

"It Is Not In Heaven"

SPHEX Club Presentation

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On daf 59b of the Tractate Baba Metzia of the Babylonian Talmud, the story is told of a debate between Rabbi Eliezar on one side and a number of other sages, including Rav Joshua, on the other. The details of the debate need not concern us tonight, since it is the structure of the argument that matters most. After extensive discussion with significant points and counterpoints, Rabbi Eliezar was at the end of his logical skills. The story then continues as follows:

On that day R. Eliezer brought forward every imaginable argument, but they did not accept them. Said he to them: 'If the *halachah* agrees with me, let this carob-tree prove it!' Thereupon the carob-tree was torn a hundred cubits out of its place — others affirm, four hundred cubits. 'No proof can be brought from a carob-tree,' they retorted. Again he said to them: 'If the *halachah* agrees with me, let the stream of water prove it!' Whereupon the stream of water flowed backwards — 'No proof can be brought from a stream of water,' they rejoined. Again he urged: 'If the *halachah* agrees with me, let the walls of the schoolhouse prove it,' whereupon the walls inclined to fall. But R. Joshua rebuked them, saying: 'When scholars are engaged in a halachic dispute, what have ye to interfere?' Hence they did not fall, in honour of R. Joshua, nor did they resume the upright, in honour of R. Eliezer; and they are still standing thus inclined. Again he said to them: 'If the *halachah* agrees with me, let it be proved from Heaven!' Whereupon a Heavenly Voice cried out: 'Why do ye dispute with R. Eliezer, seeing that in all matters the *halachah* agrees with him!' But R. Joshua arose and exclaimed: 'It is not in heaven.'¹ What did he mean by this? — Said R. Jeremiah: That the Torah had already been given at

Mount Sinai; we pay no attention to a Heavenly Voice, because Thou hast long since written in the Torah at Mount Sinai, “After the majority must one incline.”

R. Nathan met Elijah and asked him: What did the Holy One, Blessed be He, do in that hour? — He laughed [with joy], he replied, saying, 'My sons have defeated Me, My sons have defeated Me.'²

This story is of great significance for many, many reasons. First, it gives insight into the methods used to generate conclusions in an ancient legal tradition that remains alive and well to this day. Second, it comments on the nature of the relationship between a divine being and humanity, based on a clear recognition that one of the greatest gifts that humanity possesses is its intellectual ability. Third, it subtly shows how acceptance of a premise that is of a supposed divine source can be used to draw practical conclusions in a non-divine sphere. And fourth, it demonstrates a skill set that has shaped not only the content of one of the world’s great religions, but also the prototypical character of its adherents. With this one story, we can understand much about the Jewish approach to the world generally, and potentially, a great deal about the culturally transmitted habits, expectations, attitudes and behavior of those who have inherited this tradition.

Before we can understand any of these concepts, however, we should review the basic assumptions that make up the Jewish tradition itself. Any attempt to encapsulate Jewish philosophy into a short synopsis is very difficult, however, for as you can readily deduce by the aforementioned story, if you gather five Jews in a room together, you will have at least fifteen opinions. Nevertheless, some basic ideas do exist across the Jewish spectrum, although the source and binding nature of those ideas is of some dispute. Let us begin with the most traditional view.

¹ Deuteronomy 30:12

² All of the Talmudic translations in this paper are taken from the Soncino addition of the Talmud, translated by Rabbi Dr. Isidore Epstein. Available on CD from Davka Classics or in paper from Judaica Press, Brooklyn, NY

According to the traditional understanding, the Torah, which is composed of the first five books of what we normally refer to as “The Bible”, was dictated verbatim by God to Moses on Mount Sinai. According to this view, Moses did not descend with only ten commandments, but with the entire word of God as transmitted over a forty day period. Although taking down Genesis through Deuteronomy in dictation would seem to be a fantastic feat in and of itself, tradition also tells us that the written law (the Torah) comprises only half of the story. Jews understand that even a religious fundamentalist cannot possibly be a literalist. Every word in the Torah has both hidden and plain meanings, and every commandment must be interpreted to fit the conditions of those who would adhere to halachic dictates. Therefore, in addition to the written law, Jews also accept the validity of an accompanying communication known as the oral law. The oral law, which includes all of the details regarding how to apply the written law, was also transmitted to Moses on Sinai and it was verbally passed down from one generation to the next.

Of course, not all Jews agree on the literal truth of the tradition that I have just described. In fact, the three main branches of modern Judaism -- Orthodox, Reform and Conservative -- differ precisely on this point. And although there are additional “movements” within the Jewish tradition such as Reconstructionism, Jewish Humanism, Jewish Renewal, and Post Denominational Judaism, a brief description of the differences between the three major branches might be instructive.

To understand the modern Jewish world, we have to go back over a bit of history, although we don't need to go quite back to the beginning. Let's begin just after what I would call the proto-Judaic period that spans from the conquest of Canaan through the period of the Judges up until the United Kingdom under David. King David succeeded in unifying the Jewish people under centralized rule and began construction of the First Temple in Jerusalem that was completed by his son Solomon somewhere around 957 BCE. The first Temple stood until 586 BCE when it was destroyed by the Babylonians at the commencement of the Babylonian Captivity, an approximately 50-60 year span during which the majority of Jews, and the vast majority of educated and politically

connected Jews, were removed from their homeland and dispersed throughout the Babylonian empire. In response to this geographic displacement, Judaism was forced to fill the void of the lost Temple cult in order to survive, and a rich tradition of non-Temple-centric rituals and practices developed. This was the birth of Rabbinic Judaism. When the Persians, under the leadership of Cyrus the Great, defeated the Babylonians, Jews were allowed to return to Israel (538BCE). There was great debate about the status of the Temple and its sacrificial rites, but the Temple was rebuilt and we entered the "Second Temple Period" that would last until the destruction of the Second Temple by the Romans. The Second Temple Period was marked by great tension between the Rabbinic tradition that was developed as a method for maintaining Judaism during the Babylonian Captivity and which evolved into the sect known as the Pharisees, and the re-constituted Temple-based sect known as the Sadducees. The Sadducees accepted only those items that were presented in the Torah, and they rejected much of the oral tradition. For instance, they rejected the notion of an immortal soul, and did not believe in any sort of post-mortem existence. The Phariseic tradition had become somewhat more messianic, however, and they began to develop notions of salvation and redemption that included the existence of some sort of soul that is capable of surviving the death of the body. Nevertheless, with the destruction of the Second Temple by the Romans in 70CE, the Sadducean tradition effectively terminated except for a small offshoot that survives to the present and is known as the Karites.

