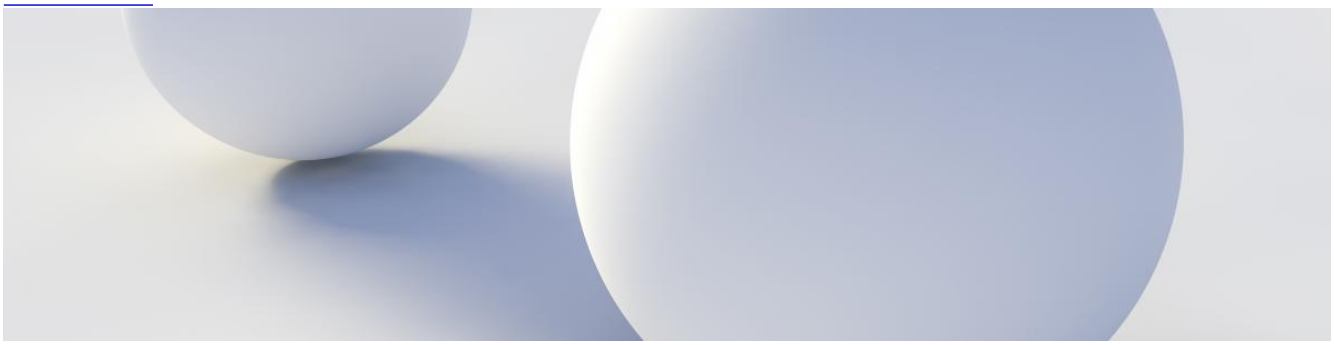
Halakhic Response to Meta-Halakhic Values

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What is the relationship between the halakhic and the ethical spheres? This question has been addressed widely by foremost Jewish thinkers and scholars, though with widely varying answers—from a total disinterest of halakha in the ethical,[1] to the ethical consistently overriding all other halakhic factors.[2] The goal of this paper is not to provide a comprehensive view of these opinions, but to argue for a halakhic outlook that includes within it a sensitivity for ethics rooted in traditional Jewish sources as larger meta-halakhic principles. Moral values derived from biblical sources lead to halakhic reality in nearly all spheres of life—economic, social, and marital. Meta-halakhic values can also generate new obligations, creating the category of *Lifnim Mishurat haDin*, beyond the letter of the law. In addition to examining cases in each sphere, this paper will look at two differing halakhic models that account for values-driven halakha. The contention of this paper is that throughout Jewish history, halakhic discourse has been unmistakably and remarkably shaped by meta-halakhic principles.

Among the most well-known debates between the schools of the great sages Hillel and Shammai is their disagreement on how to "dance before," or greet, a bride.[3] This argument demonstrates the inevitable clash between values when applied to real-world situations. The Gemara, on *Ketubot* 17a, asks what one should say about a bride on her wedding day while in her presence. Bet Shammai, in line with the value of *emet*, truth, states: "as she is," while Bet Hillel, in line with the value of *hessed*, loving-kindness, maintains that one should call her "fair and attractive," regardless of her appearance. As Bet Shammai immediately points out, Bet Hillel's position will inevitably lead to compromising the truth in some cases, and therefore violates the verse "keep away from a false matter."[4] How could Bet Hillel hold a position that is in direct contradiction with a command from the Torah? The Gemara responds by stating the principle that "a person's disposition should always be empathetic with humankind." As with nearly every other dispute between Bet Shammai and Bet Hillel, here, too, we rule with Bet Hillel, that even in the face of an explicit verse, the argument of basic human empathy remains compelling. However, while this passage, in its most straightforward reading, seems to imply that *hessed* simply overrides the Torah prohibition on falsehood, Ritva interprets it differently. In fact, Ritva maintains that this case contains no clash between *hessed* and a Torah command at all. Instead, he asserts that when dealing with a case related to the "ways of peace," the

prohibition on engaging in falsehood is rendered entirely inapplicable.[5] This assumes that there can be no conflict between law and morality, or that, at least, it does not exist in this specific case; a law simply cannot be applicable if it will lead to results that are at odds with the ways of peace. With either reading of this *sugya*, we see the unmistakable influence of the values of empathy and peace within practical decisions.

