The Ever-Changing Path: Visions of Legal Diversity in Hasidic Literature

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Ariel Evan Mayse

Judaism is a religion of law. More precisely, it is a way of life consisting of embodied practices and rituals in which we are called upon to express—and cultivate—our private inner worlds. Judaism thus binds theology and praxis, intertwining the spiritual life and physical actions by demanding that God be served neither with pure contemplation nor empty deeds performed by rote. These practices unite the members of the community by imparting a shared structure and behavioral norms, but they are also deeply personal ways of communicating the hidden realms of the spirit. The commandments are sacred vessels that evidence our relationship with God; each one bears witness to our devotion and reveals our theological convictions.

But law and spirituality are often framed as opposing forces in the religious life of devoted mystical seekers.[1] In this common understanding, the *pneuma* (spirit) inspires the mystic to new levels of intimacy with God, while the *nomos* (law) restrains and binds him to the norms of his community. The strain between these two poles could be deemed fraught or fruitful, but it remains a tension nonetheless. In the context of Judaism this model has been frequently applied to Hasidism, with the assumption that the spiritual quest and the obligatory practices demanded by halakha pull the seeker in opposing trajectories.

Recent evaluations of Hasidic literature, however, have reminded us that the early Hasidic masters were deeply immersed in the world of Jewish law. R. Levi Yitshak of Barditshev was the leader of a rabbinical court (*av bet din*) in one of the largest Jewish communities in Russia. Other Hasidic thinkers

authored original works of halakha. These include R. Shmuel Shmelke Horowitz and his brother R. Pinhas Horowitz, two very important rabbinic figures who were called upon to lead communities in Central Europe, and the later Hasidic polymath R. Israel of Kozhenits. R. Shneur Zalman of Liady was a mighty scholar of Jewish law in addition to being a charismatic leader and complex mystical theologian; his summaries of the halakha were posthumously published as the influential *Shulhan ʻArukh ha-Rav*. As the Hasidic movement spread and matured, it became increasingly common for the same individual to fulfill the roles of the Hasidic rebbe and the *posek*, and by the nineteenth century it was not all strange to for a *tsaddik* to function as both a communal spiritual leader and a legal adjudicator.[2]

There are many angles from which we might approach the complicated relationship between Hasidism and halakha. Perhaps the most obvious tack is to examine how different Hasidic thinkers explain the importance of the mitzvoth, and by extension the various laws that define and develop them. We could also explore Hasidic contributions to the creative legal dialectics or casuistry known as *pilpul*. This genre, while often quite obscure, was an important part of Jewish legal discourse in Eastern Europe. Or we might analyze cases in which Hasidic leaders decided specific points of halakha when confronted with practical questions or queries (*pesak*). More broadly, we could explore Hasidic texts advocating for added layers of stringency or supererogatory practices in fulfilling of the commandments (*humra* or *lifnim mi-shurat ha-din*), or we might look at the ways in which customs (*minhagim*) become canonized as a type of unofficial law governing the behaviors of certain Hasidic groups. Finally, we might examine those sources that refer to a conflict between the strictures of halakha on one hand, and the life of the spirit—or, alternatively, God's specific call of the hour—on the other. Although this tension should not be misunderstood as the dominant attitude in Hasidic literature toward halakha, it is an important voice and one that deserves proper attention as protective measure against an exclusive focus on the role of law in shaping Jewish religious experiences.
We will leave these important issues aside for the moment, returning to them in a future study, and will instead focus on two questions at the very heart of Hasidic conceptualizations of halakha: First, why have different sages or legal adjudicators offered divergent opinions—some of which are mutually exclusive—when they are confronted by similar cases or precedents from the same corpus of legal texts? Second, why has halakha changed over time, and why does it continue to do so in the present day? Examining these core issues will demonstrate the variety of ways in which different Hasidic masters have described the inner workings of Jewish law from a theoretical perspective. However, I believe that these sources also have much to teach us about the contemporary interpretation of halakha, and they provide a unique perspective on the manner in which Jewish law should respond to and embody Jewish theology.

Before taking up the issue of halakha explicitly, we must note that Hasidic texts emphasize human creativity and articulate a religious ethos of continuous renewal and constant change. Let us consider, for example, the following teaching of R. Levi Yitshak of Barditshev (d. 1809):

"Like all that I show you—the structure of the Tabernacle and the structure of all its vessels—and thus shall you do" (Ex. 25:9). RaSHI comments on "and thus shall you do"—for all generations. But the Tosafot object: The altar that Moses made was not equal to that made by Solomon (b. *Shevuʻot* 15a). RaMBaN raises a similar objection.
But following our method, we can understand "and thus shall you do" as referring to something else. Really, the structure of the Tabernacle and all its vessels that had to be of a certain height, weight, and form, were all ways of garbing or giving form to some holy spiritual entity. This followed the prophetic vision that Moses had on Mount Sinai, along with all of Israel. As they drew this holy inspiration into their deeds, so it was. This was the way that the garb or vessel, along with the Tabernacle itself, had to be made.
But we also know the talmudic statement that "no two prophets prophesy in the same style" (b. *Sanhedrin* 89a). Each does so in his own categories. These follow the path of that person in worshipping God; in that very way does the spirit of prophecy appear to him. This means that Moses and the generation of the wilderness, following the qualities of worship and prophecy they attained at

Sinai, had to construct this particular form of Tabernacle, structuring its vessels in just this way so that they would properly garb the spiritual lights of holiness. This is what Scripture means when it says, "Like all that I show you"—according to your framework of prophecy, so should the Tabernacle and vessels be.
Then scripture adds, "And thus shall *you* do"—for all generations. This means that in every generation, when you want to build the Temple, the structure should be in accord with the prophecy that is then attained at that time. That should determine the form of Temple and vessels. Solomon did it according to his own worship and his prophetic spirit. The form he made followed that which he attained.
Thus RaMBaN's objection can really be dismissed. Of course his altar was different! That was the commandment—that they not do it always in one particular form, but in accord with the flow of prophecy that takes place then. That should determine the form of the earthly vessels.[3]

R. Levi Yitshak is unabashedly calling for the leaders of each generation to do things differently than their predecessors. Indeed, he claims that such change is part and parcel of correctly fulfilling the commandments, for the structures of religious praxis must express the spirit of every generation in a new way. The construction of the Temple, presumably a metaphor for building a devotional community united by holy deeds, must be undertaken again and again as time goes on. A leader cannot simply imitate the actions of his forbearers or take shelter in mimicking their actions, even if those modes of worship were correct in previous generations. But this cry for renewal extends to the entire community as well. Together their deeds and collective spiritual life must be in accord with "his own worship and his prophetic spirit"— that is, their authentic service of God must emerge from their religious experiences and unique theological vision.

Many Hasidic texts also portray such religious diversity as a characteristic of the present, complementing this description of how Jewish life has developed across generations. These sources refer to different Jewish leaders and thinkers, perhaps including scholars of law as well as Hasidic *tsaddikim*, as each striking an independent path in their service of God. This point is made by R. Kalonymous Kalman Epstein of Kraków (d. 1823) in a homily found among his collection of sermons entitled *Ma'or va-Shemesh*. There we read the following:

Ulla Bira'ah said in the name of R. Eliezar: "In the future the blessed Holy One will make a circle of the *tsaddikim*, and He will sit among them in the Garden of Eden. Each of them will point with his finger, as it is written (Isa. 25:9), 'And he shall say on that day: "Behold, this is our God, for whom we waited, that He might save us. This is Y-H-V-H in whom we have trusted; let us be glad and rejoice in His salvation'" (b. *Ta'anit* 31a)."
We must understand, what is this teaching us? What does the phrase, "point with his finger," tell us? It should have said, "each and every one of them will see Him."
We can say that the sages were alluding to the following idea: It is known that each and every *tsaddik* holds fast to a path in the service of God according to his understanding (*ke-fi sikhlo*). The deeds of the *tsaddikim* are not identical to one another. Some serve God in this way, and others worship in a different manner. But so that a *tsaddik* not become distressed, saying to himself, "Perhaps my ways of approaching divine service are not upright, for there is another *tsaddik* who serves God in a different way"—for this reason, in the future God will show each one of them that his service was good and upright. Every *tsaddik* will see the goodness of the ways his understanding led him to walk in the path of God.
This is why it says that each and every [*tsaddik*] will point with his finger, [saying] "this is Y-H-V-H, in whom we have trusted"—this path through which I have served God is a correct one. [He will realize] that his was a valid (*nakhon*) way of serving the One; God will show him the validity of his approach. This is easy to understand.