After the destruction of the Second Temple and the ultimate defeat of any rebellion against the Romans, which can be dated to the failed Bar Kochba revolt of 132-136 CE, along with a clear split of the Christian sect from its mother religion also as a result of the Bar Kochba experience, Jews maintained a relatively homogenous set of beliefs and traditions. Up until the late 18th and early 19th Centuries, Jews were simply Jews. There were disputes and sectarian tensions at times – the most pronounced of which was that between the Hasidim and the Mitnagim – but all Jews were united in their acceptance of the primacy of both the written and oral traditions. Jews were also segregated from the general population by laws that were put into effect in most every European country. The French revolution changed that status temporarily beginning in 1791 when many Jews

were granted citizenship and allowed to integrate into the base community. Although those strides were reversed in most places after Napoleon's defeat, many Jews had gained an appetite for assimilation and wanted very much to adjust their own practices to more closely mimic those of their Christian neighbors. The Reform movement was born (in the early 1800s), and it was based on The Haskalah, also known as the Jewish Enlightenment movement (led by Moses Mendelssohn, 1729-1786). According to this world view, Jewish texts might admit to divine inspiration, but they are thoroughly human documents that do not carry prescriptive force. The Torah, for a Reform Jew, is an historical document that contains the values and myths of our people, but the laws contained in the written and oral law are not binding.

This new view is philosophically distinct from the traditional view, and thus after the advent of the Reform Movement, it became necessary for traditional Jews to identify themselves as Orthodox. Very soon after the formal organization of Reform Judaism, one wing of the movement became dissatisfied with the extent to which the early reformers rejected the core concepts of tradition. As a result, a third movement emerged as an offshoot of the Reform Movement, and that was the Conservative Movement.³ The Conservative Movement accepted the binding nature of Halacha, maintaining that it did come from a divine source, but it also recognized that the nature of Jewish tradition has always been evolving and that it has always accepted the role of active discussion and development. The resulting three main movements of Judaism can thus be best explained as follows: The Orthodox Jew recognizes the binding nature of Jewish law and accepts the traditional formulation of its dictates based on an assumption that halachic positions regarding oral law are cumulative and binding. The Reform Jew rejects the primacy of Jewish law and refers to halacha as an inherited source of non-binding wisdom. The Conservative Jew accepts the religiously binding nature of halacha, but also recognizes the need for dynamic interpretation and reinterpretation of that Divine corpus that allows for departure from halachic precedent based on contemporary halachic reasoning.

³ Rabbi Zacharias Frankel led a break from the Reform Movement in 1845.

But we have gone too far in describing the modern Jew's response to the written and oral traditions without first describing what that body of tradition looks like, which is actually the subject of tonight's paper. As noted, according to tradition, both the written law (the Bible) and the oral law were given to Moses on Sinai. The oral tradition remained oral for many centuries. With the destruction of the Second Temple, and the feared loss of a geographically centered religion where great academies of learning could flourish, the Rabbis decided to write down the oral tradition so it would not be lost. The result of that effort is what we refer to as The Talmud.

The Talmud is the record of the oral law as passed down from generation to generation, along with the commentaries and debates that took place about that law. The Talmud contains 63 tractates, or volumes, that are topically organized into Six Orders⁴ and add up to over 6,200 pages of careful discourse. Each section of Talmud is composed of multiple parts. The first part is known as the Mishnah, and it contains the actual statement of the law as recorded by Rav Yehuda HaNasi in approximately 200 CE. This part of the Talmud relates stories and arguments that date back for centuries before they were redacted, with many of the characters centering around the period of Romans prior to the destruction of the Second Temple in Jerusalem and collectively referred to as the Tanaim (Aramaic for 'Teachers'). The Mishnah, as the most basic statement of the law, usually uses the Torah as its source text, and explains how to interpret the Torah for application to the question at hand. The second part of the Talmud is the Gemara. This section was committed to paper around 500 CE⁵ and it includes the insights of the Amoraim (Aramaic for 'Interpreters'), which is a slightly later set of Rabbinic scholars. Still later commentaries are also included in the Talmud, so the record of arguments and counter-arguments is historically rich and conceptually broad. Prevailing opinions and dissenting opinions are both preserved in the Talmud and the structure of an argument is considered as valuable as the conclusions themselves. In fact, it is possible in Talmudic tradition to

⁴ Zeraim: Seeds, Mo'ed: Festival, Nashim: Women, Nezikim: Damages, Kodashim: Holy Things, Taharot: Purities

⁵ Our discussion tonight refers to the Babylonian Talmud. The Jerusalem Talmud, which is a shorter and more narrative rather than legalistic in the Gemara, records the discussions of Rabbinic authorities that remained in Israel after the Bar Kochba revolt. It was redacted circa 425CE. The Jerusalem Talmud is less

In the center, we have the actual statement of Jewish law. The first part is the Mishnah, and, as noted, this is a (relatively) straightforward presentation of the law. On the example page shown, the discussion immediately communicates the witnessing requirements for a bill of divorce, which differ depending on where the contract was written and how far it had to travel to be executed. Just below the Mishnah, and still in the center section, is the Gemara. As noted, the Gemara is the Amoraic commentary on the Tanaic Mishnah. The Gemara generally clarifies issues presented in the Mishnah, but it often uses the Mishnah as a segue into other related issues of law.

