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Scholarship Needs Spirituality—Spirituality Needs Scholarship: Challenges for Emerging Talmudic Methodologies

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One of the most exciting and influential revelations of my life has been my encounter with the rich and varied possibilities entailed in learning *gemara*. This includes the process, including the multiple paths and methodologies of study, as well as the results, the multifaceted forms of understanding or experience that are sought or achieved.

R. Amital, Rosh Yeshiva of Yeshivat Har Etzion, once commented that it used to take a generation for a new generation to emerge; now it happens every few years! This observation is particularly relevant to

the study of *gemara*, as we shall see below. Over the last thirty years, I have witnessed how dynamic and changing the study of *gemara* truly is.

Along with my enthusiasm for many of the new methods and techniques, I have also become increasingly aware of the challenges they present. I have learned that every new approach has its price. My reservations have sometimes led me to reconsider the value of certain methodologies, but more often they have encouraged me to a search for ways to overcome these obstacles and shortcomings, a process that itself has often led to new creativity.

Many of the new approaches provide opportunities for "spiritual" elements in *gemara* learning that are absent in the traditional approaches. "Spirituality" in this sense refers to the quest for meaning and personal significance, and that is how I use the word in the context of this discussion.

The first part of this article is descriptive; it presents the stages of my journey to discover what "learning *gemara*" means. I will then present models for implementing some of the lessons I have learned within the framework of the contemporary *beit midrash*. I present only what I know from personal experience; it is beyond the scope of this article and my ability to present the totality of the phenomena of the emerging methodologies. Thus, this section will focus on how new methods are applied in the Hesder Yeshiva of Otniel, where I teach. Finally, I will grapple with some of the problems, pitfalls, and even dangers that may result from the use or misuse of these approaches.

My purpose is not to promote the particular methodologies discussed here, nor to debate the merits of these approaches in relation to others. *Ḥazal* teach us that "*ein adam lomed Torah ella mi-makom she-libbo ḥafeẓ*" (*Avodah Zarah* 19a)—"a person learns best from a place that his heart desires." I believe that this concept includes not only *what* one learns but *how* one learns it. Similarly, the principle of "*yagdil Torah va-ya'adir*" (Isa. 42:21), of strengthening and glorifying the Torah, is fulfilled in part by the fact that there are so many different ways to learn. The fact that different *yeshivot* learn Torah differently is therefore *le-khatḥillah* and not *be-di-avad*; ideal rather than merely acceptable. My goal in this article is thus primarily to share my own experience and perspective about the possibility of

implementing these methodologies with those who are inclined to learn about them.

Since the ideal way to learn about these new approaches is through examples, I will cite links to Internet materials that serve as illustrations for ideas discussed here.

ENCOUNTERS WITH THE WORLD OF LEARNING

The Methodological Journey

When I first began learning *gemara* in elementary school, I thought that the hallmark of a *talmid ḥakham* was his ability to translate the difficult Aramaic words of the Talmud. In high school, I discovered the importance of asking questions and seeking answers. The litmus test of scholarly development thus became what types of questions are asked and what forms of answers are sought. When I began my studies at Yeshivat Sha'alvim, I was taught that the goal of study is not only the understanding of a particular Rashi or Tosafot, but the comprehension of the topic that is presented by the *gemara* and discussed by the *rishonim*. As a student of R. Ahron Soloveichik and R. Michael Rosensweig at Yeshiva University, and later as a student of R. Aharon Lichtenstein at Yeshivat Har Etzion, I first encountered the Brisker approach, a method that analyzes the conceptual ideas underlying the topics in the *gemara*.

At each of these stages of my learning, I was convinced that the basic methodological possibilities of how to relate to the *gemara* had been exhausted, but I was proven wrong time and time again.

The next stage in my thinking included two parallel developments. I discovered philosophical analysis, which posits philosophical meaning to halakhic concepts. To truly understand the *gemara*, one must uncover the "philosophy of halakhah." This drive stems in large part from R. Abraham Isaac Kook's call for the fusion of *aggada* and halakhah. (In this article, I will generally use the term *maḥashavah*, and not *aggada*, as my intent is to refer not only to a particular literary genre, but to the philosophical realm in general.)

I soon discovered, however, that this philosophical inquiry is not highly regarded at some of the institutions in which I had studied, in part because of ideological and theological issues that these

methodologies present. In a lecture I once heard during Hanukkah, a prominent Rosh Yeshiva explained that the difference between Hellenism and Judaism is that the Greeks asked not only "what," but also "why." Another Rosh Yeshiva brought Korah's rebellion as an example of the danger in searching for the philosophy of mitzvot (based on his understanding of Rashi's comment at the beginning of the *parashah*). I later heard R. Kook's son, R. Tzvi Yehuda, quoted as warning that combining halakhah and *aggada* violates the prohibition of *kilayim*; it is a forbidden mixture.

My second discovery was academic Talmud. Sensitivity to textual aspects of the *gemara*, which I imbibed from my *rebbe muvhak*, R. Shmuel Nacham of Sha'alvim, led me to explore this type of study in the venue of academic scholarship at Bernard Revel Graduate School, primarily with Professors Ya'akov Elman in relation to Talmud and Dr. Haym Soloveitchik in relation to the *rishonim*.

Academic Talmud deals with the entire gamut of sources in *Ḥazal*, not only the *Bavli*, but the *Yerushalmi*, *Tosefta*, *midrashei halakhah*, and *midrashei aggada* as well. More significantly, each source is understood on its own terms. This is in contradistinction to classical approaches, in which the *Torah she-be-khtav* is defined exclusively by the *Torah she-be-al peh*, the Mishnah by the *gemara*, the *Yerushalmi* by the *Bavli*, and the *Bavli* itself by the *rishonim*. Indeed, a friend of mine once commented that the book in the phrase "People of the Book" was once the Bible, but it is now the *gemara*. A second friend disagreed, claiming that the primary study is the *rishonim*. The academic methodology takes a different approach.[1]

Part of the richness of traditional talmudic learning is the study of different opinions, the *shiv'im panim la-Torah*. We can relate to the *lamdan*'s joy in contrasting the Rambam with Tosafot, but an approach that views each work of *Ḥazal* in its own light reveals many more possibilities. The differences between the *Bavli* and the *Yerushalmi* are often much more fundamental than those between two *rishonim* who are ultimately focused on the interpretation of a particular passage in the *Bavli*.

Although this approach does not limit the study of a source to its classical commentators, it does not necessarily lead to conclusions that

reject or even differ with those commentators. Rather, it stresses that we can only understand why *Ḥazal* interpreted a text the way they did if we are aware that the *derash* is not identical with the *peshat*. Viewing the *gemara* on its own terms also allows us to deal with questions and categories that classical commentaries did not address.

As enthusiastic as I was about this type of study, I quickly realized that the opposition to philosophical inquiry in relation to halakhah pales in comparison to the opposition to textual methodologies. The possibility that there was a process of development within halakhah, as suggested by the academic approaches, is antithetical to a perception of the Torah as abstract and unchanging. In addition, this method can challenge the classical interpretations, and it may even undermine the authority of halakhah itself.

Particularly in Israel, the polemics against these approaches have been fierce. They include attacks against the attempt to interpret *Tanakh* outside of the prism of *Ḥazal*, as well as against "*Revadim*," an approach that aims to inform students of the stages in the *gemara*'s development (*tannaim*, *amoraim*, *stammim*, etc.). Both of these polemics were spearheaded by R. Zvi Tau of Yeshivat Har Ha-Mor, the leader of the movement referred to as Yeshivot Ha-Kav ("The Line"). A full discussion of these polemics is beyond the scope of this article, but I will offer a partial response below.

A third approach to *gemara* study is the literary approach, which forges the textual with the conceptual. This approach studies the structure of a text and its use of language in terms of word-plays and imagery in order to ultimately uncover the meaning of the text. These methodologies were first applied in Torah study in regard to *Tanakh* and *aggada*, most prominently at Herzog College in Gush Etzion. It was and is promoted by teachers such as R. Mordechai Breuer, R. Yoel Bin-Nun, and R. Yaakov Medan, and through the *Tanakh* journal *Megadim*. A major turning point in my learning was exposure to the work of R. Avraham Walfish, who applied these methodologies to the texts of the Mishnah. From the Mishnah, it was but a small step to apply this approach to other sources in *Ḥazal*, including the *gemara*, and R. Walfish and others have continued exploration in this vein in recent years. *Netu'im* is a *Torah she-be-al peh* journal edited by R.

