–61.
[58] The arteries carry oxygenated blood to the brain. The functioning brain extracts oxygen, and the blood in the veins carries away the carbon dioxide that the functioning brain produces. Therefore, the oxygen content of the blood in the veins is significantly lower than the oxygen content of the blood in the arteries. Similarly the carbon dioxide content of the veins is higher than the carbon dioxide content of the arteries. If the brain is not functioning-i.e. brain death, the brain does not extract oxygen from the arterial blood. The oxygen rich blood flows untouched to the veins. One indication of absent function therefore is high oxygen content of venous blood. In fact, measurements of high oxygen content of blood in the jugular vein correlate very well with brain death. See for example: Díaz-Regañón G, Miñambres E, Holanda M et al "Usefulness of venous oxygen saturation in the jugular bulb for the diagnosis of brain death: report of 118 patients" *Intensive Care Medicine* (2002) 28:1724–1728
[59] Van Santbrink H, Maas A, Avezaat C, "Continuous Monitoring of Partial Pressure of Brain Tissue Oxygen in Patients with Severe Head Injury" *Neurosurgery* (1996)38:1. 21-31
[60] See for example: Selcuk H, Albayram S, Tureci E et al. "Diffusion-weighted imaging findings in brain death" *Neuroradiology* (2012) 54:547–554. Also Meyer MA. "Evaluating brain death with positron emission tomography: case report on dynamic imaging of 18F-fluorodeoxyglucose activity after intravenous bolus injection." *Journal of Neuroimaging.* (1996) 6(2):117-9.
[61] See discussion at the end of this Appendix regarding the survival of individual brain cells
[62] S Palmer, MK Bader, "Brain tissue oxygenation in brain death," *Neurocritical Care* 2:1 (2005) 17-22. None of the patients with oxygen levels above zero became brain dead. Jack Rose, Terry Neill et al, "Continuous monitoring of the microcirculation in neurocritical care: an update on brain tissue oxygenation," *Current Opinion in Critical Care* 12 (2006) 97-102.
[63] AB Valadka, JC Goodman, et al "Comparison of brain tissue oxygen tension to micro dialysis-based measures of cerebral ischemia in fatally head-injured humans," *Journal of Neurotrauma* 15:7 (1998) 509-19. See also MK Schultz, LP Wang et al "Cerebral microdialysis monitoring: determination of normal and ischemic cerebral metabolisms in patients with aneurismal subarachnoid hemorrhage," *Journal of Neurosurgery* 93:5 (2000) 808-14. Also N Stahl, P Mellergard et al, "Intracerebral Microdialysis and bedside biochemical analysis in patients with fatal traumatic brain lesions" *Acta Anaesthesiologica Scandinavica* 45 (2001) 977-985.
[64] Nino Stocchetti, Elisa Zanier et al "Oxygen and Carbon Dioxide in the cerebral circulation during progression to brain death," *Anesthesiology* 103 (2005) 957-61.
[65] F. Aichner, S. Felber et al, "Magnetic resonance: a noninvasive approach to metabolism, circulation and morphology in human brain death," *Annals of Neurology* 32:4 (1992) 507-11.
[66] Christopher Rumana, Shankar Gopinath et al, "Brain temperature exceeds systemic temperature in head-injured patients" *Neurologic Critical Care* 26:3 (1998) 562-567.
[67] M. Bitzani, D Matamis, et al "Resting energy expenditure in brain death," *Intensive Care Medicine* 25 (1999) 970-976.

[68] The arteries that enter the skull and supply blood to the brain are the internal caratid arteries and the vertebral arteries

[69] The internal carotid arteries are paired (one on each side). The vertebrobasilar system supplies blood to the posterior part of the brain and the brain stem. The vertebral arteries enter the cranial vault by crossing an edge of bone at the foramen magnum. This is the only opening of any size in the cranium, and with high ICP, the swollen brain frequently herniates out. Therefore, the vertebral arteries would be compressed on either side of a bony ridge, making the cessation of flow much more definitive than the internal carotid artery. In addition, the brainstem contains many closely packed nuclei that have function. If the brainstem received any significant amount of blood flow, it is reasonable to expect that some function or reflex would be clinically found. The lack of clinical brainstem function is further proof of the lack of brainstem blood flow.

