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## EMERGENCY HALAKHA IN THE RABBINIC TRADITION Zecharyah Tzvi Goldman

”עת לעשות לה' הפרו תורתך.”

*“It is a time to act for God; they have made void your Torah.”*

(Psalms 119:126)

### Introduction

The Torah and its Sages provide us with a system of law and custom to live by. At times, difficult circumstances make living by certain Torah norms untenable. There are a variety of halakhic principles available to the Rabbis as how to address such situations.<sup>1</sup> Herein, we will explore how the verse “*Et la’asot la-Hashem, heferu toratekha*,” (“It is a time to act for God, they have made void your Torah”) in Psalms 119:126 has been used by various rabbis throughout the ages to create distinctively lenient halakhic rulings which have guided individuals, local Jewish communities, and Jewish society as a whole through those difficult times. While the focus of this exploration will be how this verse in Psalms has been used in emergencies to permit that which is forbidden, it should be pointed out from the outset that this verse has the capacity to forbid that which is permitted as well.<sup>2</sup>

The first part of this verse “*Et la’asot*” in Psalms—“It is a time to act for God”—declares a rabbinic perception of a state of emergency, whereas the second half of the verse—“they have made void your Torah”—is a mandate for

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<sup>1</sup> For example, “a threat to life overrides the Shabbat,” (*Shabbat* 132a and *Yoma* 82a), and “a threat to life overrides the whole Torah except the three [cardinal] sins,” (*Tashbetz* 4, *Tur* 2:7, *Hatam Sofer*, *Yoreh De’ah* 2:245 and *Mishpetei Uziy’el*, *Yoreh De’ah* 2:48, and *Helkat Ya’akov* *Yoreh De’ah* 207.) Also, “a compelled person is exempt” (*Bava Kama* 25b).

<sup>2</sup> For a twentieth-century example of this usage, see *Seridei Eish* 2:95, where he forbids any *mohel* (ritual circumciser) from circumcising a gentile child born to a Jewish man and non-Jewish woman where no conversion of the minor is involved. This was seen on his part, as well as his predecessor Rabbi Ezriel Hildesheimer, as a fence against assimilation and intermarriage, though he acknowledged that there were lenient rulings in this regard. Another earlier historical example is found in the *She’elot u-Teshuvot Maharil* 199, who forbids teaching women Torah, even Torah that is for their practical use—even if it be considered a *mitzvah*—lest they be led astray by the cunning that Torah develops in a person. See also, *Divrei Yatziv*, *Orah Hayim* 240, where the custom of not learning Torah on *Erev Tisha B’Av* and X-mas night is explained using this principle.

the rabbinic authorities to respond with the capacity to override the law, i.e., to “void” the Torah on a temporary basis, whether it be to forbid the permitted or permit the forbidden.<sup>3</sup>

### Biblical Precedent

The paradigm for the application of the “*Et la’asot*” mechanism is the biblical story of Elijah the Prophet on Mt. Carmel.<sup>4</sup> Elijah is faced with a situation where the majority of the Jewish people found themselves with a dual faith commitment to both the God of Israel and the false god Ba’al. Elijah challenges the prophets of Ba’al to a sacrificial duel. Whoever’s sacrifice is accepted by heaven (evidenced by being devoured by a heavenly fire), his God is the true God. There is one difficulty with Elijah’s challenge: it is a severe biblical

<sup>3</sup> The verse, “It is a time to act for God, they have made void your Torah” is quoted in the mishnah in *Berakhot* 9:5 and again in *Berakhot* 63a and is divided into two sections: “It is a time to act for God” and “they have made void your Torah.” It can then be read from both front-to-back and back-to-front with alternating interpretations. The way of reading the verse that permits the forbidden is rooted in the interpretation of Rabbi Natan found in the mishnah and is later cited in its corresponding talmudic passage. However, Psalms 119:126 has been interpreted in a number of alternative ways to that of Rabbi Natan. The gemara in *Berakhot* 63a, prior to citing the interpretation of Rabbi Natan, states the front-to-back reading of our verse: “‘It is a time to act for God’ [to punish sinners] For what reason? Because, ‘they have made void your Torah.’” Rava then offers Rabbi Natan’s back-to-front interpretation which reads, “they have voided your Torah—it is a time to act for God.” Rashi explains, “They have voided your Torah—those that do your will like Elijah on Mt. Carmel, that offered sacrifice on a private altar at a time that private altars were prohibited, because it was a time to make a fence and boundary in Israel for the name of the Holy One Blessed Be He.” (s.v. *mi-seifa le-reisha*). Another example of an alternative reading of our verse is where the gemara teaches, “If you see a generation where the Torah is not dear, gather [the Torah] in, as it says, ‘It is a time to act for God, they have made void your Torah,’” (*Berakhot* 63a). Here, the Talmud is saying that in this instance, one may nullify the Torah by abstaining from transmitting it to others which ordinarily is the obligation of a sage. (See Rambam, *Mishneh Torah, Hilkhoh Talmud Torah* 1:2) Rambam, in his commentary on *Berakhot* 9:5, also has a startling interpretation of this verse when read in its front-to-back reading, as it is found in scripture: “when the time comes to collect from them and to take vengeance, causes will occur for people to void the Torah so that the punishment comes to them with justice and this matter is long and distant very, very deep...” Rambam is saying that when “It is a time to act for God” to punish sinners (in this specific case those that do not respect ancient enactments) God brings it about that these individuals “have made void your Torah” in other ways and, as a result, their punishment is fully just and forthcoming. Finally, *Melekhbet Shelomoh* in his mishnaic commentary on *Berakhot* 9:5 cites *Yerushalmi Berakhot* 9:5 which states: “He who limits his Torah study to fixed times has voided the covenant. What is the reason? ‘They have voided your Torah it is a time to act for God.’ “ The Yerushalmi Talmud states that by limiting one’s Torah study to “It is a ‘time’ to act for God,” one is, as a result of this limitation, “voiding the Torah”. (See *Penei Mosheh*, ad. loc. and *Mishneh Torah, Hilkhoh Talmud Torah* 1 for an understanding of one’s proper fulfillment of the obligation to study Torah.)