Walfish that includes many articles that utilize the literary approach. In particular, the first issues include a series of methodological articles by R. Walfish that I found very significant.[2]

From the Beit Midrash to the University and Back

In the mid-1990s, the desire to forge the tools of the academic world with those of the *beit midrash* brought me back to university, this time Hebrew University in Jerusalem. In yeshiva, I had studied the philosophy of halakhah in the context of the holiday of Sukkot. One of the major critiques of attempts to link halakhah and *maḥashavah* is the lack of rigor and the unclear boundary between *peshat* and *derash*. Thus, these efforts have generally been regarded, often rightfully so, as homiletics. I hoped that developing my findings in the course of a doctorate would help grapple with this challenge. My goal was to fine-tune the approach by utilizing the methodologies offered in the academic world and through the very fact that my findings would be open to critique; my advisers, various doctoral committees, the judges of my dissertation, and the editors of journals and their professional readers would evaluate my work. No stage ends with simple approval, but with long lists of questions, with the rejection of particular ideas, and with suggestions for improvement.

The study of ritual and symbolism in general, whether from the vantage point of anthropology or comparative religion, can lead to insights into halakhah. One can apply basic questions that are raised in these fields to the study of halakhah, and these studies also offer a broader context to particular ideas that appear in Judaism. This method does not necessarily lead to "parallel-mania" between Judaism and other traditions. Often, quite the opposite results—comparison highlights what is unique about Judaism.[3]

In 1997, I became a *ram* at the Hesder Yeshiva of Otniel, a yeshiva I had barely known existed before I was offered the position. (It has since become one of Israel's largest *hesder yeshivot*, with 350 students and 14 *roshei yeshiva* and *ramim*). I assumed that a traditional yeshiva setting would not accept either of the basic approaches to Talmud study that I had pursued; a "*maḥashavanik*" would be seen as too *ruḥani*, too spiritual, in contrast to the classical *lamdan*, while

the academic scholar would be viewed as not *ruḥani* enough. To my surprise, I found that the yeshiva was open to and involved in both the forging of *maḥashavah* and halakhah and the methods of academic scholarship.

I later discovered that much of the inspiration for this approach came from R. Shagar, who had taught one of our *roshei yeshiva*, R. Beni Kalmanson, as well as several of the *ramim*. R. Kalmanson eulogized R. Shagar as a *gedol ha-dorot*, as opposed to a *gedol ha-dor*; individuals who have significant impact on future generations are often, by definition, less recognized by the generation in which they live.

Although I joined the yeshiva in Otniel as a *ram*, I felt that I had once again become a *talmid*, as there was so much for me to learn. The yeshiva has a ḥasidic bent, which seeks the spiritual that goes beyond the intellectual. I discovered that uncovering philosophical meaning in halakhah is a not an end, but a beginning; the challenge is to translate the philosophical meaning into personal meaning and significance, and then to figure out how to incorporate it into one's life.

I have since given up believing that the journey to discover what it means to learn *gemara* will ever reach a definitive conclusion. In recent years, in fact, a number of additional approaches have developed. A colleague from Beit Midrash Ra'ava, R. Shimon Klein, has developed an approach that allows the imaginative faculties to play a role in learning. R. Dov Berkovits of Beit Midrash Beit Av demonstrates the dynamics of group discussion in developing personal significance for the ideas raised in the course of study.[4] I view these approaches as following, or at least carefully integrating, the use of the intellect, not as supplanting it.

Applying Integrative Methodologies in the Beit Midrash

Although the approaches to *gemara* study that I have encountered over the years are "new," methodologies in learning have constantly been evolving. The *aḥaronim* clearly related to the *gemara* differently than the *rishonim*. R. Hayyim Soloveitchik changed the nature of *lamdanut*, and his students, such as R. Shimon Shkop, took his methodology to new spheres. In recent times, however, this process has been greatly accelerated. The combination of interdisciplinary approaches and the

explosion of information in our times have led to unlimited possibilities. This rapid rate is inevitably problematic, as new approaches are often not yet ripe or properly developed. In addition, the eclectic nature of interdisciplinary approaches is limited by time constraints. One can devote years to writing a doctoral dissertation, but how does one incorporate various methodologies in a yeshiva, where a new *sugya* is studied every week?

I wish to present a model for coherently applying the methodologies we have mentioned. As previously noted, these are not theoretical models; they are based on experience from thirteen years of teaching in the Yeshiva of Otniel.

What Is Studied

One important factor that contributes to a methodological approach is the choice of what to learn. This includes both the choice of which *massekhtot* are studied and what is stressed in a given *massekhet*.

Meaning and significance for the student are crucial criteria in choosing a text. For example, as I write this essay, this year we are learning *Bava Batra*. Although we hope our students will learn the entire *massekhet* in *beki'ut*, we ultimately decided that the first two chapters would be studied *be-iyyun*, despite the fact that the third chapter is more "*lumdish*." This decision was made in large part because of the relevance of these chapters, which deal with the relationship between the individual and society. Similarly, when learning *Gittin*, we focused on the last chapters, which deal with *gerushin*, divorce itself, and not the first chapters, which focus on the complexities of the *get*. This choice was made in part because the process of *gerushin*, more than the *get*, sheds light on the nature of marriage; moreover, the problem of refusal to offer a *get*, a burning issue in Israel, is rooted in this topic.

After choosing the text, there is the question of focus in each chapter. When studying the first chapter of *Kiddushin*, one could focus on *kinyanim* or on the nature of marriage and the meaning of the marriage ceremony. Through studying *Nedarim*, one could fine-tune the difference between a *ḥeftza* and a *gavra* or contemplate the very nature of language. Ultimately, the issue is what to stress, as both approaches have merit and neither should be ignored entirely.

This approach to choosing the text to study does not limit the scope of m*assekhtot* learnt in yeshiva—it actually expands it. In choosing a text, meaning is a goal, but this does not only imply practical relevance; texts that express values are existentially significant. The yeshiva has in the past studied *Zevaḥim*, a *massekhet* that is unfortunately not currently *halakhah le-ma'aseh*. Nevertheless, the world of the *Mikdash*, for the restoration of which we pray daily, should be an essential part of a Jew's worldview even today.

A famous cover of the *New Yorker* depicts how New Yorkers perceive the map of the world. Not surprisingly, New York City takes up most of the map. Similarly, many traditional *yeshivot* have adopted an outlook wherein legal aspects compose the bulk of *Shas*, while the rest is just peripheral. As a result, even when learning topics beyond *Seder Nezikin*, these topics are found and stressed. When learning *Gittin*, focus is placed on testimony and the validity of legal documents (*edut* and *shetarot*); when studying *Kiddushin*, stress is placed on *kinyanim*; analysis of *Ketuvot* is associated with clarifying *sefekot*. These abstract and legal concepts are important and must be studied, both for their inherent value and in order not to be completely disjointed from the *olam ha-yeshivot*, but in our yeshiva, they are studied in smaller proportion. Our goal is meaning and significance for the student.

Introduction to the Massekhet

The second stage after choosing the text to study is devoting time to an introduction to the *massekhet*. The study of the relevant *pesukim* in the Torah is but a small investment of time, but it is of great qualitative value for the course of learning. Study of the basic ideas that emerge from the *Torah she-be-khtav* is a significant backdrop for tracing the development of these ideas and seeing how they are applied in the Torah *she-be-al peh*. It also sharpens the ability to contemplate the relationship between the *Torah she-be-khtav* and the *Torah she-be-al peh*.

For example, when the yeshiva studied *Bava Kamma*, there was a weekly *shi'ur* in which each of the *ramim* was able to express his understanding of *Ḥazal*'s interpretation of "an eye for an eye" as referring to monetary compensation.

The introduction includes the study of the *mishnayot* of the relevant chapters as well. The ability to see the entire chapter of Mishnah as a unit and contemplate its structure is yet another significant point of reference before the study of the *gemara* actually begins. For example, study of the *mishnayot* of the first chapter of *Kiddushin* allows the student to analyze the similarities between the *kinyan* of *kiddushin* and other *kinyanim* and to uncover what is unique about it, a study that sheds light on the essential nature of *kiddushin*.

Plan for the Zeman

The introduction generally takes about a week. The bulk of the *zeman* will be dedicated to the routine of learning *sugyot* one by one. By now, there have been a number of staff meetings to decide which *sugyot* to study and which to skip. The goal is to create a curriculum that covers the major topic of the *massekhet*, along with some unrelated *sugyot* whose significance demands that they be discussed.

For example, the topic of *kinyan devarim* appears in *Shas* only in the first chapter of *Bava Batra*. Although it is not relevant to the major topic of the *massekhet*, this would be the only opportunity to study it. On the other hand, although this chapter also discusses the laws of *sefekot*, they are discussed extensively elsewhere, and would thus be more likely to be skipped in this context.