[70] Behr R, Ehrlinspiel D, Christophis P. "Temperature Regulation As possible prognostic indicator with Acute Intracranial Lesions" *Acta Neurochir* (Wien)(1996) 138:192-199

[71] Available here: http://bioethics.georgetown.edu/pcbe/transcripts/nov07/session5.html the autopsy report was published as well: Repertinger, S, Fitzgibbons WP, Omojola MF, Brumback RA "Long Survival Following Bacterial Meningitis-Associated Brain Destruction" *Journal of Child Neurology* (2006);21:591–595; DOI 10.2310/7010.2006.00137

[72] page 305

[73] Karlis P, Sedigh A, Molnar C, Janssen L, et al "Standardized experimental brain death model for studies of intracranial dynamics, organ preservation, and organ transplantation in the pig," *Critical Care Medicine* (2011) 39:512–517

[74] Please see the extensive discussion on this topic here: http://text.rcarabbis.org/problems-with-defining-death-as-the-irreversible-cessation-of-circulation-what-would-we-measure-and-why-by-noam-stadlan-md/ accessed 6/21/11

[75] Dosemeci L, Babur D, Yilmaz M, Cengiz M, et al "Utility of Transcranial Doppler ultrasonography for confirmatory diagnosis of brain death: two sides of the coin". *Transplantation* (2004) 77:1:71-75.

[76] Schlake HP, Bottger IG, Grotemeyer KH et al "Determination of cerebral perfusion by means of planar brain scintigraphy and 99m Tc-HMPAO in brain death, persistent vegetative state, and severe coma" *Intensive Care Medicine* (1992) 18:2:76-81.

[77] As noted above, parts of the hypothalamus may be protected in some cases from the lack of blood flow, but there is no reason to believe that this applies to any other part of the brain. Obviously rare cases of abnormal vasculature can occur, but those would be extraordinarily uncommon. As noted above, the brainstem contains many closely packed functioning nuclei, and if the cells of the brainstem were viable in a significant number, there would be observable brainstem function manifested by reflexes, breathing, or other clinically observable function. While final edits were being done on this paper, an additional case was reported where a patient demonstrated lack of flow on testing, but retained breathing and some movement. Budohoski KP, Aries MJ, Kirkpatrick PJ, Lavinio A. "Protracted cerebral circulatory arrest and cortical electrical silence coexisting with preserved respiratory drive and flexor motor response" *British Journal of Anaesthesia* (2012) 109(2):293-4.
Obviously this patient did not fulfill criteria for brain death due to the continued breathing and movement. The implications of this paper and related blood flow issues are the topic of a presentation that has been accepted for the upcoming meeting of the American Association of Neurological Surgeons(spring 2013).

[78] p. 303

[79] See discussion below.

[80] Repertinger, S, Fitzgibbons WP, Omojola MF, Brumback RA "Long Survival Following Bacterial Meningitis-Associated Brain Destruction," *Journal of Child Neurology* (2006);21:591–595; DOI 10.2310/7010.2006.00137

[81] Shabtai addresses this point in the book and states that it is possible for R. Bleich to assert that there are in fact two different concepts of death- death of every neuron and cessation of 'vital motion'. This however would contradict the authors of the RCA document who state early on that there is only one concept of life and death. In addition, it raises further questions as to which concept is controlling when the patient fulfills one concept for death but not the second.

[82] Shewmon, DA "Chronic brain death- a meta analysis and conceptual consequences". *Neurology* (1998). 51: 1538

[83] Jennett B, Gleave J, Wilson P. "Brain death in three neurosurgical units" *British Medical Journal*(1981) 282(6263):533-9.

[84] Verwer RW, Hermens WT, Dijkhuizen P, et al." Cells in human postmortem
Brain tissue slices remain alive for several weeks in culture." *FASEB Journal* (2002). 16: 54–60

[85] It actually never irreversibly stops, as R/D Shabtai acknowledges. One can always attach a pumping machine to provide circulation.

[86] Adhiyaman V, Adhiyaman S, Sundaram R "The Lazarus phenomenon". Journal or the Royal Society of Medicine
(2007) 100(12):552-7.

[87] November 2010 available at:
http://www.torahcentral.com/YUTorah/lecture.php?752286/Rabbi%20Ezra%20Labaton/Defining%20The%20Moment:%20What%20Does%20It%20Mean%20To%20Be%20Dead?

[88] Shewmon DA: Chronic "brain death": Meta-analysis and conceptual
consequences. *Neurology* 1998;51:1538–1545. See my discussion of this paper above.

[89] Al-Shammri S, Nelson RF, Madavan, R et al "Survival of cardiac function after brain death in patients in Kuwait" European Neurology (2003) 49(2): 90-3.
Hung TP, Chen ST "Prognosis of deeply comatose patients on ventilators" *Journal of Neurology Neurosurgery and Psychiatry* (1995). 58(1): 75-80. and Al-Attar B, Shaheen F, Salam MA, Al-Sayyari A, Babiker A, Zakaria H, Babiker A, Saclayan L.
"Implications of ICU stay after brain death: the Saudi experience," *Experimental and Clinical Transplantation*(2006) 4(2):498-502.

