When God's "Yes" is "No" and God's "No" is "Yes"

Righting God's Law, Revealing the Divine Moral Conscience

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In a late seventeenth-century text, entitled *Mei'ah berakhot* (*One Hundred Blessings*), we read:

> Blessing when Purchasing Slaves
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> When an Israelite purchases a slave, he must recite a blessing, saying: "Have mercy and remember, master of this slave, to rejoice in his deeds and to enslave him and his children after him" as it says, 'You shall make them an inheritance for your children after you, to inherit as a possession in perpetuity, them shall you enslave' (Leviticus 25:46). 'Praised are You Who is good and does good'" (m. Berakhot 9:2).[1]

The author, Rabbi Avuhav da Fonseca, was then serving as chief rabbi of the Sephardic community of Amsterdam, which included Jewish slaveholders (and traders), as did the Dutch colony, Recife, in which he previously served as rabbi of the Portuguese Jewish community.[2]

While, in light of present-day sensibilities, we might find it morally repugnant for one to acquire or own a slave, let alone recite such a blessing, from biblical times into the nineteenth century (and beyond) one can hear an echoing of the sentiment expressed by the second–third century Babylonian Amora, Samuel: "Whoever emancipates his non-Jewish slave transgresses

[1] P. 184 (Amsterdam 1687). The title of this work reflects the rabbinic rendering of the biblical verse "Israel, what (*mah*) does the Lord your God require of you?" (Deuteronomy 10:12) as "Israel, one hundred (*mei'ah*) [blessings, daily] does the Lord your God require of you" (b. Menaḥot 43b).

[2] Jonathan Schorsch, Jews and Blacks in the Early Modern World (Cambridge: Cambridge University Press, 2004), 93–101.

a positive commandment" (b. Gittin 38a–38b).[3] Indeed, the assertion *Deo Vindice*, "God Will Vindicate Us," adopted as the motto of the seceding slaveholding Confederate States of America, points to this same biblical commandment referenced by Samuel and cited in *Mei'ah Berakhot*.

Beyond slavery, there remain today not a few biblical prescriptions/proscriptions and rabbinic sanctioning of the same whose viability and validity, although questioned on moral grounds, still meets with a response akin to that of Samuel or with the cry of *Deo Vindice*, voiced by those who would "uphold" the divine word against the "mistaken" moral onslaught of those who could only succeed in "dishonoring" it. For Hasidic Grand Rebbe Tsvi Elimelekh Spira of Dinov (1783–1841), whose reflections on the conflict of Jewish law and morality are the subject of this article, not only should we not cite the Torah as grounds for divine vindication in defending a law that would otherwise be deemed repugnant, but we should also not vindicate God in upholding this commandment, for that, in truth, would be a violation of the Divine will.

Tsvi Elimelekh, who lived in the period following the appearance of

[3] Slavery, of course, persists globally in various forms; see Lev Meirowitz Nelson, "Fighting Modern-Day Slavery: A Handbook for Jewish Communities," Truah (2014), https://truah.org/resources/fighting-modern-day-slavery-a-handbook-for-jewish-communities and "What Is Modern Slavery?," Anti-Slavery, https://www.antislavery.org/slavery-today/. Interestingly, Rabbi Avuhav's contemporary, Rabbi Ya'akov Hagiz, provides the following response to the query if one should say the blessing "Who makes diverse creatures" (Tosefta 6:3 and b. Berakhot 58a) upon seeing a black person (kushi): "It seems that one should [say this blessing] when [seeing] one who was born black (kushi) but his mother and father are white. But, for the children of blacks (kushim) it seems that one should not bless ('Who makes diverse creatures'). For the former [case] we are sorry, but the latter [case] reflects the way of the world, that a black (kushi) bears a black (kushi). But, if they are black (kushim) and gave birth to a white…then one may say [the blessing] 'Blessed is He who is good [and does good]'"; see Halakhot Ketanot (Jerusalem 1895), 44a (Part I, Query no. 240). Feeling sorry (for the parents or the child) when White parents give birth to a Black child, one says the blessing "Who makes diverse creatures." If Black parents give birth to a White child, however, then one may say "Blessed is He who is good and does good." Perhaps the sensibility that construes Black as negative and White as positive and elicits the blessing "Blessed is He who is good and does good" regarding Black parents bearing a White child reflects the same sensibility that causes one to say "Blessed is He who is good and does good" upon acquiring a (Black) slave: It is good for the less fortunate (or "inferior") Black and the more fortunate (or "superior") White. On the interplay within the Jewish community and Jewish tradition of slavery and color (and the curse of Ham) with regard to Blacks, see Schorsch, Jews and Blacks, 116–65. Even as they are feared for the presumed power they possess, albino Blacks, who were and continue to be shunned, persecuted, and killed within the Black communities of Africa, would offer a different perspective on the blessings of white Blacks. See the documentary film In the Shadow of the Sun (2012), directed by Harry Freeland, and Standing Voice, https://StandingVoice.org.