<sup>4</sup> 1 Kings, 18

prohibition to slaughter or offer a sacrifice outside of the sanctuary court,<sup>5</sup> and the person who violates this commandment is subject to *karet* (severance),<sup>6</sup> a most harsh consequence.<sup>7</sup> Elijah's sacrifice is nonetheless accepted, the prophets of Ba'al are slain, and the Jewish people who witness the sacrificial duel proclaim, "God is the Lord! God is the Lord!" (1 Kings 18:39) The action of Elijah the Prophet is in no way condemned.<sup>8</sup> Instead, it finds itself enshrined as a precedent in the Talmud<sup>9</sup> for rabbinic-era methods of emergency halakha and is termed a *hora'at sha'ab*—a temporary ruling. Rambam (Rabbi Moses ben Maimon 1138-1204) formulates the halakha as follows:

And so if a recognized prophet says to us to transgress one of the commandments in the Torah, or many commandments of the Torah, whether of minor or severe status on a temporary basis it is a commandment to listen to him...<sup>10</sup>

Rambam goes on to explain, however, that this does not apply to the prohibitions regarding idolatry even on a temporary basis and uses the story of Elijah as the paradigm of a temporary ruling.<sup>11</sup>

Apparent circumvention of normative biblical commandments is not infrequent in *Tanakh*. Based on varying readings of the early and later rabbinic authorities, one can find nearly thirty examples within *Tanakh* where such a mechanism was utilized.<sup>12</sup> From a rabbinic perspective, the biblical message is clear: though the commandments are norms to live by, a prophet or prophetess has the power to break any of them in time of great need, save those pertaining to idolatry. In other words, *there is a precedent in Tanakh to be flexible in our adherence to the commandments* on a temporary basis when deemed necessary by someone of prophetic authority.

### The Authority of the Sanhedrin and Rabbinic Court

Although it is prohibited for humans of flesh and blood, when not pro-

<sup>5</sup> Rambam, *Sefer Ha-Mitzvot, Lo Ta'aseh* 89,90.

<sup>6</sup> See *Keritot* 1:1.

<sup>7</sup> Severance in Hebrew is *karet*. In *Mo'ed Katan* 28a it is understood as premature death and there is a dispute whether it is defined as age 50 or 60.

<sup>8</sup> The prophet's actions have been interpreted by *Midrash Tanhuma* as being self-initiated, while *Yerushalmi Ta'anit* sees them as being of the command of God. See *Etz Yosef* on *Yevamot* 90b.

<sup>9</sup> See *Yevamot* 90b, and Meiri, *Beit Ha-Behirah*; *Hidushei Rashba*; *Hidushei Ritva*; and *Hidushei Ramban* ad loc. One thing these Rishonim all agree on is that Elijah the prophet is a precedent for a *beit din*, on a temporary basis, to permit a Torah prohibition.

<sup>10</sup> *Mishneh Torah, Hilkhot Yesodei Torah* 9:3

<sup>11</sup> *Ibid.* See *Kesef Mishneh* ad loc.

<sup>12</sup> See 8<sup>th</sup> Volume of *Encyclopedia Talmudit*, s.v. *hora'at sha'ab*. Biblical personalities understood by the tradition to have utilized this mechanism include Mosheh, Yehoshuah, Devorah, Gideon, Manoah, Shimshon, King David, King Shelomoh, Elishah, and Ezra. See also *Kol Sifrei Maharitz Hayot, Sefer Torat Ha-Nevi'im*, Chapter 5.

phetically directed, to contravene the divine will as expressed in the Torah's commandments, on occasion God might communicate to His vessels and communicators of the divine word<sup>13</sup> a need to act contrary to His normally declared will. In the post-biblical period, the radical power to temporarily circumvent biblical commandments is not limited to a prophet or prophetess. The Rambam speaks directly of the Sanhedrin bearing this authority to permit the forbidden:

And so, if they saw a need on a temporary basis to nullify a positive commandment or to transgress a negative commandment in order to return the many to the faith or to save many Jews from stumbling in other matters, they do as the hour requires. Just like the doctor amputates the hand or the foot of this person in order that the whole person lives, so, too, the rabbinic court rules on occasion to transgress a few commandments according to the time, in order that they all are established similar to what the original sages have said: "Desecrate for him one Sabbath so that he will keep many Sabbaths."<sup>14</sup>

Ra'avad (Rabbi Avraham ben David 1120-1198) speaks similarly about a court's ability to permit the forbidden without transgressing the prohibition<sup>15</sup> of detracting from the Torah:

And if they [the court] take away from [the observance of the commandments] by necessity of the hour like the example of Elijah on Mt. Carmel, this too is a matter of Torah, 'It is a time to act for God they have made void your Torah.'<sup>16</sup>

The Rif (Rabbi Isaac ben Jacob Alfasi 1013-1103) explains how the power of a prophet to permit the forbidden has been transferred to a sage. He utilizes the principle, "a sage is preferable to a prophet"<sup>17</sup> and explains that, "everything that a prophet does with his prophecy, the sage does with his wisdom."<sup>18</sup> Indeed the Talmud never questions how a properly constituted Sanhedrin has such power, and furthermore provides instances when they exercised such power.<sup>19</sup>

<sup>13</sup> See *Tosafot*, *Yevamot* 90b, s.v. *ve-ligmar mineih*.

<sup>14</sup> *Mishneh Torah*, *Hilkhot Mamrim* 2:4. See also Radbaz's comment in note 4.

<sup>15</sup> *Mishneh Torah*, *Sefer Ha-Mitzvot*, *Lo Ta'aseh* 314

<sup>16</sup> *Hasagot Ha-Ra'avad*, *Hilkhot Mamrim* 2:9 and *Kesef Mishneh*, note 9

<sup>17</sup> *Bava Batra* 12a

<sup>18</sup> See Rif's commentary in *Ein Ya'akov* on *Yevamot* 90b

<sup>19</sup> In *Yevamot* 90b, we are given some examples of this such as a *Beit Din* executing a man during the times of the Greeks for riding on a horse on the Sabbath which is only rabbinically prohibited (see *Beitzah* 36b), or for lashing a man who had sex with his wife under a tree which, while immodest, is not a biblical prohibition and lashes are not mandated. Lastly, there is the example of Shimon ben Shetah hanging 80 women on one day for their involvement in idolatrous witchcraft (*Sanhedrin* 45b). This extended past the bounds of normal law on several grounds: 1)

In addition, according to the authoritative opinions of Rabbi Yosef Karo (1488-1575) and the Rema (Rabbi Moshe Isserles 1525-1572), this power can still be exercised, and furthermore, the rabbinic courts and Jewish leadership can exercise this power in each and every era, including, in theory, our own.<sup>20</sup>

### Mishnaic and Talmudic Precedent

The Babylonian Talmud records three crisis situations where “*Et la’asot*” is invoked to allow for an expression of emergency halakha, thus overriding normative prohibitions. The first of these three situations concerns taking the name of God in vain. The last mishnah in tractate *Berakhot* (9:5) records:

They [the Sages] instituted that a person inquires as to the well being of his friend with the name of God, as it says (Ruth 2:4): “And, behold, Boaz came from Bethlehem and he said to the harvesters, ‘God is with you.’ And they said to him, ‘God bless you...’” and it says: “It is a time to act for God, they have made void your Torah.” Rabbi Natan says, “They have voided your Torah [because] it is a time to act for God.”

