

SHALOM CARMY

Eliezer Berkovits's Challenge to Contemporary Orthodoxy

ELIEZER BERKOVITS

Essential Essays on Judaism.

Edited by David Hazony.

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In the third quarter of the 20th century, Eliezer Berkovits was one of the most articulate and wide-ranging stars in the firmament of modern Orthodox thought. By the time I discovered his work, he had written on most of the perennial questions of Jewish philosophy and many of the problems of the day: God's hand in history, biblical theology, the Holocaust, Jewish ethics, prayer and the anti-Semitism and anti-Orthodoxy of various recent authors. Lectures throughout the United States made him accessible to those who wished to encounter him in the flesh. I did not know then, nor would it have mattered, that he was somewhat isolated at the Hebrew Theological College in Chicago ("Skokie") where he taught Jewish philosophy. One of my first articles was a review essay on his *Major Themes in Modern Philosophies of Judaism*, Berkovits's hard-hitting Orthodox assault on Jewish thinkers ranging from Cohen, Buber and Rosenzweig to Kaplan and Heschel.¹ Berkovits was also a serious *talmid ḥakham* who published on halakhic topics. Here his most notable work was a substantial treatise on condi-

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tional marriage, the upshot of which was to argue that freer use of rabbinic annulment could solve the painful situation of women whose dead marriages had not been terminated by a *get*. It was known that this last effort had been dismissed by the mainstream rabbinic world with a vehemence that precluded a thorough hearing.² As far as I recall, the controversial reception of this book in no way affected Berkovits's reputation in my circles.

It was in the last decade and a half of his life that Berkovits became widely known as a halakhic radical. His last books, *Not in Heaven* and *Jewish Women in Time and Torah*, not only reached conclusions disagreeable to his Orthodox colleagues, but also deviated from the accepted methodology of halakhic discourse. In particular, Berkovits's attack on the "Karaism of the Oral Law" challenged the binding authority of halakhic precedent as codified in the Talmud, to say nothing of later codes. Remarks in this vein occur in Berkovits's earlier writings, including out of print essays republished in the anthology under review. Due to these pronouncements many deny validity to all of Berkovits's discussions of Halakhah and the philosophy of Halakhah. This is a mistake, in my opinion: Berkovits raises significant issues that no other thinker of his rank has tackled. I therefore urge Orthodox readers to bracket our rejection of Berkovits's views on the authority of the talmudic canon in order to concentrate on other elements in his thought on Halakhah.

The editor of this anthology, David Hazony, is senior editor of the influential political-cultural journal *Azure* (like this book, published by the Shalem Center). He has undertaken to revive interest in Berkovits's books, and, through this anthology, to highlight the importance of Berkovits's ideas for the Jewish intellectual agenda.³ Almost half the book is devoted to five essays on morality and Halakhah, and these subjects remain central in the four essays presented under the rubric "Jewish Nationhood." Part III—"Jewish Theology"—comprises four chapters representative of Berkovits's understanding of the God/man relationship. The selections cover Berkovits's output over a forty-year period, from the obscurity of the early 1940's, when he was mired in the rabbinate, to the notoriety of his old age. Though editorial intervention always threatens to replace the author's voice with the editor's, Hazony's choice of material seems judicious to me. Hence the volume under review, and Hazony's introduction, can serve as the starting point for our attempt to define Berkovits's contribution and challenge.

I. Morality and Halakhah

Hazon calls attention to themes he considers characteristic and distinctive to Berkovits's halakhic philosophy. One such element is the priority of ethics in Halakhah. Conformity to the rules of halakhah is not an end in itself but "merely one reflection of a set of higher moral principles" (Hazon, xviii). No stable legal system functioning in the real world can perfectly articulate the underlying values; therefore the timeworn precedents of the codified Halakhah should be maintained. But their final justification derives from the moral principles. Proper interpretation and application of the Halakhah should be governed by these principles. Hence Halakhah cannot conflict with morality. When codified Halakhah inflicts real damage on moral ends, in Berkovits's opinion, as with numerous rulings on women's status or when conversion standards ignore non-Orthodox concepts of Jewish identity, Berkovits advocates change.

