

## **Study Guide for *Yochanan's Gamble: Judaism's Pragmatic Approach to Life* By Rabbi Marc Katz**

### **Introduction To This Study Guide**

Some two thousand years ago, as the story goes, a rabbi named Yochanan makes the epitome of pragmatic gambles—wagering the entire fate of the Jewish people. In dialogue with the soon-to-be Roman emperor Vespasian, Yochanan tacitly acknowledges the Romans' planned destruction of Jerusalem in return for a plot of land in a town called Yavneh. There, after the razing of Jerusalem, Jews will join with their teacher to reenvision a new Judaism—one not based on Temple rites but on real life in exile—laying the groundwork for today's vibrant Judaism.

The decision to abandon Jerusalem is one of the most controversial in Jewish history, yet it exemplifies the way that the ancient Rabbis think. In one simple act, Yochanan births a new way of approaching ethics, where he and his fellow Rabbis think situationally, weigh competing values, and make hard compromises. They ask, "What will work?" alongside "What is right?" They initiate a malleable and nuanced system of law (*halakhah*) that is both faithful to their received tradition and to the people and circumstances before them.

*Yochanan's Gamble* examines that system as a counter to the stridency of today's discourse. It provides an alternative model for how to be in the world. By investigating how the rabbis navigate their own ethical challenges—determining truth, upholding compromise, convincing others, keeping peace with neighbors, avoiding infighting, weighing sinning in hopes of promoting a greater good—*Yochanan's Gamble* forges a new Jewish path forward for resolving moral conundrums in our day.

The following study guide will help you in two ways. First, its questions will help unpack many of the ways the Rabbis are able to think and act pragmatically. Second, it will provide an avenue to make the necessary connections to today's political climate. Although the book itself mainly deals with the world of the Talmud, it will help you apply that world to today.

Each chapter will include the following:

1. A short summary of the major themes and arguments in that chapter
2. Questions to consider after reading the chapter
3. A "pull quote" that one might find interesting or provocative with additional questions to allow the reader to go deeper

My hope is that the book will raise many more questions than it answers and that it will provide an alternative path to today's broken discourse. It's my love letter to the Talmud and its centrist discourse.

Rabbi Marc Katz



## **Preface**

This section provides the introduction to the work as a whole. After speaking about the problem with our modern discourse - how people stand on soap boxes yelling at one another rather than speaking to one another - it introduces the Rabbis as an alternative model. Birthed from a broken world of division, much like our own, they create some of the most important works in Jewish history, be they the Mishnah or Gemara. After a brief overview of the world of the Rabbis, this section introduces readers to the themes found in the book as a whole. It finishes by reminding us that the Rabbis often took leaps of action, moving forward uncertain if their path was the right one. The book explores the fruits of those gambles.

## **Questions:**

1. Do you agree with the author's assessment that we "live in an age of stridency?" Does that term accurately describe our political climate?
2. Rabbi Katz explains that we rarely are made to choose between right and wrong. Instead we have pragmatic concerns to deal with like preserving social capital or assessing chances of success? Do you agree that those concerns matter? How much do you take them into account when making your own decisions?
3. The Rabbis made a pragmatic turn after the destruction of the Second Temple, but their model is not the only model of Jewish leadership. What other models do you know in other eras? How useful are they?
4. The preface includes a quote by Chaim Saiman that the Rabbis knowingly avoid abstract philosophical discussions of big ideas like "what is beauty" or "what is justice?" Instead "the Talmud anchors such macro questions in the context of a specific mitzvah and its obligations?" What role should philosophy have in our moral inquiries and why do you think the Rabbis avoid asking big moral questions?

## **Passage to consider (pg xix-xx):**

I have always been struck by the scene in the Israeli film Footnote when Eliezer, an older scholar of Rabbinics, chooses to take aim at his son Uziel's style of popular scholarship. In an interview about the different approaches father and son have to Jewish text, Eliezer proclaims:

Say we both deal with potsherds. Yes? Broken pottery? One of us examines these potsherds, cleans them meticulously, catalogs them, measures them scientifically and precisely, tries to decipher which period they are from, and who made them. And if he succeeds, he has done his work properly, and it has scientific value for generations. The other looks at the potsherds for a few seconds, sees they are more or less the same color, and immediately makes a pot out of them. The potsherds may be from different periods, they may not exactly match, main thing is, he has a pot! The pot is very nice, very attractive, but it has nothing to do with scientific truth. It is an empty vessel. An illusion. A tower with no foundation. There is no pot! That is the point! It is fiction.

