BACK TO ZECHARIAH FRANKEL AND LOUIS JACOBS? ON INTEGRATING ACADEMIC TALMUDIC SCHOLARSHIP INTO ISRAELI RELIGIOUS ZIONIST YESHIVAS AND THE SPECTRE OF THE HISTORICAL DEVELOPMENT OF THE HALAKHAH

As part of a contemporary wide-ranging revival of spiritualist practice and doctrine in both Haredi and Religious Zionist communities, Israeli Religious Zionist yeshivas over the past two decades have undergone a major spiritual and intellectual sea-change with their adoption of new methods of teaching Talmud. While I discuss three new methods, my focus will be on the methodology of those Religious Zionist rashei yeshiva (yeshiva deans) and ramim (talmudic lecturers) who have sought to integrate academic talmudic scholarship into their shi'urim (talmudic lectures) and batei midrash (study houses), and on how these rashei yeshiva and ramim have dealt with the theological challenges raised by this integration. But first some words of background.

All these new methods have developed against the backdrop of the hitherto and perhaps still dominant approach to teaching Talmud in Religious Zionist yeshivas, namely the classical conceptual approach, lomdus, known as the “Brisker” approach after its founder, R. Hayyim Soloveitchik of Brisk (Brest-Litovsk, 1853–1918). The leading contemporary exponent, advocate, and practitioner of this approach within Israeli Religious Zionism is R. Aharon Lichtenstein, Rosh Yeshiva of Yeshivat Har Etzion and son-in-law of R. Joseph B. Soloveitchik (1903–1993, grandson of R. Hayyim Soloveitchik and the foremost rabbinic figure within twentieth-century American Modern Orthodoxy). This method is known for its ahistorical, highly abstract, and formalistic nature, focussing on the conceptual foundations of talmudic law and eschewing any search for religious significance. Regarding the method’s abstract nature, R. Lichtenstein writes,

The conceptual approach to learning... is overwhelmingly tilted towards fundamentals—above all, the most basic of intellectual chores: definition. Armed with...
sets of categories, the conceptualist strives ... to grasp the essential character of a particular element and hence to classify it. (2006, 9)

Regarding its formalistic nature, R. Moshe Lichtenstein (Rosh yeshiva in Yeshivat Har Etzion and son of R. Aharon Lichtenstein) writes that the Brisker method
effect a shift from the “why” to the “what,” and from the final cause to the efficient cause. No longer is it the task of the learner to ascertain why a certain Halakha is as it is. ... Rather ... the goal of the analysis of the concrete phenomenon at hand is to understand what it is and how it works. (2006, 170)

According to the classical Brisker, once one has carried out the basic intellectual chore of definition, through exploring the competing definitions of the “what” of a particular law, and has further examined the practical implications resulting from the different conceptual understandings of that commandment’s “what,” one’s task is over. There is no further interest in ascertaining how the conceptual debate regarding the “what” of a commandment might illuminate its religious significance. The formalistic nature of the Brisker method comes to the fore here.

Against this backdrop, three new methods of Talmud study have emerged, all exemplifying the sea-change referred to above: (1) a modified Brisker approach; (2) the Torat Eretz Yisrael, “the Torah of the Land of Israel” approach; and (3) what I would call the shiluv approach, a term that implies forming a new and harmonious whole. These three approaches have in common is the desire to retain the conceptual analysis of the Brisker approach, but to abandon its strict formalism and combine it with a search for religious meaning and significance. However, while the first two approaches generally eschew the use of the critical methodologies employed by academic talmudic scholarship in their search for the religious significance of the text, the third approach—my primary focus—embraces the use of those methodologies.

The modified Brisker approach, set forth both by Rabbis Moshe Lichtenstein and Michael Rosensweig of Yeshiva University, one of R. Aharon Lichtenstein’s most outstanding American disciples, stresses the need to move from the traditional Brisker emphasis on the “what,” that is, formalism, to raising the question of “why,” and to—I am citing here R. Rosensweig—“distill the values and themes that issue forth from the nuances of halakhic conceptual analysis into a broad religious outlook” (2006, 215). That is, to cite R. Avraham Walfish, a talmudic scholar who, as we shall see, has one foot in the modified Brisker camp and another in the shiluv camp, one “translates halakhic concepts from the formalistic language prevalent in classic talmudic discourse into language of value accessible and more relevant to ... students” (2003, 271–272).

We may illustrate the difference between the modified and the classical Brisker approaches by briefly contrasting two shir‘urim on the first sugya in Barli Kiddushin, dealing with fundamental issues of marriage law: one by R. Aharon Lichtenstein, representing the classical approach, the other by his son, R. Moshe Lichtenstein, representing the modified approach. In his shir‘ar R. Aharon Lichtenstein focusses on the issue of the status of the pikelgash (concubine). It will suffice here to cite the shir‘ar’s conclusion.

The institution of pikelgash, the concubine, was understood by most Rishonim (medieval Talmudic exegetes) as either a quasi-marital relationship or a strictly extramarital relationship. Rambam parallel to marriage d

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relationship. Rambam (Maimonides), however, sees pilgesh as a separate institution, parallel to marriage that in practice only a king can effect. (See note 7.)

As is evident from this summary, R. Lichtenstein is conceptually analysing and classifying in classic Brisker fashion the varying views of the Rishonim regarding pilgesh: Is it a quasi-marital relationship, a strictly extramarital relationship, or a separate institution? This particular Brisker hakisah (analysis), in turn, draws upon a more general abstract conceptual "key" of the Brisker method often utilized by R. Lichtenstein: Is law b an extension of law a or a separate institution or rule? No consideration, however, is given to exploring how these varying views, once subject to conceptual analysis, might shed light on the personal and religious meaning of, or the values exemplified by, the halakhic institution of marriage itself.

Contrast this with a shi'ur of R. Moshe Lichtenstein on shavah kesef, that is, marrying a woman not through presentation of money (kesef), but with the equivalent of money, goods. R. Moshe Lichtenstein begins his shi'ur in classic Brisker fashion, focussing on conceptual clarification.

The formula in the Mishnah states that a woman may be married by giving her a coin worth a perutah, or goods of equivalent value. We would like to begin by inquiring as to the relationship between these two methods. Is there essentially one type of kiddushin (betrothal) that can be achieved by either mechanism, or does the existence of two methods perhaps indicate that there are also two different concepts of marriage itself? If there are two different types of marriage corresponding to the two methods, kesef and shavah kesef, what is their nature and how is each accomplished?

In pursuing his goal of determining the nature of these two methods of marriage and of, thereby, shedding light on the concept of marriage itself, R. Lichtenstein focusses on a debate between the Tosaphists and Ramban (Nahmanides) "as to whether the validity of using shavah kesef can be derived from a priori logic or requires a proof-text" (see note 7). After an extended analysis, R. Moshe Lichtenstein arrives at the following conclusion:

Ramban seems to understand kiddushin as a monetary acquisition, and so the kesef is required for the value it represents. Hence no source is necessary to allow the use of shavah kesef in place of kesef. Tosaphot (Tosaphists), on the other hand, seem to understand kiddushin as the establishment of an interpersonal relationship, and so the kesef is required as a symbol. Hence a source must be found to allow shavah kesef to act as this symbol.