Individual Sugyot

Here we have arrived at the heart of the challenge—the study of each individual *sugya*. Obviously, each *rebbi* has a different style; I will refer to a major trend among the *shi'urim* in our yeshiva, but I cannot speak for all. Furthermore, every *sugya* presents its own challenges, and no one formula is appropriate for each. The discussion below is thus purely a model.

The stages in learning a *sugya* are generally chronological. By virtue of the introduction, the relevant *pesukim* and *mishnayot* have already been studied, so it usually only takes a short time to complete the biblical and tannaic sources, reviewing them in the particular context of the given *sugya* and adding *midrashei halakhah* and *Tosefta* when relevant.

The next stage is the *gemara* itself—primarily *Bavli*, but the *Yerushalmi* as well. In this stage, an attempt is made to build up the basic *sugya* from within the *gemara* itself. This certainly takes more time than if the *gemara* is treated as a jumping board to the *rishonim*. However, if the student arrives at the next stage of studying the *rishonim* and *aḥaronim* after having himself dealt with the challenges that these commentators faced in unraveling the *gemara*, he actually saves time in the end; this approach makes it easier to understand the commentators. In addition, the student attains added insight into the paths each commentary has taken.

What takes place during each of these stages? When I studied at Yeshivat Har Etzion, I was taught a basic formula for breaking down and analyzing a *sugya*: seek the source (*makor*), the halakhic definition (*hagdarah*), and the scope (*hekkef*). From these, one attempts to uncover the nature (*ofi*) of the particular law. In my teaching, I add two additional steps. Once the *ofi* of the law has been determined, we ask the "why" and search for the meaning. To this conceptual approach, textual sensitivity is applied by noting the literary structure of the sources and by studying each in its own terms, meaning clarifying what is mentioned and what is not mentioned in each source.

An example of this method is demonstrated in the appendix at the end of this article.

Shi'ur Kelali

One basic way of broadening the scope of use of methodologies is through the *shi'ur kelali*, the *shi'ur* given by the Rosh Yeshiva to the entire yeshiva. In many *yeshivot*, the *shi'ur kelali* is on a topic that has not been studied over the course of the week. In Otniel, the *shi'ur* deliberately focuses on what was studied during the week to air different approaches, thus turning the *shi'ur* into a discussion in which both staff and students actively participate, rather than a lecture. The Rosh Yeshiva giving the *shi'ur* sees his role not as a solo performance but as a conductor of an orchestra.

Yemei Iyyun

Another method of enrichment is through *yemei iyyun* for the entire *beit midrash*. These generally take place toward the conclusion of a *massekhet*. In these contexts, staff and students have the opportunity to share insights and discoveries that arose during their learning. This is also an opportunity to invite guest speakers who specialize in the relevant fields.

For example, at the conclusion of studying *Bava Kamma*, we examined how Israeli law relates to the *halakhot* of *nezikin* (torts). Judges Neal Hendel and Moshe Drori were invited to present the similarities and differences between current Israeli law and halakhah. To allow for a meaningful discussion, the students prepared in advance by studying a number of the two judges' court decisions.

Throughout the study of *Massekhet Kiddushin*, the *beit midrash* contemplated the nature of marriage that emerges from the study of the *massekhet*. Toward the end of the *zeman*, we studied the validity of civil marriage based on the conclusions of various *sugyot*. R. Shlomo Dichovsky, a leading member of the rabbinical high court, shared his opinions and experience on this issue. In order to relate to policy issues, we hosted R. Yaakov Medan, who has written a covenant for Israeli general society together with Judge Ruth Gavison in an effort to overcome the gap between religious and secular Israelis when it comes to civil marriage.

While studying *Massekhet Shevi'it*, we traveled to fields and met with farmers. This contributed to an understanding of the realia concerning the agricultural aspects of the *sugya*. Students also heard first-hand how farmers planned to meet the challenges of observing the laws of the then-upcoming *shemittah* year. We also hosted a professor of agronomy (the study of soil, especially as it relates to agriculture), who gave a more scientific view of the agricultural elements involved.

When we finished *Massekhet Gittin*, we attempted to study the different sides and approaches to dealing with the *agunah* issue. We met R. Eliyahu Ben Dahan, the head of the *beit din* in the Israeli court system, and once again with R. Shlomo Dichovsky. In addition, R. Elyashiv Knohl came to the yeshiva to present his proposal for prenuptial agreements.

We conduct ancillary studies of topics in a year's *massekhet*. While we were studying *Massekhet Berakhot*, *tefillah* workshops took place. When we were studying *Massekhet Shabbat*, classes exploring the different meanings of Shabbat were held. When we were learning *Massekhet Nedarim*, which deals with the ability to create commitments and prohibitions through the power of speech, the parallel "spiritual" work was focused on uplifting speech. In addition, there were classes on *Sefer Yeẓirah*, which deals with the spiritual and philosophical underpinning of language in Judaism. Learning *Massekhet Bava Kamma*, which focuses on damages to property and theft, led one of the staff members to give a lecture series about ethical and spiritual issues relating to money.

Beyond the Beit Midrash

While there is certainly an inherent value to the Torah studied in yeshiva, every institution aims to give its students the tools to continue learning Torah after leaving the confines of the *beit midrash*. The *mizvah* of learning Torah applies "*be-shivtekha bi-veitekha u-va-lekhtekha ba-derekh*" (Deut. 6:7), in the home and on every path in life, not only to time spent in the *beit midrash* as a formal student. Torah learning must eventually be applied in the home, in discussion between parents and children, and in the encounter with the outside world. This means that *yeshivot* must be realistic about the time constraints and environments that students will one day find themselves bound by.

When I studied at Yeshiva University, I recall, some students explained that they did not learn during night *seder* because only learning *gemara be-iyyun* is of value, and in a two-hour night *seder* there was not enough time to properly learn in depth. The yeshiva stresses certain forms of *gemara* study, especially the simultaneous use of multiple methodologies, which are often too complex to be continued after leaving that environment, when students face the challenges and limitations of family life and profession. The challenge is not to try to replicate what is done in the *beit midrash*, but to find ways to use the many facets of learning as ingredients to be rehashed in appropriate and relevant forms.

A good example is the study of Mishnah. The Mishnah itself is short and easily understood, making it appropriate to learn even in short time periods or in a family setting with people of different ages and backgrounds. The study of Mishnah is often technical and dry, however. Using the literary tools developed by R. Walfish mentioned earlier and using the resultant literary structures to uncover meaning can turn the study of Mishnah into a rich Torah-learning experience.

The task of preparing students for study after leaving the *beit midrash* must begin within the *beit midrash* itself. For years, a group of students in our yeshiva met weekly to study a chapter of Mishnah. In a short time, the students became active participants, picking up the basic methodologies. Evidence of their participation can be found in the numerous insights of the students quoted in the book that evolved from these classes, *Nishmat ha-Mishnah*.[5]

Similarly, our staff prepares students for a different type of *gemara* study. One of our teachers, R. Amnon Dukov, begins each morning with a daily *gemara shi'ur*, going page by page, and he tries to limit it as much as possible to the basic text of the *gemara*. He uses a number of basic techniques, among them focusing on understanding what underlies the flow between the seemingly associative topics within the *gemara*. A step up from regular *beki'ut* study, this presents a realistic style for graduates to continue after they leave the yeshiva. The yeshiva's website also includes a forum that coordinates the study of *gemara* for graduates. Everyone can post ideas and insights about the *daf* currently studied by the forum.[6]

CHALLENGES OF NEW METHODOLOGIES

Dangers of the Eclectic

Now that we have seen the possibilities for Torah study that have been provided by new approaches, we must discuss the potential pitfalls of using them and how these problems may be addressed.

I strongly believe that different methodologies should be used in tandem. The complex nature of *gemara* is a reality that requires a multifaceted approach. A student can exhaustively apply one methodology and still arrive at skewed conclusions, since he will

have ignored other dimensions of the *sugya*. For example, many learned articles analyze in overwhelming detail the textual aspects of the *sugya*—the manuscripts, philology, realia, etc.—but lack the conceptual underpinnings to achieve a sound understanding. The opposite phenomenon of conceptual study without textual analysis can similarly lead to problems.

There is a threefold danger, however, in using multiple methodologies.

First, a little knowledge is a dangerous thing; it is certainly perilous to use methodologies without knowing how to use them. Using several methodologies generally leads to being less familiar with each of them, and thus may lead to a more confused process than had one focused only on one approach. The student must recognize this danger and be aware of what he does not know. There should also be means for students to learn the basics of the methodologies that they are exposed to and expected to apply. If this exposure is not offered in special classes, the teacher must relate to the methodologies during the *shi'urim*. We cannot assume that students will absorb these foundations by osmosis.