Mei'ah berakhot and shortly before the abolitionist movement came to the fore, is not alone within our Jewish tradition in arguing that divine law and morality must coincide. Challenging God for what might be deemed questionable, unjust, and/or destructive is not foreign to our biblical or rabbinic tradition. Well known are the words of the biblical Abraham when seeking to save Sodom from God's (indiscriminate) destruction: "It would be a profanation (*ḥalilah*) for You; would the judge of all the earth not do justice"? (Genesis 18:25).[4] When Moses saves the Israelite people from destruction by an angry God, following the golden calf incident, the rabbis have God Himself contrast the consequences from the generation of the flood, when no intercessor rose up to challenge Him:

> The Holy One Blessed be He says: "When I win, I lose and when I lose, I win. I won at the generation of the flood, but I lost in destroying all those people. And so it was with the generation of the dispersion [of the races, in the tower of Babel] and the people of Sodom. But, at the [golden] calf, Moses prevailed over Me and I won" (*Pesiqta Rabbati*, pisqa 40).[5]

Prophets with "boundless audacity" such as Moses, our tradition tells us, exemplify true servants of God in being "His Majesty's loyal opposition."[6]

Within the Hasidic sphere in particular, confronting God was both laudatory and to be expected. The famous Berditcher Rebbe, Rav Levi Yitschak, is known as the "Defender of Israel" in that he is the "Prosecutor of God." In "The Kaddish of Reb Levi Yitschak" or "A Din Toyre mit Gott," this leader of his community rebukes God for the great, unjust suffering of his people.[7] In our time, Elie Wiesel, of Hasidic lineage, explains that his play, *Trial of God*, set in the fictitious seventeenth-century Ukranian town of Shamgorad, found its inspiration in witnessing a court of three rabbis in Auschwitz placing God on trial and declaring Him guilty for allowing the massacre of His people.[8]

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[4] On ḥallilah see Targum Jonathan (and Rashi).

[5] Pesiqta Rabbati, ed. Meir (Ish Shalom) Friedmann(Vienna: Yosef Kaiser,1880).

[6] Yochanan Muffs, "Who Will Stand in the Breach? A Study of Prophetic Intercession," Love and Joy (New York: Jewish Theological Seminary of America, 1992), 11.

[7] *Samuel Dresner*, *Levi Yitzhak* of Berditchev: Portrait of a Hasidic Master (New York: Hartmore House, 1974), 85–90.

[8] Elie Wiesel, Trial of God (New York: Schocken, 1979), xxv.

In being an upstander—in challenging rather than vindicating God—Rabbi Elimelekh is thus not exceptional. He may prove to be more distinctive in his creative interweaving of, on the one hand, the biblical and rabbinic portrayal of God as desiring or responding positively to the human challenge, as refracted through the biblical narrative, or *aggadic* portions of our tradition's texts, and, on the other hand, the call for human beings to take up the cause, presented through prescriptive and exhortative statements found within our Torah and halakhah. It is to him that we will now turn.

We will explore Rabbi Elimelekh's contention that, moved by our moral conscience and as prescribed by His law, we are required to call God to account and effect the necessary changes. The central passage we will consider is found within his commentary on the Bible entitled *Agra dekallah*. Noteworthy are the concluding remarks of his introduction to this volume, wherein he states that "these words of mine" are to be "safeguarded" by the "ḥaverim makshivim" for whom they are intended and are not for those seeking to "attack" God and "to render defective [*lehatil mum*], God forbid, the Holy Divine."[9] The *ḥaverim maqshivim* are those "companions attending (to your voice)", appearing in Song of Songs, a biblical book that the rabbis presented as an allegory of Israel seeking God. For Elimelkeh, his teachings, in *Agra dekallah*, when properly understood and applied, will make for a union of God and His people rather than provide a cause to rupture the divine-human relationship.[10]

[9] Tsvi Elimelekh, Agra dekallah (Lemberg, 1868), introduction.