[90] see reference 86 above.

[91] for example, see: Shivalkar B, van Loon J, Wieland W, et al. "Variable effects of explosive or gradual increase of intracranial pressure on myocardial structure and function." *Circulation* (1993) 87:230–9.

[92] I certainly do not claim that one has to be a specialist in the neurological sciences to be an expert on this topic. In fact many of my neurology and neurosurgical colleagues, despite an excellent knowledge of how to apply the criteria, would not consider themselves an expert on this topic. Similarly, completing medical school is not a guarantee of mastery of the topic. see here: Tawil I, Gonzales SM, Marinaro J et al, "Do Medical Students Understand Brain Death? A Survey Study" *Journal of Surgical Education*(2012) 69(3): 320-325

[93] http://www.ou.org/jewish_action/11/2012/defining-the-moment-understanding-brain-death-in-halakhah/

[94] http://www.jewishideasdaily.com/4987/features/the-brain-death-wars/

Meorot
A Forum of Modern Orthodox Discourse

BOOK REVIEW

Strictly Kosher Reading: Popular Literature and the Condition of Contemporary Orthodoxy by Yoel Finkelman

Reviewed by Rose Waldman

Biography: Rose Waldman is an author whose works have appeared in Ami Magazine, Horizons, Pakn Treger, The MacGuffin and elsewhere. Currently an MFA candidate in fiction and literary translation at Columbia University, Ms. Waldman's translation of an I. L. Peretz work was published by Back Pages Books in September 2012.

.

Meorot 10
Tevet 5773
© 2012

A Publication of
Yeshivat Chovevei Torah
Rabbinical School

Strictly Kosher Reading: Popular Literature and the Condition of Contemporary Orthodoxy, by Yoel Finkelman (Academic Studies Press, 2011)

Reviewed by Rose Waldman

"All is flux. Nothing endures but change," said Heraclitus. But in the *Haredi* community, the position has traditionally been the reverse. *Haredim* pride themselves on their resistance to change and claim an ideology staunchly unswerving of ancient traditions. They profess to observing a lifestyle based on long-established religious and ethical tenets carried over from generation to generation.

Certainly, there are recognizable signs that appear to support the *Haredi* claim. Their distinct style of dress, the mode of study in their schools, their resistance to secular education, their focus on prayer, their consideration of *halakhah* in every aspect of their lives—all seem indicative of a conservative lifestyle that is ageless and immutable.

Yet in *Strictly Kosher Reading* (*SKR*), Yoel Finkelman argues that despite the *Haredi* assertion of abiding by "a medieval tradition transplanted into the present," the Heraclitus theory of change is actually true of them, too. Finkelman isn't the first to claim this. Beginning with Jacob Katz's eminent article on the subject, in which he asserted that *Haredim* are not the "pure Judaism of old,"[1] the *Haredi* absolutist notion of traditional stasis, which had for so long appeared self-evident, was challenged. Later scholars built upon this approach, so that today Katz's claim vis-à-vis *Haredim* is the acknowledged stance. In fact, sociologist Israel Rubin who studied the Hasidic Satmar sect found that even within the Satmar community, which is one of the most fundamentalist groups among *Haredim*, "[religious] life, there, as anywhere else, is constantly evolving."[2] But where Finkelman differs from these scholars is his choice of popular literature as a means of analysis. He is among the first to study not halakhic treatises or academic texts, but literature created by and for the *Haredi hoi polloi.* As far back as 1958, the noted Yiddish writer Chaim Grade already underscored the idea that popular literature is the lens of reality. In a speech he delivered in Montreal, he asserted that despite the comprehensiveness of historian Heinrich Graetz's work, Graetz could not write the history of the "simple Jew," because this reality is not found in rabbinic responsa or canonical texts. The reality of the simple Jew's life, Grade explained, can only be discovered in literature of the times.[3] So, too, Finkelman seeks understanding of the concrete lives of *Haredim*—how they think, how they speak, and how they justify their actions—through the lens of popular literature.

Finkelman is among the first to study not halakhic treatises or academic texts, but literature created by and for the Haredi hoi polloi.