Berkovits's moral ends derive from internal Jewish sources. This is where he differs from other scholars (identified with Conservative Judaism) who justify halakhic change resulting from the encounter of tradition with the evolving needs of individual or society. The law may change, in Berkovits's view, but the values do not; the purpose of change is to better sustain the values under varying conditions. Thus Berkovits's dissatisfaction with mainstream Halakhah regarding women is rooted, not in the pressures of contemporary egalitarianism, but in his judgment about biblical conceptions of justice. He is disturbed by rigorous conversion standards because he believes that the unity of the Jewish people is a basic Torah value and that applying the *Shulhan Arukh* to a community that does not subscribe to its authority leads to schism.

As an account of halakhic deliberation, the scaled down formulation of Berkovits just offered is not as controversial as some might hope or fear. Berkovits may overstate the impact of broad principles like *kevod ha-beriyot* (human dignity), but he is right to insist that halakhic decisions require more than the passage of textual data through a human computer. The *posek* is armed not only with erudition and intelligence, but also with good judgment and with highly refined conceptions of proper human relations and the appropriate ways of approaching God. These conceptions grow out of his or her mastery and internalization of Torah—the entire corpus of Halakhah and Aggadah—and an understanding of the situation to which the Halakhah is to be applied. For that reason we are wary of investing great halakhic authority in those who have specialized in only one area of Torah, no matter how well researched their work is in that field.

But Berkovits exceeds these modest claims: Most of us take guidance, when we study and when we act, from a set of important moral intuitions, but we hold them somewhat loosely. The body of Torah literature is complex, and, in the most sensitive areas, inhospitable to one-sided value judgment. Hence learning demands that we struggle with ideas that frequently pull us in conflicting directions. We strive to balance our philological and literary investigation of what the text says, and how it has been understood by the fellowship of *talmidei hakhamim* throughout the generations, against our moral and psychological conviction of what it ought to say, in our opinion. Because the editors of the Mishnah and the Talmud chose to include the conflicting views of the Sages, and because this decision molded the nature of our study ever after, the student of Torah is required to respect rabbinic positions that are not accepted at a practical level; thus he carries in his bones, so to speak, not only the final law, but the voices of disagreement and debate behind the law. In this incessant dialogue the student is sometimes compelled to recognize that the ideas and values with which he began do not fit the law. When this occurs, one does not reject or amend the law; it is our thinking that is ripe for revision. Charged with the responsibility of interpreting the law, we educate ourselves through the study, and the results are not always predictable.

Berkovits, by contrast, displays great confidence in his ability to discern, and define with precision the underlying axiology that ought to determine Halakhah, and which values should be allowed to override the others. For all the times he reminds us that no set of laws can succeed in absolutely capturing moral-religious reality, he is not inclined to remind himself that putting one's trust in a set of general principles is a less reliable method of reaching truth than committing oneself to a set of precepts and texts with all their strange turnings and surprising twists.

One reason Berkovits is inclined to dismiss material that would complicate his clear-cut moral vision is his belief that in doing so, he is merely following in the footsteps of the rabbis themselves. The rabbis, at their best, saw the moral universe pretty much as Berkovits does and did not hesitate to reinterpret the Torah to conform to their views. Presumably this is not regarded as dishonesty because, according to Berkovits, the very existence of a written law is a misfortune, albeit an unavoidable one. Berkovits, drawing on traditional statements that, were it not for pressure of circumstances, the Oral Law would not have been committed to writing, asserts that it was canonized owing to the catastrophe of dispersal, though his references to forced reinterpretation include doing violence to the Written Torah as well.⁴ The chapter on "The Nature and

Function of Jewish Law” abounds in examples where Berkovits takes it for granted that normative interpretations of biblical law are nothing but veiled impositions of a higher morality rather than evidence of oral tradition or the fruit of honest effort to read the Torah correctly. Occasionally Berkovits resorts to sarcastic scare quotes to express his feelings about a normative “reinterpretation” (72) or a Maimonidean “explanation” (76).

At times Berkovits’s analysis of the apparent gap between text and interpretation parallels conventional Orthodox theology by recognizing that in a complex situation, text (*peshat*) and normative interpretation (*derash*) reflect legitimate values in conflict. Regarding *mamzerut*, for instance, Berkovits writes (70): “There is a law whose purpose is a positive one; namely, to protect the moral health of the family. But there is also a biblical view about the seriousness of the injustice done to innocent people in general. And in this specific case innocent people suffer because of the valid concern and care for the ethical foundations of the community. It is as if the happiness of the bastard were sacrificed for the greater good. It was unquestionably an injustice done to an innocent human being.” The appropriate conclusion, in the light of various rabbinic comments on this halakhah, is that the Torah law remains valid, but the rabbis take it upon themselves, as a fulfillment of Torah morality, to circumscribe the unjust practical effects of the Biblical commandment.