Though Eliezer tries to minimize his son's scholarship, I have never viewed his critique as that biting. When Eliezer calls his son's "pot" fiction, he may be critiquing him in the academic sense, but to at least this religious Jew it is a compliment. To my way of thinking, our goal as Jews is not to catalog shards of unusable pottery, relegating them to cabinets with the tags still on. Our

task is to use them, albeit imperfectly, in our quest to create a productive and effective story for living our lives today. We may choose to emphasize some details over others. Like all narratives, there may be holes. But in the collective fiction that is Jewish memory, Jewish texts—and hopefully this book—will help you grow.

Questions on the passage:

1. Do you agree with the author that Eliezer's critique is "not that biting"?
2. How can we use the Talmud to derive Truth when you know some of what's in there did not happen?
3. The Talmud is not wholly pragmatic. There are lots of counterexamples to this book. Yet when the author reads the Talmud he says that a certain story or ethos emerges. Is that scholarship or something else?
4. How "useful" should sacred texts be for our lives?

### **Prologue: Yochanan's Gamble**

This section introduces us to Yochanan ben Zakkai and his famous gamble during the siege of Jerusalem in 70 CE. The story involves a conversation between him and the soon to be Emperor Vespasian. After Rabban Yochanan predicts that Vespasian will become the emperor, Vespasian offers the Rabbi a favor. Thinking hard about what he might ask for, Yochanan requests a plot of land to remake Judaism after the Emperor destroys the Temple. Later criticized for not asking for Jerusalem to be saved, the Talmud defends Yochanan. Yochanan was right to not ask for the siege to end since he asked for a thing he knew he could get, rather than reaching for the stars and getting nothing at all. This chapter looks closely at this story and at the character of Yochanan ben Zakkai to understand how he sets the stage for millenia of Jewish pragmatic thinking.

### **Questions**

1. Do you think it was right for Yochanan to sneak out of Jerusalem? What do you think he was trying to accomplish?
2. How would you categorize Yochanan's interaction with Vespasian? If you were in his shoes how would you have reacted to the leader?
3. Now that you have read this chapter, do you agree that Yochanan made the right "gamble" in abandoning Jerusalem?
4. Can you think of other similar gambles you have seen in Jewish history or in your own life?
5. Why do you think the author refers to Yochanan's decision to ask for Yavneh as a "gamble"? Do you think that's the right word to describe it?
6. The author calls this the "founding myth" of Rabbinic Judaism? Do you agree? And what place do myths have in the broader search for meaning and truth?
7. The chapter goes into other pragmatic decisions and viewpoints in Yochanan's past to show that he was consistent in his conversation with Vespasian. How important is consistency to morality? Should a pragmatic person be consistent?
8. Do you agree that people like Avika and Shimon bar Yochai are outliers?

### **Passage to consider (pg 9):**

Yochanan has an uncanny ability to open channels of communication with the most important leaders around him, from the Romans to the zealots, from the Rabbis to the priests, from the followers of Hillel to those of Shammai. The reason he is able to open up so many channels of communication is that at his heart he is a peacemaker. He understands that ideology is a double-edged sword. Without it we become aimless—but if we are too married to it, our opinions can drive wedges between us. He preaches peaceful relations with all groups he encounters.

### **Questions on the passage:**

1. What are the pros and cons of having a strong ideology?
2. What does it take to be a person that "opens channels of communication" around them? How would you describe someone like that?
3. How important is it to build a large and varied coalition like Yochanan seeks to build?
4. Are there times where seeking peaceful relations shouldn't be the ultimate goal?

## **Chapter 1. Recalibrating Truth**

This chapter introduces readers to the concept of pragmatic truth. Where most of us define what is true by “what is” it shows that the Rabbis often add an additional gloss of “what will work.” This approach is seen most clearly in the story of the Oven of Ahknai and in the character of Rabbi Yehoshua. Although the book will include many more examples, the chapter introduces a few key texts where the Rabbis gloss over the search for absolute, invaluable truth in favor of an approach that has utility. They imagine that even God takes other pragmatic factors into account when judging the world, not just what God believes is right in a vacuum. The chapter further explores how a person’s quest for truth can go array, even devolving into violence. Instead, the chapter claims, it is in walking through uncertainty that real Torah is found.