And therein lies the breakthrough. Because unlike "elite" literature, which tends to portray a lofty ideal, the more "mundane" literature that Finkelman analyzes reflects reality, actual lives lived. Take, for example, the conclusion he draws regarding the existent harmony of American *Haredi* Judaism's "popular and elite literature." Though Finkelman admits that part of the reason for this harmony is because *Haredi*

rabbis oversee—and occasionally give "*haskamot"* (approvals) to popular literature, another part is due to the masses' power over the rabbis. *Haredi* leaders are personally invested in maintaining a positive relationship with the masses, aware that refusal to cooperate with popular opinion will result in their own alienation. Consequently, elite and popular literature is *made* to fit, and popular literature brands like *Artscroll-Mesorah* are able to claim ideological purity. The analysis that Finkelman makes here would be impossible based on elite texts alone, since according to those works, religious leadership bases decisions on Torah alone and it ignores subjective preferences or personal advantage.

SKR's thesis is that *Haredi* popular literature serves to galvanize and unite the community in significant ways, to illuminate their distinctiveness, and ironically and unintentionally, to demonstrate their acculturation. *Haredim*, Finkelman claims, do not operate under a chain of continuity that leads back to the giving of Torah on Sinai, but in fact, they borrow heavily from the norms of Western society. Regardless of their official ideology, *Haredim* have been deeply acculturated and influenced by their host countries.

There is great concern about a couple's emotional compatibility in the Haredi *community, a concept more in common with Western mores than with Judaic sensibilities.*

Unlike many scholars who use the term *Haredi* as a blanket description of the entire Orthodox Jewish demographic, Finkelman separates Orthodoxy into three discrete sub-groups: Modern Orthodox, *Haredi*, and Hasidic. He focuses on the group he refers to as "*Haredim*," generally known within Orthodox circles as "Yeshivish." Not quite as isolationist as *Hasidim*, not as Americanized as the Modern Orthodox, *Haredim* are the middle ground on whom *SKR* is concentrated. It has become common in academic studies to separate Modern Orthodoxy from its more right wing co-religionists, but the Yeshivish and Hasidic groups are often lumped together under the term, "*Haredi*." Finkelman's omission in this study of the Hasidic community allows for more specificity and accuracy, as Hasidic norms differ from the less right wing Yeshivish camp in a number of areas. But in certain spots, the omission of Hasidism creates a lost opportunity for richer analysis.

One instance is the discussion of *Haredi* couples' courtships and subsequent engagements. In pre-modern *Ashkenaz*, marriages were often an economic agreement, with romance playing little or no role. If *Haredim* were, indeed, an unchanged continuation of ancient norms, today's marriages would have been socio-economic transactions, contracted by the young boy's and girl's parents. But by analyzing *Haredi* popular literature, which includes dating guidebooks intended to teach girls and boys how to determine "if their personalities will enable the couple to get along with each other," Finkelman concludes that there is great concern about a couple's emotional compatibility in the *Haredi* community, a concept that has more in common with contemporary Western mores than with ancient Judaic sensibilities. Although this determination is noteworthy—it demonstrates *Haredi* acculturation in one of the most important aspects of their lives—the analysis would have been decidedly more comprehensive if *Hasidim* were included in this discussion.

Unlike *Haredim*, *Hasidim* don't date and don't produce books that inform girls and boys how to choose their partners. Parents play a categorically greater role in the selection of their children's spouses. To what degree, one wonders, do Hasidic engagements/marriages correlate with the pre-modern *Ashkenaz* model? Including at least a mention of Hasidic norms, simply as a basis for comparison, would have considerably advanced the analysis.

On this topic, David Lehmann and Batia Siebzehner have conducted an impressive study of *Haredi* marriage norms. They define "*Haredi*" as most scholars do, to encompass *Hasidim* and "Lithuanians," but they do differentiate between the two in specific examples in their findings. They relate that the Lithuanian leader Rav Schach offered a figurative take on the talmudic dictum in *Kidushin* 41a, by saying, "It is prohibited to complete a *shidduch* (marriage arrangement) unless the couple has walked together." He elaborated on that, explaining that walking is a fluid motion, making for "chemistry." Such a comment, Lehmann and Siebzehner posit, would be unheard of among *Hasidim* "where parents play a more proactive, if not dominant role [in marriages]."[4]

A running theme throughout *SKR* is the irrefutability of *Haredi* acculturation to Western mores. In light of this, Finkelman seeks to understand how *Haredi* authors frame these secular norms within the confines of Judaic doctrine and values. In other words, how do they defend their legitimacy as Orthodox Jewish writers? Finkelman argues that authors do this chiefly in three ways: denial, acknowledgement, and admitting the "superiority of secular approaches."

Denial is straightforward. The authors simply claim that their ideas represent Torah. This is easier to do than one might imagine because first, popular literature doesn't require citations, so one need not back up her/his claims, and second, the Judaic canon is so extensive—and often contradictory—that it is easy to find quotes to support nearly every opinion, especially if one de-contextualizes the quotes. Much like pseudo-scholars who decide on a thesis and then pick and choose only the sources that support their claim, *Haredi* authors, Finkelman argues, find Torah quotes that are "compatible with their concerns."