Were this a standard Brisker shi'ur, it might well have ended at this point, having linked the debate between Tosaphot and the Ramban to a conceptual debate regarding the very nature of kiddushin. R. Moshe Lichtenstein, however, finds "our understanding of the Ramban's position . . . unsatisfactory," and his dissatisfaction with this perception is not so much with its lack of halakhic cogency, but with its, in his view, problematic ethical implications. As he notes:

Even if kiddushin is a standard monetary transaction, it cannot be an exchange of values between two parties as it is in a commercial setting. Firstly, it seems
eminently clear that a person does not purchase a wife as he does a field, as Ramban himself indicated elsewhere (Gittin 9a). Kinyan kiddushin, “to purchase a wife,” clearly relates to a special bond within the laws of personal status and not to the common concept of commercial acquisition. Therefore, payment is out of place. Hence, the money which creates this religio-legal status is not merely an object of value. Secondly ... regarding kehut kiddushin, there is absolutely no doubt in any mind that the money used is of a symbolic nature. A perutah (or any other sum, for that matter) does not reflect the value of the woman. Instead, it is a minimal sum required for the symbolic effect of purchase.

There follows a remarkable interjection that one would find hard to imagine being uttered by a classic Brisker, an interjection starkly revealing R. Moshe Lichtenstein’s ethical concerns.

Actually, Arnet Milu’m (29:2) (author R. Aryeh Leib Heller [d. 1812]) does claim that the money handed over for kiddushin is for real value, but such an idea is totally untenable and, hopefully, he did not show this piece to his wife. (The book itself was published posthumously.)

After another extended analysis, R. Lichtenstein suggests that:

It seems preferable to offer a different interpretation of Ramban’s opinion which emphasizes the element of consent ... Ramban ... is relying upon an understanding of kiddushin in which the personal relationship is paramount (emphasis added: LK) and for whose purposes the interpersonal agreement is the focus of the procedure. The transfer of money is merely an expression of their agreement, and therefore, Ramban emphasizes the element of agreement .... This being the case, if both parties agree to use another object instead of money, there is no reason not to allow shareh kefet.

The move from “what” to “why,” to uncover “the motivating forces behind the halakhah” and “integrate [halakhic] phenomena and ultimate purpose,” could not be more evident (Lichtenstein 2006, 177, 180).

This modified Brisker move from “what” to “why” comes to the fore, as well, in its engagement with the exegetical dimension of rabbinic literature. Thus, R. Rosenweig devotes an entire section of his important paper “Reflections on the Conceptual Approach to Talmud Torah” to “the inherently complex relationship between the written and received Torah” (2006, 209). While, in general, the written Torah “provides important ... parallel insights in Torah she-be’al peh” (Rosenweig 2006, 212), at times, he notes, there appears to be an “apparent dissonance between these dimensions of Torah in halakhic matters.” An example of such dissonance from the laws of damages is that “the Torah formulates an eye for an eye, when the halakhic tradition determines definitively that monetary compensation is intended” (Rosenweig 2006, 209). R. Rosenweig, in accordance with modified Brisk’s emphasis on “the values and themes that issue forth from the nuances of halakhic conceptual analysis,” suggests that it is possible that by with normative den respect to various I conveyed by the no

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Thus, R. Rosensweig argues that

“an eye for an eye” possibly establishes that the monetary payment mandated by the Halakhah in cases of personal injury is not compensation for what the victim has lost, but a kind of symbolic ransom or pay-off. (2006, 210)

R. Rosensweig further speculates that it may be significant “that some halakhah are derived via the thirteen hermeneutic principles, while others are explicated in the text of Torah she-bikhtav (written Torah).” The example he offers is, like R. Moshe Lichtenstein’s discussion, the first sugya in Kiddushin. Why, he asks, “does the Torah explicate kiddushei bi’ah (marriage through sexual relations), while kiddushei kesef (marriage by monetary transaction) is derived from a gezerah shavah (textual analogy)?” He tentatively answers:

It is possible that kiddushei bi’ah is the quintessential method of marriage, as it integrates the interpersonal relationship of husband and wife as the basis for the formal kinyan (mode of acquisition) …. Kiddushei kesef, on the other hand, accent the formal and legalistic aspects of marriage that require a mode of acquisition. The method is derived indirectly from the laws of real estate transactions, precisely because it is a foreign import from the world of Hoshen Mishpat (Jewish civil law), albeit an effective method of initiating marriage. Thus the different biblical sources for the various methods of initiating marriage accurately reflect a hierarchy of values that has many echoes in normative Halakhah. (Rosensweig 2006, 211)

Note how both Rabbis Moshe Lichtenstein and Michael Rosensweig stress, in line with modified Brisk’s translation of halakhic concepts into the language of personal-existentialist values, the personal relationship between husband and wife and not the acquisition as the paramount feature in the halakhic view of marriage.

The Tose Taret Yisra'el approach, represented most prominently by R. Yehoshua Weitzman, Rosh Yeshiva of Yeshivat Ma’alot, similarly seeks to combine traditional "lomdus" with the search for meaning, which it finds in the esoteric soul of the Torah that undergirds and gives life to the exoteric aspect. Unlike the modified Brisker approach which, as we have just seen, understands meaning to refer to rationally comprehensible, personal-existentialist themes and values, the Tose Taret Yisra'el approach perceives it in highly spiritual, indeed Kabbalistic terms. To cite from R. Weitzman’s "Tose Taret Yisra’el: Ten Principles:"

The esoteric aspect of the Torah is the spiritual source of its exoteric aspect, and sources drawn from the inner wisdom [i.e., Kabbalah: L. K.] shed light on sugyot and clarify their meaning…. Many questions arising in a particular sugya serve as holes through which one can peer inward to its inner depth. A precise reading of the pesah (plain sense meaning) leads one to the sod (secret aspect).
It must be said, however, that the relationship between the exoteric legal content of the talmudic text and its esoteric spiritual or kabbalistic significance often appears quite tenuous, if not tenuous, if ingenuous. Consider, for example, R. Weitzman’s shi’ur on yet another sugya in Kiddushin, Mekadesh bemoahkor, one who sought to marry a woman by giving her a pledge. In his shi’ur, R. Weitzman demonstrates lucidly how a debate between the Ramban and the Rabad (twelfth century, R. Abraham ben David of Posquieres) concerning the interpretation of this sugya is linked to their differing views as to the halakhic character of a pledge. “For the Ramban a pledge creates an obligation, while for the Rabad the pledge is a result of a (pre-existing) obligation.” R. Weitzman then ably elaborates on the practical differences arising from this debate.