This pluralistic vision is representative of many sermons in *Ma'or va-Shemesh*, and it may rightly be described as one of the primary messages of his work. In this particular take on this theme, R. Kalonymous Kalman reminds his reader that each person must cultivate a posture of humility when

examining the worship of those around him. This certainly includes Hasidic leaders, for whom a sense of modesty is particularly important, but it is not limited to them. However, R. Kalonymous Kalman understands that such humility can also lead to paralyzing self-doubt, and he emphasizes that in the messianic age we will be awakened to the fact that all ways of serving God—including one's own—are valid and true. Knowledge of this future revelation should engender feelings of confidence even in the present. Divergent spiritual paths can all be authentic and, like points on a circle, they are equally proximal to the divine Presence that lies within them.

R. Kalonymous Kalman's historical context is important for understanding this passage. His teachings were delivered in the 1810s and 1820s, during a period in which Hasidism was growing rapidly and spreading across Eastern Europe. By this point most of the direct disciples of the Maggid of Mezritsh (d. 1772) were already gone, and a new generation of Hasidic leadership was beginning to take their place. These *tsaddikim* were united by a common religious ethos and a shared intellectual lineage tracing back to the Ba'al Shem Tov (d. 1760). But there were very real differences between their ideologies, including everything from proper forms of leadership (populist vs. elitist), to their understandings of Kabbalah and the contemplative life, to their notions of how—if at all—one should attempt to uplift and sanctify the physical world. R. Kalonymous Kalman's sermon thus offers theological reflection on the changing social reality around him.

Returning to our theme, we must ask if this Hasidic mandate for a creativity that embraces multiple religious paths would also extend to the realm of halakha? Is there a full appreciation of a spectrum of legal positions, and, if so, how can we explain the fact that two different sages derive incongruous answers from the same corpus of legal material? And, if halakha is indeed so dynamic and flexible, how can it be that a law claiming divine origin change over time? The flow of Jewish legal discourse from the Bible to the medieval responsa and codes suggests that halakha is constantly in flux, evolving in response to unprecedented situations and the influx of new ideas. How can we account for such development?

A few well-known classical rabbinic sources reveal that the talmudic sages were keenly aware of these issues, and indeed were willing to consider them explicitly. The relationship between God's will and human creativity or agency in legal decision-making is the heart of the famous "oven of Akhnai" story (b. *Bava Metsia* 59b). While an interesting and often-underappreciated counterpoint is offered in the tale of R. Eliezer's death in b. *Sanhedrin* 68a, the paradigm of "the Torah is not in heaven" and "My children have defeated me" has clearly become the dominant voice of the rabbinic tradition and Jewish legal discourse. This trend is further supported by the famous "these and those are the words of the living God" (b. *Eruvin* 13b), wherein two different legal positions can be verified as expressions of the divine word, even if only one of them will define the normative practice.[4] These traditions are complemented by a tradition in b. *Hagigah* 3b claiming that even opposite rulings, both those that permit something and those that prohibit it, were given to Israel by a single divine Shepherd.

The development of Jewish law has been defined by a constant dynamic of codification and interpretation.[5] This dialectic began in the rabbinic period and has continued into the modern era. At various points individuals have attempted to systematize and standardize a normative halakha, but without fail these ventures have been met with both criticism and a wealth of super-commentaries that push the law back into variegated literature with few obligating precedents. In explaining their reasons for trying to standardize the halakha, some authors of codes reveal their understanding of why Jewish law has changed over time. For example, R. Ya'akov ben Asher (d. c. 1340), the son of the Rosh and author of the *Arba'ah Turim*, claims that he began his project in order to clarify the many doubts that had arisen regarding the proper modes of Jewish conduct.[6] Similarly, Maimonides attributes all rabbinic disagreements and the eventual division of halakha into multiple streams to the fact that the students of Shammai and Hillel were not paying careful enough attention to their masters' words.[7] That is, the plurality of halakha in his time—and thus one of the impetuses for writing the *Mishneh Torah*—is the result of a defective transmission.

Some kabbalistic texts, however, offer another explanation as to why different scholars may take different legal positions or reasons why halakha changes over time. Moses de Leon describes the unfolding of divergent opinions as the result of ideas being refracted through the matrix of the *sefirot*.

[8] R. Isaiah Horowitz (d. 1630), the author of the immensely influential *Shenei Luhot ha-Berit*, claims that halakha changes because legal stringencies have increased over the years. Things that were permitted in the days of Moses are now forbidden, since the cosmic forces of impurity are perpetually growing stronger and new levels of piety are needed to combat them.[9] We shall see that while Hasidic sources work with these models of legal change, they do so with a much greater sense of optimism and an embrace of human creativity that manifest as leniency in addition to stringency.

Let us begin our journey through the Hasidic texts on legal diversity with the teachings of R. Nahman of Bratslav (d. 1811).[10] A great-grandson of the Ba'al Shem Tov and a very creative thinker, the unique R. Nahman was also extremely controversial. During his lifetime, he was engaged in bitter public conflicts with several other Hasidic leaders. These battles were ideological as well as economic in nature, for R. Nahman took exception to populist and regal forms of Hasidic leadership. It is no surprise that we find R. Nahman exploring the nature and origins of scholarly disagreement (*mahloket*) in his homilies. In doing so he often blends together two different meanings of this term: controversy in a traditional legal sense, with opposing scholars offering contradictory legal positions, and contemporary disagreement between communal leaders.

Some of R. Nahman's portrayals of *mahloket* suggest that such disagreements often lead both parties into negative realms. Conflicts bring out the most ignoble human instincts and feed the Evil Inclination, even if they originally began in a controversy over a holy issue.[11] In another fascinating homily, R. Nahman describes the ways in which Hasidic leaders (*tsaddikim*) and their new teachings are perpetually misunderstood by traditional rabbinic scholars (*lamdanim*).[12] The latter accost the *tsaddikim* and charge them will all sorts of infelicities and infidelities. But the small mindedness of the *lamdanim* and thus the source of the disagreement between them and the *tsaddikim*, says R. Nahman, comes from the fact that their own studies are tainted by pride and self-interest.

One of R. Nahman's fullest treatments of the positive elements of controversy appears in the famous teaching *Likkutei Moharan* I 64, where we read the following:

A disagreement [between scholars] is like the creation of the world. The essence of the world's formation happened by means of the empty void (*halal ha-panui*), since without this everything would have remained *Ein Sof*. There would have been no room for the creation of the world. Therefore God contracted this divine light to the sides, creating an empty void. Within this He created the world, including time and space (*ha-yamim ve-ha-middot*), through speech, as it says, "with the word of Y-H-V-H the heavens were created" (Ps. 33:6). So it is with a disagreement, [which also takes place through words]. If all scholars agreed as one, there would no room for Creation. But because of the disagreement among them, for they dispute with one another and take opposite positions, through this they create an empty space between them. This is like the withdrawal of the divine light to the sides, and the creation of the world through [God's] speech.[13]

The dissenting positions taken by scholars actually generate a creative zone between them, an intellectual white space in which innovation may be born. Homogeneity thus prevents new interpretations of Torah because it suffocates this imaginative realm. R. Nahman does not explicitly mention halakha in this particular passage, but in other sermons he extols the importance of creative reinterpretation of Jewish law as an act that renews the mind and cultivates one's attunement to the spiritual.[14] It is therefore reasonable to assume that he would extend the model described above to include the creative possibilities afforded by positive disagreements over the law.

Our next source comes to us from the sermons of R. Dov Baer Friedman, popularly known as the Maggid of Mezritsh (d. 1772). One of his teachings explores why Bet Hillel and Bet Shammai disagree over whether or not an egg laid on a Jewish holiday may be eaten on that same day.[15] His explains that their lack of consensus in this specific case represents a much broader legal phenomenon:

"These and those are the words of the living God," both those that forbid and those that permit. "With knowledge rooms are filled" (Prov. 24:4). All of the [divine] attributes (*middot*) come from Mind (*da'at*).... Each person draws forth from *da'at*, combining the words in this way or that. This one draws

love (*ahavah*, i.e., *hesed*) from *da'at*, meaning that the egg is permitted. Another draws down awe (*yirah*, i.e., *gevurah*) from *da'at*, and the egg is forbidden. And when one wants to change the halakha, like R. Joshua, who said that "we pay no attention to a heavenly voice,"[16] he returns the ruling (*din*) to the attribute of *da'at* and from there draws it down through a different attribute. The enlightened will understand.