On the side of the page that is closest to the binding, we find a major commentary on the Mishnah and Gemara by a famous Rabbi called Rashi⁶. Note that Rashi is now commenting on the commentary on the Mishnah. On the opposite side of the page we find the Tosafot. This is a commentary on Rashi produced by a group of Rabbis, several of whom were Rashi's grandchildren and their cousins. Notice that with the Tosafot, we are reading a commentary on the commentary on the commentary on the Mishnah. At the bottom of the page or around its margins, other text boxes contain clarifying information, additional commentaries, and references to other sections of Talmud or other related texts. The links between the various section of a Talmud page are often based on specific highlighted words, so the ancient text performs much like a set of modern hyperlinks.

The point in acquainting you with the structure of a page, or 'daf', of Talmud, is that it should create an appreciation for the non-static nature of Jewish Law. In approaching the text we are met immediately, right in the Mishnah, then in the Gemara, and then in subsequent commentaries, with debates about what the Mishnah actually means and how it should be applied. We find debates about the debates, and debates about the debates about the debates. This is truly a dynamic document, and its dynamism is presented by its very structure.

⁶ Rashi is an acronym for Rabbi SHlomo Itzhaki lived in France from 2/22/1040-7/13/1105

When approaching a page of Talmud, the reader must immediately decide how deeply into the process of argument s/he wishes to engage. The reader can scan the Mishnah itself and move on, or become deeply immersed in one small aspect of the text and follow a particular train of thought to its conclusion. Often, we do both. We start with a simple reading of the Mishnah to get our bearings, and then go back to examine a nuance that might initially have seemed tangential, but is now essential to a point made later in the text.

It is important to note that although the structure of an argument is as important to the Jewish mind as is the result of the discussion, our study of Talmud must also give us practical guidance on how to live our lives. To illustrate this, I would like to demonstrate the Talmudic process with two example topics. The first will seem somewhat arcane to non-Jews, but it shows the degree to which the tradition forces decisive specificity. The second topic will be somewhat more immediately relevant to the lives of tonight's audience, and, amazingly, will depend upon some of what we see happening in the first discussion. First, Shabbat in the Arctic.

According to Halacha, Jews are commanded to celebrate the Sabbath each week. We are prohibited from doing work on Shabbat, and work is defined based on the description in the Torah of activities necessary for the construction of the Tabernacle in the desert during the 40-year-long exodus. As a result, traditionally observant Jews may not build fires, cut or tear things, write, cook or engage in any number of other activities that rely upon those things (like driving, turning on the lights, carrying objects over long distances or tearing toilet paper). These prohibitions apply throughout Shabbat, so it is extremely important for a Jew to know exactly when the Sabbath begins and when it ends. I was recently asked an interesting question on this point, and I will provide to you now the answer that I gave.

Question: When is it permissible to light the Shabbat candles and recite Havdalah (the service marking the end of Shabbat) in a place, and at a time of year, where the sun does not set? In other words, when does Shabbat begin and end during the Arctic summer?

second relevant passage is from Beresheet (Genesis) 1:5 and the relevant wording that mentions evening before morning is repeated five more times during the creation story.

1. In the beginning God created the heaven and the earth.
2. And the earth was without form, and void; and darkness was upon the face of the deep. And a wind from God moved upon the face of the waters.
3. And God said, Let there be light; and there was light.
4. And God saw the light, that it was good; and God divided the light from the darkness.
5. And God called the light Day, and the darkness he called Night. **And there was evening and there was morning, one day.**

As the Gemara in Berachot states:

GEMARA. On what does the Tanna base himself that he commences: FROM WHAT TIME? Furthermore, why does he deal first with the evening [Shema]? Let him begin with the morning [Shema]! The Tanna bases himself on the Scripture, where it is written [And thou shalt recite them] . . . when thou liest down and when thou risest up... And if you like, I can answer: He learns [the precedence of the evening] from the account of the creation of the world, where it is written, And there was evening and there was morning, one day.

From this piece of Talmud we learn that the calendar day, and thus Shabbat, begins in the evening. What we do not yet know is how to define 'evening', and that is where things become slightly more complex.

It was common in all cultures that pre-dated mechanical clocks to measure the daylight portion of a day by means of tracking the sun, and to divide the daylight portion of a day into a set number of hours. The standard, inherited from the Babylonians, was to divide

the day into twelve segments that we call hours.⁷ Since a sundial was used to measure the twelve daylight segments of a day, the length of each of those segments varied with the seasons. If the sun rises at 6:00am and sets at 6:00pm on our mechanical clocks, each of the twelve 'hours' of the day will be 60 minutes long. During the summer, however, when the days are longer, each one-twelfth of the period of daylight will be longer. During the winter, each one-twelfth of the period of daylight will be shorter. According to Jewish tradition, therefore, an hour is called a "sh'ah zemanit", or "seasonal hour", often referred to as a proportional hour. The Jewish daylight portion of a day is always divided into twelve proportional hours.

Sunset and sunrise are known reference points in the day, so morning and evening are defined in relation to them. Midnight is defined as the midway point between sunset and sunrise. This can be termed 'local midnight' and it might not fall at 12:00 at night. Noon is defined as the midway point between sunrise and sunset and can be termed 'local noon'. This, too, might not fall at 12:00 in the afternoon at any given location. Unfortunately, while we might know exactly when sunrise and sunset take place, we still do not have firm definitions of morning and evening. Dawn, when things begin to get lighter, starts before sunrise and dusk, when things aren't entirely dark, lasts beyond sunset. Extensive halachic discussions have taken place to figure out how long before sunrise the morning begins and how long after it, it ends. Likewise for the evening. At what point in the late afternoon does evening begin and for how long after sunset does it

⁷ The reason for the number twelve is interesting. In ancient Babylon, people counted on their fingers, so you might think that a day should have ten hours, a night should have ten hours, and a calendar day should therefore have twenty hours. Or you might think that a day should have five hours (one hand for the day) and the night should have five hours (one hand for the night), for a total of ten hours in a calendar day. Interestingly, the Babylonians counted with their fingers but they came up with a total of 24 hours. This is how they did it. The Babylonians didn't use their thumbs to count and they counted the segments between joints on each finger rather than the fingers themselves. There are three segments per finger on each of four fingers. One hand -- twelve segments -- for the day, and one hand -- another twelve segments -- for the night results in a twenty four hour long calendar day.

last before one can properly be said to be in the night? There are Jewish answers to these questions.