### **Questions:**

1. In your opinion should the miracles in the Oven story and God’s appearance be enough to prove that Eliezer is right?
2. What do you think about Yehoshua’s response to Eliezer? Did you find it compelling?
3. How does Yehoshua’s backstory add color to his response in the Oven of Ahknai story?
4. If you were Yehoshua would you have acquiesced to Rabban Gamliel? Did you find Rabbis Akiva and Dosa Ben Horkinas’ arguments compelling?
5. How would you categorize the three theories of truth (correspondence, concordance, and pragmatic)? Which do you find the most compelling?
6. Do you agree that there should be something else at stake besides looking for absolute truth when a judge rules? How much should they take into account external factors in their ruling?
7. The example of the garment in Mishnah Bava Metzia 1:1 shows that sometimes we can’t wait around to know the truth. How long should we wait or how hard should we try to discern the truth before we rule?
8. The story of Hillel and Shammai teaches that sometimes two people can have access to truth even if they disagree. Do you agree with this sentiment?
9. What is the risk of a person claiming ownership over truth? When might we worry about violence like in the case of Shammai’s students?
10. Do you think it was right to excommunicate Eliezer? What is the Rabbis’ fear?
11. React to the quote by Elie Wiesel, “None is as fanatic as the one who claims to derive the truth from heaven.”
12. Who do you think is more evil, the ideological Haman or the opportunistic pragmatist Ahasuerus?
13. Do you agree with the author that “Pragmatism is not an end but rather a tool. It is a framing set of questions to help us figure out how to get to an answer. If we seek to find a useful means to answer the question “How can I preserve my own power,” that is a problem. If we instead search for a workable solution to enacting the ethical, fulfilling God’s will, upholding the values of Torah—all the essence of the Rabbinic project—then pragmatism can help us navigate uncharted moral waters?”

### **Passage to consider (pg. 32):**

But how do we know we are doing the right thing? Like I imagine the Rabbis felt, it is hard to know the moral path when objective Truth is beyond our grasp. I yearn for a clear-cut Torah: my

questions answered, my ethical knots swiftly untied. I want access to God's truth laid out before me—a road map to virtue. But is that actually good for me?

In the imagination of the Rabbis, the fact that the real, objective Truth cannot be defined is valuable. The flexibility of the Rabbinic system gives license for Jewish law to pivot to meet the needs of any era. "If the Torah was given in a clear cut manner," Rabbi Yanai proclaims in the Jerusalem Talmud, "no foot could stand firmly." In other words, it is in the maddening, irksome unknown that law leaves us open to the possible.

Questions on the passage:

1. Do you agree with the author who at first glance yearns for a "clear cut Torah"?
2. What are the advantages of living with a tradition that sees it as virtually impossible to access truth?
3. What do you think the Rabbis mean when they say "If the Torah was given in a clear cut manner no foot could stand firmly?"
4. Without someone to tell you so, how do you know that your opinions are right?

## **Chapter 2. Upholding Compromise**

One of the key components to Rabbinic pragmatism is that the Rabbis are open to compromise, even if it feels messy. This chapter examines in depth the Rabbinic approach to compromise. The Rabbis emphasize compromise in two ways. First they tell cautionary tales of people who refuse to compromise like Pinchas and Jephthah or Isaiah and Hezekiah. Second, they show models of people who succeed, most notably Hillel and Shammai, who famously allow their children to marry one another despite holding views that would disqualify their children from one another. The Talmud, however, takes a nuanced view of these concessions, understanding that sometimes one has to put strictures on them to make them more palatable. The chapter then moves into the issue of whether someone with integrity must hold firmly to their positions or whether there can be integrity in compromise. It finishes with a discussion of compromise in the legal arena, asking whether compromise gets in the way of finding truth or whether compromise brings us a better version of that truth.