So far we have classic conceptual analysis. R. Weitzman, however, proceeds to suggest that the root of this debate is to be found in esoteric Kabbalistic considerations. He argues that the Ramban’s view that a pledge creates an obligation flows from the esoteric understanding of a pledge’s nature found in “the Holy Zohar.” The Zohar (3:113a) addresses the verse “And I will place my abode (mishkan) in your midst” (Lev.26:11). Playing on the verbal similarity between abode (mishkan) and pledge (mashkan), the Zohar states that God’s abode, his mishkan, is His Shekinah, His Divine Presence, and, following from this, that God’s causing His Shekinah to dwell among the people of Israel is the equivalent of depositing a pledge with them.

The Blessed Holy One wished to dwell among Israel. What did He do? He took His cherished possession [i.e., the Shekinah] and brought it down to Israel. He said to them: “Behold, My pledge is with you, in order that I might never be separated from you.” And even though the Blessed Holy One distanced Himself from us, He left the pledge in our hands, and we watch over His cherished possession.

R. Weitzman comments:

According to the Holy Zohar, the pledge created the connection between the two parties. Before the taking of the pledge there is love and desire, but... no obligation. It is the pledge which creates obligation of the first party [God] to the second party [Israel]. . . . It would appear that... the Ramban’s understanding of the pledge’s [halakhic] nature stems from his understanding of its inner nature as set forth in the Holy Zohar.

This is quite brilliant derush (homiletics), but derush nevertheless. First, contrary to R. Weitzman’s assertion, the Zohar never states that God’s depositing His pledge with the Jewish people creates any obligation on His part. More fundamental, even were one to agree with R. Weitzman that, according to the Zohar, God’s depositing His pledge does create a divine obligation, the relationship between the Ramban’s halakhic analysis and the Zohar’s homiletical/Kabbalistic comment is almost certainly the reverse of that suggested by R. Weitzman. For the Zohar, according to all critical scholars, is not a classical rabbinic work, but a medieval work that post-dates the Ramban and was influenced by him. If anything, then, we have here a brilliant Kabbalistic/homiletic use on the part of the Zohar of a halakhic concept of the Ramban to make a profound point about the relationship between God and Israel.

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Similar to modified Brisk, the move of Torat Eretz Yisrael from “what” to “why” also comes to the fore in its engagement with the exegetical dimension of rabbinic literature. One should note, however, that while for R. Rosensweig “the inherently complex relationship between the written and received Torah” refers primarily to examining the connection between pshuto shel mikra, the plain sense of Scripture, and normative halakhic demands, for the Torat Eretz Yisrael approach, by contrast, engaging in an analysis of rabbinic literature’s exegetical dimension, refers almost exclusively to examining the nature of the 13 hermeneutical methods and other hermeneutical methods found in rabbinic literature; and the role they play in that literature.

The Torat Eretz Yisrael approach maintains that “there is a link between the method (that is, the specific hermeneutical method for interpreting the Torah) whereby a law is derived and the essence and content of the law” (see note 7). Let us look at R. Weitzman’s use of this principle in a shi’ir of his on the first sugya in Kiddushin dealing with the source of Kiddushi kesef and see his spiritualizing approach at work. R. Weitzman focuses on the Talmud’s conclusion that the source for the law is a gezerah shavah (textual analogy); the same root kihah (taking) is used both in connection with marriage and with Abraham’s acquiring a field by monetary transaction from Efron the Hittite. The significance of this analogy is,

The method of deriving a law via a gezerah shavah is used in connection with matters that do not resemble one another externally … but, nevertheless, share some inner depth reflected in the common word used in both laws. A woman and an inheritance tie a person to eternity. “A generation goes and a generation comes, but the earth endures forever” (Eccles. 1:4). This is the connection between a field and woman that finds its expression in the fact that both are acquired by monetary transaction.

At the very end of the shi’ur, R. Weitzman discusses kiddushi b’i’ah. He explains:

Marriage through sexual relations is not derived from any of the hermeneutical methods used for deriving a law, but its source is set forth explicitly in Scripture. Indeed, sexual relations reflect the special union of man and woman, which does not exist in any other context involving a relationship between two things, and therefore marriage through sexual relations cannot be derived from any other laws [using a hermeneutical method], but the Torah has to explicitly inform us about it.

While both Rabbis Rosensweig and Weitzman agree that what is special about marriage through sexual relations is that it uniquely expresses “the interpersonal relationship of husband and wife,” which is why that mode of marriage is set forth explicitly in Scripture, they differ sharply with regard to marriage by monetary transaction. For R. Rosensweig,

Kiddushi keesef … accents the formal and legalistic aspects of marriage that require a mode of acquisition. The method is derived indirectly from the laws of real estate transactions, precisely because it is a foreign import from the world of Hoshen Mishpat (Jewish civil law), albeit an effective method of initiating marriage.
Presumably, for R. Weitzman, such a view of Kiddusha keesef, which, after all, is an effective method of initiating marriage, is too "formal and legalistic," not sufficiently edifying and spiritual. For him, the fact that Kiddusha keesef is derived indirectly from the laws of real estate transactions does not, contra R. Rosensweig, make it into a "foreign import from the world of Hoshen Mishpat." For acquiring a woman and acquiring an inheritance, despite their external disparity, share the deep inward commonality—a commonality reflected in "the common word used in both laws"—that both acquisitions "tie a person to eternity." Thus, while for R. Rosensweig the fact that "Kiddusha keesef... is derived indirectly from the laws of real estate transactions... accents the formal and legalistic aspects of marriage," for R. Weitzman a real estate transaction itself is not purely "formal and legalistic," but possesses a profound inner religious significance. One may suggest that the modified Bisker approach, which translates halakhic concepts into the language of personal values, can preserve more formal halakhic elements alongside those values; the Torat Eretz Yisra'el approach, however, in which "a precise reading of the pesher" of halakhic concepts "leads one to the sod" of Kabbalistic categories, seems driven to translate, in classical Zoharic fashion, all the elements of that halakhic pesher into Kabbalistic sod.

Perhaps almost as important as what the modified Bisker and Torat Eretz Yisra'el approaches share in the positive sense—namely the attempt to combine lomdei with the search for meaning, however differently that meaning may be understood—is what they share in the negative sense, that is, as noted earlier, the avoidance of critical—historical lines of enquiry for the study of rabbinic literature, in particular any idea of the historical development of the Halakhah.

In contrast to the modified Bisker and Torat Eretz Yisra'el approaches, and certainly all tradionalist approaches, stands what I have termed the shiluv approach. Shiluv, as I am using it, implies not just combining together but joining or blending together to form a new and harmonious whole. The shiluv approach to teaching Talmud, then, to cite the description of its leading ideological exponent, advocate, and practitioner, the late R. Shagar (Shimon Gershon Rosenberg, 1949–2007),

has as its goal the cleaving [to the divine] which reveals itself in the uncovering of the existential significance and meaning of the sugya, and the method it adopts is that of uncovering this meaning through joining together (shiluv) the tools of traditional conceptual analysis, lomdei, and those of [historical—critical] scholarship (kellim l'man-daniyim venehkarriyim). (2008, 254)

Before offering specific examples, a few preliminary remarks about the nature of the shiluv approach’s use of historical—critical scholarship and how it differs in this regard from the other two schools are in order. David Flatto has noted that in addition to "using manuscripts to emend rabbinic texts or examining the material culture prevalent during the rabbinic period," critical scholarship pursues four fundamental lines of enquiry regarding rabbinic literature: 
1. A synoptic study [Mishnah, Tosefta, Midrash Halakhah, Yerushalmi, Barait];
2. A diachronic study...
3. An analysis of the exegetical dimension...
4. An evaluation of comparative traditions [rabbinic and extra-rabbinic traditions]

Returning to our three approaches, we find, perhaps not surprisingly, that none of them, not even the shiluv approach, with its above-stated commitment to using the "the tools of... [historical-critical traditions]." It would seem comparison of "rabinic sharp relief by highligh... otherwise remain... a three approaches, such between sacred and pr... yeshivas r... Tosefta, Midrash Halakh... alist talmudic exeges... if studied only for cor...