[10] In this introduction, Elimelekh explains that most of the book's contents derive from his Shabbat lectures, thus its title, Agra dekallah, "means aseiphat shabbat kallah," or the ingathering/collection of the Shabbat kallah. The term kallah here hearkens back to the mass assemblies of Babylonian students in talmudic times who gathered to learn from renowned teachers during the months of Elul and Adar. Agra as a gathering or collection would reflect the verse from Proverbs (10:5) in which the root letters alef, gimel, and resh are employed: "A wise son gathers (oger) in the summer while a shameful son sleeps during the harvest." At the same time, the word agra, in consonance with the book's full title, is Aramaic and reflects the talmudic expression Agra dekallah (b. Berakhot 6b), the reward of (attending) the kallah. This title has a more esoteric allusion as well, as indicated when Elimelekh says that these words of the kallah "were said and taught in the assembly of the ḥaverim makshivim." As noted, the phrase ḥaverim makshivim derives from Song of Songs 8:13 ("The initiates/companions [ḥaverim] attend [makshivim] to your voice"). This book, according to rabbinic tradition, speaks of Israel seeking and finding union with God, her beloved. In this context, the kabbalistic tradition speaks of the coming together of God (associated with tif'eret, the divine male principle) and His Shekhinah, or divine indwelling (associated with malkhut, the divine female principle), which is often identified with Knesset Yisrael, or the congregation of Israel, and called kallah, or the divine bride. Shabbat, perceived as a propitious time for this union, is called Shabbat ha-malkah or Shabbat kallah. Agra sometimes also means "to unite, or bind," as does the word ḥaver. Thus the ḥaver, or one who will properly understand this book, will receive the reward, or experience the union, of

The textual teaching that will be our focus appears in Elimelekh's commentary on the Torah portion *Re'eih*, which begins with the words "Behold, I have set before you today a blessing and a curse—the blessing if you heed the commandments of the Lord your God, and the curse if you do not heed the commandments of the Lord your God" (Deuteronomy 11:26–28). After subsequently noting that, upon entering the Land, Israel is to "utterly destroy all the places where the nations you are to dispossess served their gods… And you shall break down their altars…and you shall destroy their name out of that place" (Deuteronomy 12:2–3), the Bible warns: *lo ta'asun kein l'adonai elohekha*, "You shall not do thus to the Lord your God" (Deuteronomy 12:4).

This latter verse, based upon its context, is generally understood as part of the Deuteronomist's call for centralization of the cult, as further evidenced in the verses that immediately follow it (Deuteronomy 12:5–6) and/or as warning against erasing God's name or destroying (a stone of) the altar, in contrast with the actions prescribed in the verses preceding it. Our Hasidic rebbe, however, reads this negative commandment in a remarkably surprising way:

> *lo ta'asun kein*… [The word] *kein* is to be explicated as meaning just (*tsedeq*) and right (*nakhon*, firmly established). For God, may He be praised, desires that the righteous (*tsadiqim*) annul His decree for that is His delight (*sha'ashua'v*) rather than that the righteous one (*tsadiq*) would say "certainly His laws, may He be praised, are just and how can I bring charges (*meqatreig*) against my Master." He should not say thus (*kein*)! That is [the meaning of] *lo ta'asun kein* [*l'adonai elohekha*], "Do not make just and right (*kein*) His laws [when they are not so]" (Elimelekh, *Agra dekallah*, 320b).[11]

the kallah. These words, or teachings, then, are to be guarded by the ḥaverim for whom they are gathered, lest they fall into the hands of those who will use them against heaven. Elimelekh, Agra dekallah, end of introduction.

[11] The word sha'ashu'a is associated in the Bible with God's Torah (toratkha sha'ahu'ai, "Your Torah is my delight") and mitsvah (mitsvotekha sha'ahu'ai, "Your commandments are my delight"), as well as with Israel (yeled sha'ashu'im, "delightful child"); see Psalm 119 and Isaiah 31:19; cf. Jeremiah 5:7. The kabbalistic tradition tells us: "The Holy One Blessed be He enters the Garden of Eden to take delight (le'ishta'ashe'a) with the righteous (tsaddiqim). At this time [midnight] one is to rise to take delight (le'ishta'ashe'a) in the Torah. For the Holy One Blessed be He and all the righteous in the garden of Eden all listen for his voice, as it is written (Song of Songs 8:13): "O, you who linger in the garden, the companions are listening (ḥaverim makshivin)

Applying his explication *lo ta'asun kein* directly to the words of the verse, we thus read: "Do not make just/right the Lord your God." In an otherwise radical exegesis of this verse, Elimelekh replaces "the Lord your God" with "His laws" thus stopping short of (directly) impugning God. This would not escape his readers, who, on the basis of Elimelekh's rendering of this verse, are told to challenge and "bring charges" against the "Master." For purposes of presenting the whole of the verse in terms of his exegesis, we shall read it "Do not make just (the laws of) the Lord your God."