The previous illustration has a happy ending because Berkovits’s reading of the tradition coincides with the actual state of halakhic law. Where legitimate values are in conflict, and major *posekim* weigh them without coming to Berkovits’s conclusions, his patience can be limited. It is worth looking at his remarks about *ta’anat ma’is alai*—a woman who sues for divorce, claiming that her husband is repulsive to her, without offering independent evidence. Can the court coerce the husband to divorce her?

A crucial reference in the primary Talmudic discussion (*Ketuvot* 63) is unclear, as are other significant details in the *sugya*.⁵ The influential Tosafist Rabbenu Tam held that coercing the husband in this situation is not justified and would risk invalidating a bill of divorce so procured. Maimonides (*Hil. Ishut* 14:8) championed a contrary view; the wife must be given her divorce: “She is not like a captive woman that she should submit to one she dislikes.”

The halakhic history of this law is further complicated by the widespread Geonic practice of mandating divorce in this case. Many of the medieval authorities understand this not as an endorsement of Maimonides but as a Geonic enactment that suspended the talmudic rule. This is how the Baal ha-Maor interpreted R. Yizhak Alfasi’s ruling; main-

taining that the enactment was a temporary measure, he advocated a return to the more restrictive original position. Ramban, in the *Millhamot Hashem*, insists that the Geonic *takkanah* was intended to replace the restrictive position permanently. In closing, however, he notes that whoever adopts the more stringent view of the Talmud “has lost nothing, and may he be blessed.”

It is no surprise that Maimonides’ eloquent words meet with Berkovits’s approval. One might expect him to be satisfied with Ramban’s defense of the strong application of the Geonic position. Not only does Ramban arrive at a more “liberal” position than the Baal ha-Maor; his belief that the Geonim vacated talmudic law in this area is a blow against the “Karaism of the Oral Law” that refuses to budge from the jots and tittles of the Gemara. Yet Berkovits’s happiness is ruined by Ramban’s equanimity towards those who are more stringent: “One remains astounded at such words. To be ‘strict’ in matters of divorce and overlook the happiness of the woman may often be extreme leniency in the implementation of the not insignificant commandment ‘And you shall love your neighbor as yourself’” (80). Berkovits probably thought that Ramban recommended strictness out of concern for the validity of Rabbenu Tam’s view, according to which the divorce would be invalid; he seems oblivious to Ramban’s own assertion, in the *Hiddushim ad loc* (probably composed later) that the Geonic enactment should not be employed today because it would encourage lewdness.⁶

My purpose in reviewing Berkovits’s reaction is not to criticize his moral or prudential judgment of this issue. Happiness is important to human beings, even more so in our society where people are often judged harshly for not being happy, or for not placing sufficient value on their happiness, as society defines it. Distaste for physical intimacy with a partner whose repulsiveness cannot be overcome goes beyond mere unhappiness, even more so when people are trained not to tolerate such deficiencies. The power of rabbinic or halakhic suasion to reconcile people to their unhappiness, or to master it, is weak, and horror at the prospect of remarriage after a dubious divorce is diminished. These considerations of morality and feasibility are factors in the deliberations of *posekim*. It can hardly be doubted that *talmidei hakhamim*, even of the highest stature, will differ in their definition and assessment of these factors. In a fragmented society we frequently suffer frustration when *posekim* fail to grasp the full complexity of a situation, and there will be anger and resentment when they fail to see things as we do. Nevertheless, the beginning of wisdom is the awareness that people of great intellectual and religious probity, who really ought to agree with us, do not.

We are obligated, as a simple matter of intellectual integrity and a measure of *kevod ha-Torah*, to understand why Ramban's theoretical and practical judgments diverge markedly from ours. Such an exercise will yield a better understanding of Torah and a better self-understanding. It may not alter our initial conviction that Maimonides' view is closer to the truth, whether on textual or moral grounds; it may confirm and deepen the insight that our situation differs crucially from that faced by the *rishonim*, and this may help us decide how to proceed. But rolling one's eyes in exasperation with the Ramban is not a philosophy.