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comparison of “rabbinic and extra-rabbinic literature helps set rabbinic teachings in
sharp relief by highlighting distinctive emphases within rabbinic writings that would
otherwise remain ... obscure” (Flatto 2012, 123), in the eyes of the exponents of all
three approaches, such a comparison would lead to blurring the critical difference
between sacred and profane texts. The texts studied in the Talmud curricula of all Reli-
gious Zionist yeshivas remain those texts sanctified by the tradition itself: Bible, Mishnah,
Tosefta, Midrash Halakha, Yerushalmi, Bavli, Rishonim, and Aharonim (modern tradition-
alist talmudic exegeses)—not Jubilees, Philo, Josephus, or the Dead Sea Scrolls, even
if studied only for comparative purposes.

That said, both the modified Brisker and Torah Eretz Yisrael approaches engage, if in
differing ways, in “an analysis of the exegetical dimension of rabbinic literature.” More-
over, the Torah Eretz Yisrael approach also engages in some “synoptic study of rabbinic
literature.” Thus, one of the principles of this approach is “The Teaching of the Tannaim
(rabbis of the Mishnah),” namely

One ought to study the different Tannaitic teachings regarding the subject matter of
the (Talmudic) Sugya as found in the Mishnah, Tosefta, and halakhic midrashim, and,
proceeding from that analysis, return to the sugya and clarify its details.

The critical difference, then, between the shilav approach and the other two resides in
the fact that latter two do not engage in the “diachronic study of rabbinic literature,”
steering clear of any hint of the historical development of the Halakhah. As a result,
even if some of the lines of inquiry of the modified Brisker and Torah Eretz Yisrael
approaches do resemble certain critical-historical lines of inquiry for the study of rab-
ninic literature, it is a resemblance only in form and not in spirit.

Thus even if the “synoptic” Torah Eretz Yisrael traces a talmudic dispute to its core
Tannaitic sources, the goal of this process is not to trace historical development but
to clarify the later talmudic discussion. There is no notion of any evolution of ideas
or legal concepts from, say, the halakhic Midrashim first to the Mishnah, then to the
Tosefta, proceeding to the Jerusalem Talmud, and culminating in the discussion in the
sugya in the Babylonian Talmud. As for the modified Brisker and Torah Eretz Yisrael
approaches’ engagement in “an analysis of the exegetical dimension of rabbinic
literature,” R. Weitzman completely ignores any “apparent dissonance between the
dimensions of Torah in halakhic matters,” and while R. Rosensweig does acknowledge
this “apparent dissonance,” there is no suggestion that this “gap” points to an internal
process of the unfolding of the Halakhah. In summary, despite surface resemblances
between some of their lines of inquiry and critical-historical method, neither the modified
Brisker approach nor the Torah Eretz Yisrael approach, challenges in any way the
assumptions of harmony and timelessness grounding much of traditional talmudic disc-
ourse. Rather, like the classic Brisker approach from which they have broken in so
many respects, they still view the corpus of the halakhic literature as divorced from his-
torical context, historical influence, and historical development, as existing; to use
Robert Alter’s lovely phrase, “in a timeless simultaneity.” This stands in polar contrast
to the “critical approach,” which, as Flatto argues
conceives of the mesorah (handed down tradition) as historically embedded. This allows for the notion of progression and development, and even assumes that this is an inevitable consequence of religion being transmitted to successive generations over time. Historicizing need not lead to relativism, but it does move away from immutable or inexorable readings. (2012, 128)

Against this background, we can understand my claim that of the three approaches I have been discussing only the shilur approach engages in "critical-historical lines of inquiry for the study of rabbinic literature," for only that approach engages in the "diachronic study of rabbinic literature," and is, thereby, truly open to the historical development of the halakhah, to "conceiv[ing] ... the mesorah as historically embedded." (Flatto 2012, 128) Stemming, then, from the shilur approach’s commitment to the "diachronic study of rabbinic literature," its engagement in the "synoptic study of rabbinic literature," and in the "analysis of the exegetical dimension of rabbinic literature" is itself historical and developmental in nature, and thereby differs radically from the pursuit of these lines of inquiry by both the modified Brisker and the Torah Eretz Yisrael approaches.5

The diachronic study of rabbinic literature on the part of the shilur comes across clearly in the "mission statement" of Yeshivat Otniel, one of the main shilur yeshivas.

The tension between the channel linking us to the past and the word of God which is revealed each and every day, between commitment to the tradition and innovation, is one of the foundations of our Beit Midrash .... This tension gives rise to a serious struggle to understand the relationship between the Written Torah and the Oral Torah. The attempt is made to see how the Oral Torah takes the spiritual goals hidden within the Written Torah and develops them to fashion complex worlds, out of the midst of which practical halakhic rulings arise. How is it possible that everything that a qualified student will innovate was already revealed to Moses on Mount Sinai? .... The practical implication of all this is: To begin the analysis of the sugyot from their earliest sources, that is, the relevant biblical passages, the Midreshei Halakhah, and the Mishnah. Only following upon this should one analyze the Babylonian and Palestinian Talmuds and the Rishonim and Aharonim. All this should be accompanied by an uncompromising examination of the Halakhah in all its fine details and by paying particular attention to the halakhic and spiritual significance of the sugya for the life of the people and of the individual in the contemporary era.

Here both the engagement with the "the exegetical dimension of rabbinic literature," and the "synoptic study of rabbinic literature" are placed within a diachronic framework, all with the ultimate goal of uncovering "the halakhic and spiritual significance of the sugya for the life of the people and that of the individual in the contemporary era."

A particularly eloquent example of the shilur approach to the study of a sugya may be found in a shi'ur by R. Yaakov Nagen, a Ram in Yeshivat Otniel, on the law of meikav (the best). The Bible mandates that "If a man causes a field or a vineyard to be eaten, and he shall send forth his beast and it feed in another man’s field, of the best of his field and of the best of his vineyard shall he make restitution" (Exod. 22:4). The full title of R. Nagen's lecture, "The Development (hishtalshelut) of the Law of 'meikav," already indicates its diachronic approach. This emerges even more strongly from its abstract:

The diachronic perspective contents:

1) Introduction; 2) R. Ishmael and R. A., of the view of R. Is Rava’s revolution;

The section “Rava’ is striking, indeed darin onian academy head r number of ways. Firs R. Ishmael (a Tanna), plaintiff” into the disc view of R. Akiva (a Ta far reaching, this allo Rava’s students, flows all moveable ipso facto b then, land turns out to Thus, the tort—to secure some meas according to Rava and kenasot, fines or puniti together, on an exe R. Ishmael and R. Ak. Here we have, the dih the rabbinic placed within a diach damages under discus to that of namonot.