Central to the halakhic discourse around larger Torah principles is the verse, Proverbs 3:17: "all her paths are pleasantness, and all her ways are peace," from which stems the talmudic concept of *darkhei shalom*, ways of peace. As Rabbi Marc Angel states in reference to this verse:

> The verse is also prescriptive: It reminds us that religious life must take into consideration the qualities of pleasantness and peace....They are not peripheral adornments to the Torah way of life, but are essential and central ingredients. Without these qualities, Orthodoxy is false to its mission and misrepresents the ideal Torah way of life.[6]

Similarly, Rav Abraham Isaac Kook writes,

> Morality in its natural state, with all its profound splendor and might, must be fixed in the soul, so that it may serve as a substratum for the great effects emanating from the strength of Torah…. Every element of Torah must be preceded by *Derekh Eretz* [= natural ethical behavior].[7]

Pleasantness and peace—which encompass morality, decency, and human rights—are not detached from Jewish law. As is stated in Mishna *Avot* (3:23) "There is no Torah without *derekh eretz."* Without the moral principles of the Torah guiding it, the halakhic system strays from its intended path. This is why a prescriptive reading of Proverbs 3:17 was employed by rabbinic tradition in shaping halakha to meet the standards of "pleasantness and peace." In *Masekhet Gittin*, the Mishna lists a number of rabbinic institutions in the name of *darkhei shalom*, from establishing the order of *aliyot* during public Torah reading, to establishing property rights for minors and the disabled, to ensuring that non-Jews can partake in charity.[8] None of these seem to have any explicit roots in the biblical text, yet the rabbis realized the importance of these enactments on moral and social grounds.

This in and of itself is remarkable, demonstrating the devotion of the rabbis to supra-legal values, but the Gemara takes this concept a step further.[9] Commenting on the aforementioned Mishna in *Gittin,* Abaye expresses incredulity at the characterization of these laws as rabbinic in nature, questioning why they are not of biblical status. But they have no source in the Torah! How could Abaye possibly think the laws are *de'Oraita*, having the status of Torah (as opposed to rabbinic) law? The answer is that, according to Abaye, "Aren't the halakhot of the entire Torah also given on account of the ways of peace, as it is written: "Her ways are ways of pleasantness, and all her paths are peace" (Proverbs 3:17). This statement assumes that anything done in line with pleasantness and peace is by definition included in Torah law. The statement, in terms of practical application, is limited somewhat by the Gemara, but the moral force of the claim that the Torah itself is given on account of the ways of peace remains untouched. In this case, there, by definition, cannot be a way of Torah that is not a way of peace. For how could even one aspect of the Torah go against its *raison d'être*?

Rambam, in codifying the halakhic obligations of Jews to non-Jews includes Abaye's reasoning, asserting that

> Our Sages have commanded us to visit their [i.e., non-Jews'] sick and bury their dead along with Jewish dead, and sustain their poor along with the poor of Israel is for the "sake of peace", since it says, "God is good to all, and His mercies extend upon all his works" (Psalms 145:9) and it says, "her ways are ways of pleasantness, and all her paths are peace" (Proverbs 3:17). [10]

By including these verses in his legal code, *Mishneh Torah*, Rambam establishes the role of these meta-halakhic factors as the basis for action. From talmudic to modern times, we witness the influence of these factors in rendering practical halakha, including in areas of economic concern. One of the most well-known examples of a rabbinic institution that seems to prioritize financial needs is Hillel's *Prozbol*. In the Torah, we find the explicit commandment for the cancellation of debts in the *Shemitah* year:

> At the end of every seven years, you shall make a release. And this is the manner of the release: Every creditor shall release that which he has lent unto his neighbor; he shall not exact it of his neighbor and his brother; because Hashem's release has been proclaimed. (*Devarim* 15:1–2)

Yet, in the second temple period, Hillel the Elder, the leader of the Jewish people, realized that this commandment was leading to unintended negative consequences, as lenders would not give loans when the *Shemitah* year was approaching. The reality in which loans were not available to those in need of them was, to Hillel, untenable. As a result, Hillel instituted a *Prozbol*, which transferred the ownership of debts from an individual to a *Bet Din* (religious court), thereby allowing debts to remain despite the *Shemitah* year.[11] Facing negative effects of the direct application of a Torah command, Hillel chose to create a loophole in order to preserve the moral integrity of the system.