The prevailing Halachic opinion is that dawn begins prior to sunrise when it starts to get light. The decisive Jewish opinion is presented in tractate Pesachim, daf 93b. In that section of the Talmud there is a debate about what constitutes a long trip. We don't need to concern ourselves with why the Rabbis were debating this point, but one piece of gemara sheds light, so to speak, on the definition of the dawn. It defines the period of time between dawn and sunrise as being the time that it takes for a person to walk five mils [There is debate here, and the official distance is ultimately determined to be four mils]. A mil is a Roman mile and is equivalent to 2,000 cubits. The talmudic passage references Beresheet (Genesis) 19:15-23, the story of the destruction of Sodom. In verse 15 angels come to Lot at dawn and warn him to leave Sodom. In verse 23 we learn that Lot had made it to Zoar by sunrise. Thus, the time in between dawn and sunrise, according to the Torah, is the time it takes a man to walk from Sodom to Zoar, which is five mils. Pesachim daf 93b states:

The Master said: Five mils from daybreak until the first sparklings of the rising sun. Whence do we know it? Because It is written, And when the morning arose [i.e., at daybreak], then the angels hastened Lot, saying etc.; and it is written, The sun was risen upon the earth when Lot came unto Zoar, while R. Hanina said: I myself saw that place and it is five mils [from Sodom].

So how long does it take to walk five [four] mils? The consensus is 72 minutes (18 minutes per mil). 72 minutes before sunrise corresponds to the time when the sun is 16 degrees below the horizon. Some sources use proportional minutes to calculate dawn, however, and they indicate that Alot Hashachar, the rising of the morning, is 75 proportional minutes prior to sunrise. I prefer this latter calculation, because although it does introduce some questions (such as why people would walk faster or slower at different times of year), it corresponds to 1.25 proportional hours and is perfectly

analogous to the established opinion of the span of time between the onset of evening and sunset as I will discuss below.

Sticking with our discussion of the morning, however, even once we have been this careful in defining dawn as opposed to sunrise, it is still not clear when the morning begins. Does the morning begin at dawn or at sunrise? What is the earliest that one can engage in mitzvot that are time linked to the morning, such as reciting the morning Shema? To be sure that we do not recite the Shema too early, we wait until enough natural light exists such that it is possible to recognize a known acquaintance from a distance of four cubits (approximately six feet). Daf 9b in Berachot contains the following:

MISHNAH. FROM WHAT TIME MAY ONE RECITE THE SHEMA IN THE MORNING? FROM THE TIME THAT ONE CAN DISTINGUISH BETWEEN BLUE AND WHITE. R. ELIEZER SAYS: BETWEEN BLUE AND GREEN. AND HE HAS TIME TO FINISH UNTIL SUNRISE. R. JOSHUA SAYS: UNTIL THE THIRD HOUR OF THE DAY, FOR SUCH IS THE CUSTOM OF KINGS, TO RISE AT THE THIRD HOUR...

GEMARA. What is the meaning of BETWEEN BLUE AND WHITE? Shall I say: between a lump of white wool and a lump of blue wool? This one may also distinguish in the night! It means rather: between the blue in it and the white in it. It has been taught: R. Meir says: [The morning Shema is read] from the time that one can distinguish between a wolf and a dog; R. Akiba says: Between an ass and a wild ass. Others say: From the time that one can distinguish his friend at a distance of four cubits.

This section of Talmud answers the questions as to how early and late in the day one may recite the morning Shema and it presents variously strict and lenient opinions. On this basis, we learn that the Jewish morning begins when it becomes light enough to recognize a friend from a distance (this has been technically measured to be when the sun

is 11 degrees below the horizon and is also identified as 0.75 proportional hours before sunrise) until the third proportional hour of the day. We also now know that dawn (Alot Hashachar) begins 72 minutes or 1.25 proportional hours prior to sunrise.

We should now consider the length of the evening. According to the prevailing opinion, evening begins 1.25 proportional hours prior to sunset (Plag Haminchah). This position is attributed to Rabbi Judah in Berachot 27a where it states "When does the first half [of the second part of the afternoon] end and the second half begin? At the end of eleven hours less a quarter." There is no debate in halachic circles that Plag Haminchah commences 1.25 proportional hours prior to sunset, and this sets up a perfect analogy to the morning, where dawn begins 1.25 proportional hours before sunrise. Evening then extends until dusk concludes and it is once again dark. The standard measure for this time is when it is possible to see three stars in the night sky. This time is termed Tzeit Hakochavim. Tzeit Hakochavim is the evening analogue with the earliest Shema. It is the time when the day becomes subjectively dark. For the purposes of ending shabbat, we use an even stricter standard based on when three *small* stars can be seen in the sky. This corresponds to the sun dipping eight degrees below the horizon and is calculated to be 72 minutes after sunset.

So, let's review. The Jewish calendar day begins in the evening and it contains 24 hours. The daylight portion of the calendar day always contains twelve hours, so those hours will vary in length with the seasons. Morning begins when the sky begins to lighten, 72 minutes prior to sunrise, and extends until three proportional hours after sunrise. Midday then continues until 1.25 proportional hours prior to sunset when evening begins. Evening continues until it is dark enough to see three stars, and Shabbat continues until we can see three small stars.⁸

⁸ The Jewish day thus contains the following basic parts:

- 1) Alot Hashachar, Dawn: 72 minutes or 75 proportional minutes prior to sunrise
- 2) Earliest Shema: The point at which one can recognize a friend from four cubits away (.75 proportional hours before sunrise)
- 3) Netz Hachamah: Sunrise
- 4) Latest Shema: Three proportional hours after sunrise (footnote continued on next page)

We now have all the information we need to answer the specific question that was asked. We know that Shabbat cannot begin prior to Plag Haminchah and that it cannot end until we are clearly beyond the end of evening. In a place where the sun does not set, we should accept the point at which the sun begins to move higher into the sky as the beginning of the morning. That means that local midnight, Alot Hashachar, sunrise, sunset and Tzeit Hakochavim will all take place simultaneously- when the sun is at its lowest point in the sky. Since Shabbat cannot end until evening is clearly over, it cannot end until local midnight. Shabbat cannot begin earlier than 1.25 proportional hours prior to sunset. In a place where the sun never sets, the proportional hour, which is one twelfth of the time between sunrise and sunset, will be 120 minutes long. 1.25 proportional hours will, therefore, be 150 minutes long.