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The rabbinic discussion concerning the law of “meitar” moves from viewing the tort-feasor as a criminal offender to one who violates civil laws and finally as the individual who is responsible for paying for the damage since there is no one else to make up the loss. Corresponding to this, the law of “meitar,” to begin with, is seen more as a punishment for the tort-feasor, then as an expression of the concern that the injured party receive full compensation, and finally, in the context of a tendency to treat the tort-feasor leniently and enable him to use any mode of payment. The law of “meitar” is intended to ensure the liquidity of land [if used for payment], which, in general, is viewed as the worst form of payment, since it is not liquid (see note 7).

The diachronic perspective is highlighted further in the lecture’s detailed table of contents:

1) Introduction; 2) Peshturo shel Mikra (the plain sense of Scripture); 3) the Mekhilta: R. Ishmael and R. Akiva; 4) R. Ishmael; 5) R. Akiva; 6) The Amoraim’s explanation of the view of R. Ishmael; 7) The Amoraim’s explanation of the view of R. Akiva; 8) Rava’s revolution; and 10) Summary.

The section “Rava’s revolution” calls for brief comment. The very term “revolution” is striking, indeed daring. R. Nagen demonstrates that this fourth- to fifth-century Babylonian academy head revolutionized the law vis-à-vis its biblical and tannaitic roots in a number of ways. First, in connection with the sugya’s exposition of the view of R. Ishmael (a Tanna), Rava introduces the principle of “the burden of proof is on the plaintiff” into the discussion. Second, in connection with the sugya’s exposition of the view of R. Akiva (a Tanna), Rava allows for payment in goods. Third, and even more far reaching, this allowance for payment in goods, as explained in the Talmud by Rava’s students, flows from the fact that liquidity is the true measure of meitar. Thus, all movables ipso facto belong to the category of meitar, for all goods are liquid. Ironically, then, land turns out to be the worst type of payment, since land in general is not liquid. Thus, the tort-feasor must pay from the best only when he pays with land, this in order to ensure some measure of liquidity. Fourth, and most fundamental, it turns out that, according to Rava and his students, the laws of damages do not belong to the realm of kenosot, fines or punitive damages, but to that of mamnot, compensatory damages. Taken together, on an exegetical level, Rava’s views lead to reinterpretation of the views of R. Ishmael and R. Akiva in such a way as to change their original meaning.

Here we have, then, a paradigm example of the shiluv approach where “the exegetical dimension of rabbinic literature” and the “synoptic study of rabbinic literature” are placed within a diachronic framework. That diachronic development of the laws of damages under discussion is itself reformulated as a move from the realm of kenosot to that of mamnot.

The shiluv approach’s incorporation of academic historical-critical scholarship with its diachronic approach into Israeli Religious Zionist yeshivas raises, however, the specter of the historical development of the Halakhah, potentially challenging its authority as a divinely revealed system of Law. To be sure, the issue of the theological challenges posed by the historical development of the Halakhah goes back to R. Zechariah Frankel and was taken up more recently by R. Louis Jacobs, but these issues have now expanded
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y means of the earlier conditions" (2008, 169-178) critically examines a classic essay of modern historical scholarship dealing with the development of the Halakhah, Jacob Katz's "Alterations in the Time of the Evening Service (Ma'arir): An Example of the Interrelationship between Religious Customs, Halakhah, and Society" (1984). Katz focuses on the view of Rabbeinu Tam (leading twelfth-century Franco-German Tosaphist) defending the minhag (custom) in Ashkenaz to recite the evening service before the appearance of the stars, in apparent contradiction to the Gemara's ruling. Katz argues that in order to understand Rabbeinu Tam's view, one must combine halakhic and historical analysis. The Halakhah, for Katz, is not just a function of inner legal argumentation, but is bound up with social and sentimental motifs arising from the relationship between minhag and Halakhah. R. Shagar argues that Katz, contrary to his declared intention, does not deal at all with the inner halakhic argumentation of the sources. To be sure, Katz examines how Rabbeinu Tam dealt with the apparently contradictory ruling of the Talmud that forbids (184) recitation of the evening service before the appearance of stars. But Katz, so R. Shagar argues, does not take Rabbeinu Tam's suggested reading of the relevant talmudic sources seriously, seeing it simply as an unconvincing "pilpulistic" attempt to neutralize the sources in order to maintain the common practice and, thereby, the unity of community practice. It follows, R. Shagar concludes, that, for Katz, the motivation for Rabbeinu Tam's attempt to defend the common practice was purely social, and his halakhic analysis of the relevant talmudic sources was just a "blind" to conceal that attempt's social nature.

R. Shagar argues, as opposed to Katz, that the relevant talmudic sources are more complex than Katz realizes, and seeks to show that "Rabbeinu Tam makes use of interpretive possibilities that are genuinely contained in the sources themselves" (2008, 174). Thus, Rabbeinu Tam is not simply out to defend the minhag at all costs, but rather, for him, the minhag brings to light an interpretive possibility contained in the sources themselves. R. Shagar, thus, agrees with Katz's view that in order to understand Rabbeinu Tam's position, it is necessary to combine halakhic and historical analysis, but...
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makes it meitar. Thus, when Archdeacon Grantly's son, in Trollope's The Last Chronicle of Barset, wonders that "people are so fond of land," the archdeacon explains "It is a com-
fortable feeling to know that you stand on your own ground. Land is about the only thing that can't fly away" (1981, 612).

Perhaps R. Nagen might respond that we do not have here a "tendentious change," but a genuine shift in the meaning of meitar in light of the "changing historical conditions." Still, the example can serve to indicate that the line between theologically legitimate and allegedly illegitimate conceptions of the historical development of the Halakhah may not be as neat as R. Shagar would wish.

This leads to the second way the diachronic approach is liable to undercut the continuity of rabbinic literature. Much modern historical scholarship maintains that the medieval rabbinic authorities (Rishonim) under the pressure of changed social and historical conditions simply ignored or misread or twisted the relevant talmudic sugyot in order to arrive at a satisfactory solution to the practical problems confronting them. As opposed to this view, R. Shagar argues that precisely the pressure of changed conditions led the Rishonim to discover genuine interpretive possibilities in the relevant sugyot themselves that allowed them, without distortion or misreading, to solve the problems raised by the new conditions.


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beyond the world of the university or modern rabbinical seminary and penetrated into the yeshiva.

Perhaps the key theological challenge is that the diachronic approach is liable to undercut the continuity of rabbinic literature. This challenge is manifest in three different ways, each of which has drawn responses from the proponents of shiluq themselves.