The Ritva (Rabbi Yom Tov ben Avraham Ashvili 1250-1320) explains that the sages instituted this emergency halakha

...because of the concern that the name of God not be forgotten and the name of idols would [then] be fluent in their discourse. Thus, we permit them to make mention of the name of God in vain.<sup>21</sup>

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women are not hanged, 2) there seems to have been less than normative judicial requirements, and 3) they were all hanged on one day. (Rashi, ad loc., s.v. *ein danin*, Rambam’s commentary on *Sanhedrin* 6:4, s.v. *be-yom ehad*, and *Mishneh Torah*, *Hilkhot Sanhedrin* 24:4).

<sup>20</sup> In *Shulhan Arukh*, *Hoshen Mishpat* 2:1, Rav Yosef Karo states that a *beit din*—even of today’s status—is able to exercise extra-judicial authority. The *Shulhan Arukh* reads, “Every *beit din*—even those that are not ordained in Israel—if they see that the nation is enmeshed in sins (and it is an emergency), they judge, whether it is capital cases or monetary cases, of any kind of legal punishment, and even if there is not complete testimony. And if the person is immune [from their power], they beat him by means of the gentiles. All their actions should be for the sake of Heaven, and this [power] refers specifically to the rabbinic leaders of the generation or the leaders of the city that the public has relied on them.” The Rema adds, “They have the ability to remove his possessions from him as they see fit, to mend the breaches of the generation.” He continues on to say, “so we are accustomed in every place that the leaders of a city in their city are like the Sanhedrin: they lash and punish and their abrogation of private property is valid according to the custom, even though there are those that disagree [with regards to the extent of this power and drastically seek to limit it]...” See continuation of Rema and *Me’irat Einayim*, note 11. This passage seems to indicate that, in theory, some extra-judicial power is still retained with regards to this more conservative approach of going beyond the norms of the Torah. We will see as we examine the earlier and later authorities how they exercised their power as leaders of the generation in regards to the liberal capacity of this power.

<sup>21</sup> *Hidushei ha-Ritva*, *Berakhot* 63a. Another example worth mentioning is the decree of the

The Meiri (Rabbi Menahem ben Shlomo Meiri 1249-1315) explains this innovation in a different light:

They [the Sages] instituted that a person inquire as to the well being of his friend with the name of God in order that they know that peace and the rest of the blessings reach one from his [divine] glory.... And even though there is an opening to say not to mention the name of God in vain and by way of commoners. However, it is written: "It is a time to act for God, they have made void your Torah," and it is preferable to us to mention God's name more than it is fitting then not to mention it at all, in order that we make it regular in the speech of people.<sup>22</sup>

It should be understood that while for the Rambam the taking of God's name in vain in such a manner is prohibited biblically,<sup>23</sup> most early authorities, including the Ritva and Meiri, hold it is merely a rabbinic prohibition.<sup>24</sup>

While each of these early authorities sees this Talmudic precedent as an example where "*Et la'asot*" is invoked to override an existing prohibition, Rashi (Rabbi Shlomo Yitzhaki 1040-1105) has an alternative reading of this particular precedent. In the words of Rashi,

there are times where we nullify the words of Torah in order to act for God. So this [person] who intends to inquire as to the well being of his friend this is the will of God as it says, "Seek peace and pursue it" it is permitted to annul the Torah to do something that *appears* forbidden.<sup>25</sup>

In Rashi's interpretation, the Torah value of "seek peace and pursue it" (Ps. 24:15) serves as the primary justification for this unconventional use of the divine name, whereas "it is a time to act for God" ("*Et la'asot*") is what allows for doing an action that on the surface *appears* forbidden.<sup>26</sup> Thus, according to Rashi, the power of "*Et la'asot*" is used more modestly in this particular instance.

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Hashmonaim that God's name should be written in legal documents in response to the attempts of the Greeks to remove faith in God from the Jewish people. The Hashmonaim made this decree despite the inevitable reality that these documents would be discarded and God's name would not be respected in the garbage (*Rosh Hashbanah* 18b and *Megillat Ta'anit*, 7 Tishrei). The justification for this was likely, "It is a time to act for God." See *Meshiv Davar* 2:80, where this is presumed.

<sup>22</sup> Meiri, *Beit ha-Behirah*, *Berakhot* 63a

<sup>23</sup> *Mishneh Torah*, *Hilkhot Berakhot* 1:15.

<sup>24</sup> *Tosafot*, *Rosh Hashbanah* 33a, s.v. *ha*; *Sefer Ha-Hinukh* 430; *Rivash* 384; *Terumat Hadeshen* 37 in the name of the Geonim.

<sup>25</sup> *Berakhot* 54a, s.v. *ve-omer*.

<sup>26</sup> See Professor Rabbi Eliezer Berkovitz, *Not in Heaven: The Nature and Function of Halakha* (NY: Ktav, 1983), 66.

The second of the three crisis situations regards the wearing of the priestly garments of the *kohen gadol* (high priest) outside of the Temple. The Talmud records a story of how an anti-Jewish group wanted to enlist the support of Alexander of Macedonia to destroy the second Temple. Shimon the Righteous went to meet Alexander with other prominent Jewish leaders and he apparently dressed himself in the priestly garments of the *kohen gadol* in honor of Alexander. However, these sacred garments may not be worn outside the Temple grounds. The meeting was successful, though, due to a recurring vision that Alexander had previously had of Shimon the Righteous greeting him in these same garments before he went out to do battle. Because of this astonishing encounter he reversed his earlier decision which had been influenced by the anti-Jewish group, and the Temple was saved. The Jews then proceeded to punish their enemies and declared the day a *yom tov* (holiday). The Talmud seeks to understand how it was that Shimon the Righteous was permitted to wear priestly garments outside of the Temple grounds; it offers two different resolutions: “If you prefer, say [he wore clothing that] was [merely] fit to be used as priestly garments. Or if you prefer, say, ‘it is a time to act for God they have made void your Torah.’”<sup>27</sup>

Meiri explains that based on the quoted verse from Psalms we understand this as an emergency halakha.<sup>28</sup> According to this reading, one can violate the prohibition of wearing priestly garments outside the temple in order to save the temple—an “*Et la’asot.*”

The third and final crisis situation concerns the writing down of the oral tradition. The Talmud teaches that, “one is not permitted to say words of the written tradition by heart, and one is not permitted to commit the words of the oral tradition to writing.”<sup>29</sup> Yet we find that the sages committed the oral tradition to writing! And, in one instance, the Talmud<sup>30</sup> questions how it was that Rabbi Yohanan and Reish Lakish were reading from a book of *agadah*, a part of the oral tradition. The Talmud offers as its answer, “‘it is a time to act for God they have made void your Torah’—it is better that one letter from the Torah be uprooted than the Torah be forgotten.”<sup>31</sup>

<sup>27</sup> *Yoma* 69a; *Tamid* 27b

<sup>28</sup> Meiri, *Beit Ha-Behirah*, *Yoma* 69a.