For example: If local midnight in the arctic is 2:00am, Shabbat cannot begin prior to 11:40pm on Friday night. It would then end at 2:01am on Sunday morning. Our question, therefore, has been answered.

The level of precision necessary to make the above delineated Talmudic argument might seem excessive to an uninitiated listener, but it is important to remember that the beginning and ending time of Shabbat is of great concern to an observant Jew. Also, as well demonstrated by this entire tradition of reasoning, it is obviously not sufficient to know what to do, but also why we should do it that way. We need to begin with a basic assumption, most often mined from Torah, and continue with a logical argument for a conclusion that can be demonstrated to be both consistent with the commandments and also demonstrably defensible against counter-argument. Very often arcane discussions end up being extremely valuable to practical decisions. Take another topic as an example; the declaration of death.

5) Chatzot: Local noon

6) Plag Haminchah: 1.25 proportional hours prior to sunset

7) Shkiah: Sunset

8) Tzeit Hakochavim: Evening ends, night begins; the point at which one can see three stars in the sky (to end Shabbat we wait until 72 minutes after sunset, when we can see three small stars in the sky).

In American hospitals, where we have the ability to maintain certain bodily functions long after we might consider the entire organism to have died, it often becomes necessary to define our concepts of death and to apply those definitions consistently to the pronouncement of death. “Brain Death”, or the ability to diagnose the state of being dead by neurological criteria, is an example of a practical question that can be answered on the basis of Talmudic reasoning.

Consider the following case that is taken from my own professional work as a clinical ethicist. Mr. B was a 16-year-old male patient with involved parents who presented in the ED with anoxic brain injury secondary to a severe asthma attack. Mr. B went without oxygen for approximately 15 minutes before an airway could be established. Initial EEG readings were inconclusive, but brain death was suspected although unconfirmed. Six hours post admission, Mr. B suffered a brain stem herniation secondary to increased intracranial pressure. A spec scan verified that the pressure had compressed all of the veins and arteries in the brain and that there was a complete lack of blood supply to the brain. At this point, death was determined with absolute certainty based on neurological standards. The attending physician wished to declare death and extubate the patient but Mr. B’s family indicated that respirator support should continue and that Mr. B should remain a full code. The attending contacted respiratory therapy with instructions to extubate. The family continued to oppose extubation adamantly, but nursing staff felt uncomfortable in providing invasive care that would do no good for the patient. How should cases of this type be handled?

First of all, let me be clear that in my professional life I would never base my recommendations on a Talmudic argument or on Halacha. The patient and family in this case is very unlikely to share my religion, and it would be inappropriate for me to make recommendations based on my own tradition. Having said that, the structure of Talmudic reasoning clearly does shape my skill set, even though I would not apply my own personal assumptions to the professional judgments that I am consulted to make. For our

purposes, tonight, however, let us wonder about how the Talmud would answer the question of death.

Question: Is Mr. B halachically dead and may death be determined by neurological criteria when brain stem function ceases (i.e. by means of a whole-brain standard of death)?

Opinion: The loss of brain functioning and spontaneous respiration does constitute the death of the organism and Mr. B should be considered dead, regardless of the preferences of his family members.

Interestingly, the best place to find a source of information on the determination of death is to consider the laws of Shabbat. Recall that in our earlier example of Talmudic reasoning, we considered when Shabbat begins and ends. This is of importance because Jews need to know when they can and cannot do specific actions that amount to work. Additionally, the reader needs to know about one other important Jewish law known as “Pekuach Nefesh” or “The Preservation of the Soul”. According to the precept of Pekuach Nefesh, a Jew is allowed to break almost any other Jewish law if doing so is necessary to save a human life. The only laws that may not be broken to save a life are the prohibitions against idolatry, murder (killing of innocent victims but not guilty aggressors) and sexual immorality (rape and adultery). A person cannot commit these three types of transgressions even if it would be the only way to save his/her life. However, all other laws, including the laws prohibiting work on Shabbat, may be violated if necessary to save a life.

Given the concept of Pekuach Nefesh, the Rabbis considered a possible case where a building collapses on Shabbat. If we are concerned that there could be surviving victims in the rubble, it would clearly be permissible to violate the Sabbath laws in order to dig out the survivors. If we know that the victims are already dead, however, there would be no justification for breaking the laws of Shabbat and we would wait until Shabbat is over in order to remove the debris. Since the need to save a human life is sufficient justification for violating the Sabbath, we need to know how far to go if we are unsure

whether or not a victim is alive or dead. This question is asked and answered in Tractate Yoma, daf 83b and 85a which states the following:

Babylonian Talmud, Yoma 83b, 85a

IF DEBRIS FALL ON SOMEONE, AND IT IS DOUBTFUL WHETHER OR NOT HE IS THERE, OR WHETHER HE IS ALIVE OR DEAD... ONE SHOULD OPEN [EVEN ON SABBATH] THE HEAP OF DEBRIS FOR HIS SAKE. IF ONE FINDS HIM ALIVE ONE SHOULD REMOVE THE DEBRIS, AND IF HE BE DEAD ONE SHOULD LEAVE HIM THERE [UNTIL THE SABBATH DAY IS OVER].

Our Rabbis taught: How far does one search? Until [one reaches] his nose. Some say: Up to his heart...