### **Questions:**

1. After reading the story of Yehudah HaNasi and Rabbi Pinchas, how might either have acted differently to have resolved their dilemma? Do you like the image of the mountain as a metaphor for the failure to compromise?
2. Are there people you think are not worthy of the most basic compromise: to agree that the other person is worthy of dialogue?
3. What role do cautionary tales like the disagreement between Pinchas and Jephthah or Isaiah and Hezekiah play in promoting compromise?
4. At first the Talmud presents a utopian image of Hillel and Shammai's followers marrying one another. But then it walks that image back. Do you agree with the decision to limit the ruling?
5. Should Hillel have changed his mind in the case of the half-free slave? Does it make a difference that he knew that God sided with him in all debates?
6. How would you categorize Akavya ben Mehalalel? Do you think he has integrity? Do you agree with the author's definition (informed by Bernard Williams)?
7. Where do you fall on the question of the use of compromise in legal settings?
8. Do you think Aaron is right to try to get people to settle the night before a court date?
9. What do you think of the ruling that if a judge can't discern the facts of the case, he can compel people to compromise?
10. Knowing the Midrash about Aaron and the golden calf at the end of the chapter, do you think Aaron was right to compromise? Why might God have kept him as High Priest after he built the idol?
11. Knowing the power of compromise, how do we foster a society that better understands and embraces it?

### **Passage to Consider (pg 40:43):**

When it comes to compromise, Occam's razor, the idea that the simplest solution is usually right, is often wrong. A garment can be torn in two (see chapter 1), but such a splitting is not always viable, as the Bible points out when two women come to King Solomon to dispute who is the baby's rightful mother. A swift compromise may negate the feelings, agency, or integrity of

one or more of the disputing parties. Sometimes the cleanest compromises need to be made messy to work...

For [the Rabbis], compromise does not mean surrendering all of one's ideals. It means holding fast to ideals you will never relinquish and moving forward on those you are willing to cede. Furthermore, and equally importantly, compromise entails continuing to examine and question a decision's effects and making on-the-fly adjustments as needed.

Questions on the passage:

1. When should Occam's razor be in play in questions of compromise?
2. When do clean compromises work and when do they not? Can you think of a compromise that wasn't "clean" in your life?
3. How important is it to be heard in a situation involving compromise?
4. How often should compromises be revisited or adjusted?
5. When you make compromises what are the values you hold firm to, no matter what? What are values you are willing to cede?



### **Chapter 3. Not Leading Too Far Out in Front**

This chapter deals with whether and how a leader should listen to the people he or she leads. It begins by examining the fine line a leader must take when rebuking their flock. While truth telling is important, one should be careful not to ask others to change when change is impossible. In fact, the Rabbi even countenance withholding information from others so they might sin unknowingly rather than choose to sin knowingly. This might come in the form of not teaching a prohibition or avoiding advocating for a positive commandment if one thinks it might not be followed. The chapter then turns to the command for leaders to avoid putting undue financial or time burdens on the people. As the author shows, the Rabbis are willing to change laws or accept outcomes that are less than ideal if it keeps the general population from growing resentful. The chapter continues by looking at the precepts of *lehatchilah-bedieved* which the Rabbis use to show that even if there is an ideal that we should strive for, there are fail safes so our actions “count” should we fall short. In essence, the chapter concludes, the Talmud has a people-centric, psychologically sensitive outlook that compels its leaders to act with compassion.

#### **Questions:**

1. What are examples in your life where leaders lead too far out in front? What are examples where leaders tailor their approach to those they lead?
2. Why do you think the command to rebuke is such a central command? How good are we generally at rebuke?
3. What do you think of the idea that we should not rebuke a person who cannot hear that rebuke? Should that hold equally to an individual as it does to a group of people?
4. What are examples of “stumbling blocks” in your life?
5. Do you agree with the Rabbis’ decision to not alert the people to the prohibition against meat and wine in the post-Temple era? What about clapping on Shabbat? Do these two cases feel the same?
6. How do you feel about the maxim “*halakha v’ein morin ken*” (it may be the law, but we don’t teach it). Should the Rabbis be keeping a leniency secret to ensure that people don’t abuse it?
7. How available should information be to everyone? Should leaders be keeping secrets from those they lead?
8. Why do you think the Talmud uses cases from the Temple, which wasn’t standing at the time of its redaction, to teach important lessons like avoiding putting financial strain on one’s population?
9. In your mind, should leaders care about wasting their people’s money? Or time? Which is worse to do? And can you think of other categories of things that leaders should be careful of wasting?
10. Describe in your own words the *lehatchilah-bedieved* duality? Can you think of ways this duality manifests in your own life?
11. How would you categorize the general approach of the Rabbis toward their flock? Do you agree with the author’s categorization?