A more common approach than denial is acknowledgement. Most authors take this route. They acknowledge that they fuse the Jewish and the secular; in fact, they laud the ability to find the good in outside traditions and make them work within the Torah framework. Naturally, this coalescence of the Jewish and Gentile opens the author to potential criticism. Because the outside world is perceived as an overall negative influence, bringing it into Jewish literature may be seen as a sort of contamination.

Finkelman seeks to understand how Haredi authors frame secular norms within the confines of Judaic doctrine and values

---

To counteract these imputations, *Haredi* authors create what Finkelman calls an "aura of Torah" around the book. He cites the example of author Miriam Adahan who holds a B.A. in psychology from the (entirely secular) University of Michigan, a Masters from Wayne State University, and who did her post-Masters work at the Humanistic Psychology Institute in San Francisco. Adahan's self-help books and parenting guides borrow freely from secular culture. But she offsets any criticism by emphasizing the Jewishness of her books through the addition of the word *Jewish* in her titles, e.g. "A Jewish Approach to Childrearing." She calls her program the very Hebrew-sounding EMETT (acronym for Emotional Maturity Established Through Torah), and uses names, language and examples in the book that are drawn from Haredi life and familiar to the *Haredi* reader. Tweaking language in this way is simple, yet effective. It lends legitimacy to many works that are secular in nature but marketed as *Haredi* literature.

Regarding denial vs. acknowledgment, Finkelman offers an interesting observation, namely that *Haredi* female authors always use the acknowledgement and never the denial strategy (as far as he was able to ascertain in the numerous books he's studied). He suggests that this is because *Haredi* women do not generally receive the rigorous education in the sacred

canon that men do, yet they receive a broader secular education, which means they have less reason to utilize the denial strategy. Since women are not expected (and perhaps wouldn't be taken seriously were they) to speak in the name of Torah, they may as well establish authority by leaning on their superior (vis-à-vis men) secular education. Finkelman does not form a connection to the non-linear form of thinking that often arises out of copious Talmud study, which may also be a factor in men's use of denial. Perhaps that is an influence that should be taken into account as well.

Finally, some authors actually acknowledge the superiority of secular approaches. Such instances are rare, but if published in the right venues and couched in the right language, authors may sometimes show how in certain areas (the example in *SKR* is about public schools' mainstreaming of special-education children), Western society offers a model for *Haredim* to emulate. Using this strategy is risky, but as the mainstreaming example demonstrates, it can be done successfully.

Though the leadership alleges authoritarian powers, actually they can only exercise as much power as the masses allow them.

One of the compelling nuggets in Finkelman's study is his discussion on the pecking order of *Haredi* literature. Though it would make sense to assume that texts on theology would be hierarchically highest, in actuality it is lower in importance than works on Talmud and *halakhah*. Despite theology's paramount influence in *Haredi* life, it is pushed lower on the scale of importance because the *Haredi* ideal is "simple faith." *Haredim* expect that the default is to believe. Consequently, much of the theology-focused literature is geared toward outsiders and written for outreach purposes. The implicit message is that *Haredim* do not need proofs in order to believe and therefore have no need for such works. Still, books on theology are higher on the pecking order than the "less serious" genres, such as fiction, cookbooks, parenting guides, etc.

There are a number of inherent paradoxes or complications within *Haredi* culture. Chief among them is the contrariety of isolation and acculturation. Although *Haredim* claim to be an isolationist people observing unadulterated Judaism, they have, in fact, adopted many of the standards of contemporary Western society. This paradox is further complicated by the power push-and-pull between the rabbinic leadership and the masses. Though the leadership alleges authoritarian powers, actually they can only exercise as much power as the masses allow them. And finally, the authoritarian/voluntary dichotomy within *Haredim* informs and complicates their stance on most challenges facing the community.

The *Haredi* community operates under what Foucault coined an "ideological state apparatus," which means that remaining within the community is ultimately voluntary.[5] Thus, the leadership cannot force anyone to follow their orders; rather, their power stems from threats of societal alienation. In light of this, rabbinic leaders must constantly tread a fine line, considering carefully which standards they can uphold and which they must discard. Much like God, *Haredi* rabbis must utilize both the just left hand and the merciful right hand. All of these complications are reflected in *Haredi* popular literature.