Significantly, Elimelekh's exegesis of *kein*—whereby one is not to be God's "yes man" by finding just what is unjust—is based upon the biblical episode of the daughters of Zelophehad. Immediately before his above-cited exposition of this verse, he writes: "*Lo ta'asun kein*... *kein* as in the expression *kein beinot Tselofḥad*, meaning right and just [are the daughters of Zelophehad]" (Elimelekh, *Agra dekallah*, 320b). The daughters of Zelophehad are recorded as bringing the following grievance:

> Then the daughters of Zelophehad drew near...and stood before Moses and before Eleazar the priest, and before the princes and the entire congregation at the entrance of the tent of meeting, saying: "Our father died in the wilderness, but he was not among the assembly, Korah's assembly, that banded together against God...and he had no sons. Why should our father's name be lessened among his family because he has no son? Give us a holding among our father's brothers" (Numbers 27:1–4).

Not unexpectedly, as this was apparently their intent in presenting themselves before the tent of meeting, their claim as daughters to inherit as do the sons of other Israelite fathers is brought before God:

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for your voice, cause me to hear it" (Zohar 1:92a and 2:46a). Using here the word sha'ashu'a, Elimelekh suggests that in letting God hear our voice—through faithful engagement in Torah, which at times requires us to challenge Him—we help bring about and experience the union of the "Community of Israel" (Kenesset Yisra'el/Shekhinah) with God. Indeed, the text further relates that, when the "Community of Israel comes and takes delight in (mishta'ashe'a) the Holy One, Blessed be He, He extends to her the scepter of mercy," intimating, as the kabbalist Abraham Galante notes, "that the secret of union and copulation (sod hayiḥud vehazivvug) is called sha'ashu'a." For an extended discussion of the term sha'ashu'a in kabbalistic sources, including the citation from Galante, see Elliot Wolfson, Language, Eros and Being: Kabbalistic Hermeneutics and Poetic Imagination (New York: Fordham University Press, 2004), 132ff. Cf. Elimelekh, Agra dekallah, 126a and 45a.

> Moses then brought their cause before the Lord. And the Lord said to Moses: "Justly/Rightly (*kein*) do the daughters of Zelophehad speak. You shall assuredly give them a hereditary holding in the midst of their father's brothers, and you shall transfer their father's inheritance to them. And you shall speak to the Israelites, saying: 'If a person dies and he had no son, then you shall transfer his inheritance to his daughter… And it shall be for the children of Israel a statute of judgment, as the Lord commanded Moses'" (Numbers 27:5–8).

In using the daughters of Zelophehad story in his explication of the verse *lo taʿasun kein l'adonai elohekha* as "You shall not make just (the laws of) the Lord your God," Elimelekh presents an interpenetration of divine commandment and biblical narrative. While the narrative of Zelophehad's daughters serves as the instantiation and affirmation of "You shall not make just (the laws of) the Lord your God," this commandment sanctions and requires actions like those of the daughters of Zelophehad. Moreover, we see the just claim of these women being championed and formalized into law, in their name, by God Himself. God presents the emerging narrative as making for a new "statute of judgment," even as His response to the daughters of Zelophehad is in fulfillment of His law *lo taʿasun kein*, "Do not make just (that which is not just)." God is thus portrayed by Elimelekh as an examplar of employing the integrative engagement of *nomos* and narrative. The established *nomos* must not lie beyond the grasp of a questing narrative so that when infused with its living spirit it gives birth to a new law, which itself becomes generative of that spirit.

The daughters of Zelophehad, as Elimelekh hopes for the *ḥaverim* for whom he has written this book and who attend to the divine voice of Torah, were attuned to a voice of God that could not yet be heard within the prevailing community. Those whose moral sensibilities make for a deeper understanding of the divine moral conscience are God's partners in bringing a new revelation and law into the divine community. In challenging as unjust God's command, which was heretofore perceived and held as just by the community, and in being responsible agents in rectifying it, the daughters of Zelophehad are making the Lord their God just.

The rabbis present Zelophehad's daughters as saying "human beings extend greater mercy to males than they do to females. But, He who spoke and the world (*ʿolam*) came into being is not so (*kein*). Rather, His mercy

is upon both males and females."[12] One can hear Elimelekh pointedly reading this midrash as God does not say *kein* to, or affirm as just and correct, those who, in limiting His mercy through law, do not truly express the divine moral conscience. Rather, *yomar na yisraʾel, ki leʿolam ḥasdo* (Psalm 118:2)—all "Israel," in exercising His Law, "should say 'His (the Creator's) lovingkindness is everlasting and to all His world.'"

Speaking to an injustice still practiced today in the name of God's Law, we might hope that, like that of the daughters of Zelophehad, the plight of the *ʿagunah* would evoke within us all Elimelekh's divine command *lo taʿasun kein*.[13] Cast in the words of a present day activist for the liberation of "enchained women," even as it might have been expressed upon a protesting placard of a would-be abolitionist, this rebbe's reading of this verse might be rendered "Do not give the nod to a narrow God." Justly resolving the plight and compassionately responding to the protest of the *ʿagunah* through a remedying of the Law releases us and our God from the fetters of injustice.