Second, when a *shi'ur* is tackling a topic from many vantage points, less time can be devoted to each method. To avoid sloppiness about the essential, the teacher must often skip what is peripheral. Ultimately, there is a price for this approach, but it is a price I am willing to pay.

Third, with many tools at one's disposal, there are great temptations to sacrifice intellectual honesty. Instead of using multiple methodologies to test an idea, one may use them to create a "supermarket" to pick and choose items that push a pet theory.

The use of manuscripts is a good example. Alternative *girsa'ot* must be invoked not only in order to promote a particular idea, but also to temper it. For example, I have argued that the celebration of the *simḥat beit ha-sho'evah* is a reenactment of the story of the bringing of the ark to Jerusalem by King David and that the singing and dancing of the "*ḥasidim*" represent that of David himself. What could be a better proof than the *mishnah* that states that the *ḥasidim* said "*shirot ve-tishbaḥot*," a phrase also used by *Ḥazal* to describe David's

poetic endeavors? All the manuscripts of the *mishnah*, however, just read "*tishbaḥot*" instead of "*shirot ve-tishbaḥot*," creating a much less striking analogy to David.[7]

Similarly, I argue that *Massekhet Tamid* 1:4 parallels Song of Songs 2:12–14. After all, the Mishnah uses the phrase "*higgi'a et*," matching the words of the verse, "*et ha-zamir higgi'a*." Once again, however, the word *et* does not appear in the reliable manuscripts of the Mishnah.[8]

Ultimately, to overcome the challenge of selective use of methodological tools, it is critical that there be an opportunity for interaction, feedback, and critique between *lomedei Torah*.

Halakhah and Maḥashavah

As I mentioned earlier, R. Zvi Yehuda Kook quoted Hatam Sofer as stating that mixing halakhah and *aggada* is forbidden as *kil'ayim*.[9] The attitude opposing interaction between halakhah and *maḥashavah* often assumes that classical *lamdanut* is more of a vehicle to uncover the *peshat*, to touch on the original meaning of *Ḥazal*, than *maḥashavah* is.

I believe that, in essence, the opposite is true. I do not mean to devalue classical *lamdanut*; rigorously uncovering the implications of *Ḥazal*'s *halakhot* is significant even if it does not uncover the conscious intent of the *ḥakhamim*. *Lamdanut* is, in fact, an essential source for the model of learning *gemara* that I have presented. However, the genre of *maḥashavah* is closer to that of halakhah. As Yonah Frankel has pointed out, all of our sources from *Ḥazal* contain both halakhah and *aggada*—the *Bavli*, *Yerushalmi*, *midrashei halakhah*, and, to a lesser extent, the Mishnah and Tosefta. The same *ḥakhamim* engaged in both genres.[10] The idea that halakhah and *maḥashavah* are unrelated would also contradict all we have learnt from anthropology and comparative religion. Rituals have significance and meaning, and often reflect a value system. The burden of proof is on anyone who would argue that Judaism is the exception.

In practice, however, matters are more complicated. There are indeed serious challenges to attempts to uncover the *maḥshevet ha-halakhah*. Just as many dogmatically deny the very possibility that *maḥashavah* considerations form the basis for the halakhah, some

have gone to the other extreme, maintaining that every detail of the *shakla ve-tarya* teaches us a fundamental idea. The famous guru George Gurdjieff tells of a man walking with the devil. The man asks the devil what another man is doing, and the devil responds that he is collecting truths. The man then asks why the devil is not frightened by this attempt, and the devil replies that he has no reason for concern; ultimately, the person will turn the truths into a dogma.

A second problem of intertwining halakhah and *maḥashavah* is its newness. For many years, methodologies of *lamdanut* were created, exercised, and polished. No such methodologies have been formed for *maḥshevet ha-halakhah*. In my doctorate[11] and my book on Sukkot,[12] I grapple with this challenge, but there is still a long road ahead.

I will address the third and, in my opinion, the most serious problem in the next section.

Spirituality Needs Scholarship

Academic scholarship and the search for spiritual meaning are two different drives, but both are significant, and it is necessary to incorporate both in learning. I believe that this is true not only because each contributes to and deepens study, but precisely because the differences between them may help each to overcome the pitfalls and dangers of the other.

Although I believe in the essential relationship between *maḥashavah* and halakhah, the fact that *maḥashavah* has personal, subjective significance—as opposed to *lamdanut*, which is generally more abstract and detached—leads to a gap between critically and objectively understanding the sources, on the one hand, and expressing a subjective, personal worldview through the sources, on the other. The subjectivity of *maḥashavah*, the "spiritual meaning" of the text, must somehow be counterbalanced.

The following anecdote articulates both the problem and an approach to respond to it. When Professor Benjamin Ish Shalom opened his institution, Beit Morasha, R. Amital asked him whether it would be like a university or a yeshiva, the difference being that "in university, you want to know what Rav Kook *said*; in yeshiva, we want to know what Rav Kook says *to us*." Ish Shalom, who desired to combine

the best elements of both approaches, replied, "I want to know what Rav Kook says to *me*."[13] Ultimately, the professor agrees that study should lead to personal significance, but he demands that it be based on and following from the best effort to uncover the original meaning. To do this, one must be conscious of what emerges from the text itself and what its implications are. Academic scholarship, which seeks to at least partially detach a person from his subjective understanding of the matter studied, allows for a two-step process that can temper subjective interpretations. Without this, the search for meaning can leave one looking at a mirror instead of through a window.

Scholarship Needs Spirituality

Academic scholarship attempts to view each source in its own context. This, of course, leads to the realization that *peshuto shel mikra*, the simple reading of the Torah, is not necessarily always identical with the commentary of *Ḥazal*. The challenges raised by this situation are more of an educational than a theological nature, as there are many sources for this type of explication and many instances of *rishonim* and *aḥaronim* who justify or practice this approach.[14] The problem must be dealt with, however; if this method leads to an interpretation of texts that differs from the classical one, it may undermine the authority of these sources and, thereby, the binding nature of halakhah. It is beyond the scope of the present discussion to adequately address this issue, but I will attempt to point to a general approach.

Those with experience in *gemara* study recognize that not every commentary provides the simple meaning of the source it intends to explain. There may be an educational danger in acknowledging this reality, but there is an educational danger in denying it as well, especially as students themselves often raise this issue. The educational approach of a teacher who offers far-fetched explanations, trying to convince students that the problem surfaces only because of the limits of the students' intellectual grasp and refusing to accept the problem that the students see, may ultimately, God forbid, cause severe damage to the students' trust in their teachers and the Torah itself. Basing commitment to the *Torah she-be-al peh* on the argument that it involves no development whatsoever may cause some to abandon

it entirely. Students who sense that commentary includes a creative process in addition to a descriptive one may conclude that the *Torah she-be-al peh* lacks sanctity and that there is no need to be committed to it. It is essential that these issues be raised and grappled with within the *beit midrash*, as often students face these questions only later, when they are no longer part of an atmosphere that can help them deal with these issues from a vantage point of *yir'at Shamayim* and theological depth.

R. Kook writes about three major revolutions of the (then) "new thinking"—sociology, cosmology, and the theory of evolution. Each of these changes was perceived as threatening to faith. R. Kook's approach was to meet the challenges not by ignoring them or by denying them all validity, but by viewing them as challenges to discover the divine within them, and ultimately to enrich faith and achieve a deeper understanding of God through them.[15] Similarly, questions rooted in academic study may serve as an opening for deepening the study of *Torah she-be-al peh*. A believer says, "When *Mashiaḥ* comes, my grandmother will rise from her grave," while a nonbeliever says, "When my grandmother rises from the grave, *Mashiaḥ* will come!" The formulation and the melody can make all the difference between faith and heresy; a *beit midrash* is capable of offering the correct melody.

The traditional method of *gemara* learning leaves little room for any approach that stresses the development of the *Torah she-be-al peh*, primarily as a result of assumptions relating to two fundamental issues—the nature of commentary and the nature of the Oral Torah itself. Rethinking these topics—and teaching them differently—can help us successfully grapple with the challenges posed by developmental theories.