#### **Passage to Consider (pg 73-74):**

Leaders today could learn something from the approach of the Rabbis. Be scholars in the

psychology of your flock. Understand what those you lead are capable of and hold standards malleable enough to fit their needs. Expect that people are flawed: self-interested, stubborn, fickle, impatient, careless, selfish, quick to pronounce the truth of complex situations with only surface understandings. The Rabbis do not wholly reject these most human of traits (even if, to be fair, they, being human themselves, often bemoan that those they serve do not meet their standards). Instead, the Rabbis are inclined to legislate around humanness—to build compassion into their system of law.

Questions on the passage:

1. How can leaders become better acquainted with the psychology of their flock?
2. What does it mean to lead with eyes open to the flaws of those around you?
3. Do you agree that the cases explored in this chapter show a Rabbinic system of compassion?
4. How good are leaders today in understanding those they lead and tailoring their leadership to them?

#### **Chapter 4. Abiding by the Wisdom of the Masses**

This chapter shows how the Rabbis hold by the maxim “None of us is as smart as all of us.” Although there are plenty of examples of the Rabbis’ disdain for the everyday folk around them, their actions often do not match their harsh critique. Time after time, they take into account the collective wisdom of the masses to further their own project of uncovering Truth. In one case, Rabbi Hillel is reminded of a forgotten Torah law by looking at how common folk behave. In another case, we learn that rumors can sometimes be heeded because they show knowledge that the Rabbis cannot access on their own. Even folk sayings and slang can help solve textual conundrums or hold great wisdom. The chapter concludes with a beautiful statement by Rabbi Shimon ben Lakish about why everyone in a society matters, even and especially the unlearned.

#### **Questions:**

1. Are you surprised to hear that scholars think the Rabbis were generally powerless? Why do you think they don’t convey that fact in their own writing?
2. What kind of wisdom do you think the Rabbis can gain from the everyday folk around them? What kind of wisdom do you gain in your own life?
3. Explain in your own words the meaning of the phrase “If they are not prophets . . . they are the sons of prophets.” Do you agree with that sentiment?
4. What do you think of the idea that wisdom relies on humility? Do humble people become more wise?
5. How much do you think we should stay away from rumors? Why are they so dangerous?
6. What role should rumors play in our quest for information? Do you agree with the Rabbinic criteria about which rumors we are allowed to use?
7. The stories about Rabbi Yehudah HaNasi’s maidservant teach us that we should listen closely to even the most “insignificant” among us because they will know things we don’t. How has that lesson played out in your life? Are you generally good at learning from everyone?
8. Examine the list of the sources of knowledge that Rabban Yochanan utilizes. If you had to make your own list, what would be on it?
9. Choose one of the folk sayings examined in this chapter. Why do you think the Rabbis use it? How does it help them make their point? What is an example of a folk saying you hold by?
10. Do you agree with Rabbi Shimon ben Lakish’s analogy to the grape plant that everyone serves a purpose in a community? In your life, what purpose do different groups around you serve?

#### **Passage to Consider (pg 77-78):**

To reinforce their point that one must listen to those around them, the Rabbis follow up the Sons of B’terah story with a reflection on the costs of ignoring communal wisdom: “Anyone who acts haughtily, if he is a Torah scholar, his wisdom departs from him; and if he is a prophet, his prophecy departs from him.” Wisdom, according to this text, relies on humility. Arrogant individuals see themselves as the only source of knowledge. Yet we humans are leaky vessels; even the smartest of us forget salient information. If we rely only on ourselves, external sources of wisdom cannot replace what we ourselves lose. If, however, we open ourselves to the

wisdom of those around us, our learning will endure—reinforced by the discourse and actions of those with whom we surround ourselves.

Questions on the passage:

1. Do you agree that arrogance can lead to a loss of wisdom?
2. How would you define humility? What connection does humility play in the acquisition of wisdom?
3. Who do *you* rely on to ensure that you have the best knowledge and make the best choices?
4. Who do leaders today listen to? Do you think they are generally good at heeding the collective wisdom around them?