As exemplified by Zelophehad's daughters, disobedience is at times obedience, even as obedience is at times disobedience. Elimelekh asks us to see that the blessing is sometimes found in following the commandment not to follow the commandments. Present day research, as expressed here in the words of Pearl Oliner, the author of *Saving the Forsaken*, finds that "significantly higher percentages of bystanders, as compared with rescuers, cited obedience as a primary value."[14] In Elimelekh's view, we are divinely challenged to have the courage of conscience to speak out for ourselves and others by rightly declaring His laws unjust.

How, though, can we be certain when disobedience in deeming His laws unjust constitutes obedience in fulfilling the commandment "Do not make just (the laws of) the Lord your God"? In opening his exegesis of the verse *lo taʿasun kein*, Elimelekh notes that, for some, Jewish living is "religious behaviorism" (*ḥoq qavuʾa lahem*). However, the wise individual (*maskil*) understands that

> no single day is the same as another, [so that] at times, the self-same deed that constitutes a commandment one day

[12] Sifrei ba-Midbar, Pinḥas, ed. H.S. Horovitz (Jerusalem: Shalem, 1992), 176 (pisqa 133).

[13] Because the Bible (Deuteronomy 24:1) presents the man (alone) as issuing a writ of divorce, when men are unwilling or unable to do so, women remain chained to their husbands in perpetuity; see "Resolution on Agunot in Israel," Rabbinical Assembly, www.rabbinicalassembly.org/resolution-agunot-Israel?tp=110.

[14] Pearl Oliner, Saving the Forsaken (New Haven, CT: Yale University Press, 2004), 107.

> is a transgression the next. And it is impossible to further explain the matter, for the wise one will discern on his own. And it was regarding this that our Torah warns us in saying "do not do *kein* to the Lord your God," [*kein*] meaning [living always] "thus," the same, never changing behavior (Elimelekh, *Agra dekallah*, 320b).

The slippery slope is always present, but one is a deviant in refusing to deviate. If wise, our behavior in observing the law will change when we correctly discern what is required. Although we might not always be correct, there is greater risk in not risking than in risking; that will result in an ossified religion, God and self. For Elimelekh, when righting our ever-evolving Torah, we are God's active partners in further revealing and realizing the divine moral conscience.

Apposite to Elimelekh's remark that the proscriptive and prescriptive may at times interchange is his second interpretation of *lo ta'asun kein*, which we will now consider. The rabbi of Dynov writes:

> An allusion to another [meaning of] *lo ta'asun kein* [is provided] on the basis of what our rabbis, may their memory be for a blessing, said: "Greater is a transgression committed for God's sake (*lishmah*), than a commandment performed not for His sake (*shelo lishmah*)"…as you know from the matter of Ya'el, the wife of Ḥever, the Kenite [whose adulterous action saved her people; see b. Nazir 32b and b. Horayot 10b, cf. Judges 7:17–22]. And this is what the Torah was indicating [by] *lo* [*ta'asun kein*], meaning that against which you are warned by *lo* ("no"), being the negative commandments, you shall make *kein* ("yes") "for the sake of the Lord your God" (Elimelekh, *Agra dekallah*, 321a).

Thus, complementing his first reading of *lo ta'asun kein l'adonai elohekha* as a negative commandment, "Do not make just (the laws of) the Lord your God," Elimelekh here reads this verse as presenting a positive commandment, "Make the "no/*lo*" (negative commandment) into a "yes/*kein*" (prescribed action). In his first exposition of this verse, God's "yes" becomes "no" when proscribing the prescribed, as we challenge rather than perform a

morally reprehensible action. In this understanding of the verse, God's "no" becomes "yes" when prescribing the proscribed, as we commit ourselves to the ethically laudable for the sake of God.

It is instructive that, in discussing those whose practice is fixed (*ḥoq qavu'a*) and who are unable to discern that at times proscriptions are to become prescriptions (or the reverse), he later writes:

> This is what is alluded to in the verse "And you shall not erect an [immutable] pillar/stone (*matsevah*) for yourself" (Deuteronomy 16:22). That is, [do not create] a condition (*matsav*) in which your service [of God] is constant without change (Elimelekh, *Agra dekallah*, 327a).[15]

In the verse immediately preceding *lo ta'asun kein* (Deuteronomy 12:4), the Bible, in referring to the idolatrous nations which Israel is to displace, says: "You shall break their pillars, or standing stones (*matsevotam*)" (Deuteronomy 12:3). When we are not discerning and, in our unchanging way, adhere to a proscription that is not for "God's sake" (*lishmah*) rather than seeing it now as a prescription to be fulfilled for the sake of God, we are idolizing the Law rather than serving God.[16]