If the value of a commentary is entirely related to its ability to passively uncover the original intent of the author, it is difficult to accept any gloss that does more than that. One of the major revelations in our times (although often taken to an extreme in postmodern thought) is the realization that legitimate commentary can be dynamic. It seems clear that *Ḥazal* themselves had a complex conception of commentary. Statements such as "*lo ba-Shamayim hi*"[16] stress a preference for the commentator's understanding of the text over that of God. "*Eilu*

ve-eilu divrei Elokim ḥayyim"[17] envisions the possibility of multiple truths in interpretation. The famous story of Moses not understanding what R. Akiva quotes in his name attests to this as well.[18]

What is the *Torah she-be-al peh*? Some suggest that the existence of two *Torot* reflects the fundamental differences between them. The Written Torah is by nature fixed, whereas the Oral Torah is not written deliberately in order to maintain its fluidity. R. Moshe Glazner, the author of the *Dor Rivi'i*, writes:

> Know that there is a major and obvious difference between the *Torah she-be-khtav* and the *Torah she-be-al peh*: The *Torah she-be-khtav* was given to Moses word for word, from "*Bereishit*" to "*le-einei kol Yisrael*," whereas the *Torah she-be'al peh* conveyed to him included the content, but not the words . . . as words can be passed down only in writing. . . . By the very nature of oral transmission, there will be differences in understanding between people, as each will put in some of his personal understanding. . . . In truth, we see the Torah's wonderful wisdom in that it gave the sages of each generation [the ability to give] the commentary on the Torah, so that the Torah will live with the nation and develop with it, and this is its eternity. With this [understanding] we can explain the phrasing of the blessing recited after [reading] the Torah: "Who gave us a Torah of truth [*Torat emet*] and implanted eternal life [*ḥayyei olam*] within us." The Tur explains that the "Torah of truth" is the *Torah she-be-khtav*, whereas "eternal life" refers to the *Torah she-be-al peh*. . . . Thus the *Torah she-be-al peh* is not called absolute truth, but "agreed-upon truth," which is dependent on the understanding of the judge in your time. For this very reason, it is called "eternal life implanted within us," because through it, the living spirit of each generation will come to fruition.[19]

The Torah is eternal because it is fluid and dynamic.

R. Kook similarly acknowledges human input in the *Torah she-be-al peh*:

> The spirit of the nation did not generate *Torah she-be-khtav,* but the spirit of God, creator of all, created it…. In the *Torah she-be-al peh* … we feel the spirit of the nation, which is connected like a flame to a coal to the true light of the Torah, causing, through its special qualities, that the *Torah she-be-al peh* was formed in its unique form. Certainly, man's Torah is included in God's. The spectator's open eye looks through the lighted speculum; [this is] true to all houses of God. It is impossible that from him there will be hidden this abundance in all its developments. These two lights make a complete world, where heaven and earth meet.[20]

The source of this passage has, in fact, been censored. In the original passage taken from R. Kook's journal, the line reads "*she-Torah she-be-al peh nozeret,*" that the *Torah she-be-al peh* is formed, in the present tense, and not in the past, as indicated in the printed version. R. Kook viewed the formation of the *Torah she-be-al peh* as a process that not only occurred in the past but continues to occur in the present.[21]

Rav Kook's conception of the *Torah she-be-al peh* is rooted in the Kabbalah. In kabbalistic thought, the *Torah she-be-khtav* and the *Torah she-be-al peh* are represented in the 10 Divine *sefirot*; *Torah she-be-khtav* is represented by *tiferet*, "splendor," and *Torah she-be-al peh* by *malkhut*, "royalty." *Malkhut* reflects the Divine presence within reality and is the spiritual representation of Israel within the *sefirot*. Much of Kabbalah deals with the interaction between *tiferet* and *malkhut*, including the interactions between God and Israel and between the *Torah she-be-khtav* and *Torah she-be-al peh*. In simple terms, the kabbalistic conception of the Divine is that God is not only transcendent but immanent, and can be expressed and revealed through human endeavor. Therefore, the fact that there is human creativity and participation in the formation of the *Torah she-be-al peh* does not undermine its status as an expression of the Divine. The

sanctification of the human element of the *Torah she-be-al peh* gives it greater validity and legitimacy than if it was merely "human, all too human."

While this is obviously a simplistic explanation of the kabbalistic concept underlying R. Kook's approach, I believe it is important to stress that the Kabbalah offers a perspective on dealing with these issues.

There is a further important point relevant to academic study of the *Torah she-be-al peh*. Seeing a creative process within the insights of the anonymous editors of the *gemara* is problematic if this leads to the impression that their innovations are less authoritative. But the authority of the *gemara* stems from its acceptance by *kelal Yisrael*,[22] and the anonymous parts of the *gemara* are certainly included in what was accepted. We know that *gadol mei-rabban shemo*—when a rabbi is cited by his name alone, without any title (such as Hillel), it is a reflection of his greatness. I would add that *gadol mi-shemo stam*—remaining anonymous is even greater than being named at all.

Academic scholarship needs spiritual tempering to protect faith, but also because an approach that lacks faith ultimately limits a student in the search for truth. I have a friend who studied Greek philosophy because he recognized that the works of the Greek philosophers changed the world. He complained that the professors had no faith. "Why would you expect the professors to be religious?" I asked. "You don't understand," he replied. "I mean they have no faith in Homer, Aristotle, and Plato!" The prevalent presumption of the academic world—that one must be emotionally detached from the topic studied in order to be objective—undermines the ability to uncover the deep truths of the topics studied. Lack of spiritual context not only makes an academic approach to the *gemara* dangerous; it impedes a basic understanding of the text.

R. Shagar goes a step further in criticizing the academic world's claim of truth based on its "objectivity" and detachment from the text, challenging this assumption based on the postmodern argument that all readers have preconceptions when approaching a text.[23] Commentary may come from the outside; the commentator deliberately detaches himself from what he is studying, thus giving him

a broader perspective, as he looks from afar. However, commentary may emanate from a different direction; the commentator identifies with what he is studying and has the advantage of understating it from the inside. Ultimately, the postmodern preference is for understanding that comes from within.[24]

I would add the need to be aware of the strengths and limitations of both the inside and outside commentary; a balance between scholarship and spirituality, a golden mean, must be navigated.

The Mixed Blessing of the Experiential

A balance is necessary not only between spirituality and scholarship, but within spirituality itself.

I grew up in a *litvish* environment, in which religious values focused on *yir'at Shamayim* and commitment particularly in the context of fulfilling the halakhah. In Israel, I encountered additional dimensions in *avodat Hashem*, a more ḥasidic approach that focuses on love, joy, and seeking to experience God.[25] In this context as well, there is a need for synthesis, as opposed to a black-and-white choice between alternative paths.

After several years of teaching, I realized that enthusiasm for the more ḥasidic approach was actually doing a disservice to many of my students, who did not have the privilege of growing up in the *litvish* tradition and for whom the experience of *avodat Hashem* was thus primarily experiential, the *havaya*. This approach is problematic for three reasons. First, instead of being a means to greater closeness to God and a deepening of one's service to the Divine, the spiritual experience becomes an end in and of itself, a phenomenon evidenced by the growing popularity of New Age movements. Second, personal experience becomes the only criterion for legitimacy; if I can't relate to something, I simply don't do it. Finally, focus on the experiential can lead a person to be self-involved and less attuned to others.

In order to preserve the experiential element of *avodat Hashem* while avoiding its descent into amorphous "spirituality," a focus on *yir'at Shamayim* is necessary. We are taught that "*reshit ḥokhmah yir'at Hashem*" (Ps. 111:10); in our time, we should add that "*reshit havaya yir'at Hashem*." Similarly, just as the Mishnah (*Avot* 3:17) calls for a

balance between wisdom and action so that the wind will not uproot a flourishing tree with shallow roots, we must stress the balance between action and experience.

From an educational perspective, it is no small challenge to achieve that balance. It is not sufficient to simply note each value, especially if the other is stressed. I ultimately realized that this balancing must be a day-to-day challenge, and not merely a topic for an occasional talk. For many years, I have begun each class with my students by noting the date and then adding the verse, "This is the day that God has made; we will rejoice and be glad in it" (Ps. 118:24), thereby expressing the perspective that life itself is a blessing and that joy is to be found in recognizing this reality. As a result of the concerns outlined above, I have adapted my practice somewhat; before this verse, my students and I recite the last verse of Ecclesiastes together: "The end of the matter, when all is said and done: Fear God, and keep his commandments, for that is the whole duty of man" (Ecc. 11:13).[26]

Use of New Methodologies in Israel and in America

Many have noted that the use of the approaches discussed above is much more prevalent in Israel than in America. Many view this as stemming from the fact that the thought of R. Kook is much more pronounced in Israel, while that of R. Yosef Dov Soloveitchik has been influential in American trends of learning. In reality, however, I think the answer is more complex. As I have already noted, many of R. Kook's followers are at the forefront of the polemics against these approaches, often fiercely criticizing the concept of *maḥshevet ha-halakhah*. On the other hand, many of the figures promoting these methodologies are American-born, including R. Avraham Walfish and R. Dov Berkovits, as well as R. David Bigman, Rosh Yeshiva of Yeshivat Ha-Kibbutz Ha-Dati, R. Mayer Lichtenstein, my colleague in Otniel, and R. Tzuriel Wiener, head of Beit Midrash Raʿava. Furthermore, many of these teachers view themselves as students of R. Soloveitchik or of his students, and they draw inspiration from his thought.