Another explanation of "these and those are the words of the living God:" The Oral Torah is the adornment of the bride. One person says that the adornment must be like this, and another says that this is not so pleasing, and another way is more beautiful. The king receives great pleasure in their disagreement over the adornments, since both of them wish to adorn the king.[17]

The divine Mind is a realm of infinity and abstraction, and there the law is still unformed and exists only as pure potential. Human scholars must decide the practical application of the halakha by drawing forth this energy and recasting it through the various divine attributes (*sefirot*). The positions these judges take may all be described as the "words of the living God," because each one of them is an authentic manifestation of the different potentialities included in God's Mind.

But the Maggid also claims, perhaps even prescriptively, that any of these rulings can be overturned and transformed by returning it to its ultimate source in the *sefirah da'at*. There in God's Mind the various other possibilities remain eternally valid and intact, and one may manifest a different legal decision as required by the hour. The seven lower *sefirot*, vessels for receiving divine energy that are here described as "rooms," emerge from the *sefirah da'at.* The Maggid's sermon builds upon the kabbalistic geography of the divine superstructure, but in this case he is also referring to the correlate of these same *sefirot* within the human psyche as well. Interpreting of kabbalistic symbolism as relating to the psychological and spiritual life of the individual is one of the principal features of his theology.

The Maggid often uses the term *da'at* to refer to a seeker's mystical awareness of the divine Presence. This distinguishing consciousness transforms all of his deeds, even mundane actions like eating, drinking, or conversing with other people, into opportunities for serving God.[18] But *da'at* is also the highest region of concrete human knowledge, and in earlier Kabbalah it is often associated with Moses and with the Written Torah itself. This suggest that retracing a legal ruling back into the abstract potential of *da'at*—into the realm that is simultaneously the divine Mind and the deepest seat of our active cognition—is a moment akin to the Revelation on Mt. Sinai.

Does this teaching suggest that scholars possess an *a priori* legal intuition that necessarily determines how they will decide the law? Or is the Maggid describing a more purposeful, intentional process of decision-making in which judges actively seek to decide or change the halakha by drawing out new possibilities from of the unformed potential? We do not have enough evidence to know if this conceptualization would have affected the Maggid's own legal rulings, but this framework does provide an interesting kabbalistic justification for why different scholars will reach different verdicts even when confronted by the same case. In the passage above, the heavenly voice represents the current heavenly judgment on the halakha. R. Joshua's reasoning led him in a different direction, and, ignoring the previous divine judgment, he changed the halakha to accord with him own decision. The Maggid's reading of R. Joshua rejecting the heavenly voice because he wants to alter the halakha is a fascinating interpretation, and not at all the obvious meaning of the talmudic passage.

R. Dov Baer's second reading of "these and those," however, differs from the one given immediately preceding it. Earlier Jewish mystical texts commonly apply the term "adornments" of the Bride (i.e., *shekhinah*) to Torah novellae, but here the Maggid argues that creative new interpretations of the Oral Torah, like standards of beauty, have an inherently subjective dimension. He gives a parable about two sages who disagree over which of the various possible manifestations of the law is the most befitting for the king (surely a reference to the King of kings), but never claiming which of them is the most rationally compelling. All such decisions bring great joy to God, and indeed the very process of legal argumentation, as long as this is done with integrity. Each one is appealing in the eye of the beholder and pleasing to the Divine, which remains true even if they contradict another or are mutually exclusive.

Perhaps we are meant to take the aesthetic analogy to sartorial ornaments less literally, since surely each proponent has his reasons in addition to thinking that his interpretations more beautiful. Pure subjectivity, after all, is not integrity. But we should nevertheless highlight that the Maggid describes God as delighting in the multiplicity, suggesting that the Divine takes no joy in a monochromatic or static legal system.

The Maggid's teachings are mirrored by a halakha delivered by his student R. Menahem Nahum of Chernobil (d. 1797). His discussion of halakha emerges from a surprising interpretation of the biblical tale of Jacob resting for the night on his way to Beer Sheva (Gen. 28:10–22), during which the patriarch "took of the stones of the place, and put it under his head" (Gen. 28:11) The Midrash senses an ambiguity in the verse, for it is unclear if Jacob took one stone or many, and claims that twelve rocks jostled with one another in the hopes of being selected by Jacob. The relevant section of Menahem Nahum's homily reads as follows:

We know how [the divine] Mind (*da'at*) is poured forth from the unified source above and comes down into this world of separation; only as it enters this universe is Mind divided. This is the source of the controversies and divisions among the sages in understanding the mind of Torah (*be-da'at ha-Torah*), [of which it is said], "Both these and those are the words of the living God" (b. *Eruvin* 13b)! Mind comes from this sublime and completely unified source above; it is divided only as it enters into the universe of distinctions, the place where the souls of Israel originate.

So it is that there were twelve stones [under Jacob's head],[19] for Mind is divided according to one's root in the twelve tribes of Israel. The twelve stones represented the twelve tribes, but in their root they were one. Each person approaches mind from [his own place within] the world of division. His opinions follow the root of his soul; it is on that basis that he expresses his view of Torah. Another, who says the very opposite, may be acting just as faithfully in accord with the root of his own soul, which shows him what it does. In their source, both are the words of the living God, since all is one. The flow of *da'at* derives from *binah,* where there is no division or conflict at all; only as mind enters the world of separation is it too separated and does it flow through varied channels into distinctive "heads" (see Gen. 2:10). All [the sages] really mean the same thing, however, since all of them are drawing from the same well, from the same Mind. Only in this world of separation do their opinions appear to diverge. When the controversy is uplifted back to its root, to the world of unity, all become one again, and then "both these and those are the words of the living God."

Now there were twelve stones, each designated by the name of one of the tribes, as we have said, but in their root all of their differing minds were one. That is why the stones were "quarreling" with one another. They were "stones" (or "rocks") as in, "There, the shepherd, the Rock of Israel" (Gen. 49:24). Each represented a part of the truth, just as in the controversies of the sages concerning the Oral Torah. Each said: "May the *tsaddik* rest his head upon me"—may he rely upon me to act correctly in God's service and in the commandments. Each of them intends the truth, for all of them draw from that same source in Jacob. Only because our world is a divided one do they appear contradictory and disputed. But when mind is returned to its root in the one they become one stone again….[20]

R. Menahem Nahum does not cite the Maggid explicitly, but aspects of his intricate conceptualization of the sages' disagreements sounds quite familiar. He too describes the realm of *da'at* as an expansive pool of new ideas, which includes all of the different valid legal rulings. *Da'at* is the root of the divine Mind, the ever-rushing wellspring from which the various distributaries of halakha branch out and become manifest in the sages' diverse rulings. These are embodiments of the seven lower *sefirot*, which collectively represent the matrix of intellectual divergence and individual creativity.

Unlike the Maggid, however, R. Menahem Nahum does not explicitly claim that a contemporary sage may actually modify the halakha by restoring it to the realm of *da'at* and returning it once more through a different practical manifestation. R. Menahem Nahum emphasizes that an element of unity remains above, or within, the contrasting legal rulings maintained by the various sages. This mirrors the kabbalistic assertion that all of the *sefirot* are as actually bound together by a common core of sacred divine energy. It is toward this realm of unity that one must look in order to understand how the

sages can offer different rulings: their legal decisions are but one of the many ways in which the infinite divine Mind is constantly unfolding in new and sometimes contradictory paths.
Returning once more to the Maggid's teachings, his sermons often refer to a supernal Torah (*Torah kedumah*) that remains in an abstract, perhaps even pre-linguistic form deep within the Divine. This ineffable, primordial Torah was embodied in the revealed Scripture given at Mt. Sinai and the legal discourse rooted therein as it entered our world and was translated through the seven lower *sefirot.* This accounts for a great variety of different opinions in halakha, but raises the question of whether or not any of them is more correct than the others. Is there a single divine law, one that may be hidden from us but should be the goal toward which all human decisions should accord? Or, alternatively, should the development of halakha be defined by a telos of refinement through which human scholars seek its ideal manifestation? These questions, the subject of much debate in the analysis of Jewish law, undergird one of the Maggid's sermons:

There must be a reason why [the Torah] changes down below. It may be understood through the sages' teaching: "a heavenly voice went out and said, 'the halakha is like R. Eliezer.' R. Joshua said, 'we do not listen to a heavenly voice.' R. Nathan happened upon Elijah and asked him, 'What was the blessed Holy One doing at that time?' He replied, 'He smiled and said, "My children have defeated me"' (b. *Bava Metsia* 59b). Now, if the heavenly voice declared that the halakha was like R. Eliezer, then presumably the true Torah [above] conforms to that [position], and so must the configuration [of the letters] be above! If so, this is difficult. How could R. Joshua say that we pay no mind to a heavenly voice!? And we must also understand the origin of all the dialectics (*shakla ve-tarya*) of the Talmud, which is the Oral Torah. Surely such disputes have no relationship to the Torah above.[21]

The Maggid has pointed out that the entire project of the Oral Torah is about sustaining multiple divergent but equally valid viewpoints, fleshing out different possibilities that can coexist with one another. That is, the Oral Torah is governed by an approach to legal discourse that by its very nature encourages multiplicity, not conformity or even harmony. He continues,

Truly there are no dialectics above. Matters exist just as they are, in accord with the halakha. But from our perspective, meaning after [the Torah] came down through its seven pillars,[22] which are the seven days of building [i.e., the seven lower *sefirot*], we can refer to dialectics inclining to the side of compassion, judgment, or any other attributes.... This explains the Zohar's statement: "the blessed Holy One consulted with the Torah" (Zohar 3:61b). This seems difficult, for how can there be any such consultation above, God forbid? "Consulted" must refer to the dialectics, just as a person "consults" with himself in seeing that there are reasons to incline to both sides [of the argument]. But this is still difficult, for how can the *tsaddikim* use their reasoning to come up with something that contradicts the Torah above?