Similarly, *the Heter Iska* has been utilized to avoid the prohibition of lending money to another Jew with interest, in the name of promoting overall social economic welfare. A *Heter Iska* restructures a loan to qualify it as an investment, thereby rendering a loan with interest halakhically valid, albeit on a technicality. One of the earliest decisors to implement this was the Terumat Hadeshen, a fifteenth-century Rishon, who asserts that "one is permitted to create a *Heter Iska* even when the goal of both parties is only to find a 'kosher' way of creating a transaction that is very similar to an interest-bearing loan."[12] This seems to fly in the face of Torah law! But the author of *Me'or Einayim* explains that although "this is something surprising that appears to evade the law, [...] it should not be forbidden when needed in a particular situation to provide sustenance to fellow Jews."[13] Both the *Prozbol* and the *Heter Iska* were instituted in the name of fostering a society that includes loans for those in need, without which many would have been adversely affected. However, this monetary concern is not only limited to Jews. In a responsa, Rav Ben Zion Uziel, the first Sephardic Chief Rabbi of the State of Israel, addresses the financial obligation of a Jewish man who fathered a non-Jewish child. After lengthy halakhic consideration that seems to exonerate the man of any financial responsibility, Rav Uziel nonetheless obligates the man in providing for his child, stating that "this is the way of Torah, whose ways are ways of pleasantness.…"[14] Despite technical reasoning, Rav Uziel relies on the commitment of the Torah to the value of pleasantness and peace to enforce his ruling.

Within the social sphere, the emphasis on refraining from humiliation is used forcefully in demarcating the bounds of Torah law and in prompting rabbinic enactments to maintain it:

> Rabbi Yo?anan says in the name of Rabbi Shimon ben Yo?ai: It is more amenable for a person to throw himself into a fiery furnace if faced with the choice of publicly embarrassing another or remaining silent even if it leads to being burned, and not humiliate another in public. From where do we derive this? From Tamar, as she was prepared to be burned if Judah did not confess, rather than humiliate him in public.[15]

This is not a halakhic statement, but a midrashic way of bearing out a Torah value. It is not, however, kept separate from the legalistic discussions of Judaism; rather, it is a principle used to reach implemented law. For example, when discussing the parameters of the commandment, "You shall surely rebuke your neighbor, and not bear sin because of him" (Lev. 19:17), the law only applies up to the point of causing embarrassment.[16]Another case that elicited concern of humiliation was the case of a widow, who, due to having a child from her first husband, had been required to marry outside of the family of her former husband, after which her child died. Normally a childless widow either must marry a relative of her late husband, or undergo a ceremony, known as *halitza*, with that relative to terminate her obligation toward him. But in this case, when she was already married to another man, what should the rule on *halitza* be? The rabbis ruled leniently in this case, allowing her to remain married to her new husband without undergoing that ceremony.[17] Rabbi Eliezer Berkovits writes,

> From the point of view of talmudic reasoning, this was not at all obvious. A rule of talmudic deduction is employed to argue that really the woman ought to perform *halitza*. But all logical reasoning is pushed aside by the statement that such could not be a law of the Tora, for it is said of the Tora: "Her ways are ways of pleasantness." In other words, it is inconceivable that the Tora would in this case require *halitza*. The woman is already married. To subject her to such a ceremony would be humiliating for her vis-a-vis her present husband.[18]

The rabbis also instituted a number of rules surrounding burial and mourning to ensure honor and prevent embarrassment specifically for those on the lower economic rungs of society. In *Moed Katan*, the Gemara relates that while in mourning, the rich were brought baskets of gold and silver, while the poor were brought baskets made of twigs. As a result, the poor felt ashamed. Similarly, the corpses of the rich were carried on couches while the poor were carried in simple wood boxes. This, too, shamed the poor. The clothes that a corpse was expected to be buried in were so expensive that sometimes those without the means to buy such clothes would run away and abandon the body. In all of these cases, the rabbis commanded that the standards change to accommodate those who were humiliated by the previous customs.[19] Baskets of gold and silver, ornate couches for carrying the dead, fine clothes for those being buried, and more were all prohibited, not because of a technical command or Torah obligation, but because of respect of the rabbis for the emotional needs of the lowest strata of society.