II. The Intentional Fallacy

According to Hazony the specter of Kant haunts 20th century Jewish thought. Almost every major Jewish thinker of the last century is infected by the Kantian axiom that purity of intention is the essential ingredient in moral action. Even those influenced by existentialism, who laud action rather than thought, cannot escape his baleful influence, because their concept of action centers on the inner resolve to act rather than the external manifestations of that resolve. While Berkovits did not produce "a systematic treatise on the nature of Jewish morality," Hazony presents him as the solitary Jewish antagonist to Kant.

At one level, the gap between the Kantian and Halakhah is obvious. The Kantian aspires to act for the sake of the self-legislating rational moral law alone, to the exclusion of any other motive. Observing Halakhah is obedience to the will of God. More important for Hazony's picture of Berkovits, the validity of the halakhic act is not ordinarily annulled by lack of religious motivation. Judaism, according to Berkovits, addresses the body, not only the spirit. This is fundamental to Berkovits's philosophy of *mizvot*, which forms the core of the brilliant opening chapter in this anthology: "Law and Morality in Jewish Tradition." The commandments mold human character "indirectly," by habituating the person to moral response, rather than by preaching to the intellect or the emotions alone.

This critique is clearly effective against a target like Buber. How well it fits Rosenzweig and Heschel need not concern us here. What is interesting is that Hazony includes R. Soloveitchik in his anti-Kantian strictures. This is surprising because the Rav often cites the halakhic principle that "*mizvot* do not require intention," and that even according to the less dominant view that intention is required, this does not mandate some esoteric inner experience, but merely the awareness that one is

engaged in a *mizvah*. Like Berkovits, he identifies the service of God with obedience to His commands; both thinkers treat mysticism, which does not realize itself in the act, as peripheral to Judaism. When he depicts the highest level of relationship with God, *devekut* (in *U-Vikkashtem mi-Sham*), the Rav picks out three elements that facilitate *devekut* and one of them is “elevation of the body.”⁷ Earlier in that work he pronounces without embarrassment that motivations emerging from human psychological and biological needs are not without value for the religious quest.⁸ If there is a real difference between R. Soloveitchik and Berkovits in this area, it should illuminate Berkovits’s distinctiveness.

Hazon’s Berkovits-inspired attempt to tar the Rav with the Kantian brush focuses on two issues:

1. R. Soloveitchik asserts that the meaning of prayer is addressing God and the physical recitation of the liturgy is the external technique for doing this. Berkovits, by contrast, knows that automatic movements of the lips “may count for little in comparison with *kavvanah*, the directedness of the praying soul toward God in ecstatic submission; yet they too represent a form of submission of the organic self to the will to pray” (26, quoted in Hazon’s introduction, xxxiii). This is taken to demonstrate the Rav’s bondage to Kant.

Neither the Halakhah nor the Rav say anything about “ecstatic submission.” It is conventional Halakha—and not the Rav’s putative Kantianism—that requires *kavvanah*; though the nature and extent of the necessary intention is subject to debate. Let us peruse one facet of the discussion. R. Hayyim Soloveichik, the Rav’s grandfather, held that in the absence of awareness that one is addressing God, there is simply no act of prayer; knowing that one is standing before God, but not paying attention to the meaning of the words, is a valid performance of prayer, albeit a defective one. Hazon Ish, among his other criticisms of R. Hayyim’s reading of the Rambam, observed that even the individual who is not explicitly aware that he is praying nonetheless experiences, by virtue of his external gestures, some subliminal consciousness of the activity of prayer.⁹ The same is true for other commandments with an essential component of inwardness: one may assume, for example, that a person who observes the *halakhot* of mourning, removing shoes, sitting on the floor, abstaining from proscribed activities, is experiencing the emotions of mourning, or that the person who engages in celebratory activities on a holiday is fulfilling the commandment to be joyful. Uttering words in the direction of another person without any awareness of what one is doing is meaningless, not because it fails to rise to

the authenticity of the Buberian I-Thou dialogue, but because it is simply not an act of communication. A totally inert, robotic performance of prayer, mourning or rejoicing fails for the same reason, not because it violates Kantian criteria.