<sup>29</sup> *Gitin* 60a; *Temurah* 14b. This teaching also finds expression in the midrash. (See *Shemot Rabah* Vilna Edition Parashah 47:1,3 and *Yalkut Shimoni*, *Parshat Ki Tisa* 247-404.

<sup>30</sup> *Ibid.*

<sup>31</sup> This is the answer found in *Temurah* 14b. In *Gitin* 60a, Psalms 119:126 is quoted without the latter statement. The words “one letter from” is a correction of *Shitah Mekubetzet*. See also Rabbeinu Gershom ad loc. In *Gitin* 60a the case of a “Sefer Aftarata” is brought as well. Examine there and see the Rif’s ruling in chapter 5 of *Gitin*, page 28, where he rules against the Talmud that one can write passages short of a complete book of a Torah scroll instead of the whole Torah scroll for the education of a child. See also Rabbeinu Nissim and *Shiltei Giborim* ad loc. In the latter, he interprets this leniency of the Rif as possibly due to socio-economic reasons.

Rashi explains the reasoning behind this emergency halakha with the following words: “When one acts for the sake of [God’s] holy name, it is fitting to void the Torah...”<sup>32</sup> Meiri uses the same language:

...similarly with the words of the *agadah*, for these are words of the oral tradition and nevertheless, they relied on [this verse] to write them, since their hearts have become small and the Torah forgotten; and whenever a time comes that it requires the making of an ordinance for the sake of Heaven, we forgive the honor of the Torah on a temporary basis, as it is said, “It is a time to act for God; they have made void your Torah.”<sup>33</sup>

Other early authorities explain this passage in the same manner.<sup>34</sup>

Having explored how “*Et la’asot*” has been used as a basis to explain the actions of prophets, the authority of courts, and the decisions of sages, we will now explore how it has been used by earlier and later religious authorities throughout the generations.

### Rulings of the Early Authorities

There are two distinct features that the above biblical and Talmudic precedents share in common. The first is that their application of “*Et la’asot*” relates to the collective Jewish people. Whether one is contravening the law to prevent faith in God from being diluted, preventing God’s name or power from being entirely forgotten, saving the Temple from destruction, or seeking to preserve the oral law from oblivion, these are all matters that relate to *Klal Yisrael* (the entire nation of Israel)—not to an individual Jew or even an individual Jewish community. The second feature these precedents share in common is that the invoking of “*Et la’asot*” stands on its own, without recourse to other halakhic principles to support the decision in question. Indeed we shall see that the further away from the era of the Talmud one looks, “*Et la’asot*” becomes less independent as an halakhic mechanism.

In light of his understanding of the Talmudic uses of “*Et la’asot*”, Ridvaz (Rabbi David Ibn Zimra 1479-1573) does not see it as having application to individuals. In his own words, “certainly we do not say “*Et la’asot*” except in a matter that applies to all.”<sup>35</sup> This restrictive view, however, is not shared by Tosafot, Rambam, and several other earlier authorities, who each apply this verse to circumstances concerning individuals.

<sup>32</sup> *Temurah* 14b, s.v. *et la’asot la-Hashem*.

<sup>33</sup> *Beit Ha-Behirah*, *Gitin* 60a.

<sup>34</sup> See *Hidushei ha-Ran*, *Gitin* 60a; *Nimukei Yosef*, *Gitin* 60a; and *Hidushei Ha-Ritva*, *Gitin* 60a.

<sup>35</sup> Ridvaz, *Orah Hayim—Yoreh De’ah* 8:10 here he critiques *Tosafot*, *Bava Kama* 3b, s.v. *ke-de-me-targem* where *Tosafot* understands the blind Rav Yosef’s ability to read Targum by heart as being an invocation of, “It is a time to act for God.”

Tosafot (*Bava Kama* 3b, s.v. *ke-de-metargem*), in seeking to understand how the blind *amora* Rav Yosef recited the Aramaic translation of the prophets by heart despite the halakhic ban on doing so,<sup>36</sup> explains “there is no greater “*Et la’asot*” than this.” For Tosafot, Rav Yosef’s blindness was a personal emergency, for if he could not study the written Torah by heart he would not be able to study it at all. This personal emergency, it seems, allowed for the invoking of “*Et la’asot*.”

Rambam, in a famed and precedent-setting responsum,<sup>37</sup> addressed a situation where a Jewish man bought a non-Jewish maidservant<sup>38</sup> and took her into his house.<sup>39</sup> This aroused the displeasure of his stepmother and her three daughters who claimed that, “he was isolating himself with her and doing what was fitting in his eyes.” Based on the complaint of the family, a local judge questioned the maidservant—who claimed to be Jewish—and the judge allowed the girl to return to the man’s home. The question posed to Rambam by the local court, skeptical of her claim to Jewishness, was whether or not they were obligated to remove the girl from his house or whether they could allow the situation to stand as it was. The Rambam ruled that they must make every effort to remove her or have him free her from her servitude and marry her. Removing her, while perhaps less effective, posed no halakhic difficulty; forcing him to free her and then marry her, on the other hand, did present a difficulty as it contradicted an explicit *mishnah*: “one who is suspected [of having sexual relations] in regards to a maidservant and frees her, he should not marry her.” (*Yevamot* 2:8) The proscription of marriage in such an instance is seen in the *mishnah* as the halakhic ideal<sup>40</sup> in order to prevent the confirmation of the original suspicions,<sup>41</sup> but for the Rambam, this ideal was set aside because of a decree to make it easier for sinners to repent (*takanat ha-shavim*<sup>42</sup>) and to lessen the sin.<sup>43</sup> Additionally, the Rambam writes that “we rely on that which the sages have said, ‘It is a time to act for God they have made void your Torah.’”

<sup>36</sup> *Gitin* 60a

<sup>37</sup> This responsa has been quoted by many of the Modern era responsa that address intermarriages where the couple was intimately involved with one another prior to their conversion. See *Otzar Ha-Poskim, Even Ha-Ezer* 11:5 Ot 60; *Abiezer* 3:21; *Seridei Esh* 3:50; *Tuv Tam Ve-Dat* (Mehadura Kama) 230.

<sup>38</sup> See responsa *Pe'er Ha-Dor*, Siman 132 for all the details and differing renditions of the situation.

<sup>39</sup> *Pe'er Ha-Dor*, Siman 132

<sup>40</sup> The end of the *mishnah* clearly says that if he did marry her he is not forced to divorce her.

<sup>41</sup> Rashi, ad loc., s.v. *lo yisa'enah*.

<sup>42</sup> See article by R. Barry Gelman on *takanat ha-shavim* and outreach considerations in this volume – Editor’s Note

<sup>43</sup> Rambam’s language is, “It is better that that he eats from the gravy and not the [forbidden] fat itself.” Cf. *Kidushin* 21b and *Pesahim* 79a.