The entire corpus of *shakla ve-tarya*, the legal dialectics that characterizes the Talmud and its discursive reasoning, only appears to be an integral part of Torah from our perspective. However, the Maggid is still bothered by the possibility that human interpretation might lead the sages to decide the halakha in a way that is contrary to what exists in the pure, ideal Torah above:

It is as we have explained in another place. "The *tsaddik* rules by the fear of God" (2 Sam. 23:3)[23] —because of the greatness of his connection to God, the *tsaddik*'s will is the Will of the blessed One. Just like the supernatural miracles we have seen *tsaddikim* perform, since they decree and the blessed Holy One fulfills, the same is true here. Because they were so deeply attached to the blessed One, R. Joshua said that we pay no mind to a heavenly voice. The Torah has already been given to Israel, meaning that it is from our perspective. It says "to incline after the majority" (Ex. 23:2). If so, we must follow these positions, since certainly the Torah [as we see it] from our perspective includes dialectics. We are the majority, and we have the power to transform the combination [of the letters] above so that

the halakha follows us.
This is [the meaning of]: Do not read “ways” (*halikhot*) but “laws” (*halakhot*).[24] Those below have the power to change the “cosmic ways” above, so that they are like the laws that we have decided. This is [the meaning] of the statement, “My children have defeated me,” by changing the combination [of the letters of the heavenly judgment] to agree with them. “He smiled,” since God receives great pleasure and delight from this, as it were.
This is alluded to in the verse, “Happy is the one who finds strength (*oz*) in You” (Ps. 84:6), which refers to the Torah from our perspective. “Who finds... in You,” meaning the new interpretations of Torah he has achieved by means of his great attachment, he can transform the combination above—this is “in You.” Perhaps we can say that “in You” (*bakh* = 22) also alludes to the following. There are twenty-two letters of the Torah, which have the ability to reverse the letters of the combination from *bakh* to *khab* (22).
This is the explanation of the ending of the verse, “in the pathways of their heart.” Who can do all of this? One who has traveled the pathways of Torah, and the cosmic ways are the well-trodden paths of his heart. He must also connect and attach himself to God with great love and awe. This is “in their heart.”... This is the meaning of the Talmudic phrase “the verse is turned around and interpreted” (b. *Bava Batra* 119b)—the interpretation of the *tsaddikim* below transforms Scripture above.[25]

The Maggid’s claim is quite bold: There cannot be any rift between the supernal Torah and its concrete manifestations, because the sages have the power to change the heavenly Scripture according to their will. Just as they can temporarily suspend—or supersede—the laws of nature when working miracles, so too can the “majority ruling” of *tsaddikim* transform the abstract Torah in God’s Mind. Clearly this implies that there is no single ideal, true conception of halakha that all of our legal decisions should be striving to achieve, since the Maggid claims that the Scripture on high changes in response to the legal rulings of the *tsaddikim* below.

Let us now bridge toward key Hasidic texts that engage with the question of why Jewish law has changed over time. The homily from R. Levi Yitshak of Barditshev presented at the beginning of this article demonstrated his emphasis that religious life must evolve across different generations. In that context we raised the question of the extent to which R. Levi Yitshak would apply this to the realm of praxis, but several of his homilies addresses this quandary directly:

Regarding the disagreement between Bet Shammai and Bet Hillel, we have said that “these and those are the words of the living God” (b. *Eruvin* 13b). A person understands the plain-sense meaning of the holy Torah according to his own attribute (*behinah*). If he comes from the world of Kindness [i.e., the *sefirah hesed*], everything is ritually pure, permitted and kosher, according to the ruling his mind deduces from the holy Torah. The reverse is also true. If he is from attribute of Judgment [i.e., the *sefirah gevurah*, then everything is the opposite. The attribute of Bet Hillel was Kindness, and therefore they offered lenient rulings. Bet Shammai were of the attribute of Judgment, and were therefore stringent. But the truth is that each of these, according to their level, are “the words of the living God.”... The sages that came after Bet Shammai and Bet Hillel saw that the world needed to be run with Kindness, and they established the halakha to follow the leniencies of Bet Hillel in every case.[26]

This formulation explains why halakha was subject to change in earlier generations, since each scholar would rule in light of his personal intuitive and intellectual leanings. It also offers an interesting justification regarding why the particular decisions of the school of Hillel were adopted as the normative practice, an explanation which runs counter to the Talmud’s own explanation in b. *Eruvin* 13b. But elsewhere R. Levi Yitshak offers a more programmatic vision that acknowledges the continuous evolution of halakha into the present:

The Oral Torah changes according to the sages of the generation. This one says such-and-such, and another says something different. The conduct of the halakha accords with the generations. RaSHI decided that *tefillin* should be donned in one way, and Rabbenu Tam decided that it be done in a different manner (see b. *Menahot* 34b).
The truth is that the halakha follows the attribute (*middah*) with which the blessed One directs the world [in that particular age]. If it is conducted by means of [divine] love [i.e., *hesed*], then the halakha accords with the sage whose position reflects that. If it is *tif'eret*, then the halakha follows that one. This explains why Israel lovingly desired to receive the Torah [on Mt. Sinai], for they said, "We will do and we will understand" (Ex. 24:7), but at first did not want to receive the Oral Torah.... It was difficult for them [to grasp] that the Oral Torah would change in accord with the *tsaddik* of each generation. He causes the world to be directed by a certain [divine] attribute, and so too is it with halakha of the Oral Torah.[27]

At first R. Levi Yitshak claims that the halakha changes because it must respond to ever-changing manner in which God directs the world. This is the reason that RaSHI and his grandson Rabbenu Tam, obviously his junior by two generations, give discrepant rulings regarding the construction of the *tefillin*. The normative halakha thus follows the ruling of the *tsaddik*, the individual most attuned to the subtle and constant fluctuations in the Godhead. Based on this knowledge of the workings of the Divine, the *tsaddik* decides the correct form of the law as it applies to the entire community.
However, by the end of the sermon R. Levi Yitshak has arrived at a different message. He argues the *tsaddik* determines the correct applications of the law in his generation, and God then mirrors his decision by engaging with the world through that particular *middah*. This notion is indeed radical, but it is very much in keeping with a cornerstone of R. Levi Yitshak's theology: The Divine willingly diminished His infinite power by creating the world and revealing the Torah, lovingly entering into a relationship with mankind but also demanding that the *tsaddik* become His partner. God does this because of the great delight brought about by the correct expressions of human agency. In the case of the teaching above, the active role of the *tsaddik* takes the form of a hermeneutical duty to interpret the Oral Torah and the halakha anew in each generation.
Of course, we should note that R. Levi Yitshak's boldness has certain implied limitations. RaSHI and Rabbenu Tam disagree over how one should order the biblical passages included in the *tefillin*, such that it is impossible to fulfill both opinions without donning two different sets. But neither of these great sages suggests that the *tefillin* may be any color than black, that the boxes could be any shape but square, and, of course, neither would tolerate a suggestion that one is no longer obligated to put on *tefillin* on a daily basis.
What emerges from R. Levi Yitshak's sermons is a subtle balancing act in which the scholar dances between receptivity and creativity. The *tsaddik* must listen to the unfolding of the divine Will through a certain attribute in his particular generation, but he also plays an active role in shaping the manifestation of God's voice in his time. We see R. Levi Yitshak outlining a similar dynamic in another of his homilies:

"Moses sent them [i.e., the spies]... according to the word of Y-H-V-H" (Num. 13:3). Moses and his generation, the generation of the wilderness, may be likened to the Written Torah. Joshua and his generation, those who entered the Land, are like the Oral Torah. This is what the sages meant in saying, "The face of Moses is like the face of the sun, and the face of Joshua is like the face of the moon" (b. *Bava Batra* 75a). The Oral Torah receives from the Written Torah, just as the moon receives [its light] from the sun.[28] This is the meaning of, "And Moses sent them according to the word of Y-H-V-H" (*al pih ha-shem*), teaching that the generation that came into the land of Israel needed to emulate the Oral Torah (*Torah she-be'al peh*).
The truth is that the Oral Torah is the will of the *tsaddikim* of the generation. This one will prohibit and another permits, one may declare something impure and the other will call it pure. All goes according to the will of the *tsaddikim*. Therefore Israel, who are likened to the Oral Torah, count the year according to the [ever-changing] moon, which is also associated with the Oral Torah.[29]

Here R. Levi Yitshak draws a distinction between the Israelites who lived and died in the desert (*dor ha-midbar*) and those who entered the Holy Land (*dor she-ba'u la-arets*). The first were content to conduct themselves in line with the precepts of the Written Torah, which is constant, inflexible, and unchanging. This was possible because their generation lived within a protected vacuum, subsisting on Manna and never being forced to confront the complex reality of an autonomous kingdom. The people who entered the land of Israel, however, needed to cultivate an approach to law characterized by constant responsiveness to changing circumstances. Just the moon waxes and wanes, so must the Oral Torah and its multi-faceted halakha be ready to change when met by new situations.

In all of these sermons R. Levi Yitshak makes it clear that only certain people are positioned to decide the correct application of the halakha, namely the *tsaddikim*. This is not, however, to claim that change emerges only from the ivory tower. Elsewhere he affirms that an individual who adjudicates the law must be totally invested in this world.[30] This is why the most impenetrable talmudic difficulties will eventually be resolved by Elijah the Prophet. Overturning the many classical interpretations that portray this shadowy figure as ethereal and otherworldly, R. Levi Yitshak asserts that Elijah never tasted the experience of death and is permanently connected to the earthly realm. Therefore he alone is alert to the changing nature of the generations, and will decide even the unsolvable legal quandaries.

But R. Levi Yitshak is presumably not advocating for a type of religious anarchy in which the preference for human autonomy gives way to each individual leader developing his own unique version of the halakha. He is more cautious, suggesting that the transformation of the law must happen on a communal, perhaps even a national scale. Change may originate with the *tsaddikim*, but halakha is not reshaped to conform to the fleeting whims of private individuals. Furthermore, R. Levi Yitshak's model is highly elitist, since change emerges exclusively from the intellectual and spiritual leadership. Only the *tsaddikim* understand the different attributes with which God engages the world, and, more importantly, only they have been entrusted with the power to command these divine attributes.

R. Avraham Yehoshua Heschel of Apta (d. 1825) offers a very different account of why halakha has adapted and transformed over time. Because God created the world through Scripture, and since the cosmos itself is constantly being renewed, he suggests that Torah must be perpetually evolving as well:

Rabbi Berakhiyah says in the name of Rabbi Judah: Each and every day the blessed Holy One innovates (*mehadesh*) new halakha in the heavenly court. How do we know? It is written, "[Listen to the sound of His voice], and the utterance (*hegeh*) that goes forth from His mouth" (Job 37:2), and "recite (*ve-hagita*) it [i.e., the Torah] day and night" (Josh 1:8). Abraham knew even these *halakhot*, as it says, "For Abraham has hearkened to My voice and kept My charge, My commandments, My statutes and My teachings (*torotai*)" (Gen. 26:5). Thus far [are the words of the Midrash; see *Bereshit Rabbah* 64:4].

We must understand this. Let us begin with what we recite [in the liturgy], "And in His goodness He eternally renews the works of creation each day." We know that the holy Blessed One created the world through Torah (*Bereshit Rabbah* 1:1). Since the world was formed by means of Scripture, the continuous renewal of the works of creation must also take place through new interpretations of Torah and the *halakhot* that the *tsaddikim* innovate in each and every generation, each and every day. That is, they are constantly immersed in the study of Torah and the commandments with integrity, sincerity, awe and love. Then the blessed One bestows them with an upright intellect (*sekhel yashar*) and human understanding (*binat adam*) to derive one thing from another, [grasping] the reasons for the Torah and the commandments. They use these [tools] to develop new *halakhot* each day. God imbues a pure intellect and straight intellect within scholars and those who are immersed in Torah and the commandments for its own sake (*lishmah*). With this they innovate new *halakhot* every day, and through this the works of creation are renewed.

This is how to explain the sages' teaching, "One who studies (*shoneh*) *halakhot* each day is assured a place in the World to Come, for it is written, 'eternal ways (*halikhot 'olam*) are His' (Hab. 3:6)—do not read *halikhot* ("ways") but *halakhot*" (b. *Niddah* 73a). The halakha is renewed as the reasons for

matters halakha change (*hishtanut*), as is known to everyone who understands this intuitively (*mevein me-da'ato*). This is the meaning of "one who studies *halakhot* each day," meaning that he studies for its own sake and puts his entire self (*rosho ve-rubo*), all of his body and senses, into understanding the reasons of the Torah and the commandments, and studies the reasons for the *halakhot* each day. Thus he creates new *halakhot* each day, as the reasons for the *halakhot* change.
This revitalizes the works of creation. The very formation of the worlds is renewed, and they are unified and connected to one another. "He is assuredly worthy of the World to Come (*ben 'olam ha-ba*)"—this refers to the world that comes and is renewed on that day. This rebirth comes about because of him. This is the meaning of "eternal ways are H/his"... that is, his new interpretations of the *halakhot* make the world created on that day into his. He has brought about its renewal.[31]

Constant change defines the universe, for in all moments God re-infuses the created world with new divine energy. This fresh breath of sacred vitality allows the universe to endure. But since, argues R. Avraham Yehoshua Heschel, God formed the cosmos through the Torah, this same aspect of perpetual change is present in Scripture as well. It is manifest through the new interpretations of Torah voiced by the *tsaddikim* in each generation. But their novel exegesis actually plays an active and important role in the sustaining of the cosmos. The new interpretations of devoted scholars have the power to imbue the world with sacred vitality. Thus the flow of creative energy flows in both directions through the nexus of Scripture; vitality courses from God into the world, but it is also drawn forth by the *tsaddikim* and infused into cosmos, eventually reaching back into the heart of the Divine.
We should note that is the new understandings or manifestations of halakha developed by the *tsaddikim* that instills the universe with this energy. That is, the physical world is renewed as scholars revitalize and reinterpret old or ossified structures of Jewish law. These frameworks must be updated and transformed in light of the ever-changing universe as well as their own intellectual attainments.
Many Hasidic sources explore the relationship between the spiritual practices of an individual and the universal demands of halakha. These texts take it for granted that any single, rigidly-codified corpus of law cannot apply to all people or situations, and therefore the specific person and his particular circumstances must be taken into account when determining how the law should be applied. This theme is particularly prominent in the sermons of R. Mordecai Yosef of Izhbits (d. 1854), a disciple and later a rival of R. Menahem Mendel of Kotsk (d. 1859). He articulated a theory of religious praxis that revolves around individual of halakha, arguing that fulfilling the will of God and conforming to the words of the *Shulhan Arukh* are not necessarily identical, a theory that was quite controversial. R. Mordecai Yosef's position has been seized upon by both detractors and enthusiastic supporters in his time as well as our own. Although his theology is a vital part of understanding the spectrum of Hasidic models regarding the nature of halakha and its processes of determination, there is no need to summarize or recast their arguments here. The interested reader is invited to turn to their work.[32]

A different answer to the complex relationship between personal praxis and the ideal (or normative) halakha was recorded in the name of R. Yitshak of Vurke (d. 1848), another intellectual descendent of the Pshishkhe/Kotsk Hasidic school. As quoted in the writings of a later master, we read the following:

Rabbi Yitshak of Vurke explained the talmudic teaching, "Anyone who studies laws (*halakhot*) each day will earn a place in the World to Come" (b. *Niddah* 73a), as follows: This refers to a person who has attained the Torah (*zakhah ba-Torah*) and is connected to the blessed One. He does nothing lightly, not even moving one of his limbs, for all of his actions are performed for the sake of God. Everything that he does is called halakha, for he walks in the path of the One (*holekh be-darkhei ha-shem*). This is the meaning of the sages' teaching, "Anyone who studies *halakhot* each day..."—each of this person's deeds throughout the entire day is halakha. This is the meaning of the verse, "worldly ways (*halikhot olam*) are his" (Hab. 3:6)—the entire world (*olam*) was created for the sake of people like this, for they bring great pleasure to the blessed Holy One and His *shekhinah*.
If one achieves this level, in which all of his deeds, actions, and feelings are devoted to God alone and not undertaken for any ulterior reason, he will always be connected to the Torah. All of his

actions are God's Torah. The ultimate goal of Torah is to become connected to God, and the six hundred and thirteen commandments are prescriptions for achieving this rung....
But this type of path is extremely difficult. He must keep his eyes trained on the target and never miss. None of his actions should seem trivial. It is as if he is ascending a rope above a stormy sea. He must take care and focus all of his attention not to lean to one side or the other. If he inclines even a hairsbreadth, he will plunge into the sea....[33]

Here we find an expansive definition of halakha that stretches to include all of one's deeds, a notion that is by no means uncommon in Hasidic texts. A spiritual leader who has refined himself to the utmost degree actually becomes a living embodiment of Torah. All of his deeds, by extension, are expressions of halakha and indeed Torah, sacred actions of great significance, because each of them brings him closer to the Divine. This does not mean that he breaks traditional patterns of Jewish practice or founds his own version of halakha. Rather, the teacher's rich inner spiritual world, his connection and commitment to the Infinite, transforms each one of his deeds into a holy action. This includes performing the commandments, but this permanent attachment to the Divine means that all of his deeds—no matter how seemingly mundane—become significant.
This homily demands a richer definition of halakha than is allowed by the common translation "Jewish law." This rendering is not entirely incorrect, but it does fall short of the mark. Halakha is a complex and sophisticated structure of practice that includes rules governing rituals like the Sabbath, prayer services, and the definitions of kosher food. Halakha also addresses monetary issues such as torts, inheritance, and the rules of commerce. But it is flexible, dynamic, and no single rule (or ruling) can apply universally and to all cases. Jewish conceptions of halakha thus share much in common with Islamic understandings of *sharia*. Halakha and *sharia* may have many elements in common with Western conceptions of jurisprudence, but these systems of religious practice do not fit into all classical definitions of law. Indeed, R. Yitshak of Vurke's interpretation links halakha to the word halakha, walking along a path. It is a collection of spiritual practices and an approach to religious service in which every action along the journey leads one back to the Divine.

The texts we have seen above represent some of the most interesting and nuanced voices from the world of Hasidic literature. More conservative positions on the subject of the evolution of halakha were commonplace in the nineteenth and twentieth centuries. In these years Hasidism, broadly speaking, changed course and became a part of the emergent ultra-Orthodoxy, a new religious and political force bent on combating the processes of modernization. But some less change-oriented voices appeared in the first few generations of Hasidic leadership, and these too deserve some mention. R. Israel Hapstein of Kozhenits (d. 1814), a brilliant legal scholar as well as a Hasidic preacher, seems to have been less excited about legal change. He is a contemporary of the figures cited above, but offers a very different perspective on legal development. He claims that a scholar must understand all aspects of a given ruling before even one iota may be altered.[34] One may all too easily be lured into erroneously thinking that he fully comprehends the reasoning for an earlier sage's decision, and thus change the law when it is inappropriate to do so.
Many other Hasidic thinkers refused to valorize different manifestations of halakha or to deny the possibility that there is a single, ideal law. For example, R. Kalonymous Kalman Epstein of Kraków decried the proliferation of different legal opinions and the loss of a single, clear stream of halakha (halakha *berura*).[35] This Hasidic master, whose teaching cited above referred to a plurality of different ways of serving God, claims that the trend toward legal multiplicity be countered with great force. He writes that the more one studies with devotional fervor and great humility, the greater his chance of attaining the ideal truth and thus grasping the halakha as it should be. The Talmudic sages always concluded their disputations by loving one another, says R. Kalonymous Kalman, because they end up agreeing with one another. Doubts regarding how to apply the law plague us today because we have all eaten from the Tree of Knowledge of Good and Evil, which has become separated from the Tree of Life.[36]

Halakha is central to the spiritual path outlined by R. Shneur Zalman of Liady (d. 1812), who authored significant writings on Jewish law in addition to his major work of Hasidic theology known

as *Sefer ha-Tanya*. In one sermon, indicative of many others, he boldly defines halakha as the process through which we bring (*molikh*) the divine Presence into the world, since adhering to its precepts allows us to become one with God.[37] Though it is less explicit in his legal writings, examining R. Shneur Zalman's homilies reveals that he was also a very sophisticated thinker about the nature of halakha, its development over time, and the process through which it should be decided.

R. Shneur Zalman offers a fascinating explanation of the rabbinic dictum of "these and those are the words of the living God" found in b. *Eruvin* 13b. He suggests that the positions of two opposing sages may indeed be the words of God, but that the two contradictory decisions are not the words Y-H-V-H.[38] This sacred name gestures toward the transcendent, infinite aspects of the Divine, and it is from this expansive realm that the truest expression of the halakha is drawn forth. Following the plain-sense meaning of the talmudic passage, he explains that only someone who is of humble spirit—in that case, Hillel and his school—is able to find the real halakha. That is, through moving aside his ego and personal concerns, he allows for a flow of divine truth. While even the status of "these and those" only applies to great *tsaddikim*, such as the sages of the Mishnah, R. Shneur Zalman claims that when deciding how to apply the law in our times we must always follow the opinion of the *makhria* (see b. *Berakhot* 43b), the adjudicator who successfully mediates between two opposing positions and presents a third opinion that in some way satisfies them both. Such a person taps into the reasoning that supports both of the opinions and grasps their ultimate source in the abstract world of intellection. This presumably allows him to devise a ruling that can either fuse the two opposite positions together, or can satisfy the underlying cause of them both.

The upshot of this sermon is that we must generally follow the established norm in halakha. Unlike the teachings of the Maggid and R. Levi Yitshak, which allow for the possibility of proactive change as Jewish law confronts different situations across generations, R. Shneur Zalman's account makes it very difficult to conceive of overriding the *makhria*. The voice of the latter might take the form of the majority opinion, or it might alternatively come as the ruling of contemporary sage weighing in on an old disagreement.

Elsewhere R. Shneur Zalman claims that every aspect of the halakha was given to Moses in its purest form on Mt. Sinai, without any of the questions or incoherencies that obscure its meaning.[39] These difficulties developed later in history, as problems emerged in the transmission of these revealed traditions. But all is not lost, for by means of intellectual effort and unceasing investigation (*pilpul*) one may remove the proverbial chaff that conceals the divine halakha and restore it to its pristine state. R. Shneur Zalman argues that every person can accomplish this task for one element of Torah, since each soul has an innate connection to an aspect of Torah as it was revealed on Sinai. This is why some questions may go unanswered for many generations, waiting until a solution is developed through the right person's critical ingenuity.

This framing of Jewish law and how it may be restored highlights a tension that cuts across much of R. Shneur Zalman's thought, which is at once profoundly elitist and yet makes great demands of all religious seekers. R. Shneur Zalman claims that each person is only required to clarify the halakha according to his individual scholastic capacity, but he also notes that *knowing* the entire corpus of practical Jewish law is incumbent on all individuals. The creative work and the responsibility for rendering original decisions is left up to the scholars, but each and every person has an obligation to develop an absolute command of all aspects of religious duties by understanding the details of all practical halakha.

R. Shneur Zalman is also troubled by the question of why there are so many detailed laws governing how to perform the commandments.[40] Their basic requirements and the essential forms are, after all, relatively simple. He gives the examples of kashruth and building a sukkah, both of which are practices grounded in a small number of verses that are nonetheless the subjects of great rabbinic inquiry. R. Shneur Zalman explains this subsequent development by suggesting that the spiritual illumination included within the commandments becomes increasing manifest over time. Therefore, in order for human beings to withstand this expanding measure of divine light, it must be embodied within progressively more gradients or levels of diminution.

In other words, says R. Shneur Zalman, the commandments need to be surrounded by an increasingly complex network of details that unfolds across the generations. This process began with the Mishnah, which includes the seeds of all later talmudic discussions, and continued as new applications of the law were developed by the *rishonim* and the *aharonim*. Interestingly, R. Shneur Zalman notes that these transformations or additions often tend toward stringency (*humra*). Thus, although halakha may indeed be characterized by its constant change, for R. Shneur Zalman this development leads toward greater intricacy and strictness. Jewish law evolves and in some sense responds to the changing spirit of the generations, but this is far from the empowered creativity described by the Maggid, R. Levi Yitshak, and R. Avraham Yehoshua Heschel.