One of the most challenging halakhic issues of modern times, that of the *Aguna*, arises in the marital sphere. *Aguna*, literally a chained woman, is a status that occurs when the husband of a married

woman disappears or is recalcitrant to give his wife a *get*, or Jewish bill of divorce. In either case, the *Aguna* is stuck with her husband and unable to remarry. The tragic nature of this situation was not lost on the rabbis and led them to do whatever possible to evade an *Aguna* situation. Discussed on *Yebamot* 88a, the Gemara asserts that unlike normal cases, a single witness can be relied on, responding to objections that, "due to the case of a deserted wife (*Aguna)*, the sages were lenient with her." The Rambam codifies this very line in his *Mishneh Torah*.[20] The Tosafot explains this as "not the uprooting of a matter in the Torah, for the matter appears inherently credible [and hence a single witness is acceptable]…."[21] But the Maharsha explicitly rejects this reading of the Gemara as "far-fetched." Instead, he argues that without rabbinic intervention in the normal system,

> she may thereby become an *Aguna*, which is not a peaceful state…. And it says "there is great peace to the lovers of your Torah," for this is not an uprooting; rather, it is an application of the attribute of peace to prevent having the woman become an *Aguna*, as is written, "Its ways are ways of pleasantness." And the passage concludes with the verse (Ps. 29:11), "The Lord will give strength to His people," for it is not a matter of uprooting something in the Torah, inasmuch as the Holy One Blessed Be He gave strength and power to his people, who are scholars, to rule leniently in this matter, for "the Lord will bless His people with peace," as is written, "all its paths are peace"— and there will be no peace if she becomes an *Aguna*."[22]

Tosafot's reading of this Gemara would keep the conversation surrounding *Agunot* as one of technicality—perhaps the plausibility of this claim generates different standards of testimony. But to the Maharsha, the technical conversation yields to one of values and sensitivity. For the Maharsha, there is no more likelihood that one witness is more accurate than in any other case, in which we would reject the testimony of a single witness. It is the value of preventing an *Aguna*, which contends with the Torah's desire for peace, that elicits the deviation from normal halakhic standards. One of the Torah giants of the modern era, Rav Ovadia Yosef was known for his dedication to preventing women from becoming *Agunot*:

> Generally, it is the way of some of the Sages of our generation to remove all possible doubtful situations to make universally applicable legal rulings that cannot be challenged. This is generally a good path to take, but by *Aguna* I follow in the footsteps of earlier and later Sages that would find every possible facet of the law that could be used to treat an *Aguna* case with leniency.[23]

Rav Ovadia expresses the need for deviation from standard proceedings when dealing with such sensitive cases, and rejects the application of halakha that is divorced from the nature of the case. In the case of the *Aguna*, we see the willingness of the rabbis, from talmudic to modern times, to bypass the established norms in order to maintain peace for these women.

Not only do meta-halakhic principles guide the halakhic process, but they can also create new obligations in cases where the halakha is silent. This yields the category of *Lifnim Mishurat haDin*, beyond the letter of the law:

> The Gemara relates an incident involving Rabba bar bar ?anan: Certain porters broke his barrel of wine after he had hired them to transport the barrels. He took their cloaks as payment for the lost wine. They came and told Rav. Rav said to Rabba bar bar ?anan: Give them their cloaks. Rabba bar bar ?anan said to him: Is this the halakha? Rav said to him: Yes, as it is written: "That you may walk in the way of good men" (Proverbs 2:20). Rabba bar bar ?anan gave them their cloaks. The porters said to Rav: We are poor people and we toiled all day and we are hungry and we have nothing. Rav said to Rabba bar bar ?anan: Go and give them their wages. Rabba bar bar ?anan said to him: Is this the halakha? Rav said to him: Yes, as it is written: "And keep the paths of the righteous" (Proverbs 2:20).[24]