R. Papa said: The dispute arises only as to from below upwards, but if from above downwards, one had searched up to the nose, one need not search any further, as it is said: In whose nostrils was the breath of life (Genesis 7:22).

According to this piece of Talmud, if a person is suspected to be trapped under rubble, we may start digging him out to determine whether or not he is alive or dead, even on Shabbat. However, we must stop digging once we confirm his death. If we dig from the feet up, we need to keep digging until we get to his nose. If we start from the head down, we can stop digging once we get to the nose and discover that there is a lack of respiration. From where do the Rabbis derive their position? They base their view on Beresheet (Genesis):

Genesis 2:7

And the Lord God formed man of the dust of the ground, and breathed into his nostrils the breath of life; and man became a living soul.

וַיִּצְרֶה יְהוָה אֱלֹהִים אֶת-הָאָדָם, עָפָר מִן-הָאֲדָמָה, וַיִּפַּח בְּאַפָּיו, נִשְׁמַת חַיִּים; וַיְהִי הָאָדָם, לְנֶפֶשׁ חַיָּה.

According to this verse, life was generated by breath, so the loss of an ability to breathe constitutes the loss of life. According to Jewish tradition, therefore, the lack of

spontaneous respiration, even more than the lack of cardiac function, is constitutive of death. But it is possible that someone who is alive in all other respects cannot breathe without assistance, so breathing by itself is a difficult standard of death. The controversy over brain death contemplates the complete loss of brainstem function, which includes spontaneous respiration along with other neurological activity, although certain autonomic functions such as cardiac activity might continue.

How might the Talmudic position relate to the concept of determining death by neurological criteria? All people who are “brain dead” will lack spontaneous respiration, so is it reasonable to accept a whole-brain death standard consistent with Halacha? We can look to another section of Talmud to make this determination. Rather than considering sources on Shabbat, the next section of Mishnah comes from the laws regarding ritual purity. According to Jewish Law, coming into contact with a dead body generates impurity that must be removed by ritual means such as a Mikvah (ritual bath). In the days of the Temple, the Priests needed to be pure before they could perform a sacrifice, so it was very important to understand how ritual impurity is transmitted and removed. Even though we no longer have a Temple, and the concepts of ritual impurity no longer function in our daily lives⁹, the sources on this matter are very instructive. The immediate question being raised in the Mishnah is whether or not a person receives impurity by coming into contact with a dead human or animal body. Mishnah Ohalot 1:6 states:

MISHNAH 6. A PERSON CAN NOT DEFILE [AS A CORPSE] UNTIL HIS SOUL IS GONE FORTH, SO THAT EVEN IF HE HAS HIS ARTERIES SEVERED OR EVEN IF HE IS IN HIS LAST AGONIES HE [STILL] MAKES LEVIRATE MARRIAGE OBLIGATORY AND LIBERATES FROM LEVIRATE MARRIAGE. QUALIFIES [HIS MOTHER] FOR EATING TERUMAH AND DISQUALIFIES [HIS MOTHER] FROM EATING TERUMAH. SIMILARLY IN THE CASE

⁹ One area where impurity still matters to observant Jews is the set of laws regarding Niddah, or female impurity associated with the menstrual cycle. It is not permitted to have contact with women during their menstrual cycles as this is an indirect contact with death. Women immerse themselves at the end of their menstrual cycles in order to remove impurity.

OF CATTLE OR WILD ANIMALS, THEY CANNOT DEFILE UNTIL THEIR SOUL IS GONE FORTH. IF THEIR HEADS HAVE BEEN CUT OFF, EVEN THOUGH THEY ARE MOVING CONVULSIVELY, THEY ARE UNCLEAR; [MOVING. THAT IS TO SAY.] LIKE A LIZARD'S TAIL, WHICH MOVES CONVULSIVELY.

This Mishnah clearly states that a person who is actively dying, but still living, should be considered alive for all legal purposes. However, an animal that has been decapitated can be considered dead, and thus transmits impurity, even if its body continues to move convulsively “like a lizard’s tail”. This Mishnah has been used to demonstrate that without a head, even if the body continues to move, it is reasonable to determine death. Many Rabbis have argued that the loss of the brain is equivalent to the loss of the head and that it can be considered decisive evidence of death, even if involuntary movement continues. On this opinion, a heartbeat is not sufficient to constitute living, and may be considered analogous to the twitching of a lizard's tail. And thus, my answer to the case of Mr. B: Death may, halachically, be determined by neurological criteria.

This last topic shows clearly how source texts on matters that seem remote, such as work prohibitions on Shabbat and the transmission of ritual impurity, actually have impact on issues that are immediate. The Torah does not tell us directly how to define death in a modern hospital that is replete with ventilators and feeding tubes, but human reason based on those sources can generate a solution.

As we have seen, Halacha has implications that are both religious and secular, and one might wonder what the balance between these two uses might be. There are many laws in the Talmud that consider rules governing prayer and holidays, but many others that consider business ethics, employment law, personal damages and criminal punishment. The Talmud requires that we pray on schedule and that we pay our workers on time. It requires that we build fences around our observance by avoiding even the appearance of breaching ritual requirements, and it demands that we provide a safety railing for construction workers fixing a roof. It instructs us on how we are judged by God, and it

defines the process by which witnesses in a trial must be properly cross-examined. Perhaps the best demonstration of the scope of Talmudic endeavor is to compare Berachot, the tractate dealing with blessings, and Gittin, the tractate dealing with divorce. Notice that Berachot, which contains both English and Hebrew in this volume, is dwarfed in size by Gittin, which contains only the Hebrew. This should not come as a surprise. The Talmud is a code of Jewish law, and as such, it governs how we live and not just what we think. In fact, it tells more about how to think than what to believe. The Talmud is a practical source of teaching that is designed to help us live better, so the project of practical living takes center stage.