We must hear one final Hasidic voice before exploring the contemporary implications of these sources. I have in mind the teachings of R. Yehudah Aryeh Leib Alter of Ger (d. 1905), which were written down by the rebbe himself and posthumously published under the title *Sefat Emet*. This book became a classic of Hasidic literature soon after it was printed, and it remains of great interest to scholars of Jewish mystical thought in the modern era. R. Yehudah Aryeh Leib is in many respects a daring Hasidic thinker, but two aspects of understanding of halakha will offer some relevant words of caution.

The first of these notions appears throughout R. Yehudah Aryeh Leib's sermons about Korah and his rebellion against Moses. Keeping this context in mind will be crucial for understanding the subtler message of this homily. He teaches,

"And this is the Torah that Moses placed..." (Deut. 4:44). Yet the Torah is "hidden from the eyes of all living things" (Job 28:21), and "its expanse is greater than measure" (Job 11:9). It is called the Torah of truth, just as we say, "Y-H-V-H is our true God, and His Torah is truth." [The word] "truth" (*emet*) includes the first, last and middle [letters]. All the combinations included in each word, in every verse, in each section as a whole, and in every portion, book, and the entire Torah—all of these are expressions of truth, and they cannot be [fully] grasped. They have no boundary or limit, for the blessed Holy One and the Torah are one (see Zohar 2:60a).

But the Torah as it is ordered before us was placed in front of the Jewish people by Moses. This form is particular to the community of Israel, as it is written, "the inheritance of the community of Jacob" (Deut. 33:4). Therefore, there are many details as a new combination of the Torah emerges, according to the time and place, since we find [reference to] *hora'at sha'ah*, and the sages of the Mishnah taught that every person has his time, and everything has its place. But all of these paths must be connected (*le-hithaber*) to the root of Torah, which is its eternal structure.[41]

R. Yehudah Aryeh Leib begins by laying out a seeming contradiction: The essential nature of Torah is boundless and ineffable, for it is co-existent with the Divine, but the Scripture that was revealed to us is composed of specific words and narratives. How do these elements of Torah, the finite and the infinite, relate to one another? He answers that Moses gave us Scripture in the form that was particularly appropriate for the Jewish people, but emphasizes that the limitless potential for other "combinations"—novel interpretations of Torah and even new legal rulings—never disappeared. The discerning student of Scripture can still tap into that infinite reservoir, and therefore new expressions of Torah and combinations of ideas are constantly unfolding.

This is R. Yehudah Aryeh Leib's rereading of the term *hora'at sha'ah*, which usually refers to a temporary legal decision or one made in an emergency situation. Here he takes it to mean that a particular interpretation or ruling (*hora'ah*) must match the time and place (*sha'ah*) in which it is being delivered. This does not mean, however, that all readings of Torah are necessarily valid or should be adopted as communal practice. All of these new paths that are unique to a specific time and place must be intimately connected to the vital root of Torah. The scholar or teacher who reveals these different potentialities once included in the infinite expanse of Torah must do so with careful attention to the way his decision links up to the tradition in addition to being aware of his immediate surroundings. Korah thus provides a counter-example, a brilliant individual who was grounded in the Torah but failed to realize that his particular understanding of the halakha was incorrect for that moment. But perhaps R. Yehudah Aryeh Leib's critique is even more pointed: Korah may be interpreted as having

given a ruling that, while intellectually compelling, was essentially disconnected from the eternal source of the Torah.

The second cautionary message may be found in several of R. Yehudah Aryeh Leib's teachings about the death of Nadav and Avihu (Lev. 10). Like many earlier commentators, he is puzzled by God's dramatic punishment of what seems to be a minor infraction. R. Yehudah Aryeh Leib builds upon rabbinic tradition claiming that Nadav and Avihu were smitten for giving a legal ruling in front of Moses and Aaron, but he also offers a unique reading of their transgression:

It was said that they [i.e., Nadav and Avihu] taught halakha in front of their teacher (b. *Eruvin* 53a). If so, it would seem that they were attuned to the true law (*halakha amitit*). But the halakha is only according to the Torah and the command of Moses our teacher, the prince of Torah. This is the meaning of, "a law conferred to Moses on Sinai," mentioned in many places [in the Talmud]. They attained the reasoning and the halakha, but without any command. Thus they lacked the essence how one draws near [to God], which comes from the Creator having sanctified us with His commandments.[42]

This emphasis on the necessity of being commanded as an integral part of spiritual uplift seems like a counter to the type of individualist sentiments of R. Yitshak of Vurke and R. Mordecai Yosef of Izhbits. Nadav and Avihu were consumed by a heavenly fire because they approached the Divine without the structure of the commandments to protect them. Of course, they meant well and were following their understanding of the halakha, but because this was not rooted in the deeper nature of Torah and the power of Scripture to *command* our behavior, their religious fervor and devotion were ultimately misplaced.

These Hasidic texts offer a vision of halakha that runs counter to understandings of Jewish law as a static or atemporal legal discourse. They similarly oppose the claim that halakha is a fully cohesive system in which all decisions rendered according to its immutable principles are necessarily compatible with one another. Of course, these homilies do not address legal method per se. With the possible exception of R. Shneur Zalman's reference to the importance of the *makhria*, these sermons do not explain when to follow Rav and when to follow Shemuel, how to weigh the words of the *rishonim* against one another, or when to choose the opinion of a later interpreter over the opinion of the *Shulhan 'Arukh* or R. Moshe Isserles' gloss.

The goal of these Hasidic sources is far more expansive, and it extends beyond new ways of conceptualizing Jewish law or explaining its capacity for change. They articulate a theology in which the evolution of halakha is one element of a much broader project of renewal and creative reinterpretation of canonical texts. Scripture must be understood in new ways in each and every generation, and so too must Jewish law be constantly reinterpreted as time goes on. Together these processes of exegesis form the heart of the ever-changing Oral Torah.

Sermons such as these demonstrate that the Hasidic masters were indeed interested in new ways of thinking about the nature of halakha and its determination. I do not mean to suggest these homilies prove that the Hasidic masters were involved in radically changing Jewish praxis. Various historical, cultural, and intellectual circumstances prevented this from happening. R. Levi Yitshak of Barditshev and R. Avraham Yehoshua Heschel of Apt were involved in rendering legal decisions at a very high level, but there is no evidence that these sorts of texts informed their rulings. This is also true of the Maggid of Mezritsh and R. Menahem Nahum, although the near total lack of legal traditions from them makes this fact unsurprising. And the array of change-oriented sources and those claiming a more conservative understanding of halakha both represent authentic attitudes found in Hasidism, which has included both radical and moderate voices in every stage of its development.

My aim is to demonstrate that these Hasidic descriptions of Jewish law offer a paradigm for thinking about halakha in our time that includes change and flexibility in addition to commitment. Hasidic texts about Jewish law are part of the legacy of Hasidic literature, but their treatment of this particular subject means that they must be taken seriously as a voice in the broader world of Jewish legal discourse. These homilies are part of the long-standing debate regarding the ways in which *aggada*

may inform halakha.[43] These two literary and intellectual realms are sometimes cast as separate subjects, but *aggada* and halakha can also function as mutually informative realms that balance and calibrate one another.

Deciding the correct application of the halakha is not an empirical science in which the data is static and the results are pre-ordained. Texts like the various Hasidic homilies explored above remind us of this fact. One charged with ruling must take into consideration a wide variety of factors; everything from the judge's (and the inquirer's) personal background to his understanding of the vicissitudes of history, his theological convictions, and his grasp of meta-judicial principles like equity and justice will inform his decision. This phenomenon has been described by the late R. Aharon Lichtenstein *z"l* [44] and R. Daniel Sperber.[45] In very different ways, these two brilliant contemporary thinkers have analyzed and argued for the importance of the subjective element of legal determination.