2. Hazony's other argument hits closer to home. He points out that the "halakhic man," depicted in the Rav's essay of that title, though fully committed to halakhic action, seems to be indifferent to the success of his efforts in the historical world. Offhand this is an unfair criticism. "Halakhic Man" is an ideal type; though an appreciation of his outlook is essential in order to comprehend the Jewish spirit, his characteristics are not synonymous with Judaism. The essay is descriptive and eulogistic but not consistently prescriptive. In one passage the Rav elucidates the halakhic type by recounting the debate at a pre-World War I rabbinical conference. On the table was a proposal to exclude from the Jewish community individuals who did not have their sons circumcised. R. Hayyim, who is here meant to illustrate halakhic man, opposed the move: in purely legal terms, refusal to circumcise one's sons is a grievous sin, but does not abrogate Jewish status. The Rav remarks that the other *gedolim* were right on public policy grounds: the proposal was likely to have a deterrent effect. It is not the Rav's purpose to indicate what he would have done in the same situation.¹⁰ Moreover the Rav's approach to halakhic decision-making, as can be attested by anyone who had contact with him or access to his written responses, notwithstanding his adamant rejection of any attempt to treat Halakhah as a mere instrumentality, was far from a formalistic calculus that plugged in the results of his theoretical lectures without regard for the consequences.¹¹

Though he does not anticipate my response, Hazony is prepared with a rebuttal. He argues: "It is telling that of all the religious types articulated in Soloveitchik's writings, the only one that is fully dedicated to a concern for the consequences of action is 'Adam the first' from *The Lonely Man of Faith*—a figure who is not considered by Soloveitchik to care for good or evil" (347, n. 41). Rather than quibble with Hazony over the meaning of the word "fully" and the internal relationships between the types in *Lonely Man*, let me extend the spirit of his criticism in a way that highlights Berkovits's distinctiveness.

Readers of *Halakhic Man* have often expressed astonishment that nothing is said about the role of the *talmid ḥakham* as one who studies Torah for the sake of thereby deciding practical halakhah. There are good reasons for the emphasis on the theoretical activity in Halakhah.

Torah study is pursued for its own sake; its discipline is autonomous and analytic, fixed on truth, not subjugated to the bottom line: it is like science, not like engineering. To the outsider this religious mentality is indeed puzzling, and it is this lacuna in the study of religion that *Halakhic Man* intends to fill. *Ish ha-pesak*, the person who decides Halakhah, does not, at first blush, call out for his phenomenological redeemer and apologist: *pesak* resembles other kinds of judging, a combination of knowledge, human sensitivity when that is needed, technical resourcefulness and the like. If you subscribe to Halakhah, applying it doesn't seem problematic on the face of it.

One may suggest an additional reason to concentrate on the study of Torah more than on the nature of halakhic decision-making. The study of Torah is everyone's concern; each one of us must study, according to his ability, for its own sake and to be informed respecting one's duties. Few of us are capable of serving as *posekim*. Thus the questions, why study Talmud, what manner of person is it who is occupied in study, have a broader relevance than questions about the process of deliberation that leads to the adjudication of challenging cases or the enactment of novel practices within Halakhah.¹²

In any event, R. Soloveitchik did not write systematically on *pesak*. He may have considered the subject less important or interesting than the topics he wrote about; he may not have thought he had anything of great importance to contribute. Perhaps he doubted whether *pesak* is an appropriate subject for comprehensive analysis. Perhaps it can be grasped properly only through personal growth, through the living apprenticeship that is *shimmush talmidei hakhamim*, and not by formulating abstract principles or paradigmatic narratives or portraying ideal types.

Few of us become *posekim*, but we live in a world that *posekim* have made and continue to refurbish. It is the great contribution of Rabbi Berkovits to focus the spotlight away from the study of Torah to the consequences of halakhic decisions and the question of decision-making. In the previous section we looked at Berkovits's ideas about moral considerations and halakhic decision-making. We found fault with his views on the authoritativeness and integrity of the Oral Law, with the manner in which he conducts his dialogue with the giants of earlier generations, and with his overconfidence in his own axiological table. We cannot fault him for raising legitimate questions hitherto neglected.

III. Politics and the Ethic of Responsibility

The German sociologist Max Weber is one of the heroes of Hazony's introduction for his essay "Politics as a Vocation," written against the background of imperial collapse as Germans were forced to take responsibility for their political future in the Weimar Republic. Weber contrasted the "ethics of responsibility" with the "ethics of conviction." The responsible statesman is held to account for his success or failure in furthering the right outcomes. Under trying circumstances, the statesman cannot afford to salve his conscience by cleaving to the obligations promulgated by a theoretical code of ethics, unlike the romantic "Kantian" who holds fast to his convictions and perceived duty, regardless of the consequences. In Berkovits's philosophy of the deed Hazony discovers a kinship to Weber's concept of politically responsible action. The analogy to politics is apt, according to Hazony, because Halakhah too, for Berkovits, is the art of the possible.