Rabbi Yehudah HaHasid (1150-1217), when discussing a situation where non-Jewish enemies or bandits pose a danger to Jewish women, offered this counsel:

“It is a time to act for God they have made void your Torah.” Although the Torah says, “a man’s vessel should not be on a woman and a man should not wear a garment of a woman,” if enemies have besieged a city or if one is traveling and they will see that they are women, [and] they will rape them, they should go in the garb of men, even with a sword, so that they think that they are men. And if there are only ten [Jewish] men and there are several [Jewish] women, they should wear swords in order that they presume them to be men and not harm them.”<sup>44</sup>

Rabbi Yehudah HaHasid uses “*Et la’asot*” to address a situational risk particular to one community and does not rule for the entire nation.

In another early ruling, the Rosh (Rabbi Asher ben Yehiel 1250-1327) addresses the question of whether or not a community may read from a Torah scroll written on parchment which was not processed with the intention of making a Torah scroll (and was thus not prepared in accordance with halakha<sup>45</sup>) if no other Torah scroll is available. He rules that the community may read from it, and relies on the lenient, minority view of a Gaon who saw the proper preparation of the parchment as the ideal fulfillment of the *mitzvah* but not completely necessary. In the words of the Rosh,

If you have in your place a proper Torah scroll, guard it, and if not, do not remove the reading of the Torah scroll because of it, for the scripture says, “It is a time to act for God they have made void your Torah.”<sup>46</sup>

<sup>44</sup> *Sefer Hasidim* 200. this is also brought down in *Terumat Ha-Deshen* 1:196. For a conservative use of this verse, see *Sefer Hasidim* 955, where it is used to direct someone not to travel to a distant place to learn Torah if it will endanger his life or potentially lead to his kidnapping, forced conversion, or being robbed.

<sup>45</sup> For an understanding of the halakha to which this responsum relates, see *Mishneh Torah, Hilkhhot Tefillin* 1:11 and *Hilkhhot Sefer Torah* 10:1. According to the plain understanding of Rambam in *Mishneh Torah*, such a Torah scroll should not be used for public Torah reading and it does not have the sanctity of a proper Torah scroll.

<sup>46</sup> See Rosh, *Sefer Ha-Itim* in *Hilkhhot Ketanot, Hilkhhot Sefer Torah* at the end of *Mesekhet Menahot*. In the fifteenth century, Rabbi Israel Isserlin cited this ruling of Rosh as a precedent to permit the tying of the sections of the Torah parchments together with silk when there is no choice, although he acknowledges this is invalid by normal halakhic standards (*Terumat Hadeshen* 1:51). *Mishneh Torah, Hilkhhot Sefer Torah* 10:1 lists 20 disqualifying features of a Torah scroll—the very last disqualifying feature is tying the separate parchments of a Torah scroll together with anything other than animal sinews.

Rabbi Aaron ben R. Jacob Hakohen (author of *Sefer Kolbo*, thirteenth and fourteenth centuries), basing himself on the ruling of the Geonim of Nadborna, permits communities that do not have a Torah scroll to use *humashim*<sup>47</sup> for their public readings.<sup>48</sup> The Geonim of Nadborna, had not only permitted the normal Torah blessings to be made over their *humash* reading, but also permitted the calling of the normal number of people for *aliyot* on Shabbat or weekdays. Their ruling overrode the normative prohibition of using a *humash* for a public Torah reading, which was not considered respectful toward the community. (*Gitin* 60a)

In their responsum, the Geonim of Nadborna questioned the halakhic validity of their own Torah scrolls, presuming it unlikely that they lacked *any* disqualifying features. They thus viewed the status of their Torah scrolls, which they had previously read from and made blessings over, as similar to that of a *humash*. Furthermore, they found the situation of lacking a Torah analogous to the Talmudic precedent of the “Book of *Haftorot*,” when the reading of consolidated selections of the prophets from a condensed scroll was permitted, despite an earlier prohibition to do so.<sup>49</sup> The Sages in that case invoked “*Et la’asot*” because most communities could not afford to have the entire corpus of prophetic works written for them. Similarly, the Geonim of Nadborna ruled that since the community in question could not afford or otherwise obtain a Torah scroll, public readings from *humashim* should likewise be permitted.<sup>50</sup>

The Maharil (Rabbi Jacob ben Moses Moellin, Germany, 1360-1427) similarly uses “*Et la’asot*” in addressing a question of concern to a particular community. He was asked whether or not a non-skilled Torah reader may read softly from a Torah scroll while the *hazan* reads aloud for the community from a *humash*.<sup>51</sup> He invoked the reasoning of “*Et la’asot*,” and deemed it permissible.<sup>52</sup>

<sup>47</sup> *Humashim* of their time were made by a scribe on parchment, yet did not qualify as a Torah scroll for a variety of halakhic reasons (see *Mishneh Torah, Hilkhot Sefer Torah* 10:1), but should not be confused with our *humashim* which are printed on paper. *Humashim* of the Talmudic or medieval era were generally an entire book (i.e. *Bereshit, Shemot, Vayikra*, etc. of the Torah written in a scroll), but not all five books like a proper Torah scroll.

<sup>48</sup> *Sefer Kolbo* 20. This ruling of the Geonim of Nadborna is also found in *She’ilot u-Teshuvot Ba’alei ha-Tosafot* #16.

<sup>49</sup> *Gitin* 60a. Rabah and Rav Yosef prohibited writing a selection from a book of the Prophets, but rather required that an entire book of an individual Prophet be written and that the portion of the *Haftorah* be read from it.

<sup>50</sup> The Geonim of Nadborna offered another support for their ruling that although we do not roll a Torah scroll in the presence of the community since this is considered disrespectful, we do so, nevertheless, when there is only one Torah scroll, *Yoma* 70a, *Sofrim* 11

<sup>51</sup> See note 292 as to the definition of a *humash* in their time.

<sup>52</sup> *She’ilot u-Teshuvot Maharil ha-Hadashot* 23.