NOTES

[1]Jacob Katz, "Orthodoxy in Historical Perspective," *Studies in Contemporary Jewry 2* (1986): p. 4
[2] Israel Rubin, *Satmar Two Generations of an Urban Island* (1997): p. 284
[3] From a lecture held at the Jewish Public Library of Montreal, December 7th, 1958.
[4] Lehmann, David, Siebzehner Batia, "Power, Boundaries and Institutions: Marriage in Ultra-Orthodox Judaism" *Archives Européennes de Sociologie 50,2* (2009) pp. 273-308
[5] See Louis Althusser's essay "Ideology and Ideological State Apparatuses" *Lenin and Philosophy and Other Essays*, translated by Ben Brewster (1971): pp. 13-26

Meorot
A Forum of Modern Orthodox Discourse

BOOK REVIEW

Sorrow and Distress in the Talmud, by Shulamit Valler

Reviewed by Chaya Halberstam

Biography: Chaya Halberstam is Associate Professor of Hebrew Bible and Judaism at King's University College at the University of Western Ontario. She is the author of *Law and Truth in Biblical and Rabbinic Literature* (IUP, 2010).

Meorot 10
Tevet 5773
© 2012

A Publication of
Yeshivat Chovevei Torah
Rabbinical School

Sorrow and Distress in the Talmud, by Shulamit Valler (Academic Studies Press, 2011)

Reviewed by Chaya Halberstam

In the modern Western world, law and emotion are often seen as opposite and mutually exclusive. The practice of law—judging in particular, but legislating as well—is understood as best done with utter impartiality if not indifference. As if to underscore this point, several years ago, conservatives attacked President Obama for invoking the "quality of empathy" in assessing what makes a good Supreme Court judge.[1] But scholarship on law and emotion, at least since the late 1990s, has come to reject this separation between the sphere of law (rationality, impartiality, efficiency, democracy) and emotion (irrationality, partiality, excess, opacity). Emotion is currently seen to be much more in harmony with cognitive and ethical impulses and practices, just as law has been shown to be thoroughly infused with emotional currents. A leading scholar of philosophy, Martha Nussbaum, has traced the interdependence of emotion, law, and ethics back to Greek antiquity.[2] The same might be done with Jewish antiquity, and Shulamit Valler's *Sorrow and Distress in the Talmud* excavates the Babylonian Talmud specifically to reveal the vivid emotional world that lurks beneath the sages' Torah study and *halakhic* decision-making. Valler remarks in her preface that it is the first of a series of books on the variety of emotions represented in the Talmud.

Valler's book is, first and foremost, a compendium of rich talmudic stories about sadness: for the most part as experienced by sages, and for the most part regarding their perceived shortcomings in the rabbinic academy or the spiritual world. Valler's readings of these stories are meticulous and thorough. She locates parallel sources, teases out the narratives' nuances, and explicates even seemingly irrelevant details, showing their significance. Drawing the stories together, Valler sketches some larger pictures of the causes of sorrow for the rabbinic sages and the trying social and professional networks in which the sages struggled.

The book's chief weakness, however, is that it does little to surround these observations with the vast scholarship available in theory of emotion or history of late antique Babylonian Judaism. Theoretically, notwithstanding an appendix by Alex Aviv on self-psychology written as a complement to chapter two, the book falls short of defining emotion, or sorrow and distress specifically, from a psychological, cognitive, or philosophical standpoint. Valler occasionally makes off-hand remarks such as "the fierce anguish of the sages … is based on an egocentric approach to life" (103) or "the dream is seen as expressing the sub-conscious mind" (58) which come across as anachronistic or unsubstantiated because they are not grounded in any studies of emotion or discussions of late antique thought. Moreover, comments which attempt to place the rabbis' emotions in concrete historical context draw only very minimally from the growing amount of historical scholarship on Jewish life in Sassanian Babylonia.

Valler describes her own methodology as "a critical reading approach whose [sic] purpose was to understand what Yona Fraenkel called 'harmony of content and form.' In other words, to investigate the literary features of the

sources—structure, style, and language—and to use these to reveal the meanings" (15). What Valler describes here is a literary critical method known as New Criticism, which was popular in the middle of the last century and has since been criticized for turning a blind eye to the real people and cultures that produce and consume these texts. Can "meanings" be revealed by a text without regard to the people who wrote it, edited it, and read it? Is meaning produced on a page, or between speakers and audiences? Do our own biases and conceptual frameworks not inevitably color and shape the meanings we "discover"? Valler continues by admitting that she was often "not satisfied with merely uncovering meanings, but … rather [wished] to explain [the stories] according to the social reality and cultural milieu in which the sources were created" (15).