Elimelekh is reminding us that God, and hopefully our experience of God, is beyond the boundaries of Torah; He is, and hopefully we are, not limited to or by His Torah. This rebbe relates that God Himself, as we sometimes are expected to do, "violates" the Torah for His sake (*lishmah*). Thus, in explaining God's appearance in Egypt (*mitsrayim*), the land of "defilement," he writes:

> "And I will pass (*'avarti*) through the land of *mitsrayim* on that night" (Exodus 12:12). God, may He be praised, Him-

[15] The verse "And you shall not erect an [immutable] pillar/stone (matsevah) for yourself" concludes with "which the Lord your God detests." To be sure, Elimelekh is speaking of both inspired and aspiring religious practice. A nonchanging, habitual performance is hollow service to God. So, too, commitment not coupled with critical consciousness can make for unconscionable behavior. As soulful service is sought by God, so a challenging mindfulness, making for a morally progressive practice, is His delight.

[16] Similarly, Elimelekh presents the biblical verse "For these nations, whom you are to dispossess, hearken to soothsayers, and augurs; but you, not likewise (lo kein) does the Lord your God suffer you to do" (Deuteronomy 18:14) as meaning: You (Israel), in contrast to the idolaters, God has granted [to sometimes make] the "no" (lo) "yes" (kein) in fulfillment of the principle "greater is a transgression committed for God's sake." Elimelekh, Agra dekallah, 326a.

> self, in His own glory (*beatsmo ubikhvodo*), revealed Himself in *mitsrayim*?! Behold, the rabbis, may their memory be for a blessing, said: "Greater is a transgression committed for God's sake." The Creator, may His name be praised, Who "sanctified us through His commandments" (*kideshanu bemitsvotav*)—that is to say, His commandments for He Himself fulfills the same *mitsvot* [which he commands of us]—said: "And I will pass (*ʿavarti*) through the land of *Mitsrayim*." He did not say "I will go down" or [use] any other term but "and I will pass (*veʿavarti*)," [meaning] a "transgression (*ʿaveirah*) committed for God's sake (*lishmah*)" (Elimelekh, *Agra dekallah*, 186a).[17]

This midrash aggadah and the midrash halakhah—through which the commandment *lo taʿasun kein* is a divine prescription for a transgression committed for God's sake ("You shall make the 'no,' a transgression, a 'yes'")—are complementary and mutually affirming. Here, too, through an interplay of law and narrative (one speaking to our greatest national myth), Elimelekh provides us with a divine calling that should stir us to redress an injustice that some would continue to perpetuate in the name of God. Should we not feel summoned to ask, if God makes a "no" a "yes", abrogating a proscription in performing it as a prescription, when He enters *mitsrayim* to liberate His people from the realm of impurity not of their own making, lest they themselves be counted as impure, should we not do likewise for the *mamzer*, who, being a product of an illicit union, is cast into a context of impurity through no desire or action on his part? Rather than recording who is or might be a *mamzer* in order to restrict his access into the Jewish community based on the verse "A *mamzer* shall not enter (*lo yavo*) the congregation of the Lord"

[17] See also Elimelekh, Agra dekallah, 87b and Maimonides, Sefer haMitsvot (Jerusalem: Mossad Harav Kook, 1971), Lo taʿaseh 46. The rabbis present God as violating His commandments and asking others to do the same in lying (b. Yevamot 65b), over against "Distance yourself from falsehood" (Exodus 23:7), and in erasing His name (Leviticus Rabbah 9:9 and Tosefta Shabbat 14:4), in the face of "You shall not do thus" (Deuteronomy 12:4, the contextual meaning of lo taʿasun kein), which is traditionally understood as "You shall not erase His name as you would that of the idolatrous nations and their gods." In both instances, God and humans, upon the divine behest, violate the Torah for the purpose of shalom ("peace, wholeness"). Significantly, the rabbis recognize God's name as "Shalom"; see Derekh Erets Zuta (Vilna 1870), 130–31 (Pereq ha-shalom); cf. Judges 6:24. Thus the destruction of God's name in its physical form here makes for preservation of the same in its more ultimate form. Indeed, in these instances, preserving the former would serve as idolatry, leading to destruction of the latter.