### Rulings of Later Authorities

One of the most significant uses of “*Et la’asot*” by a later authority is found in the *Kesef Mishneh*, Rabbi Yosef Karo’s commentary to Rambam’s *Mishneh Torah*. In the laws of Torah study, Rambam chastises those who support themselves through charity in order to immerse themselves in Torah study rather than working.<sup>53</sup> In his commentary on this piece, Rabbi Yosef Karo uncharacteristically<sup>54</sup> goes to great lengths to contradict nearly every source the Rambam cites, developing an entire halakhic argument against the Rambam’s view. He ends his commentary on this matter with the following statement in support of Torah scholars taking a salary for their religious functions and learning:

And we have seen that all the sages of Israel before the time of our teacher [Rambam] and after his time are accustomed to take a salary from the community. And even should [the scholars] concede that the law is like [Rambam] in his commentary on the *mishnah*, it is possible that all the sages of the generation have agreed [to go against it] because of, “it is a time to act for God; they have made void your Torah.” For if the livelihood of the students and the teachers were not available, they would not be able to exert themselves in Torah as is fitting and the Torah would be forgotten, God forbid. And with it being available, they are able to immerse themselves in it and the Torah will be made great and glorified.<sup>55</sup>

Rabbi Yosef Karo argues that, if for no other reason, communities can justify their paying scholars to study and teach because of “*Et la’asot*,” that is, it is an essential need of the community and a reason to override a previously held halakhic position. This view is accepted as authoritative in later rabbinic rulings.<sup>56</sup>

During the eighteenth and nineteenth centuries, the mechanism of “*Et la’asot*” is used in a variety of circumstances. Rabbi Akiva Eger (1761-1837) questioned how people involved in the burial of the dead can take a salary for such a *mitzvah*.<sup>57</sup> Rabbi Shlomo Kluger (1785-1869) further asked how those who watch the dead before burial can take a salary. Rabbi Kluger offered as one explanation, “It is possible that from the power of ‘it is a time to act for God’

<sup>53</sup> *Mishneh Torah, Hilkhhot Talmud Torah* 3:10. This language is brought down in Tur, *Yoreh De’ah* 246 and Rema *Yoreh De’ah* 246:21. It also corresponds with Rambam’s lengthy commentary on *Avot* 4:5 that is well worth examining.

<sup>54</sup> See Introduction to the *Kesef Mishneh*.

<sup>55</sup> See *Kesef Mishneh* on *Hilkhhot Talmud Torah* 3:10

<sup>56</sup> *Shakh, Yoreh De’ah* 246:20. See also *Igerot Mosheh, Yoreh De’ah* 2:117 where Rav Moshe goes so far to say that someone who thinks he will be pious and concern himself with Rambam’s view and be stringent and work for a living is following the advice of the evil inclination and will forget what little Torah he has learned. See as well *Avkat Rohel* 20 and *Tashbetz* 1:147.

<sup>57</sup> Quoted in *Ha-Elef Lekha Shelomoh, Orach Hayim* 263.

they permitted it, as there is no one found to do [this job] for free...”<sup>58</sup>

Rabbi Naftali Tzvi Yehudah Berlin (1817-1893) ruled that it is permitted and, in fact, a *mitzvah* to destroy the original templates that were used to print holy books that were being disrespected post-production.<sup>59</sup> In justifying the printing of these holy books which, *ipso facto*, involves the creation of these templates which were inevitably mistreated by their publishing houses, he invoked “*Et la’asot*”—as no way to print books exists without such templates.<sup>60</sup>

### Rulings of the Nineteenth and Twentieth Century Poskim

The Rosh Yeshiva of the Berlin Rabbinical Seminary, Rabbi Dovid Tzvi Hoffman (1843-1921)<sup>61</sup> addressed a question as to whether boys who attended public schools on Shabbat,<sup>62</sup> and as a result missed the regular Shabbat services, could read the Torah portion of the week—including the calling of seven men and the reading of the *haftorah* with blessings—prior to the afternoon *minhah* service on a regular basis. This practice was instituted by Rabbi Ezriel Hildesheimer (1820-1899), the founder and first Rosh Yeshiva of the Berlin Rabbinical Seminary. Rabbi Hoffman felt there was support to read the Torah in such a manner on an occasional basis where no other alternative existed.<sup>63</sup> However, he did not see it as truly within the law to do so on a regular basis. He invoked “*Et la’asot*” as his reason to support the practice.

In a 1971 responsum regarding a yeshiva day school in Scranton, Pennsylvania, Rabbi Moshe Feinstein (1895-1986) felt it appropriate to ignore his usual requirement of single-sex education for students over the age of ten. In this instance, the school would have been forced to either send the girls to a

<sup>58</sup> *Ibid.*

<sup>59</sup> *Meishiv Davar* 2:80.

<sup>60</sup> The normative halakha is found in Rambam, *Hilkhhot Yesodei ha-Torah* 6:8, where he ruled, “All holy writings and their commentaries and explanations—it is forbidden to burn them or destroy them by hand...” Rabbi Berlin found it permissible to destroy these templates because they were not intended nor sanctified to be used for study, but rather from the outset, these templates were made to be destroyed.

<sup>61</sup> *Melamed Le-ho’il, Orah Hayim*, 1:14.

<sup>62</sup> Rabbi Hoffman ruled that it is permitted for children to attend public school on Shabbat provided they do not write (*Melamed Le-ho’il, Orah Hayim* 1:58). He likewise permitted children under the age of Bar and Bat *Mitzvah* to carry their books without an *eruv*. (He even stated that a religious family that could afford a tutor and could make up the material that the child missed in school on Shabbat should nevertheless send their child to school to strengthen those children who may not be up to the challenge of maintaining observance in such a situation.) Rabbi Ezriel Hildesheimer also allowed himself to look the other way when these students exercised on Shabbat at school, lest they be mocked by the school staff and called lunatics, possibly jeopardizing their ability to get away with not having to write. (See *Sheyilot U-teshuvot Rebbe Ezriel, Orah Hayim* 48) This situation, though not ideal, nevertheless proved to be quite illustrative as to how flexible and communally conscious Rabbis Hoffman and Hildesheimer were willing to be.

<sup>63</sup> *Orah Hayim* 135:2 *Rema* and *Mishnah Berurah* note 5 and *Biy’ur Halakhah* ad loc.

public school or divide the classes and risk closing the school due to cost and parental displeasure with the small classes.<sup>64</sup> Due to these factors, he invoked “*Et la’asot*” and permitted co-educational classrooms for fifth through eighth graders.

Rabbi Menashe Klein (1925- ) is known to have invoked “*Et la’asot*” to justify voting in democratic elections.<sup>65</sup> He based this decision on both the Talmudic principle of choosing the lesser of two evils (*Sotah* 48a) (in this case, the political candidates) and with a general appreciation of the United States as a kind country to Jews. But Rabbi Klein expresses great reticence and conservatism about the dangers of assimilation into a host society, in general counseling radical isolation, and only allows democratic participation through voting because of “*Et la’asot*.” In his view, choosing elected officials is not for the individual to do, rather it is for a sage to decide according to the needs of the hour and to be done solely for the sake of heaven.<sup>66</sup>

Rabbi Eliezer Yehudah Waldenberg (1917-2006) permitted men to recite Psalms or learn Torah in public areas or while riding public transportation when there are women dressed immodestly.<sup>67</sup> Supporting his decision, he quoted Rabbi Avraham Yeshaya Karelitz (1878-1953) who permitted giving rebuke to the public—which could include reciting Torah teachings of the Sages—when women who are obligated to cover their hair are present yet have their hair uncovered.<sup>68</sup> Rabbi Karelitz invoked “*Et la’asot*” as part of his lenient ruling, in addition to the view of *Tosafot Rabbeinu Yitzhak* that if one is not paying attention to an immodestly dressed person, it is permitted.<sup>69</sup>

Rabbi Yehiel Ya’akov Weinberg (1885-1966), the Rosh Yeshiva of the Berlin Rabbinical seminary prior to World War II, addressed the validity of the practices of the Yeshurun religious youth organization in post-World War II France. Part of Yeshurun’s outreach program involved boys and girls jointly participating in activities together, as well as singing holy songs together at Shabbat meals.<sup>70</sup> Rabbi Weinberg began his response recognizing that these

<sup>64</sup> *Igerot Mosheh, Yoreh De’ah* 4:28.