This contextual awareness helps rescue much of Valler's interpretations from the New Critical vacuum, but what remains underwritten is the inevitable exchange between the sages' "social reality and cultural milieu" and the "meanings" of the stories they write and redact. Valler rarely questions the motives of the authors and editors of the Talmudic stories she cites, seeing them instead as faithful adaptations of real situations or neatly constructed fictions. She does not thoroughly investigate who wrote these stories, when, and, most importantly perhaps, *why*.

Despite some of these flaws, Valler's work and her detailed textual readings illuminate the largely-ignored emotional world of the Talmud, and her book works well as a first study of a subject that needs to break new ground and cover a vast quantity of material. Chapters 1-3 organize the sources terminologically: chapter one explores the talmudic stories which use the word *mitzta'er*, chapter two covers *hulshat da'at*, and chapter three examines *bechi*. While these words are roughly translated as sorrow, extreme sorrow, and weeping respectively, these definitions are rightly not strictly adhered to, as each of these terms evidences a semantic range—and signifies various emotions—across the stories (for example, Valler remarks in chapter three that in addition to grief, weeping at times signifies "insult, anger, disappointment or happiness" [182]). Chapters 4-5 are organized thematically, with chapter four exploring emotional responses to the death of children, and chapter five investigating narratives of sorrow in which women play a role. The turn from terminological to thematic organization is not jarring, however, because even while the first three chapters are delimited by the particular word used for sadness, Valler expertly ties the narratives together conceptually and/or thematically as well.

Can "meanings" be revealed by a text without regard to the people who wrote it, edited it, and read it?

Chapter one, the chapter on *tza'ar*, or sorrow, essentially finds that sorrow is generally linked to the world of Torah, and that there is a distinction in the way this sorrow is represented by the Babylonian and Jerusalem Talmuds. Valler concludes that the BT stories are more "didactic" (53), portraying the sages' sorrow over the mostly deliberate misuse of rabbinic status for some kind of personal gain. The JT narratives, on the other hand, are not connected to scholarly status but rather sorrow over the loss of Torah in the world or the inability to perform commandments as the rabbis might have wished. Where I depart from Valler's analysis, however, is her assessment that this distinction reflects a divide between fiction and reality. Valler writes that "the laconic nature of the [JT] narratives, and the different causes of sorrow being described all support the presumption that they are close to being reports of *actual events*" (53, emphasis mine); in contrast, the BT narratives "take on the aspect of *literary creations* with a didactic agenda" (53). The evidence does not bear out such a historical conclusion, but Valler nonetheless helpfully points out the very different agendas that might

lurk behind the construction of the BT versus the JT narratives.

The second chapter explores "extreme distress" (*hulshat da'at*), which Valler finds is associated most often with competition for what she calls "spiritual greatness," and which breaks down to: 1) competition over rabbinic status; 2) displaying complete authority in expertise as compared to students; 3) competition among students; 4) perceived failures in achieving spiritual greatness and 5) competition with both sages and "simple people … for Divine love" (103). Because it is these types of failures—all to do with perceived lack of ranking, authority, or divine approval—that bring about extreme distress, Valler understands this emotion as resulting from "an egocentric approach to life" (*ibid*.). She presses on, however, trying to understand why the sages would have adopted such an outlook. Her conclusion is psychological-historical:

> In Jewish society, which was a completely closed religious society that placed Torah study at its center, the natural masculine competitive drive was channeled towards the world of Torah and the study hall, and there against the backdrop of the culture of argumentation and polemic it developed to immense proportions and brought about a severe deterioration in human relationships within the band of scholars. (107)

There is much in this analysis that is convincing; most significantly, Valler's observation that Torah study would be no different from any other institution just because it was understood as a spiritual or God-centered pursuit. The sacred nature of Torah study did not exempt its practitioners from egocentric concerns and competitive, even aggressive, behaviors; in fact, it might have exacerbated them, given that the stakes of the pursuit were that much higher. But other aspects of this interpretation seem somewhat reductive, such as naming the competitive drive "masculine" without enough of a theoretical framework on gender or referring to Jewish society as "completely closed" (is any society at any point in history ever *completely* closed?). Valler's conclusions also beg the question of why the sages would have written, edited and indeed canonized such unflattering stories about themselves. Is there a didactic agenda regarding these stories as well? If so, it is not particularly overt. Were these stories intended to circulate beyond the walls of the *bet midrash*, and if so, what purpose were they meant to serve?