As is the case with many great men, both R. Kook and R. Soloveitchik were many things to many people. R. Yoel Bin Nun once described the difference between the way R. Kook's two primary

students approached R. Kook's thought. R. Zvi Yehuda Kook skipped the philosophical and kabbalistic passages in his father's writings, focusing on the more tangible aspects, while R. David Ha-Kohen, the Nazir, would began each *shi'ur* by asking one of the students to recite the ten *sefirot* in their proper order. Ultimately, R. Zvi Yehuda's approach, with its strong focus on *Am Yisrael* and *Erez Yisrael*, became dominant in Mercaz Harav; the impact of the more philosophical side of R. Kook is sensed through the works edited by the Nazir, such as *Orot ha-Kodesh*. As a result, the impact of the latter approach was felt initially on an individual rather than an institutional level, until the two men ultimately became part of or founded institutions themselves.

Similarly, R. Soloveitchik was a complex personality. In addition to being a successor to the tradition of Brisk and his commitment to many aspects of that conception of Torah, he demonstrated interest in philosophy, knowledge of *Ḥasidut* and Kabbalah, and openness to academic studies (although not in relation to the study of Talmud). This complexity impacted on his Torah study. The same R. Soloveitchik who was able to eloquently present the classical distinction attributed to the Brisker method—the distinction between searching for the "what" as opposed to the "why"—often engaged in a more philosophical quest in his explanation of the halakhah.

Ultimately, then, the issue is more fundamental than the difference or similarity between two prominent personae. The question becomes why certain sides of each personality were perpetuated and developed while others were not.

A possible theory regarding the different trends in Israel and America was suggested by R. Shagar. A major thesis of R. Shagar's book is the relationship between methodology and motivation for Torah study to the worldview of the student. As he discusses this extensively, I will only relate in the present context to the implications for the issue at hand.

R. Shagar distinguishes between two basic approaches to the relationship between Torah and life. One conception, which he attributes to the Brisker approach, views the divinity and eternality of the Torah as part-and-parcel of its being abstract and autonomous, and thereby disjointed from life and reality. The Torah's alienation

from the natural flow of life is in many ways a dogma and ideal. It leads to the creation of a closed language of *lamdanut*, denigration of *balabatish* reasoning, seeing a divide between how people think and how the Torah thinks, and viewing the Torah as devoid of emotional or human elements, and thus claiming that the *mizvot* lack reasons.[27]

Within Israel, R. Shagar discerns a growing thirst for ways that Torah can illuminate life's questions and challenges, to a linkage between the flow of life and the Torah. Is God's will manifested exclusively within the realm of halakhah, or can God be found within life itself? The return to *Erez Yisrael* and the fact that they live as part of *Medinat Yisrael* has led the Dati Leumi community in Israel to prefer the latter approach.

The prominence of American-born teachers in these trends in Israel is logical, simply because their range of knowledge in different realms is broader in many ways. Thus, the new approaches link the potential presented by American Jewish education with the milieu of *Erez Yisrael*.[28]

I believe that there is a necessity for the application of these methods in the American Modern Orthodox community as well. There is a value to openness to the world which may justify its price, but this is a potential that must be actualized in practice. In a community that values Torah, exposure to secular pursuits must lead to a significant impact on the study of Torah, including the study of Talmud, which remains the primary text of Torah study in high schools and *yeshivot*.

The openness of the Modern Orthodox community has allowed for new opportunities for women to study Torah, in particular the previously inaccessible text of the Talmud. Many women indeed feel privileged to have been born in a generation in which they have these opportunities. When men in the Modern Orthodox community feel similarly—that openness has enabled them to better serve God and study His Torah—the Modern Orthodox community will have succeeded in validating its decision to accept the challenges of openness.

CONCLUSION

In this article, I have argued that new methodologies and approaches to the study of *gemara* present exciting possibilities and potential for advancement and learning. Although these approaches must be fine-tuned and more fully developed, their application in the yeshiva setting has been successfully implemented.

Numerous objections have been raised to these newer approaches, but many can be overcome. Among the principal difficulties that I have outlined is the use of numerous different approaches. On the other hand, I have noted the danger of limiting study to one approach alone, which can at times skew the picture of the *sugya* at hand. As my title says, scholarship needs spirituality and spirituality needs scholarship; each force tempers and develops the other, and both are crucial.

The challenge of our generation of Torah teachers is to find the proper balance between these two trends so that we can convey the wisdom of the *gemara* in the most productive way possible.

APPENDIX: STAGES OF A *SUGYA*

In the context of describing how individual *sugyot* are taught, I presented a model for studying the various stages of a *sugya*. So that the model will not remain theoretical, I will bring an example from one *sugya* in *Bava Batra*, "*hezzek re'iyyah*." This is not designed to be an article on the topic, but rather a general description of the stages of study performed by my second-year students. Therefore, no attempt will be made to prove or fully develop any particular point. I will not focus on the early stages of learning, defining the *makor*, *hagdarah*, *hekef*, and *ofi*, but rather on the additional aspect of incorporation of different methodologies and strategies. My goal is to give a feeling of the flow of the study process.

We ultimately dedicated two weeks to this topic. Most of the first week was focused on studying the sources in *Ḥazal*. We then devoted a week of study to the major *rishonim* and *aḥaronim*, and finally concluded the third stage by going through the *posekim*, focusing on recent halakhic responsa.

The *sugya* of "*hezzek re'iyyah*" focuses on one central question: By what authority can one be forced to build a wall to protect his neighbor's privacy? The conclusion of the *gemara* is that it results from the principle of *hezzek re'iyyah*. Presumably, this means that it is an act of *nezek* to look into your neighbor's property. Since it is forbidden to be a *mazzik*, one can be forced to build a wall in order to prevent this damage.

The phrase *hezzek re'iyyah* does not appear in the Mishnah, the *Yerushalmi*, or even in statements by *amoraim* in the *Bavli*, but only in the *stam* of the *gemara*. This certainly does not preclude the possibility that the concept precedes its first literary mention, but it does open the possibility to investigate whether there are other approaches to understanding the principles that emerge from the Mishnah. It is plausible that the wall is built to ensure privacy. But the question remains if the invasion of this privacy *must* be defined as an act of *hezzek*, as would seem to be implied by the *stam*, a categorization that has multiple ramifications. If this is not an act of *hezzek*, by what right can we force a neighbor to build the wall?

The premise of our course of study is that all opinions must accept the conclusion of the *gemara*, the halakhah that a neighbor must build a wall between properties, and that that halakhah is based on the principle of *hezzek re'iyyah*. But different *rishonim* and *aḥaronim* may assume different underlying concepts for this principle, and thus reach different conclusions about its application.

Our study of the *sugya* began by learning the *mishnayot* of the first chapter of *Bava Batra*, which deals with situations in which one is obligated to participate in a joint building endeavor that serves a common need. The chapter relates to this in the contexts of relationships between partners, neighbors, and members of a city. From the structure of the chapter, it appears that the relationship itself leads to obligations in situations of mutual need when that need is determined to be fundamental. In the case of partners or members of a city, the logic of this point is self-evident, as one is part of a unit. The *ḥiddush* of the *mishnayot* is the application of this concept to the relationship between neighbors. Even though the neighbors have not explicitly created a contractual relationship, there is a relationship

between them that cannot be denied and that can lead to mutual responsibility.

This point is highlighted by comparing Rambam's codification of these *halakhot* to the discussion in the *mishnah*. According to the *mishnayot* (*Bava Batra* 1:1–4), there are three principles to consider when determining whether one can force someone else to participate in a joint venture: (1) one can force participation for needs that are fundamental or customary; (2) one cannot force participation for needs that are not fundamental; 3) if it can be determined that a person utilizes something that was paid for by the other person alone, he can retroactively be forced to pay his part of the venture, even if it is not a fundamental need. According to the simple reading of the *mishnayot*, this list of principles, which appears twice, applies in the context of the relationship between neighbors (with the possible exception of *mishnah* 1:1).

Rambam (*Hilkhot Shekheinim* 5:1) brings the same list in the same order, but he limits the application of these three principles to the case of someone who wishes to compel a partner to participate in a joint venture. Partners are bound by these logical principles because they have entered into an agreement together.