The comparison between the relative sizes of Berachot and Gittin teaches an important lesson. If we live well, practically, the spiritual will take care of itself. In living well, all arguments are valuable, all positions are important, and the discussion never ends. Answers to our most important questions are settled by the conversations of people, drawing on a variety of sources. According to Jewish tradition, God does not just tell us the answer to our problems. We can't just pray for a voice from heaven to tell us what to do. We can, however, reason to a conclusion. The answers come from our thought, and when we are successful in finding appropriate answers, according to Elijah, God does not lament His lack of direct involvement. He revels in the power of His creation. And thus, to the Jewish mind, the answers are never found in Heaven, but always on Earth.

"It Is Not In Heaven"

SPHEX Club Presentation Handouts

Michael A. Gillette, Ph.D. January 16, 2014

Babylonian Talmud, Baba Metzia 59b

On that day R. Eliezer brought forward every imaginable argument, but they did not accept them. Said he to them: 'If the *halachah* agrees with me, let this carob-tree prove it!' Thereupon the carob-tree was torn a hundred cubits out of its place — others affirm, four hundred cubits. 'No proof can be brought from a carob-tree,' they retorted. Again he said to them: 'If the *halachah* agrees with me, let the stream of water prove it!' Whereupon the stream of water flowed backwards — 'No proof can be brought from a stream of water,' they rejoined. Again he urged: 'If the *halachah* agrees with me, let the walls of the schoolhouse prove it,' whereupon the walls inclined to fall. But R. Joshua rebuked them, saying: 'When scholars are engaged in a halachic dispute, what have ye to interfere?' Hence they did not fall, in honour of R. Joshua, nor did they resume the upright, in honour of R. Eliezer; and they are still standing thus inclined. Again he said to them: 'If the *halachah* agrees with me, let it be proved from Heaven!' Whereupon a Heavenly Voice cried out: 'Why do ye dispute with R. Eliezer, seeing that in all matters the *halachah* agrees with him!' But R. Joshua arose and exclaimed: 'It is not in heaven.' (Deuteronomy 30:12) What did he mean by this? — Said R. Jeremiah: That the Torah had already been given at Mount Sinai; we pay no attention to a Heavenly Voice, because Thou hast long since written in the Torah at Mount Sinai, "After the majority must one incline."

R. Nathan met Elijah and asked him: What did the Holy One, Blessed be He, do in that hour? — He laughed [with joy], he replied, saying, 'My sons have defeated Me, My sons have defeated Me.'

Devarim (Deuteronomy) 6:7

"And you shall teach them diligently to your children, and shall speak of them when you sit in your house, and when you walk by the way, *and when you lie down, and when you rise up*".

Beresheet (Genesis) 1:5

1. In the beginning God created the heaven and the earth.
2. And the earth was without form, and void; and darkness was upon the face of the deep. And a wind from God moved upon the face of the waters.
3. And God said, Let there be light; and there was light.
4. And God saw the light, that it was good; and God divided the light from the darkness.
5. And God called the light Day, and the darkness he called Night. *And there was evening and there was morning, one day.*

Babylonian Talmud, Berachot 2a

GEMARA. On what does the Tanna base himself that he commences: FROM WHAT TIME? Furthermore, why does he deal first with the evening [Shema]? Let him begin with the morning [Shema]! The Tanna bases himself on the Scripture, where it is written [And thou shalt recite them] . . . when thou liest down and when thou risest up... And if you like, I can answer: He learns [the precedence of the evening] from the account of the creation of the world, where it is written, And there was evening and there was morning, one day.

Babylonian Talmud, Pesachim 93b

The Master said: Five miles from daybreak until the first sparklings of the rising sun. Whence do we know it? Because It is written, And when the morning arose [i.e., at daybreak], then the angels hastened Lot, saying etc.; and it is written, The sun was risen upon the earth when Lot came unto Zoar, while R. Hanina said: I myself saw that place and it is five miles [from Sodom].

Babylonian Talmud, Berachot 9b

MISHNAH. FROM WHAT TIME MAY ONE RECITE THE SHEMA IN THE MORNING? FROM THE TIME THAT ONE CAN DISTINGUISH BETWEEN BLUE AND WHITE. R. ELIEZER SAYS: BETWEEN BLUE AND GREEN. AND HE HAS TIME TO FINISH UNTIL SUNRISE. R. JOSHUA SAYS: UNTIL THE THIRD HOUR OF THE DAY, FOR SUCH IS THE CUSTOM OF KINGS, TO RISE AT THE THIRD HOUR...

GEMARA. What is the meaning of BETWEEN BLUE AND WHITE? Shall I say: between a lump of white wool and a lump of blue wool? This one may also distinguish in the night! It means rather: between the blue in it and the white in it. It has been taught: R. Meir says: [The morning Shema is read] from the time that one can distinguish between a wolf and a dog; R. Akiba says: Between an ass and a wild ass. Others say: From the time that one can distinguish his friend at a distance of four cubits.

The Jewish day:

- 1) Alot Hashachar, Dawn: 72 minutes or 75 proportional minutes prior to sunrise
- 2) Earliest Shema: The point at which one can recognize a friend from four cubits away (.75 proportional hours before sunrise)
- 3) Netz Hachamah: Sunrise
- 4) Latest Shema: Three proportional hours after sunrise
- 5) Chatzot: Local noon
- 6) Plag Haminchah: 1.25 proportional hours prior to sunset
- 7) Shkiah: Sunset
- 8) Tzeit Hakochavim: Evening ends, night begins; the point at which one can see three stars in the sky (to end Shabbat we wait until 72 minutes after sunset, when we can see three small stars in the sky).

Babylonian Talmud, Yoma 83b, 85a

IF DEBRIS FALL ON SOMEONE, AND IT IS DOUBTFUL WHETHER OR NOT HE IS THERE, OR WHETHER HE IS ALIVE OR DEAD... ONE SHOULD OPEN [EVEN ON SABBATH] THE HEAP OF DEBRIS FOR HIS SAKE. IF ONE FINDS HIM ALIVE ONE SHOULD REMOVE THE DEBRIS, AND IF HE BE DEAD ONE SHOULD LEAVE HIM THERE [UNTIL THE SABBATH DAY IS OVER].