First, as we have seen, the diachronic approach reveals that the meaning a later layer of rabbinic literature ascribes to an earlier one often does not correspond to its original meaning. R. Nagen's shi'ur illustrates this very well. The shiluq approach, while conceding, indeed stressing this point, would emphasize that the Babylonian Amona is a creative interpreter of the earlier view, deliberately reshaping and developing that view in accordance with his own understanding of the relevant issues.

This nuance is set forth at considerable length and with great passion by R. Shagar, the most prolific expositor of the shiluq school. R. Shagar contrasts his "dynamic" method with the critical stance that emanates from classic scholarly circles. He explains that according to the latter the shift in meaning from an earlier layer of rabbinic literature to a subsequent one often results from the more recent layer's simply misunderstanding the intent of the earlier one——here R. Shagar would appear to be alluding to the approach of the noted academic talmudic scholar Professor David Weiss Halivni—or from the later layer's "tendentiously changing" the meaning of the earlier layer "against the background of changing historical conditions" (2008, 233). R. Shagar explicitly rules out these explanations of academic talmudists as "shattering the continuity of the tradition" (2008, 233).

But, one may ask, even if one rejects these critical approaches but nevertheless allows for the possibility of "creative interpretation" of earlier sources by subsequent generations, what is the source of legitimacy for such creative interpretation, such deliberate reshaping and reinterpretation? R. Shagar answers:

Without the faith that the development of the Oral Law is not accidental but part of a divine providential plan, it is impossible to develop a critical mode of study that will be part of [classical] Torah study [talmud Torah]. We are obligated to join together (lehabal) two perspectives, the perspective according to which it is possible that the way a particular Amona was understood by the stama de-Talmuda (later anonymous redactor) is not to be identified with his original stance and the perspective according to which the moment the stama de-Talmuda's understanding is woven into the tradition of study of the Jewish people it becomes part of the Torah and we have to relate to it as such. (2008, 223)

But, we may further ask, even if we grant R. Shagar's theological principle that the development of the Oral Law is not accidental but part of a divine providential plan, how are we to differentiate between "creative interpretation" and "tendentious change against the background of changing historical conditions"? Take, for example, R. Nagen's shi'ur. Though he does not refer to "changing historical conditions," certainly the shift to making liquidity the true measure of metavan, from which it follows that payment of goods is superior to payment of land, would seem to result from the shift from a land-based society to a more commercial society. One does not have to be an economic historian, merely a devoted reader of Jane Austen or Anthony Trollope, to realize that in a land-based society it is precisely the solidity of land that, as it were, makes it meitat. Thus, v. Baras, wonders that "p

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R. Elisha Ancelovits, another exponent of the *shiluv* approach, takes a somewhat different tack from that of R. Shagar. He suggests that while the *Rishonim* did, in fact, often change the form of talmudic law, "it was in order to reap the underlying talmudic concerns under changed conditions" (Ancelovits 2010, 358). As an example, he, like R. Shagar, analyses a ruling of Rabbeinu Tam. The Talmud explains that the reason why the testimony of a mute individual is biblically invalid is because the Torah requires oral testimony. Rabbeinu Tam, however, rules that while a mute person may not testify in writing, those capable of speech may so testify. R. Ancelovits observes that this ruling is "an apparently radical misread…that could simply be labelled an example of creatively 'nullifying' an earlier authoritative precedent" (Ancelovits 2010, 358). That is, under the pressure of changing historical conditions, namely the shift from the localized and oral Tannaitic and Amoraic societies to the more international and mercantile society of early medieval Ashkenazi Jewry, Rabbeinu Tam simply relaxed the talmudic laws of commercial testimony so as not to block all intra-Jewish trade and thereby limit economic opportunities. R. Ancelovits responds to this charge in two stages. First, he notes that a close reading of the talmudic rulings regarding commercial testimony indicates that the Talmud itself sought to balance two competing concerns: the concern to limit false testimony and the concern to have market-efficient testimony so that people might gainfully engage in commerce. Second, he further notes, Rabbeinu Tam did not simply allow written testimony, but hedged this allowance with important restrictions: he required that judges understand the witnesses' language directly, allowed them to investigate suspicious testimony, and finally required them to publish the basis for their verdict. In this way, R. Ancelovits argues, Rabbeinu Tam, addressing the need for written testimony, also addressed the concerns that witnesses can lie more easily through written testimony than through oral testimony, and that written testimony permitted, the audience would not hear the basis of the judges' decisions and there would be less communal oversight of that testimony. R. Ancelovits concludes that Rabbeinu Tam thus both *maintained* and *rebalanced* the original competing talmudic concerns of limiting false testimony and having market-efficient testimony—indeed, we would add, maintained them by rebalancing them.

Finally, and perhaps paradoxically, it is precisely the *shiluv* approach's commitment to the search for the religious significance, the underlying values of rabbinic literature, *combined* with its introduction of the diachronic approach to the study of that literature that leads to the third, and perhaps most critical, threat to the continuity of rabbinic literature. For precisely this combination seems to imply that the development of rabbinic law was fuelled by shifts or even revolutions in values among rabbinic Sages. But would not this imply that the rabbinic Sages who instituted such shifts did so because they found the previous values to be inadequate, problematic, or embarrassing? Can, then, Orthodox yeshiva heads admit that such shifts occurred; and if they did occur, how can they account for it?

R. Shagar indeed admits that such shifts occurred. Moreover, he argues that it is precisely the uncovering of such shifts by means of combining the search for the religious significance of rabbinic literature with its diachronic study, as carried out in his "new" approach to the Talmud study, that can serve to overcome the alienation created by the formalist Brisker at Talmud. The example he tate *Kiddushin* dealing w

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the formalist Brisker approach between the Religious Zionist yeshiva student and the Talmud. The example he offers is that of our old friend by now, the early sugyot in Tractate Kiddushin dealing with the laws of marriage.

R. Shagar urges that the student undertake a diachronic approach to the halakhic literature dealing with marriage, beginning with Scripture, moving to the halakhic Midrashim, and only then turning to the Mishnah and Gemara. Such a diachronic approach, he argues, will bring to light a shift from viewing marriage as kinyan (acquisition), viewing a wife “as the property of her husband,” to viewing it as kiddushin (sanc-
tification) (Shagar 2008, 239).

Returning to the “moderate Brisker” approach, both Rabbis Moshe Lichtenstein and Rosensweig, like R. Shagar, speak about two aspects of marriage: the formalistic and legalistic that require a mode of acquisition, and marriage as the interpersonal relationship of husband and wife. However, for the moderate Briskers, these two aspects of marriage are two permanent and timeless features of a halakhic marriage, though the latter may have axiological priority over the former. Moreover, while R. Rosensweig does state that “Kiddushet kezef… accents the formal and legalistic aspects of marriage that require a mode of acquisition [and] … is derived indirectly from the laws of real estate transactions,” it does not seem likely that he, much less R. Moshe Lichtenstein, would ever, as does R. Shagar, equate this admittedly formalistic and legalistic aspect of marriage with viewing a wife “as the property of her husband.”