Rambam limits the application of these principles to partners, and not to neighbors, because he follows the *Bavli*'s development of the *mishnah*, which is based on a number of *ukimta'ot*. In the context of partners, Rambam intuitively reaches the same principles that the simple reading of the *mishnah* does.[29]

Understanding the structure of the *mishnayot* helps explain the *gemara*'s discussion. Should we interpret the *stam* in light of that structure, leading to the conclusion that *hezzek re'iyyah* is fundamentally connected to the relationship and responsibilities between neighbors, or should we interpret the *mishnayot* in light of the *stam*, concluding that the principles guiding neighbors are governed by the concept of *hezzek re'iyyah*?

Among the *amoraim*, we find that the building of a wall can be obligated even when it does not serve a mutual need. For example, when a roof overlooks a courtyard, Shemuel obligates the owner of the roof to build a wall four *ammot* high to protect the privacy of those who live

in the courtyard (*Bava Batra* 6b). However, here, too, it is not obvious that the prohibition to be *mazzik* underlies the obligation. As R. Isser Zalman Meltzer points out,[30] the owner of the roof is also obligated to build a wall of ten *tefaḥim* between his roof and adjacent neighboring roofs. The purpose of this short wall is not to prevent *hezzek re'iyyah*, but to delineate the properties and identify the owner of the roof as a thief if he tries to enter his neighbor's property. Clearly, there is a mechanism that forces a person to build to protect a neighbor's needs even when the person is not a *mazzik*. R. Isser Zalman Meltzer views that mechanism in the context of neighbors' mutual obligation not to infringe on one another's property rights.

Yet another approach to the nature of the problem of invading privacy appears in the context of the prohibition to open a window facing an existing window (*Bava Batra* 60a). R. Yoḥanan seems to view the problem as lack of *ẓeni'ut*. The *stam*, however, masterfully presents the approach that the problem is *hezzek re'iyyah*.

The first *sugya* of *hezzek re'iyyah* (*Bava Batra* 2a–3a) is far from spontaneous *shakla ve-tarya*; it is carefully orchestrated. There are seven parts to the first part of the *sugya*, a typological structure for Talmudic *sugyot*.[31] Five of the six *mishnayot* of the first chapter, a *mishnah* in the second chapter, and the statement of Shemuel are interpreted as focusing on looking into the neighbor's domain as the central problem. Although the first part of the *sugya* takes the position that *hezzek re'iyyah* is not *hezzek*, this ultimately holds true only in regard to the first *mishnah*, whereas in all the other cases there is an obligation to build a wall. Finally, the *sugya* comes to the conclusion *hezzek re'iyyah shemeih hezzek*, damage through looking into another's property is considered damage even in the case of the first *mishnah*.[32]

That the *sugya* is a deliberate literary creation can be demonstrated even from minor points. For example, the *sugya* begins by bringing a proof that the word *meḥiẓah* in the *mishnah* means "wall." There are many *mishnayot* from which this point could be proven; it is thus surprising that the *sugya* chooses to prove it from a *baraita* in *Kil'ayim*. Recognizing the agenda of the *sugya* leads to an explanation for this choice. According to the cited *baraita*, the owner of a vineyard must build a wall in order to prevent his grapes from creating *kilayim* with

the grain in his neighbor's field; if he does not build the fence, he will be responsible as a *mazzik*. This source serves as a significant precedent for the approach that the *stam* later presents: that the obligation to build a wall stems from the need not to be a *mazzik*. Additionally, *kil'ayim*, like *hezzek re'iyyah*, is a form of non-tangible *nezek*; the lack of a wall between the grain and vines does not physically damage the grain, but rather leads to a halakhic prohibition.

The one *mishnah* in the chapter in which the *stam* does not identify *re'iyyah* as being the problem, *mishnah* 3, discusses a case in which one neighbor builds a wall that ultimately encompasses his neighbor's field from all four sides, thereby protecting the neighbor's field as well as his own. Nevertheless, the basis of the obligation is not viewed as resulting from a relationship between the neighbors participating in a project because of a common need, but rather from the fact that receiving benefit is considered a sufficient cause to obligate (*zeh neheneh ve-zeh ḥaser—ḥayyav*).[33]

Reviewing the different possibilities within *Ḥazal* for the requirement to build the wall serves as preparation for understanding much of the dynamics within the *rishonim* and *aḥaronim*. Those who see the problem as essentially that of relationships between neighbors' relative rights and obligations invariably bring proofs from the *mishnah*. For example, R. Isser Zalman Meltzer claims that the phrase *hezzek re'iyyah* cannot be taken literally to imply that looking at another's property is a *nezek*, as in that case the discussion belongs in the second chapter of *Bava Batra*, which discusses avoidance of damages, and not in the first, which discusses laws that emanate from partnership. Similarly, Rashba views *hezzek re'iyyah* as an issue of *ẓeni'ut*,[34] expanding R. Yohanan's statement regarding creating a window that faces other windows to encompass the general problem of looking into other courtyards. Those who focus on the *nezek* aspect of *hezzek re'iyyah*, such as Ramban, build their case on the *stam*'s statements.

Thus, there are a number of currents within *Ḥazal*, and the challenge that the commentaries deal with is deciding to which to give predominance and which to reinterpret in light of that. Many commentators choose to harmonize the sources instead of viewing

them as reflecting different perspectives. The preliminary step of seeing various approaches in *Ḥazal* does not necessarily preclude the veracity of ultimately harmonizing them, but allows the student to see the basic tensions between the sources.

Philosophical and Meta-Halakhic Considerations

Once we have discussed the different approaches to the concept of *hezzek re'iyyah,* we can contemplate the significance of the differences between these approaches.

Ultimately, the underlying issue is the relationship between the categories of *Bava Kamma* and those of *Bava Batra.* In *Bava Batra*, the two sides are not strangers; there is a relationship between them. These cases are thus different from the situations in *Bava Kamma*, which focus on damages, and wherein there is no previous relationship between the sides.[35] To what degree is this difference significant? The variance of opinions is wide; some see the relationship between neighbors as the basis for mutual obligation, and others see that relationship as a hindrance to obligating each other.[36] It is easier to obligate the other when the situation is construed as if they were strangers, since a stranger does his work exclusively on behalf of the recipient, while a neighbor acts also out of self-interest. If a stranger builds a wall around your property, he benefits you and not himself. When your neighbor builds the wall, he benefits as well.

The differences between these two basic approaches are not only philosophical; they touch on meta-halakhic issues as well. In the introductory *shi'ur kelali* that he delivered at Mercaz HaRav on *Bava Batra* in 1929, R. Kook pointed out that while the *halakhot* of *Bava Kamma* are ultimately based on *pesukim* from the Torah, *Bava Batra* is almost entirely devoid of *pesukim.*[37] R. Kook's insight leads to an important question: Where are these laws coming from? From where does their authority derive?

It seems that this is also a major point of divergence between the two basic approaches. One approach takes explicit, pre-existing categories and expands them. Thus, the approach of the *stam* is to take the pre-existing category of *nezek* and expand it to include invading privacy, thus creating the concept of *hezzek re'iyyah.* Similarly, the

concept that one must pay for benefit received when it comes at the expense of the giver (*zeh neheneh ve-zeh ḥaser*) is expanded to include cases in which the receiver of the benefit did not actively take the benefit (as opposed to the original case of *zeh neheneh ve-zeh ḥaser*, wherein one actively and without permission dwells in a area that was designated for rent). The application of this principle to the situations in *Bava Batra* also entails an expansion of the concept of what is defined as a loss, as in the *Bava Batra* situations, the builder is generally building unilaterally for his own benefit and the neighbor benefits only incidentally; in those cases, it is unclear what loss is entailed by the builder.

On the other hand, the approach that focuses on the relationship between neighbors is not building on previous categories. From where do these laws and their authority derive? Here again, R. Kook's insights about halakhah are pertinent. The Torah teaches that when faced with a halakhic dilemma, "You shall approach the *kohanim,* the *levi'im*, and the judge who live in those days" (Deut. 17:9). R. Kook explains that there are two approaches to halakhah, that of the *kohen* and that of the judge:

> The specific laws of the Torah can be analyzed according to the general spirit of the Torah, according to the power of the reasons for the Torah, appropriate to the general message of the Torah. Alternatively, one can analyze the details according to isolated study, comprehending one idea from the other without looking at the overall spirit.[38]

The approach of the *kohen* intuitively derives the halakhah from a broad perspective of the values of the Torah. This approach was dominant when *Am Yisrael* was concentrated in *Erez Yisrael.* The second approach, that of the judge, focuses on building analogies from one detail to the next. This reflects the situation of Torah study outside of *Erez Yisrael.* In other contexts, R. Kook contrasts these approaches, terming them *Torat Erez Yisrael* and *Torat Bavel.*[39]

I find it difficult to accept R. Kook's distinction as characterizing the difference between the *Bavli* and the *Yerushalmi*, as he does; there

are many *sugyot* in the *Bavli* that reflect what R. Kook characterizes as *Torat Erez Yisrael*. The insight about the existence of two basic approaches to halakhic thinking, however, is often reflected in differences in approach to particular *sugyot*, as in our case.