Introducing the political model leads Hazony to ascribe to Berkovits a thesis that does not appear in the text, as far as I can tell. Hazony argues that when an individual subordinates morality to outcomes rather than to rules this entails that "in no case are we left concluding that he has done something that is on some level 'wrong' even though it was the best of all available options—a conclusion which follows easily from a morality based on absolute rules, but which violates our basic understanding that right and wrong are intimately linked to free will" (xxvii). The position that Hazony here commends is typical of monistic moral theories. According to these theories there is one transparent standard of value, and having determined one's duty to the best of one's ability, there is no reason to feel guilt about sacrificing lesser values and obligations. Elsewhere, however, Hazony pejoratively associates monism with Kantian rationalism, even allowing himself the startling but insightful claim that utilitarians and Kantians have more in common than is usually admitted because both believe in a single deducible standard of value.¹³ Moreover, it is Kant, among the philosophers, who insists that free will is inconsistent with feeling guilt when doing the right thing, because the existence of a moral imperative implies the ability to fulfill it ("I ought, therefore I can"). Common sense morality, to the contrary, intuitively feels that even in doing the right thing (choosing to save one person rather than another when both can't be saved, for example) it is sometimes virtuous to feel moral regret for the duty that was overridden, to repent for a transgression that could not have been avoided,

and a mark of unpardonable shallowness not to do so. Hazony ascribes to Berkovits a pluralistic view of value.¹⁴ It seems odd that he then saddles him with an arch-Kantian view of moral guilt.

The thesis of guilt-free choice makes sense against the background of the proposed analogy between Jewish ethics and statesmanship. From the politician's perspective, the overly refined conscience indeed makes cowards of us all. For the ethic of responsibility, public hand-wringing about moral dilemmas that can't be helped is self-indulgence. One thinks of President Truman's declaration (belied by publication of his diaries!) that once he had done his best to make the right decision, dropping the atomic bomb did not disturb his sleep. Perhaps Berkovits's annoyance with the Ramban is due not only to their different axiologies but also to the suspicion that Ramban's support for the Geonim was sicklied over by solicitude for Rabbenu Tam's concerns.

Berkovits's reflections, to be sure, do not radiate the self-assured confidence of the smiling public man. Describing the new kind of rabbi who can provide leadership in today's society, he writes: "They must themselves have suffered all the agonies of the dualism in the life of the modern Jew. The conflict of the two worlds must have torn their own hearts and minds; without this they cannot realize how genuine and serious the problems are, or begin to seek a remedy" (198). This passage does not contradict Hazony, since being torn by conflicting values does not entail a sense of guilt after having chosen one's path. Yet there is an apparent tension between the "don't look back" boldness of Hazony's introduction and the tormented language that Berkovits himself employs.¹⁵

IV. Carrying the Burden

There is a danger in judging an author by his most original doctrines. Some of Berkovits's best work exhibits little novelty but succeeds in presenting common ideas so clearly and unforgettably that readers incorporate them almost unawares. One of the truly great Orthodox scholars currently working in academia told me that, as an adolescent, he re-read Berkovits's *God, Man and History* every year or two, and though he cannot recall what he gained from Berkovits, he knows that it was important. We have already mentioned Berkovits's description of the indirect way that living the life of *mizvot* molds human character. The perspicuity of his essay on sexual morality has not been surpassed and contains significant original interpretations. Berkovits's writing on theodicy and the Holocaust is far from airtight from a logical perspective, but is rich

in psychological truth. Looking again at the biblical essays included in this anthology, I discovered exegetical subtleties that had escaped me decades ago. I am not as impressed as Hazony with Berkovits's formulations of a messianic Zionist ideology intended to appeal to Israelis and other Jews who are not traditional believers—his highlighting the spiritual importance of political life and evocations of Jewish moral nobility are variations on themes already developed by R. Kook, and vulnerable to similar critiques, among which lack of feasibility is not the least—but Berkovits's characteristic lucidity and orderliness are refreshing.¹⁶