<sup>65</sup> *Mishneh Halakhot* 12:374. This responsum was written to Dr. Marc Shapiro, author and YCT lecturer.

<sup>66</sup> See *Mishneh Halakhot* 12:290 and the conclusion of this essay for other instances where he maintains that applying “*Et la’asot*” should be restricted to the sages.

<sup>67</sup> *Tzitz Eliezer* 15:11. Immodesty is defined here by Rabbi Waldenberg as the uncovered hair of women who should have their hair covered, or as a revealed “portion” (*tefab*) of a woman’s body that women normally cover.

<sup>68</sup> *Hazon Ish, Orach Hayim*, 16:11.

<sup>69</sup> Rabbi Karelitz also quotes the *Mordekhai* (Mordekhai ben Hillel c. 1250-1298), who stated that, “Therefore, it is forbidden to say matters of holiness while hearing a women sing and, in our sins, we dwell among the Gentiles and, ‘It is a time to act for God, they have made void your Torah,’ therefore, we are not careful in learning [Torah] when hearing Aramean women sing....” *Mordekhai* 80, *Berachot* 8. (Quoted in the name of Rabbi Eliezer of Mintz.)

<sup>70</sup> *Seridei Eish, Orach Hayim* #8 (ed. Mossad Harav Kook, Vol. II). For another example of

activities could easily be construed as normatively prohibited.<sup>71</sup> Yet he then went on to develop a sophisticated halakhic argument (including the invoking of “*Et la’asot*”) to permit these activities. He reasoned that since it was acceptable not to insist on a *mehitzah* at a mixed activity of neutral nature (like a wedding or a lecture that did not have mixed seating), the issue here concerned a stringency more than an actual law.<sup>72</sup> Similarly in this case, since the boys and girls sat on separate benches while in the same room, this practice was sufficiently acceptable.

In regards to mixed singing however, he cites the precedent set by a Sephardic rabbi who permitted this practice since there was no issue of “forbidden thoughts” in this context.<sup>73</sup> It should be noted that he also saw the future of French Jewry in grave danger and empirically recognized the effectiveness of Yeshurun’s outreach activities. Throughout his responsum he invoked “*Et la’asot*” and viewed the implementation of his own halakhic arguments as in a state of emergency.

There is a noticeable conservative feature of language that emerges amongst the nineteenth and twentieth-century religious authorities who invoke “*Et la’asot*,” in contrast to their predecessors. Some of these later religious authorities make statements that intend to put limits on how and by whom this concept should be employed. Earlier authorities seem much less self-conscious when relying on “*Et la’asot*” and—when they sparingly decide to—do so without specifying any qualifications. The need to issue warnings and publicize boundaries regarding valid, halakhic use of this verse was not limited to ultra-traditionalist authorities, but also included those who were considered to be lenient and modern. While it may come as no surprise to find these warnings

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Rabbi Weinberg’s use of “*Et la’asot*,” see *Seridei Esh, Helek Rishon, Kuntrus Rishon, “Shehitat Ofot be-Hatikhat Kol ha-Mafreket”* (ed. Mossad Harav Kook). When the Nazis prohibited the ritual slaughter of kosher animals unless the head of the animal was completely severed in the process, he permitted this practice for fowl.

<sup>71</sup> Mixed groups because of *kalut rosh*, see *Sukah* 51b-52a and *Shulhan Arukh, Orach Hayim* 529:4; and mixed singing because of *kol ishav* issues, *Berakhot* 24a, Rambam, *Hilkhot Isurei Biah* 21:2, *Shulhan Arukh, Even Ha’ezer* 21:1, *Kuntrus Be’er Mayim Hayim* O t 3.

<sup>72</sup> It should be pointed out that Rabbi Weinberg, upon his arrival in Germany from Poland, discovered devoutly observant Orthodox families (haredim) where men and women sang together on Shabbat. He was perplexed since according to his understanding this seemed to be a blatant disregard for halakha. (See *Shulhan Arukh, Orach Hayim* 75:3 and *Magen Avraham*, ad loc.) Upon searching for an explanation, he was informed that Rabbi Shimshon Raphael Hirsch and Rabbi Eziel Hildisheimer permitted this practice based on the Talmudic principle, “Two voices are not distinct.” (*Megilah* 21b) Rabbi Weinberg was not very satisfied with this basis for the ruling and proceeded to develop his own line of halakhic reasoning.

<sup>73</sup> *Sdei Hemed, Ma’arekhet Kol*. Rabbi Weinberg finds support for this ruling in the teachings of Hida when explaining how Devorah the Prophetess sang in public. “At the time of the manifestation of the Divine presence, it is permitted for a woman to sing and there is no concern for forbidden thoughts.” He feels this can be applied to the singing of holy songs on Shabbat.

in the responsa of Rabbi Moses Sofer<sup>74</sup> and Rabbi Menashe Klein,<sup>75</sup> we can also find mention of it in the responsa of Rabbi Yechiel Yaakov Weinberg,<sup>76</sup> a more modern posek and Talmudic scholar.<sup>77</sup> Though in some of these cases these latter religious authorities were concerned with the abrogation of Halakha initiated by the enlightenment or Reform forces that either started to take place or was already in full force at the time,<sup>78</sup> in other cases, their concern was for what havoc this verse could wreak in the wrong, even Orthodox rabbinic hands.

### In the Zohar and Hasidism

The verse of “*Et la’asot*” has been interpreted throughout the Hasidic tradition in a spiritual and cosmological manner.<sup>79</sup> The focus here, however, will be the quite radical interpretation of this verse by Rabbi Mordechai Yosef Leiner of Izbica, the nineteenth-century Polish hasidic master, and author of the work *Mei Ha-Shiloah*.<sup>80</sup> Commenting on a mishnah in *Berakhot* (9:5), the *Mei Ha-Shiloah* teaches:

With regards to certain things in the Holy Torah, when it is clear to a person that now is *the time for the Lord to work*, as Elijah did on Mt. Carmel, then it is necessary to overturn the general principles of the Holy Torah and act only in accord with the understanding [*binah*] that God infuses to man. Rabbi Nathan says that when the understanding is not present, the person is required to conduct himself in accordance with the manifested rules of the Torah without transgressing the bounds of the Halakha. Rabbi Nathan further says, when a person’s heart strives after the will of God and he removes from himself all

<sup>74</sup> See *Hatam Sofer, Yoreh De’ah* 2:214 where he employs this verse as a basis to find merit in a *mikvah*’s method of water transfer.