Our Rabbis taught: How far does one search? Until [one reaches] his nose. Some say: Up to his heart...

R. Papa said: The dispute arises only as to from below upwards, but if from above downwards, one had searched up to the nose, one need not search any further, as it is said: In whose nostrils was the breath of life (Genesis 7:22).

Beresheet (Genesis) 2:7

וַיִּצְרֶה יְהוָה אֱלֹהִים אֶת-הָאָדָם, עָפָר מִן-הָאֲדָמָה, וַיִּפַּח בְּאַפָּיו, נִשְׁמַת חַיִּים; וַיְהִי הָאָדָם, לְנֶפֶשׁ חַיָּה.

And the Lord God formed man of the dust of the ground, and breathed into his nostrils the breath of life; and man became a living soul.

Mishnah Ohalot 1:6:

MISHNAH 6. A PERSON CAN NOT DEFILE [AS A CORPSE] UNTIL HIS SOUL IS GONE FORTH, SO THAT EVEN IF HE HAS HIS ARTERIES SEVERED OR EVEN IF HE IS IN HIS LAST AGONIES HE [STILL] MAKES LEVIRATE MARRIAGE OBLIGATORY AND LIBERATES FROM LEVIRATE MARRIAGE. QUALIFIES [HIS MOTHER] FOR EATING TERUMAH AND DISQUALIFIES [HIS MOTHER] FROM EATING TERUMAH. SIMILARLY IN THE CASE OF CATTLE OR WILD ANIMALS, THEY CANNOT DEFILE UNTIL THEIR SOUL IS GONE FORTH. IF THEIR HEADS HAVE BEEN CUT OFF, EVEN THOUGH THEY ARE MOVING CONVULSIVELY, THEY ARE UNCLEAN; [MOVING. THAT IS TO SAY.] LIKE A LIZARD'S TAIL, WHICH MOVES CONVULSIVELY.

The Babylonian Talmud

The Six Orders of the Mishnah (ששה סדרי משנה)

Zeraim (Seeds) (זרעים)	Moed (Festival) (מועד)	Nashim (Women) (נשים)	Nezikin (Damages) (נזיקין)	Kodashim (Holies) (קדשים)	Tohorot (Purities) (טהרות)
Berakhot	Shabbat	Yevamot	Bava Kamma	Zevahim	Keilim
Pe'ah	Eruvin	Ketubot	Bava Metzia	Menahot	Oholot
Demai	Pesahim	Nedarim	Bava Batra	Hullin	Nega'im
Kil'ayim	Shekalim	Nazir	Sanhedrin	Bekhorot	Parah
Shevi'it	Yoma	Sotah	Makkot	Arakhin	Tohorot
Terumot	Sukkah	Gittin	Shevu'ot	Temurah	Mikva'ot
Ma'aserot	Beitza	Kiddushin	Eduyot	Keritot	Niddah
Ma'aser Sheni	Rosh Hashanah		Avodah Zarah	Me'ilah	Makhshirin
Hallah	Ta'anit		Avot	Tamid	Zavim
Orlah	Megillah		Horayot	Middot	Tevul Yom
Bikkurim	Mo'ed Katan			Kinnim	Yadayim
	Hagigah				Uktzim

Glossary of Mentioned Terms

- Alot Hashachar:** Dawn (the onset of morning)
- Amoraim:** A group of Rabbinic scholars who commented on the Mishnah and whose work comprises the Gemara.
- Chatzot:** Local noon
- Daf:** "Page". Each daf of talmud has an 'A' side and a 'B' side.
- Gemara:** Commentary on the Mishnah comprised of the work of the Amoraim.
- Halacha:** Jewish Law
- Hasidim:** An 18th century Jewish sect that followed the Baal Shem Tov and stressed the importance of an emotional engagement with Judaism.
- Haskalah:** The Jewish Enlightenment Movement that was led by Moses Mendelssohn and formed the precursor of Reform Judaism.
- Havdalah:** The service that marks the end of the Jewish Shabbat and the beginning of the regular week.
- Karites:** A small Jewish sect that claims to trace its roots to the Sadducees. The Karites reject much of the oral tradition.
- Mikvah:** A Jewish ritual bath that removes ritual impurity. The Mikvah is the source of the Christian custom of baptism.
- Mishnah:** The initial statement of law as presented by the Tanaim in the Talmud. The Mishnah was redacted in 200CE by Rav Yehuda HaNasi.
- Mitnagim:** An orthodox Jewish sect that stressed the importance of formal study and reacted against the Hasidim.
- Mitzvah:** A commandment. There are 613 mitzvot in the Torah (not 10).
- Netz Hachamah:** Sunrise.
- Pekuach Nefesh:** The Jewish law that states that all other Jewish laws except idolatry, murder of innocents and sexual immorality (rape and adultery) may be broken in order to save a human life.
- Pharisees:** An ancient Jewish precursor to Rabbinic Judaism that stressed the value of the oral tradition and came into conflict with the Sadducees.
- Plag Haminchah:** The onset of evening.
- Saducees:** An ancient Jewish sect that was centered on sacrificial worship at the Temple in Jerusalem.
- Shabbat:** The Jewish sabbath that begins on Friday evening and ends on Saturday evening.
- Shema:** An important prayer that Jews are commanded to include in their thrice daily required prayer.
- Shkiah:** Sunset.
- Talmud:** The redacted legal work that contains the Mishnah, Gemara and associated commentaries. The Talmud was redacted in 500CE but many of its passages record conversations that took place up to a millennium earlier.
- TaNach:** The Hebrew Bible that is comprised of the Torah (first five books of Moses), the Nevi'im (prophets) and the Ketuvim (writings). The Hebrew Bible contains works from Genesis through Chronicles.
- Tanaim:** A group of Rabbinic scholars whose discussions comprise the Mishnah.
- Torah:** The first five Books of the Hebrew Bible.
- Tzeit Hakoachavim:** The onset of night.