As Rashi points out (commenting on "the way of good men"), this is "*Lifnim Mishurat haDin*." Yet, there is no indication from this passage that Rav is giving a mere suggestion of what to do—he is giving a ruling. But how could a ruling be given on something that is beyond the letter of the law? The answer must be that it is not only the letter of the law that obligates, but the spirit of the law as well. In fact, when Rabba bar bar Hanan asks, "Is this the halakha?" the Gemara seems to imply that the letter of the law is with him, not Rav. As Rabbi Sperber explains, "The Law itself may have supported Rabbah's position, but Rav compelled him to pay more than the law required: the ethical value of walking in the paths of the good and righteous trumped the letter of the law."[25]

One of the most well-known formulations of *Lifnim Mishurat haDin* is Ramban's conception of *Naval Bershut haTorah*, a scoundrel with permission of the Torah.[26] That is to say, people can follow the letter of the law to a tee, but nevertheless can remain a "scoundrel" if they do not conform their behavior to the general principles the Torah presents, beyond merely its legal precepts. To Ramban, *Lifnim Mishurat haDin* is not optional, but specifically commanded in verses such as "be holy," and "And you shall do the straight and the good." This concept is powerfully expressed in a passage in *Baba Metzia* discussing *Lifnim Mishurat haDin*:

> Rabbi Yo?anan says: Jerusalem was destroyed only for the fact that they adjudicated cases on the basis of Torah law in the city. The Gemara asks: Rather, what else should they have done? Should they rather have adjudicated cases on the basis of arbitrary decisions [*demagizeta*]? Rather, say: That they established their rulings on the basis of Torah law and did not go beyond the letter of the law.[27]

To Rabbi Yohanan, not acting beyond the letter of the law is such a grave sin that the Temple was destroyed on its account! *Lifnim Mishurat haDin* is not an expression of extra piety, but foundational to functional halakhic life. The Torah's directives are multiplanar. There is the strict *Din*, the letter of the law, but beyond that are the values of peace and pleasantness, respect and love for all creations, and more. These together—the specific *Din* and the general values—make up the obligations of the halakha.[28]

Even among thinkers who accept the role of general Torah principles in halakhic decisions, there are multiple conceptions of the halakhic system and its relationship with those principles. One model is put forth by Rav Aharon Lichtenstein, in his essay "The Human and Social Factor in Halakha."[29] This model parallels Ritva's reading of the argument regarding dancing before the bride. There, Ritva acknowledges no discrepancy between values, but rather assumes that different values help set boundaries on others, maintaining a closed system that still gives voice to each value. Rav Lichtenstein similarly advocates a model of halakha that neither ignores what he refers to as "human and social factors," nor overrides the halakha in the event of a clash—because for Lichtenstein no such

clash can exist. As Lichtenstein writes,

> The human and social factor is relevant to halakha at its various levels; and the point can be briefly illustrated by the example of shalom perceived not only in moral and hortatory terms, with primary reference to the aggadic sphere, but as a halakhic element. At the teleological plane, it is described in one context as the impulse for the entire Torah.