<sup>75</sup> *Mishneh Halakhot* 12:374 regarding voting in elections. See also *Mishneh Halakhot*, 12:290, where he states, “But not anyone who wants shall come and utilize the Name, for God forbid we will be left with, ‘They have made void your Torah’ and this is not in the hand of every person. Rather, all with measurement and weighing and with halakha...”

<sup>76</sup> *Seridei Esh, Orach Hayim*, 2:8

<sup>77</sup> See chapters 4 and 7 in Dr. Marc Shapiro’s work, *Between the Yeshiva World and Modern Orthodoxy: The Life and Works of Rabbi Jehiel Jacob Weinberg 1884-1966* (London, England: The Littman Library of Jewish Civilization, 1999).

<sup>78</sup> See Introduction to *Torat Nevi’im* in *Kol Sifrei Maharitz Hayot*, where he explicitly articulates this concern and wrote an entire book to demonstrate that no actions that the prophets or sages did are intended to give the message that “The Torah is relative to the time and place and can be voided at any time.”

<sup>79</sup> See *Biy’urei Hasidut le-Nach* by Yishai Chasidah on Psalms 119:126 for interpretations of *Sefat Emet* and *Da’at Mosheh*.

<sup>80</sup> For a more in depth understanding of the Izbica rebbe’s background and approach see Dr. Morris M. Fairstein, *All is in the Hands of Heaven: The Teachings of Rabbi Mordecai Joseph Leiner of Izbica*.

personal attachments, God summons him to do an act which seems to him to transgress the principles of the Torah, heaven forbid. It is concerning this case that Rabbi Nathan said that a person whose heart strives after the Lord and has removed from himself all personal gain can be certain that it will not be counted as a sin, heaven forbid. He can be certain that *it was a time for the Lord to work*.<sup>81</sup>

The *Mei Ha-Shiloah* does mention elsewhere that this teaching is not intended for casual application and is intended for a “holy man.”<sup>82</sup> Nevertheless, within this late Polish hasidic tradition, “*Et la’asot*” has been taken out of the hands of established halakhic authorities and has become a living and intuitive antinomian teaching in the hands of a *tzadik* or advanced Hasid according to his individual, spiritual path. The *Mei Ha-Shiloah*’s teaching stands in radical polarity with the teaching of the Rabbi David ibn Zimra who, as stated above, does not see “*Et la’asot*” as having relevance for an individual.<sup>83</sup> It has been noted that the *Mei Ha-Shiloah* in its original publication did not appear with any approbation and is reputed to have been published by a gentile publisher and was also consequently subject to burning.<sup>84</sup> Given the Sabbatean cloud that has hung over Hasidism, the spirit of the enlightenment that was soon to envelope the Jewish people, and the inherent dangers of a person willing to take advantage of its radical teachings, it should come as no surprise that the *Mei Ha-Shiloah* was not well received even by the *hasidim* themselves.<sup>85</sup>

### Conclusion

The halakhic archeology found in this essay points to “*Et la’asot*” having undergone a type of *decline of the generations*.<sup>86</sup> This is particularly apparent

<sup>81</sup> I have declined to offer my own translation of such a radical teaching and have preferred to rely on the translation of Dr. Morris M. Faiierstein in his work, *All is in the Hands of Heaven: The Teachings of Rabbi Mordecai Joseph Leiner of Izbica* (Hoboken: KTAV, 1989), 38. Italics are mine.

<sup>82</sup> *Mei Ha-Shiloah*, Volume I, *Parshat Kedoshim* s.v. *ish imo ve-aviv*.

<sup>83</sup> Rabbi David Ibn Zimra (*Ridbaz*), *Orah Hayim*, *Yoreh De’ah*, 8:10.

<sup>84</sup> See Faiierstein, *All is in the Hands of Heaven: The Teachings of Rabbi Mordecai Joseph Leiner of Izbica* (Hoboken: KTAV, 1989), 7-8.

<sup>85</sup> Many attribute the current widespread popularity of the *Mei Ha-Shiloah* to Rabbi Shlomo Carlebach z”l who popularized its teachings over a span of more than 30 years. For an example of authors who see Rabbi Carlebach as personally responsible for this resurgence in the teachings of the Izbica, see the dedication to Eliahu Klein, *Meetings with Remarkable Souls: Legends of the Baal Shem Tov* (Northvale, NJ: Jason Aronson, 1995).

<sup>86</sup> The rabbinic expression “the decline of the generations” suggests that just as the passing of time and generations has taken us further and further away from the original revelation at Sinai, so too our understanding of Torah and human nature, as well as our personal stature (and even rabbinic authority) has decreased with time. This view however, is not universally accepted. See Menachem Kellner, *Maimonides on the Decline of the Generations and the Nature*

when one contrasts the way the verse was used to support the actions of the Prophets and Talmudic-era sages and how it came to be utilized in the responsa literature of later religious authorities and *poskim*. In general, the further in time an authority was from the biblical era when he employed this verse, the more he applied it to prohibitions of gradually lesser weight, with additional halakhic principles as support or available as alternatives, a more self-conscious usage.

A second understanding that is borne out through an overwhelming preponderance of halakhic precedent and opinion is that “*Et la’asot*” is to be employed highly judiciously by recognized religious authorities. Even the nineteenth-century Hasidic master Rabbi Mordechai Yosef Leiner of Izbica, who takes this verse out of the hands of the established halakhic authorities, restricts the implementation of this teaching to an elite cadre of rebbes and *hasidim*, and, even according to his view, is considered to be at best marginal.

Above all, “*Et la’asot*” clearly demonstrates a certain flexibility of the halakhic tradition to enable adjustment to situations of crisis and change. In every generation there have been sages who have shown themselves capable of transcending a mindset that would lead to enforcing the law to its own detriment and, in the words of the sages, create a “stringency that leads to a leniency.”<sup>87</sup> With a broader understanding of how “*Et la’asot*” has been employed throughout the different eras of our rabbinic tradition, we are left to wonder how—and if—future Orthodox *poskim* will employ this verse in the halakhic emergencies that confront us in the twenty-first century.

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*of Rabbinic Authority* (Albany, NY: State University of New York Press, 1996).

<sup>87</sup> See *Pesahim* 48b, *Yevamot* 30b, *Bava Kama* 11a, *Nidah* 24b.