In some cases the modern application of these sources is rather obvious. For example, there is R. Levi Yitshak's teaching about the different relationships to law needed for the generation of the wilderness and that of the land of Israel. This text also demands a new approach to halakha for the contemporary *dor she-ba'u la-arets*, the communities who now live in the modern State of Israel, a call echoed by decidedly non-Hasidic thinkers like Eliezer Berkovits, David Hartman, and, mutatis mutandis, Abraham Isaac Kook. But I would also like to suggest that contemporary adjudicators of halakha take these understandings of Jewish law into account when rethinking current issues of moment, such as the attitudes of halakha toward environmentalism and climate change or homosexuality. I admit that extending the Hasidic sources to these questions would be an act of hermeneutical freedom on the part of the contemporary reader, one that requires courage and creativity and not a little caution. But, after all, these very same Hasidic teachings remind us that the law must be reinterpreted in every generation. Halakha is an ever-changing religious path, which develops in congress with human values and evolves in response to transforming rationales and situational contexts. Expressions of Jewish law are linked to the same constant fluidity and continuous renewal that defines the cosmos itself.

* For Joe S. Knowles, *z"l*, a dear friend and true student of the *Ba'al Shem Tov*.

[1] See Martin Buber, "Jewish Religiosity," *On Judaism* (New York: Schocken Books, 1967), pp. 79–94, where the author famously distinguished between "religiosity" and "religion." See also Arthur Green, *Devotion and Commandment: The Faith of Abraham in the Hasidic Imagination* (Cincinnati, OH: Hebrew Union College Press, 1989); idem, "Hasidism: Discovery and Retreat," *The Other Side of God: A Polarity in World Religions*, ed. P.L. Berger (Garden City, NY: Anchor Books, 1981), pp. 104–130; and, more broadly, Isadore Twersky, "Religion and Law," *Religion in a Religious Age*, ed. S.D. Goitein (Cambridge, MA: Harvard University Press, 1974), pp. 69–82.

[2] See Aaron Wertheim, *Law and Custom in Hasidism*, trans. Shmuel Himelstein (Hoboken, NJ: Ktav, 1992). See also Shaul Magid, "The Intolerance of Tolerance: *Mahloket* (Controversy) and Redemption in Early Hasidism," *Jewish Studies Quarterly* 8.4 (2001), pp. 326–368; and Levi Cooper, "Towards a Judicial Biography of Rabbi Shneur Zalman of Liady," *Journal of Law and Religion* 30.1 (2015), pp. 107–135.

[3] *Kedushat Levi*, ed. M. Derbaremdiger (Monsey, NY: 1995), vol. 1, *terumah*, p. 220; based on our translation in Arthur Green, *Speaking Torah: Spiritual Teachings from Around the Maggid's Table* (Woodstock, VT: Jewish Lights, 2013), vol. 1, pp. 218–219.

[4] For a few studies of this issue, see Avi Sagi, *The Open Canon: On the Meaning of Halakhik Discourse*, trans. Batya Stein (London and New York: Continuum, 2007); Michael Rosensweig, "'*Elu va-Elu Divrei Elokim Hayyim*': Halakhic Pluralism and Theories of Controversy," *Tradition* 26.3 (1992), pp. 4–23; Moshe Sokol, "What Does a Jewish Text Mean?: Theories of '*Elu ve-Elu Divrei Elohim Hayim*' in Rabbinic Literature," *Daat* 32–33 (1994), pp. xxiii–xxxv.

[5] See Moshe Halbertal, *People of the Book: Canon, Meaning, and Authority* (Cambridge, MA: Harvard University Press, 1997).

[6] See his introduction to *Tur, Orah Hayyim*.

[7] See the introduction to *Mishneh Torah*, based on t. *Sanhedrin* 7:1 and t. *Sotah* 14:9.

[8] Moses de Leon, *Sefer ha-Rimmon*, ed. E. R. Wolfson (Atlanta: Scholars Press, 1988), pp. 366–367; and cf. *Pardes Rimmonim* 9:2.

[9] *Shenei Luhot ha-Berit, toledot adam, bet hokhmah telita'ah*; translated in Miles Krassen, *Isaiah Horowitz: The Generations of Adam* (New York: Paulist Press, 1996), p. 269.

[10] At this point the reader with no background in Hasidic or kabbalistic thought may wish to acquaint himself with a basic discussion of the *sefirot*, since many of the upcoming texts will draw upon this vocabulary. See, for example, Arthur Green, *A Guide to the Zohar* (Stanford: Stanford University Press, 2004), pp. 28–59; and David Ariel, *The Mystic Quest:*

An Introduction to Jewish Mysticism (New York: Schocken Books, 1992).
[11] See *Likkutei Moharan* I 62:2.
[12] *Likkutei Moharan* I 12.
[13] *Likkutei Moharan* I 64:4.
[14] See *Likkutei Moharan* II 2:2.
[15] See m. *Beitsah* 1:1.
[16] b. *Bava Metsia* 59b.
[17] *Maggid Devarav le-Ya'akov*, ed. R. Schatz-Uffenheimer (Jerusalem: Magnes Press, 1976), #58, pp. 86–87.
[18] See the tradition cited in *Orah le-Hayyim*, vol. 1, *bo*, p. 274.
[19] See *Bereshit Rabbah* 68:11.
[20] *Me'or Einayim* (Jerusalem, 2012), pp. 94–95. The present text is based on Arthur Green's forthcoming annotated translation of this entire work.
[21] A parallel version of this teaching preserved in the work *Kitvei Kodesh*, fol. 5c adds that there is no doubt (*safek*) in the divine realm, suggesting that ambiguity and uncertainty are also defining characteristics of human applications of God's law.
[22] See Prov. 9:1, interpreted as referring to Torah in b. *Shabbat* 116a.
[23] See b. *Mo'ed Katan* 16b.
[24] b. *Megillah* 28b, based on Habakkuk 3:6.
[25] *Likkutim Yekarim* (Jerusalem, 1975), #277, fol. 94b–95a.
[26] *Kedushat Levi*, vol. 2, *Likkutim*, p. 479.
[27] *Kedushat Levi*, vol. 1, *Purim*, p. 237.
[28] See Zohar 3:114b.
[29] *Kedushat Levi*, vol. 1, *Shelah*, pp. 336–337.
[30] *Kedushat Levi*, vol. 2, *Likkutim*, p. 479.
[31] *Ohev Yisra'el* (Bnei Brak, 1996), *Toledot*, p. 23. See also *ibid*., *Be-shalah*, pp. 92–93.
[32] See Herzl Hefter, "'In God's Hands': The Religious Phenomenology of R. Mordechai Yosef of Izbica," *Tradition* 46.1 (2013), pp. 43–65; and for a different perspective, Shaul Magid, *Hasidism on the Margin: Reconciliation, Antinomianism, and Messianism in Izbica/Radzin Hasidism* (Madison: University of Wisconsin Press, 2003).
[33] *Yismah Yisrael* (Jerusalem, 2002), *va-Yiggash*, fol. 102a–b.
[34] *Avodat Yisra'el*, *Shavuot*, p. 135.
[35] *Ma'or va-Shemesh*, *Hukkat*, p. 464.
[36] *Ibid*., p. 594.
[37] *Ma'amarei Admor ha-Zaken ha-Ketsarim* (New York, 1981), p. 147.
[38] *Ibid*., pp. 327–328.
[39] *Ma'amarei Admor ha-Zaken ha-Ketsarim*, p. 115. See also *Torah Or* (New York, 2012), *Yitro*, fol. 67b–68c. A similarly conservative framing of the various rabbinic disagreements is found in the writings of the twentieth-century master R. Kalonymous Kalman Shapira of Piazeczna (d. 1943), which is linked to his broad definition of Revelation; see *Mavo he-She'arim* (Jerusalem, 2001), pp. 189–190.
[40] See his development of this theme in *Ma'amarei Admor ha-Zaken*: *Ethalekh Liozna* (New York, 1958), pp. 83–84.
[41] *Sefat Emet* (Or Etsiyon, 2003), *Korah* 5653 [1893], pp. 181–182.
[42] *Sefat Emet*, *Shemini* 5639 [1879], p. 54; see also *ibid*., *Shemini* 5641 [1881], p. 56.
[43] For three different takes on the mutual interdependence of halakha and *aggada*, see R. Shmuel Eidel's (Maharsha) introduction to his commentary on the Talmud; Haim Nahman Bialik, "*Halachah* and *Aggadah*," *Revealment and Concealment: Five Essays*, afterword by Zali Gurevitch (Jerusalem: Ibis Editions, 2000), pp. 45–87; and Robert M. Cover, "*Nomos* and *Narrative*," *Harvard Law Review* 97 (1983–1984), pp. 4–68.
[44] Aharon Lichtenstein, "The Human and Social Factor in Halakha," *Tradition* 36.1 (2002), pp. 89–114.
[45] Daniel Sperber, "'Friendly' Halakhah and the 'Friendly' *Poseq*," *Edah* 5.2 (2006), 36 pp.