Hazony's presentation, however, both reflects and encourages a focus on Berkovits's discussions of the philosophy of Halakhah. We have expressed dissatisfaction with several ingredients of Berkovits's position as a systematic approach to the study of Torah: the unwillingness to grant the greatest representatives of *Torah she-be-al Peh*, when they disagree with him, the same moral integrity he claims for himself, the conviction that concrete obligations inevitably distort moral truth while abstract moral principles are unproblematically reliable, the overconfidence in the transparent truth of the moral principles he has discovered in the Torah. And yet there are readers who, having acknowledged all these criticisms, can't help regarding them as beside the point. As they see it, we live in a period of unprecedented halakhic crisis. In a hopeful vein, they might point to the renewal of Jewish sovereignty and everything that comes with it, and suggest that the return to Israel after two thousand years during which Halakhah lacked its full scope, necessitates a radical halakhic response: here Berkovits can be classified—ironically, given their respective political orientations— with the other *vieux terrible* of our community, Yeshayahu Leibowitz. Less optimistically, one may shudder at the prospect of schism as disputes over marriage law and conversion threaten to split the Jewish people, God forbid.

All too often the people who clamor for specific halakhic results have little appreciation for the integrity of Halakhah. Like politicians they may consider all absolutes negotiable with a wink and a nod. Or as human beings suffering unbearable pain, or suffering along with a mortally ill child, beseeching the doctor, they plead for the *posekim* to make things well, without knowing or caring much how relief is obtained. As they might say in Oz, the good *posek* is a good man, because he reaches the desired conclusion, and a good wizard, because he is ingenious enough to sustain the impression that the conclusion is the product of elaborate labors and was not cooked up in advance. A modicum of good will, strategic cajoling, the power of the purse and (in Israel) a dose of

Erastian ideology, may yet produce the kind of *posek* “courageous” enough to do the bidding of his constituency. Therefore God-fearing *talmidei ḥakhamim*, bombarded by cynicism and incomprehension, are tempted to avert their attention from these concerns.

Nonetheless the problems are genuine and serious, and one reason for averting our attention is that we have no obvious solutions for them. The halakhic literature on *Even ha-Ezer* 17 is full of case-by-case analyses by the titans of Halakhah who strove to allow the remarriage of *agunot*; they were not always successful. Safeguarding the unity of the Jewish people is no doubt as great a value as Rabbi Berkovits maintains, but the history of Judaism is punctuated by examples of rifts that never were healed, from the ten tribes who may or may not return some day, through our separation from Samaritans, Christians and Sabbateans. It has been noted that Berkovits’s *Not in Heaven*, with its call for heroic leniency in conversion standards, appeared twenty years ago, at the very moment that the Reform movement opted for patrilinear descent. It is not at all obvious that the preservation of unity in the Jewish community is feasible, no matter what compromises we are willing to submit to. And *pace* all doctrines of consequentialism, there are principles and practices that we cannot conscientiously surrender, even for the sake of national unity. Few of us anticipate an irreconcilable breach with equanimity; most can imagine it only with horror. But in the real world not all stories have a happy ending. The question of Jewish unity is merely the most drastic of a host of problems, all of which we desperately wish to solve without radical sacrifice, but with no assurance that our efforts will succeed.

We have a better understanding of how to analyze halakhic concepts than how to decide their applicability in difficult cases or how to institute new practices when necessary. Berkovits’s work, with all its flaws, demonstrates the urgency with which we need to consider the practice of *pesak*. In dealing with the problems that Berkovits throws in our faces, the *posekim* we need, like our other leaders and educators, must be resourceful, erudite and courageous in responding to the needs and values he articulates; in Berkovits’s language: “strong enough to think sincerely while deliberate in translating thought into action, cautious and yet bold” (198). They must also be strong enough to stand up for values that are unpopular with, and unappealing to various segments of the community, with the same sincerity, deliberation, caution and boldness.

It may be fitting to give Berkovits the last word. The 1943 article just cited concludes: “For his actual behavior the rabbi of today can have

no better and more inspiring example than that of his predecessors in Jewish history. The personal humility and great idealism of the noted rabbis of the past, their deep sense of social justice, their unwavering stand by what they thought right, combined with gentleness of character—to mention only a few of their virtues—will for all time remain a beacon for all who follow them in carrying the burden of rabbinical responsibility. It is possible that the type of rabbi needed today will come into being, and that when he appears he will be as successful as his forerunners. It is improbable that he can be trained according to a fixed pattern, but Jewish education, when it is worth its name, should be able to produce him” (199).