(Deuteronomy 23:3), should we not make the "no" (*lo*) a "yes" (*kein*) and, committing a transgression for the sake of God rather than performing a precept that does not serve Him, bring the *mamzer* into our community as God brought the Israelites into His.[18]

God asserts, explain the rabbis, that a Jewish community and its legislators that use My law to oppress rather than comfort those in need are not serving Me:

> "But I returned and observed all the oppressions that are done under the sun; and behold the tears of the oppressed, and they have no comforter; but from the hand of their oppressors comes power, but they have no comforter" (Ecclesiastes 4:1). Ḥanina the Tailor interpreted this verse: "All the oppressions" this refers [to what is being done] to the *mamzerim* (those illicitly conceived), "and behold the tears of the oppressed," [for] their mothers transgressed, but it is these humiliated ones that are being marginalized. This one's father had illicit sexual relations, but what did he (the child) do?! Why should it have consequence for him?! "They had no comforter" but "from the hand of the oppressor there comes power"—this refers to the Great Assembly of Israel which comes upon them with the power of the Torah and marginalizes them in the name of "No *mamzer* shall enter the community of the Lord" (Deuteronomy 23:3). But, [since] "they have no comforter," the Holy One Blessed be He says: "It is upon Me to comfort them" (Leviticus Rabbah 32:8).[19]

[18] David Weiss Halivni, "Can a Religious Law be Immoral," in Perspectives on Jews and Judaism: Essays in Honor of Wolfe Kelman, ed. Arthur A. Chiel (New York: Rabbinical Assembly, 1978), 165–69, citing this midrash, argues that the "case of mamzerut" is the lone exception in which the rabbis of the Talmud were willing to openly entertain the notion that a conflict existed between the religious law and morality. Consequently, and ironically, this might account, Halivni argues, for why the "problem of mamzerut" has not been "solved," while the morally challenging cases of capital punishment and lex talionis, which "were never presented by the Rabbis of the Talmud as a moral problem," were resolved through rabbinic "alteration" of the law. Presenting this conflict between morality and law precluded any "adjustment" in the case of mamzerut, for "any subsequent change will be interpreted as an admission that initially there was no moral sensitivity, imputing to the Lawgiver a defective moral awareness."

[19] Vayiqra Rabbah, ed. Mordechai Margoliyot (New York: Jewish Theological Seminary of America, 1993), 654–55.

The governing body uses My Law, complains God, to aggravate rather than ameliorate the plight of the *mamzer*. The midrash thereafter concludes that, in a future world (*'atid lavoh*), God will create an inclusiveness of all that the current world (*'olam hazeh*) is incapable of achieving. At the same time that God presents humans as making His law an obstacle in creating a truly divine community, one hears, as well, His persistent hope that it would not be so.[20]

The rabbis, in bringing attention to the profound pain being experienced by the *mamzer*, yet presenting God as the only avenue of redress, might be commenting upon a community that—by sacralizing its "moral integrity" so that it is not violated by countenancing the "stain" of *mamzerut* upon its collective moral fabric, lest it be placed in the precarious position of incurring the wrath of a punitive God—may be blinding rather than binding itself to that God whose will it seeks to fulfill. Returning to the words "Behold, I set before you today a blessing and a curse—the blessing if you heed the commandments of the Lord your God, which I command you this day, and the curse if you do not heed the commandments of the Lord your God but turn away from the path which I command you today to go after other gods" (Deuteronomy 11:26–28), we find the following teaching of Elimelekh:

> And this is the meaning of "Behold, I set before you today a blessing." I place before you and in your hands that which will arouse a blessing for Israel. And "a curse" you will actualize if you do not listen to the commandments of the Lord your God, only insofar as it is in the manner that I command you this day to do this transgression; that is a transgression ('averah) committed for God's sake (lishmah), for that is to be included among My commands. By that means (committing a transgression for God's sake) you will actualize "going after other gods"—that is, you will

[20] Interestingly, this midrash suggests, through the mouth of God Himself, that the divine law, as refracted through the Torah text, is not to be seen as the final and ultimate word. Indeed, leaving matters as they are would be an affront to God. The Conservative Movement's Committee on Jewish Law and Standards echoed and acted upon the sentiment expressed in this midrash. Adopting Rabbi Kaplan Spitz's position paper, in which he argued that "We need to address mamzerut precisely because it raises the question whether we will enforce a Torah law that strikes us as unconscionable in light of other Torah values," its rabbis concluded that "we render mamzerut inoperative." See Rabbi Elie Kaplan Spitz, "Mamzerut," Rabbinical Assembly, https://www.rabbinicalassembly.org/sites/default/files/2022-09/spitz_mamzerut.pdf.

actualize the curse upon other gods (Benei Yissakhar 82a).[21]

For Elimelekh, we are commanded to both heed and transgress God's commands. Blessing and curse are presented together, but it is our discriminating response to God's commands that determines which we bring upon ourselves and which upon the foreign gods. Contradicting the contextual meaning of the verse, this Hasidic rebbe reads not heeding God's commandments and turning away from the path as that "which I (God) command you to do," in the particular instances constituting transgressions for the sake of God. Thus, in heeding God's command by not heeding "God's" command, we destroy foreign gods who might otherwise blind us.