The sacred nature of Torah study did not exempt its practitioners from egocentric concerns and competitive behaviors

---

Chapter three looks at the activity of weeping, which often (though not always) expresses sorrow. Valler insightfully distinguishes stories of weeping from stories of distress by revealing that while *hulshat da'at* often depicts a self-centered sorrow, weeping almost always signifies "an expression of sorrow for another person or for the collective, free of egocentric concerns" (182; again, the position is perhaps overstated, as it is hard to imagine any emotion experienced by an individual being *entirely* free of egocentric concerns, but her overall point is nonetheless taken). Here Valler notes a distinction between stories about *Tannaim* and stories about *Amoraim: Tannaim* are portrayed as expressing sadness about catastrophic or tragic events, while *Amoraim* are depicted as weeping in response to biblical verses "that reminded them of divine punishment" (182) or made them question God's justice. But in the end these two types of stories are aligned in terms of the causes of sorrow and the communal and fellow-feeling that they signify. While it is not altogether clear *why* weeping is used so differently in Talmudic stories from other expressions of distress, Valler's distinction between "egocentric" sorrow and empathic sorrow is fundamental and ought to be taken into account in any further study of emotion in rabbinic literature.

Chapter four shifts away somewhat from emotion in and of itself toward the practice of mourning: specifically, mourning over the death of children. Valler finds that:

> "paradoxically, … the sages named in theses [sic] narratives bear their grief with restraint; they are not beset by profound despair (*hulshat da'at*), they do not weep, and they are not even described as grieving all of their lives" (233).

Nevertheless, Valler reads these stories closely to ascertain the specific emotions and their causes associated with descriptions of sages mourning children: 1) *pain* due to the lack of explanation for premature death; 2) frustration over theological questions about divine justice; and 3) loneliness and a "need … to be surrounded and embraced" (237) during the period of mourning. As much as this chapter is an analysis of expressions of sorrow, it is also a study of the practice of mourning, an encounter with challenge of what constitutes comfort.

Emotion in the Talmud has been overlooked because it is considered a "feminine" subject

---

The final chapter moves one step farther away from investigating the depiction of emotions in the Talmud to examine how responses to grief might be gendered. This chapter lays bare, perhaps, a feminist project that has been implicit from the beginning in Valler's work: that emotion in the Talmud has been overlooked because it is generally considered a "feminine" subject; that most of the depictions of the sages' anguish result from hyper-masculinized, competitive values; that we would do well to remember that the valorized (male) sages often felt sorrow and distress, and that they openly wept.

In chapter five, Valler points out a dichotomy in how men and women are portrayed in Talmudic narratives when confronting grief: men "focus … on themselves and [are] apprehensive about their honor" and they "become powerless" (271); women, on the other hand, "become more empowered: … they are sensitive and loyal to their fellows, they are able to seize the initiative and take action to help or rescue even at the price of setting aside their own feelings and waiving their dignity" (272).

This gender division is fascinating and astutely observed; however, it leaves more questions open than it resolves. First and foremost, is it "empowering" that the women in the Talmud, during times of sorrow, display sensitivity (to men) and loyalty (to men) and set aside their own feelings or dignity? Though she does not say so explicitly, it appears that Valler would like to claim these stories on behalf of women, as positive portrayals of women's experiences in the androcentric, rabbinic world, contrasting, in the last paragraph of the book, women's sorrow which is "reserved and free of egotistical considerations" with "masculine outbursts of ego"(272).

But seeing women placed in care-giving roles, suppressing their own profound grief in order to sympathize with their husbands or work to alleviate their pain, in stories undoubtedly *written by men for other men*, does not strike me as a feminist victory for women of Late Antiquity, or for women today who want to find role models in a work they believe to have sanctity. Valler's omission of any feminist theory in this chapter leads to somewhat facile conclusions about "women's empowerment" that do little to rescue the Talmud, or Jewish women today from the androcentrism of traditional Judaism.

The feminist victory of this book is not the final chapter, but the emphasis Valler places on the significance of "trivial, feminine" subjects such as emotion in the masculinized world of Torah study. The study and practice of law, *halakhah*, is never indifferent or pristinely cerebral. Judging or decision making in the world of *halakhah* is rationally ordered, but it is also subject to vagaries of the emotions of *halakhic* practitioners. In the end, the *halakhic* system does not determine *halakhah*—people do.

NOTES

[1] http://www.upi.com/Top_News/Special/2010/06/28/Obama-empathy-questioned-at-Kagan-hearing/UPI-52001277761061/, accessed June 26, 2012.

[2] See, for example, Martha Nussbaum *Love's Knowledge: Essays on Philosophy and Literature* (Oxford: Oxford University Press 1990); "Equity and Mercy," *Philosophy and Public Affairs*, 22, 83 (1993); Emotion in the Language of Judging. *St. John's Law Review*, 70, 23 (1996). *Upheavals of Thought: The Intelligence of Emotions*. (Cambridge: Cambridge University Press 2001).