This, though, returns us to our original query: Does not this admission by R. Shagar that the development of rabbinic law was fuelled by shifts or even revolutions in values among rabbinic Sages undermine the authority of the Halakhah as a divinely revealed system of Law? Here we return to R. Shagar’s credo “that the development of the Oral Law is not accidental but part of a divine providential plan.” R. Shagar, drawing on the teachings of the Ramhal (R. Moses Hayyim Luzzatto, 1707–1746) and R. Abrahm Isaac Kook (1865–1935) and even twice referring to Hegel maintains that this very evolution of values is part of an ongoing process of divine revelation, and that: it represents the absolute divine providential will manifesting itself in the unfolding of both the history and the Torah of the Jewish people (2008, 220, 244). R. Shagar repeatedly stresses this point, but I will restrict myself to one quote dealing with the other central halakhic topic which we have encountered in the course of our exploration, the laws of damages.

As long as the student considers, for example, the Rabbinic interpretation that “an eye for an eye [means] monetary payment” to be a tradition transmitted from Moses, our Master, he will be obliged to defend this view in a forced manner and will find himself entrapped in contradictions, even experiencing ongoing scepticism and alienation. We have to understand that we do not have here a tradition in its simple meaning. It was the Sages who declared, on the basis of the authority given to them, that “an eye for an eye [means] monetary payment” in the framework of a change in the concept of punishment [emphasis added: L.K.]. If we understand this change not in the language of external historical-sociological necessity adapted by the critical-historical school, but as a decision arising out of a profound involvement in and perception of the meaning of Torah (which illuminates the very historical circumstances) and as a part of the unfolding of
the divine providential will manifesting itself in the people of Israel and the Torah of Israel, then our perception of the Torah will be correspondingly deeper as will be our identification with its way. When the spirit understands itself and its contexts, to use Hegelian terminology, this self-understanding will enable an act of choice. (2008, 244)

Most representatives of the shiluv approach, however, for example, Rabbis Walfish, Ancelowits, and Mayer Lichtenstein (son of R. Aharon Lichtenstein and brother of R. Moshe Lichtenstein), reject, either explicitly or tacitly, R. Shagar’s approach. First, on theological grounds, they believe it is too close for comfort to the positive–historical approach of Rabbis Frankel and Jacobs. Second, on pedagogical grounds, they argue that it will not inspire students in their spiritual search. Finally, on scholarly grounds, they contend that it does not do justice to the complexity of the rabbinic texts themselves.

R. Walfish in a critical, albeit appreciative, review-essay takes direct aim at R. Shagar’s diachronic reading of the halakhic literature dealing with marriage. He criticizes R. Shagar on both theological and pedagogical grounds. R. Walfish cites a claim of R. Shagar that his diachronic approach “will give rise to a consciousness of the absoluteness attached to the act [of marriage] as well as enable one to discern its social and legal significance” (2008, 247). R. Walfish responds:

I am not convinced that R. Shagar’s approach will succeed in preserving the “consciousness of the absoluteness” [of marriage]. His adoption of the developmental model set forth by Maimonides in the Guide [3:32] will undermine it. If the concept of “taking a woman” in Scripture is “primitive” (p. 245) and the Sages and commentators are permitted to change it in a fundamental manner, can the word of God be deemed “absolute”? This is not just a rhetorical question, but deserves a profound theological investigation, which cannot be undertaken here. My question here is pedagogical: Will students be able to reconcile the “absolute belief in the eternity of the Torah” with this developmental approach? (2011, 185)

R. Walfish may not be entirely fair to R. Shagar. R. Shagar never refers to the biblical concept of “taking a woman” as “primitive.” What he does say is “Scholarship has established a clear dividing line between the ‘primitive’ acquisitive aspect of marriage and its more refined sanctification aspect” (Shagar 2008, 245). Note that he puts the word “primitive” in quotes, as if to indicate that he does not identify with this scholarly view, though he does agree that the sanctification aspect of marriage is “more refined” than its acquisitive aspect. Still, R. Walfish’s concern that R. Shagar has weakened the absoluteness of God’s word is well taken.

R. Walfish’s main criticism, however, of R. Shagar’s diachronic reading is scholarly. He maintains that a close examination of the various strata of the halakhic literature dealing with marriage indicates that both the terms kinyan and kiddushin function in a synchronic manner to indicate two aspects of taking a woman . . . . This approach also carries with it advantages in the theological pedagogical realms, for it removes the need to posit a great gap between the biblical and rabbinic views of marriage, like R. Shagar. (Walfish 2011, 185)

He furthermore argues “kinyan” in both Scripture that the word implies that rather than seeking the darkness into lig network of relations their lives together many levels. (2011, 185)

In all these ways, then, arrives at conclusions Michael Rosensweig arr of Talmud study.

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He furthermore argues that a careful consideration of the semantic range of the word “kinuyan” in both Scripture and Rabbinic literature does not bear out R. Shagar’s contention that the word implies that a wife is “the property of her husband.” R. Wallish concludes that rather than seeking signs of a diachronic development that brings the halakhah cut of the darkness into light, we need to search for the complexity of the multi-faceted network of relationships between husband and wife—a man and a woman who join their lives together and who establish a family together relate to one another on many levels. (2011, 187–188)

In all these ways, then, R. Wallish, from a broadly based critical-literary perspective, arrives at conclusions very similar to those that Rabbis Moshe Lichtenstein and Michael Rosensweig arrive at utilizing more traditional, purely synchronic, methods of Talmud study.

R. Wallish, however, does not address the following question. Granted a close examination of the various strata of the halakhic literature dealing with marriage reveals that the two aspects of taking a woman, as indicated by the terms kinuyan and kidlulahin, are to be found in all the strata. However, since, as R. Wallish contends, such an examination needs to be carried out diachronically, one may ask whether such a diachronic examination also reveals that the balance between these two aspects is constantly being recalibrated in light of changing historical conditions.

Such a general view is set forth by R. Ancelovits, who, as we saw, maintains that while there may be changes in the form of the law, “it [is] in order to reappraise the underlying concerns [of the law] under changed conditions.” The example offered by R. Ancelovits that we examined earlier deals with a change wrought by a medieval rabbinic authority (Rabbeinu Tam) in the form of a particular talmudic law. R. Ancelovits also applies his analysis to changes wrought by later talmudic authorities in the forms of laws set forth by earlier talmudic authorities, again arguing that such changes simply sought to “reappraise … [these laws’] underlying concerns under changed conditions.” Rather than examining any of R. Ancelovits’s examples of these inner-talmudic changes, I would like to conclude by examining R. Mayer Lichtenstein’s approach to this issue, which is similar to R. Ancelovits’s, though expressed in somewhat different terminology.