Indiscriminate adherence to a particular law may undermine the whole of the Law with which it is at variance, thus violating rather than valorizing God's Torah. Indeed, for Elimelekh, moral sensibilities that issue from outside the Law and serve to contravene a law are sometimes most consonant with the Law in which it may find its greatest support. In his midrashic "misreading" of *lo ta'asun kei*n as both a positive and negative commandment to do what is right and just, Elimelekh shows how stimulus for change can originate outside the Law and at the same time be sanctioned within the Law. This stimulus, in turn, finds its nurturing within the moral spirit of the Law, as reflected in many of its commandments, and serves to deepen and expand our understanding of the divine moral conscience, which it further concretizes in a renewed revelation of God's Law.

Elimelekh is heir to a rabbinic tradition that reminds us that the Torah begins and ends with an act of lovingkindness on the part of God (b. Sotah 14a). For this Hasidic rabbi, we are enjoined to make the whole of the law an expression of God's lovingkindness. While some rabbis in the time of Elimelekh and beyond argued—as did the second–third century Amora, Samuel—that slaves must not be released lest we violate God's Law, others, looking to a Torah reflective of a caring and loving God, rendered this law inoperative.[22]

In our own time, in an address entitled "Being Frum and Being Good," Rabbi Aharon Lichtenstein writes regarding filicide and genocide when

[21] *Benei Yissachar*, 2 vols. (Jerusalem: n.p., 1983), vol. 1. Within this earlier and more widely known work of Elimelekh, this textual analysis of blessing and curse in observing and transgressing God's commands appears in an extended discussion of the verse "And I will pass (*'avarti*) through the land of mitsrayim," which, as we have seen, serves as God's modeling for us a transgression for the sake of God.

[22] Schorsch, *Jews and Blacks* 287–303.

discussing God's command to Abraham to sacrifice his son and the biblical commandment that we eradicate Amalek:

> Wiping out Amalek…killing "from child to suckling babe"…I am not saying, God forbid, it is immoral in our case, where God has specifically commanded the destruction of Amalek…The same holds true of the Akeida…in the context of the divine command, surely it partakes of the goodness and morality of God… When there is a conflict between the *tsav* (Divine command) and the moral order, what do we do about it? For us, the answer is perhaps practically difficult, but surely it is conceptually clear and unequivocal… The message of the Akeida is clear: God's command takes precedence in every respect, over our moral sensibility and our conscientious objections… As those who educate towards *yirat shamayim* (fear of heaven), we must communicate the message of the *akeida* boldly, loudly and clearly.[23]

His contemporary, Rabbi Harold Schulweis, in his book, *Conscience: The Duty to Obey and the Duty to Disobey*, presents a contrasting perspective, one with which Elimelekh would appear to concur.

> What does Judaism have to say to those who, on moral grounds, may challenge commander and commandment, rabbinic and scriptural narratives and laws? …Legislation and obedience are essential aspects of Judaism, but are controlled by a persistent moral conscience. The deep respect in Judaism for courage of conscience cultivates a sensibility significantly different from [that] of the religious believer who stands passive, acquiescent, and trembling before God and scripture… Contrary to those who split asunder the duty to obey and the duty to disobey, viewing them as contradictory, we Jews regard both duties as complementary.[24]

[23] Aharon Lichtenstein, By His Light: Character and Values in the Service of God (New York: Ktav, 2003), 123 and 127.
[24] Harold Schulweis, Conscience: The Duty to Obey and the Duty to Disobey (Woodstock: Jewish Lights, 2008), 3–4.

When confronted with a Constitution that does not recognize the full humanity of black people or their right to freedom, some abolitionists rejected the former in their commitment to the latter. Elimelekh, reflective of the Jewish tradition, sees that fidelity to those marginalized by the Law requires us to rectify rather than forsake that Law.[25] We advance our shared humanity in more fully realizing a Torah of morality. It is through a "redemptive righting" of our Torah, as found in and promoted by the teachings of this Hasidic rebbe that we make for and are blessed by a renewed revelation of the divine moral conscience.

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[25] See Robert M. Cover, "Nomos and Narrative," Harvard Law Review 97, no. 1 (1983), 38 (Foreword in The Supreme Court, 1982 Term) for discussion of "Redemptive Constitutionalism" in contrasting the "anti-slavery anti-constitutionalism" of the Garrisonians with the "radical constitutionalism" of Frederick Douglas: "Douglas was the escaped slave. His escape constituted a redemption. Douglas' greatest need was for a vision of law that both validated his freedom and integrated norms with a future redemptive possibility for his people. The radical constitutionalists criticized the Garrisonians precisely for their failure to adopt such a vision. The Garrisonian alternative showed, to the constitutionalists, an abdication: 'Dissolve the Union on this issue..who shall stand up as deliverers, then?'"