The lack of textual sources specifically in the realm of *Bava Batra*, which deals with issues of relationships within the community, is not accidental. The nature of these areas demands a fluidity that rigid and detailed legislation would prevent. As the *Maggid Mishneh* points out at the close of *Hilkhot Shekheinim* (14:5):

> Our perfect Torah was given to perfect man's character and behavior . . . "And you shall do the right and the good" (Deut. 6:18), meaning that one should behave in a good and righteous manner with other people. It was not appropriate to command details, as the commandments of the Torah apply in every day and age and in every situation . . . and man's qualities and behavior change with the times and people . . .

Thus, the approach that does not interpret *Bava Batra* in light of pre-existing categories views these laws as based on the general values of *ve-asita ha-yashar ve-ha-tov*, doing what is right and good.

Pesak Halakhah

The final stage of our discussion confronts the challenge of applying the *gemara* to the changing realia. The Ḥazon Ish, for example, views modern courtyards as serving different functions than those that existed in talmudic times, making many of the laws of *hezzek re'iyyah* less relevant.[40] The *Minḥat Ẓevi* views the Israeli law that obligates a builder to insert shutters on bedroom windows as alleviating the problem of *hezzek re'iyyah*.[41]

It is interesting to note that many Ḥaredi *posekim* are open to consideration of changes in realia, and they stress that Israeli law, as well as *ḥazzakah* and *minhag*, plays a role regarding the application of *hezzek re'iyyah*. In a *pesak* by a *beit din* in Alon Shevut composed of rabbis from the Religious Zionist community, on the other hand, we

find a very straight application of the prohibition of *hezzek re'iyyah*.[42] Part of the difference may stem from the fact that *hezzek re'iyyah* poses different problems based on the surrounding community, such as whether it is a dense urban society or a private villa in an upper-middle-class suburb.

One lesson learned from study of this topic is that even after the laws are essentially fixed in the *Shulḥan Arukh*, there is still fluidity in applying these *halakhot*, allowing them to fulfill the condition of the *Maggid Mishneh* mentioned above: "The commands of the Torah apply in every day and age and in every situation . . . and man's qualities and behavior change with the times and people."

NOTES

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1. While students in traditional *yeshivot* may be exposed to the whole range of sources, the sources are not generally viewed on their own. In cases in which an earlier text is interpreted by later authorities, the range of legitimate interpretations is limited to those that have already been offered. For example, in *yeshivot*, the *Yerushalmi* is studied in light of the *Bavli*, not as an independent source.
2. "Word-Plays in the Mishna," http://www.herzog.ac.il/vtc/0039563.html
3. "*Sukkot* in Rabbinical Thought: Motifs in the Halakhah of *Sukkot* in Talmudic Literature" (Ph.D. diss., December, 2003) (Heb.), http://www.daat.ac.il/daat/vl/nagendoc/nagendoc01.pdf
4. See his book on *Massekhet Kiddushin*: Dov Berkovitz, *Marriage and the Limits of Personal Power: Talmudic Creativity in the Eye of the Storm* (Israel, 2008).
5 Available at http://www.daat.ac.il/daat/vl/yakov-negen/yakov-negen01.pdf
6. The yeshiva's website is www.otniel.org
7. *Nishmat Ha-Mishnah*, p. 140, n. 16 (see n. 5 above).
8. Ibid., p. 216, n. 4.
9. The original statement of the Ḥatam Sofer was somewhat different: "So I do declare, anyone who mixes words of Kabbalah with the conclusions of halakhah is guilty of planting *kil'ayim*," *Responsa Ḥatam Sofer*, *Oraḥ Ḥayyim* 1:51.
10. On the relationship between halakhah and *aggada* in *Ḥazal*, as well as the development of the view that seeks to dislocate them, see Yair Lorberbaum, *Ẓelem Elokim: Halakhah ve-Aggada* (Jerusalem, 5764), pp. 105–140.

11. See n. 3 above.
12. Yakov Nagen (Genack), *Water, Creation, and Immanence: The Philosophy of the Festival of Sukkot* (Israel, 2008).
13. Prof. Ish Shalom noted that if one who studies R. Kook in yeshiva is called a Kooknik, whereas one who studies Rav Kook in the university is called a Kookolog, one who combines both approaches is a Kooknikolog
14. See *Divrei Rishonim ve-Aḥaronim bi-Inyan Havanat Darkhei ha-Talmud*, ed. Asaf Malakh. Certainly, this fact does not prevent accusations of heresy. Dr. Moshe Bernstein told of a *ḥasid* who entered one of his classes, politely listened, and then thanked Dr. Bernstein at the end of the class. When Dr. Bernstein asked him what he had learned, the response was, "That the Rashbam and Ibn Ezra are *apikorsim*!"
15. *Orot ha-Kodesh*, vol. 2, pp. 538–562.
16. *Bava Meẓia* 59b.
17. *Eruvin* 13b.
18. *Menaḥot* 29b.
19 *Dor Revi'i*, introduction to *Ḥullin.*
20. Introduction to *Orot ha-Torah.*
21. *Shemoneh Kevaẓim*, vol. 2, *piska* 56.
22. See Rambam's introduction to *Mishneh Torah.*
23. Shagar, *In His Torah He Meditates: The Study of Talmud as a Quest for God*, ed. Zohar Maor (2008), p. 154.
24. Ibid., pp. 160–167.
25. In other contexts, I have written about the power of Judaism to incorporate both "doing" and "being," which is often viewed as the east-west divide. See "*Parshat Bereshis*: Doing and Being" (http://www.notes.co.il/yakov/61535.asp) and "*Om Shalom:* Jewish and Spirituality between East and West" (http://www.notes.co.il/yakov/16266.asp).
26. This combination of joy and *yir'ah* is organic, as attested to by the reading of *Kohelet* on Sukkot, "*zeman simḥatenu.*"
27. Shagar, *In His Torah*, esp. pp. 92–95. Regarding the lack of reasons for all *mizvot*, see p. 96.
28. Ibid., p. 143.
29 R. Kook, *Iggerot Ra'ayah* (Jerusalem, 5745), vol. 1, p. 124 (letter 103). On the *mishnayot* of the first chapter of *Bava Batra*, see Yakov Nagen and Baruch Siach, "*Mishnat Perek ha-Shuttafin*," available at http://upload.kipa.co.il/media-upload/otniel/otniel3619.DOC
30. *Even ha-Azel*, *Hilkhot Shekhenim* 2:16.
31. See Shamma Friedman, "*Mivneh Sifruti be-Sugyat ha-Talmud*," Sixth Congress of Jewish Studies, pp. 389–402.
32. In our text, the conclusion is presented as "*lishna aḥarina.*" In manuscripts, it is brought as "*ikka de-amrei*" (see *Dikdukei Soferim*). The significance of the

difference is that *lishna aḥarina* implies a parallel *sugya*, whereas *ikka de-amrei* implies that it is all part of one *sugya.*

33. See *Bava Kamma* 20b, which quotes and interprets this *mishnah.*
34. *Teshuvot ha-Rashba* 2:268.
35. For a summary of many elements of the *sugya*, see Yakov Nagen and Yehuda Katz, "*Mavo Le-Sugyat Hezzek Re'iyyah*," available at http://upload.kipa.co.il/media-upload/otniel/otniel3620.DOC. That article was written ten years ago, and some of the points mentioned here do not appear.
36. See, for example, Ramban, *Milḥamot Hashem,* on the *sugya* on 4b.
37. Ch. Mescheloff, *Tov Ro'i al Bava Batra: Yalkut Bi'urim, Ḥiddushim, He'arot, u-Derushim shel Maran Ha-Ra'ayah Kook zz"l al Massekhet Bava Batra* (Jerusalem, 5758), p. 13.
38. See R. Kook's introduction to *Ein Ayah* (Jerusalem, 5755), vol. 1, p. 16.
39. *Iggerot Ha-Ra'ayah* , vol. 1, p. 124 (letter 103).
40. *Ḥazon Ish*, *Bava Batra* 12:3.
41. *Minḥat Zevi*, responsum 3.
42. See R. Gidon Pearl, "*Ḥovat ha-Reshuyot li-Mno'a Hezzek Re'iyyah*," *Techumin* 19 (5759): 55–59.