While *shalom* is of teleological import, its implementation comes about as a result of its status as a "halakhic element." This integration allows for sensitive halakhic decisions in line with the broader values of the Torah, while in no way compromising the system, which can only be "superseded by the internal dynamics of the halakhic system proper." This approach also asserts that neglecting the human and social factors is not just "insensitive," but "bad halakha" as well, for to neglect any halakhic factor in giving *Pesak*, halakhic decision, must be "bad halakha." This is not fundamentally different than ignoring any other technical factor that may affect the final ruling. Lichtenstein propounds that "to the extent that *kevod ha-beriot* [basic dignity], for instance, permits a "violation," be it of a *de-rab-banan* [rabbinic] injunction, actively, or of a *de-oraita* [biblical law], passively, failure to act on that principle undercuts a spiritual ideal." Halakhic ruling demands consideration of any internal element that may affect the outcome, and principles of peace and human dignity are no different. Rav Lichtenstein in no way condones using moral arguments to push aside halakha, but rather asserts that perhaps "what had been apt and perhaps even necessary in a given socio-historical setting was no longer ideally suited to his own." This promotes obedience to traditional halakha, while recognizing that the halakhic system itself contains paths to avoid consequences seen as contrary to Torah values and does not mandate uniform application of previous rulings to new cases. This model minimizes, if not eliminates altogether, the language of clash between halakha and larger meta-halakhic principles, while striving to stay true to those principles.

In contrast to this stands the model wherein one maintains a separation between Torah values and technical halakha, and navigates those situations by prioritizing the value, as put forth in the writings of the *Dor Revi'i* and Rabbi Eliezer Berkovits. Rabbi Moshe Shemuel Glasner, known as the *Dor Revi'i*, while discussing whether one should eat an explicitly forbidden food or human flesh, which is not explicitly forbidden in the Torah, writes,

> You should know that as to all the loathsome things that man finds despicable, even if the Torah had not forbidden them, anyone eating such things would be regarded as being far more abhorrent than one who violates an explicit Torah prohibition….
>
> But tell me now, a dangerously ill patient having to choose between meat from an improperly slaughtered or congenitally defective animal and human flesh—which should he eat? Do we say that he should eat the human flesh, which is not forbidden by a Torah prohibition—even though it is forbidden by the moral code accepted by civilized man, so that anyone eating or feeding another person human flesh is cast out from the community of men—rather than eat meat which the Torah forbids with a negative commandment? Would it enter your mind that we, the chosen people, a wise and understanding people, should violate this moral code in order to save ourselves from violating a Torah prohibition?[30]

The *Dor Revi'i* similarly rules that in a case where one's house is on fire, and he can either run out naked or in a women's dress, that although wearing women's clothing seems to be a more serious prohibition, it is undoubtedly preferable to wear it than to run out unclothed. He roots his opinion in the concept of *Tzelem Elokim*, man as made in God's image. To the *Dor Revi'i*, it is clear that in these two cases there is a clash between a Torah prohibition and "moral code," which he gives credence to by linking it to the biblical principle of *Tzelem Elokim.* Unabashedly, the *Dor Revi'i* upholds the moral principle in the face of the halakhic. It should be noted that Rav Asher Weiss expresses incredulity at this position of the *Dor Revi'i*, but nevertheless recognizes that it is within the bounds of normative halakhic Judaism.[31] Rabbi Eliezer Berkovits similarly describes the "priority of the ethical" when discussing the application of halakha.[32] To Rabbi Berkovits, there are certain immutable Torah values that the halakha must, by definition, reflect. Any halakha that does not conform to those principles is "inconceivable." In his essay, "The Nature and Function of Jewish Law," Rabbi Berkovits writes,

> The rabbis in the Talmud were guided by the insight: God forbid there should be anything in the application of the Tora to the actual life situation that is contrary to the principles of ethics. What are those principles? They are Tora principles, like: "And you shall do that which is right and good in the sight of the Eternal"; or, "Her ways are ways of pleasantness, and all her paths are peace" (according to Talmudic teaching, this refers to the ways and paths of the Tora); or, "That you may walk in the way of good people, and keep the paths of the righteous."... Quite clearly, these principles, and such an understanding of the meaning of the Tora, give priority to the ethical demand.[33]

Unlike Rav Lichtenstein's model, which integrated the quoted verses into halakhic discourse by conceiving of them as formal halakhic elements, Berkovits and the *Dor Revi'i* allow for a separation of halakhic factors and values, yet maintain a dialogue between the two. For both Berkovits and the *Dor Revi'i*, that dialogue must always conclude with a halakhic decision that is in line with Torah principles, even if that means foregoing normative halakhic reasoning. In this approach, halakha is seen as a vehicle for the application of values that therefore must inform and completely shape any halakhic ruling.