Notes

1. S. Carmy, “Modern Jewish Philosophy: Fossil or Ferment?” *Tradition* 15:3 (Fall 1975):140-152.
2. On the approbation originally offered by R. Yehiel Weinberg, who had been Berkovits’s teacher in Berlin, and its withdrawal under pressure, see Marc Shapiro, *Between the Yeshiva World and Modern Orthodoxy: The Life and Works of Rabbi Jehiel Jacob Weinberg 1884-1966* (London, 1999), 190-192.
3. He has also written two substantial articles on Berkovits. “Eliezer Berkovits and the Revival of Jewish Moral Thought” (*Azure* 11 [Summer 2001]: 23-65) is a version of his introduction to the anthology. It was followed by “Eliezer Berkovits, Theologian of Zionism” (*Azure* 17 [Spring 2004]: 88-120).
4. It may be heuristically useful to examine the analogy to other systems of law. American jurisprudence is generally governed by precedent: the Supreme Court often moves in tiny, almost invisible increments, straining to avoid overruling previous decisions overtly, even when the current majority is on record as having opposed the precedent. Only when the court regards the precedent as a gross violation of moral principles does it dismiss *stare decisis* (e.g. *Brown v. Board of Education* nullifying *Plessy v. Ferguson*). This seems to resemble Berkovits’s ideas about gradual and radical halakhic change. Of course, American law does not claim divine origin, the courts ostensibly function as interpreters rather than legislators, and no legal theorist I am familiar with has ascribed the burden of written precedent in American law to Americans suffering the luxative effect of prolonged exile. As far as I know, Berkovits never considers the long history of human law interacting with human life in hypothesizing about the relation between Jewish law and life.
5. *Ziẓ Eliezer* 4: #21 surveys seven major approaches among major medieval authorities. The entire section is an excellent window on the efforts of a 20th century *posek* to apply the Halakhah in the light of contemporary circumstances while remaining faithful to the plurality of moral values reflected in the sources.
6. See *Ziẓ Eliezer* 5:# 26 p. 128, for a careful comparison of Ramban’s presentations in the *Milḥamot* and the *Hiddushim*.
7. *Ish ha-Halakhah: Galuy ve-Nistar* (Jerusalem, 1979), 207-17.

8. *Ibid.*, 170-72.
9. See *Hiddushei Rabbenu Hayyim Halevi to Hil. Tefillah* 4:1 and marginal notes of Hazon Ish.
10. Regarding other anecdotes in this work representing halakhic man, R. Soloveitchik stated explicitly that he would have conducted himself differently than the ideal type he portrays.
11. On this point, see R. Walter Wurzburger, "Rabbi Joseph B. Soloveitchik as Posek of Post-Modern Orthodoxy," in *Exploring the Thought of Rabbi Joseph B. Soloveitchik*, ed. Marc Angel (Hoboken, NJ, 1997), 3-22.
12. It is my impression that American philosophy of law is likewise very much concerned with the nature and content of law, and the role of moral principles in applying the law, while there is relatively little on the nature of judging or the nature of legislation. One wonders whether the parallel to Halakhah is instructive.
13. It is noteworthy that Yoram Hazony (brother of our editor), Director of the Shalem Center, which has sponsored the Berkovits revival, casts Kant and Buber as the villains of his provocative *The Jewish State: The Struggle for Israel's Soul* (New York, 2000). He attacks Kant's political doctrine, adopted from Rousseau, for grounding the state in the unrealistic concept of the social contract, thus impeding the development of a robust nationalistic theory (89-92 and 105ff., *inter alia*). His objections to the Kantian cult of the pure will, which negates realistic politics, overlap with David Hazony's thesis in his introduction, as do his complaints about Kantian monism.
14. R. Soloveitchik and his student R. Walter Wurzburger, in his *Ethics of Responsibility* (Philadelphia, 1994), have also insisted that Jewish ethics, because it is rooted in the will of God, cannot be reduced to one value or principle.
15. The Teutonic Weber, of course, was far from glib about the moral price exacted from the statesman. It is difficult to experience his essay without shuddering. For example: "The genius or demon of politics lives in an inner tension with the god of love, as well as with the Christian God as expressed in the church. This tension can at any time lead to an irreconcilable conflict... Machiavelli... has one of his heroes praise those citizens who deemed the greatness of their native city higher than the salvation of their souls" (*From Max Weber*, ed. H. H. Gerth and C. Wright Mills [New York, 1946], 126).
16. After completing this review, I received *Azure* 18 (Autumn 5765/2004). See the letters column (4-8) on the Kookian source of Berkovits's ideas on Zionism. If I understand him correctly, Hazony concedes the influence, but prefers Berkovits's version because it does not subscribe to the more problematic elements in Rav Kook's outlook.