R. Lichtenstein in yet another critical, albeit appreciative, review-essay of R. Shagar’s In His Torah He Meditates, argues that at the heart of the halakhic discussion of any particular issue are the challenges and dilemmas that the issue poses. He opines that “while different societies may offer very dissimilar solutions, the fundamental dilemmas with which people contend in every generation are very close in nature to one another” (Lichtenstein 2011, 222). As an example, he offers the various dogmatic exemptions, set forth in tractate Bava Kamma, for liability for damages, as opposed to the contemporary law of damages which imposes absolute liability. R. Lichtenstein points out that the different types of damages that the Halakhah specifies—animals, the pit, and fire—were basic necessities of life in the ancient world. A balance had to be maintained between enabling the efficient use of these necessities and, at the same time, minimizing the potential damage caused by such use. It is against this background, R. Lichtenstein maintains, that we can understand the Torah’s dogmatic exemptions. Modern societies, R. Lichtenstein continues, have to contend with the same problem, for example in connection with the use of

"A spirit that understands this self-understanding..."
automobiles. But they solve it through the licensing of cars and their drivers and requiring that drivers be insured—a solution possible only by virtue of modern bureaucracy and technology. Thus, while the solutions offered by the Halakhah and contemporary societies to the issue of liability for damages differ, the problems they are trying to solve, the concerns they are trying to balance, remain the same (Lichtenstein 2011, 222–223). R. Lichtenstein concludes:

The awareness of the gaps between the generations primarily derives from the changing life circumstances in the frameworks of which the differing generations of the Sages of the Oral Law had to operate; and, in turn, this awareness of the changing life circumstances can shed light on the varying precise formulations of the halakhic solutions to the ongoing halakhic dilemmas these solutions were intended to resolve, where oftentimes in order to implement a solution it was necessary to define it afresh. (2011, 224)

Here R. Lichtenstein’s formulation is strikingly similar to R. Ancselovits’s claim that the rabbis often change the form of the law, “in order to reapply the [law’s] underlying concerns under changed conditions."

In summary, both Rabbis Lichtenstein and Ancselovits admit that a diachronic approach to the study of the Halakhah reveals that the halakhic solutions offered by the rabbis regarding a particular halakhic issue have changed over time, but they maintain that such changes reflect not a shift in the rabbis’ fundamental values and concerns, but their rebalancing and recalibrating these values and concerns in light of changing historical circumstances. In this regard, they differ sharply from R. Shagar who, as we saw, denies that the gap between the generations may be reduced to “the changing life circumstances in the frameworks of which the differing generations of the Sages of the Oral Law had to operate” and sees a real gap of values between the generations. This gap can only be overcome by R. Shagar’s credo “that the development of the Oral Law”—including the emergence of new values—“is not accidental but part of a divine providential plan.”

Needless to say, this central debate within the shilur school, which is both scholarly and theological in nature, ought to be of concern not only to Israeli Religious Zionist roshet yeshiva and ramim, but to all thoughtful modern Orthodox Jews who have ever reflected on the complex dialectical relationship between the eternal, authoritative divine Law and the ever fluid, ever changing course of history.  

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No potential conflict of interest was reported by the author.

Notes

1. One can find anti B. Soloveitchik’s on Rosh Hashanah “what” to the exc Shofar halakhically sefast, a wordless gation of addressin turn, from Rosh H ence. Here, R. Sol 74–75, 80). One s tions and his conc exploring the valu
2. These “Ten Principi ings regarding onc e of this pape
3. The Revadim (layes in Israeli Religious differentiating bet sequentially. As s m study, but a “dilac to Talmud study. search for meanin approach to Talm about the histori
4. R. Shagar’s diachr Torah towards regarding traditional synchr debate between A but I cannot elab of this “apparent a ence meitar, from
5. R. Wallish’s claim in the Guide 3:32 i based on Maimoni
6. R. Shagar’s view noted Orthodox
7. The shi’urim of R. Etzion’s website vbn-torah.org/as well as his essay Ma’alot’s website finally, the shi’ur may be found show=22005 and
Notes

1. One can find anticipations of modified Brisk in Brisk itself. For example, R. Joseph B. Soloveitchik’s famous halakhico-phenomenological analysis of the metevah of Shofar on Rash Hashanah appears to breach the Brisker requirement that one focuses on the “what” to the exclusion of the “why.” R. Soloveitchik argues that the sounding of the Shofar halakhically constitutes, among other things, a kiyum of prayer, both shaah and zeakah, a wordless cry to God comprising both praise and supplication. But this very obligation of addressing this wordless prayer to God via the medium of the shofar derives, in turn, from Rash Hashanah as a day of gilu Shekhinah, the revelation of the Divine Presence. Here, R. Soloveitchik does seem to move from “what” to “why” (Soloveitchik 1985, 74–75, 80). One may also argue that R. Aharon Lichtenstein’s focus on “primary” questions and his conceptual mapping of halakhic topics set the stage for modified Brisk’s exploring the values underlying those conceptually mapped out topics.

2. These ”Ten Principles,” R. Weitzman claims, are an implementation of R. Kook’s teachings regarding Torah Erets Yisrael. A critical analysis of this claim, however, is beyond the scope of this paper.

3. The Beradim (layers) method of Talmud study, which aroused a good deal of controversy in Israeli Religious Zionist circles about a decade ago, advocates, as its name indicates, differentiating between the different layers of rabbinic literature and studying them sequentially. As such, it shares some features in common with the shilur approach. However, this methodology does not claim to be a comprehensive approach to Talmud study, but a didactic-pedagogic tool that can coexist with many of the classic approaches to Talmud study. Consequently, it has nothing to say about conceptualization and the search for meaning, and, somewhat apologetically, distances itself from any academic approach to Talmud study, refusing to draw any larger conclusions from the method about the historical unfolding and “embeddedness” of the halakhah. See Hayman (2011).

4. R. Shagar’s diachronic explanation of the “apparent dissonance between the dimensions of Torah” regarding “an eye for an eye” should be contrasted with R. Rosenweig’s more traditional synchronic one. One may suggest that this difference goes back to the debate between Maimonides and Nahmanides regarding the nature of the Oral Law, but I cannot elaborate on this here. If one accepts R. Shagar’s diachronic explanation of this “apparent dissonance” regarding “an eye for an eye,” the transformation of this law may be seen as part of a broader transformation, suggested by R. Nagen with reference metevah, from viewing the laws of damages as kenasot to viewing them as mammonot.

5. R. Wallish’s claim that R. Shagar adapted the developmental model set forth by Maimonides in the Guide 3:32 is problematic. As we have seen, R. Shagar’s developmental model is not based on Maimonides, but on Ramhal and R. Kook, with more than a soupcon of Hegel.

6. R. Shagar’s view resembles in many ways, which we cannot discuss here, that of the noted Orthodox feminist theologian, Tamar Ross.

7. The sh’urim of Rabbis Aharon and Moshe Lichtenstein may be found on Yeshiva Har Etzion’s website at http://www.veb-torah.org/archive/01petich.htm and http:// vbm-torah.org/archive/kiddushin/03kiddushin.htm; the sh’urim of R. Weitzman as well as his essay, “Torat Erets Yisrael: Ten Principles” may be found on Yeshivat Ma’alot’s website at http://www.yeshivat.co.il/torat-il/mramerit/mei11.asp; and finally, the sh’ur of R. Nagen as well as the “mission statement” of Yeshivat Otziel may be found on that yeshiva’s website at http://www.otziel.org/about.asp?show=22005 and http://www.otziel.org/show.asp?id=22168.
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