With either model—one being the formalization of general principles into finite halakhic categories, the second being the shaping of halakha to conform to those principles—we see the emphasis on values-driven *Pesak.* The statements of the Torah regarding ethics and human dignity, peace, and pleasantness, must remain central factors in halakhic dialogue. As we have seen, in a wide array of cases, from Rav Uziel obligating a man to financially support a non-Jewish child, to the rabbis of talmudic times enforcing new norms around mourning, to generations of halakhists, from Talmudic to modern times, ruling leniently in the case of *Aguna*, values matter. In *Halakhic Man*, Rabbi Joseph B. Soloveitchik states "the actualization of the ideals of justice and righteousness is the pillar of fire which halakhic man follows."[34] We must not sever the connection between halakha and Torah values. When Abaye asks (albeit rhetorically), "Aren't the halakhot of the entire Torah also given on account of the ways of peace?" we must resoundingly answer *yes*!

[1] Daniel Rynhold. "Yeshayahu Leibowitz." *Stanford Encyclopedia of Philosophy*, Stanford University, 6 Mar. 2019, plato.stanford.edu/entries/leibowitz-yeshayahu/#JewFaiJewLaw.

[2] See *Dor Revi'i* and Rabbi Eliezer Berkovits, as discussed later in this paper.

[3] BT *Ketubot* 17a.

[4] Exodus 23:7.

[5] *Chidushei HaRitva, Ketubot* 17a.

[6] Marc Angel. "Reclaiming Orthodox Judaism." Jewishideas.org, www.jewishideas.org/article/reclaiming-orthodox-judaism.

[7] *Orot ha-Torah*, chap. 12, 2–3.

[8] Mishna *Gittin* 5:8.

[9] BT *Gittin* 59b.

[10] *Mishneh Torah, Hilkhot Melakhim* 10:12.

[11] Mishna *Shevi'it* 10:3.

[12] *Terumat haDeshen* #302.

[13] See Daniel Sperber, "Friendly Halakhah and the Friendly Poseq," *The Edah Journal* 5:2 (2006): 1–36.

[14] *Mishpetei Uziel* § 4 "Obligation of father in sustenance of a child born of a non-Jewish woman." I came across this example in Marc Angel. *Loving Truth and Peace: the Grand Religious Worldview of Rabbi Benzion Uziel*. Jason Aronson, 1999.

[15] BT *Sotah* 10b.

[16] *Sefer Mitzvot Gadol*, Negative Commandments 6.

[17] BT *Yebamot* 87b.

[18] Eliezer Berkovits. "The Nature and Function of Jewish Law." *Not in Heaven*, Shalem Press, 2010, pp. 3–70.

[19] BT *Moed Katan* 27b.

[20] *Mishneh Torah, Hilkhot Geirushin* 13:28.

[21] Tosafot on *Yebamot* 89a.

[22] Maharsha on *Yebamot*, 122b.

[23] *Teshuvot Yabia Omer* 6: E.H. 3.

[24] BT *Baba Metzia* 83a.

[25] Daniel Sperber, "Friendly Halakhah and the Friendly Poseq," 13.

[26] Ramban on Leviticus 19:2.

[27] BT *Baba Metzia* 30b.

[28] See Aharon Lichtenstein. "'Does Jewish Tradition Recognize an Ethic Independent of Halakha?'" *Modern Jewish Ethics*, by Marvin Fox, Ohio State University Press, 1975, pp. 62–88.

[29] Aharon Lichtenstein. "The Human and Social Factor in Halakha." *Tradition*, vol. 36, 2002, pp. 89–114.

[30] *Dor Revi'i*, General Introduction, 2.

[31] I learned of these positions of the *Dor Revi'i* and *Minhat Asher* from Rav Dovid Silverstein, my rabbi in Yeshivat Orayta.

[32] Berkovits, "The Nature and Function of Jewish Law."

[33] *Ibid*., 28–29.

[34] Joseph B. Soloveitchik, *Halakhic Man*, p. 91.