## **Chapter 5. Keeping the Peace with Neighbors**

This chapter explores the lengths the Rabbis will go to keep peace with their non-Jewish neighbors. Knowing that they are often the minority, they develop a precept known as *kerovin l'malkhut* (drawing near to the kingdom) where they will allow the Jewish community to change their practices to conform to the norms around them in order to keep up good relations. After exploring this precept, the chapter then turns to the concept of relationship building, one of the chief ways the Rabbis preserve the peace with their neighbors. The chapter looks at the character of the Roman Matron and how through dialogue and cultural literacy, the Rabbis are able to get her on their side at moments of persecution. At the same time, the chapter looks at times where one must lie and scheme to get their way in the absence of good and productive relationships with ones' neighbor. After this discussion, the author turns to the questions of acquiescence and coexistence. Namely, should Jews enter bathhouses with idols present and should they attend gladiatorial matches? The chapter concludes by examining four precepts *piku'ah nefesh*, *dina d'malkhuta dina*, *mipnei darkhei shalom*, and *mishum eivah* as examples of when accommodation with the outside world can actually make it into mainstream Jewish law.

### Questions:

1. What do you think about Nehemiah's decision to drink non-Kosher wine as part of his job? Why do you think the Rabbis chose him as one of the key models to show *kerovin l'malkhut*?
2. Do you agree with the edits that Rabbi Judah the Prince made in his letter to Antoninus? Why do you think he had to be so careful?
3. This chapter has examples of bribes and lies which were meant to keep the peace with foreign powers? How much should we do "wrong" in order to preserve the peace?
4. Of all the sins in Judaism, idolatry is often cited as one of the most problematic. Yet, for peace the Rabbis seem to allow it in their midst. How do they draw their boundary? Would you draw it differently?
5. Were the Rabbis correct in engaging in dialogues and studying the philosophy and literature of the Romans? Since time is a limited resource, how much time should be given over to cross-cultural literacy?
6. Reuven ben Isterobeli's subterfuge against the Romans backfires when they find out that he is lying to them. When is lying worth the risk?
7. Gamliel gives three answers to Proclus about why he will enter a bathhouse with a statue of Aphrodite. Which do you find the most compelling?
8. What do you think about the debate about Rabbis attending gladiator matches? How compelling do you find Rabbi Natan's rationale for why he permits going?
9. Can you come up with an example of when you think laws should be broken for the sake of *piku'ah nefesh* (saving a life)?
10. *Dina d'malkhuta dina* gives religious important to secular laws. Do you think there is anything "holy" about secular obligations like obeying traffic signals or paying your taxes?
11. Do you think there are different rationales behind *mipnei darkhei shalom* and *mishum eivah*? How much are they legal concessions (outside the law) and how much are they part and parcel of the Rabbis vision of what the law should be (inside the law)?
12. To what ends will you go to preserve peace and avoid enmity?

Passage to Consider (pg 96):

The Talmud is full of Rabbinic dialogues with Romans about any number of issues. Together the Rabbis and the Romans explore such diverse issues as why God chooses to reward good and punish evil, why God chooses to make Eve out of Adam's rib, and the importance of keeping kosher. Although these debates provide a framework for the Rabbis to explore important ideas, their form suggests a deeper lesson about the Rabbinic worldview. The Rabbis keep in close contact with their non-Jewish neighbors, especially with Roman matrons who are often the focus of these dialogues.

One of the most famous of these involves a conversation between Rabbi Yosi and a Roman matron about how God spends time now that God has finished creating the world. Rather than sit back and relax, Rabbi Yosi explains, God devotes the rest of eternity to making romantic matches. At first the matron belittles this Divine feat—but when she tries it herself, pairing up her male and female slave, all her matches end in disasters. Amazed, she compliments God, "There is no God like your God; your Torah is true, pleasing, and praiseworthy. You spoke wisely." Rabbinic dialogues with neighbors can open minds and hearts.

**Questions on the Passage:**

1. Why do you think it was worthwhile for the Rabbis to discuss the different laid out in this passage with the Romans?
2. Why do you think so many of these conversations happen with a Roman matron rather than say a soldier or merchant?
3. Do you believe that "dialogues with neighbors can open minds and hearts?"
4. How good are we as a society at these kinds of dialogues? What could make them better? How good are you personally?

## **Chapter 6. Avoiding Infighting**

Since the Rabbis understand from their own history the true cost of communal discord, they go out of their way to legislate against intra-group conflict. After examining the sociological and religious reasons behind the Rabbi's desire for Jewish unity, the chapter looks closely at a few legal precepts that help achieve that cohesion. These include *mipnei darkhei shalom* (for the sake of peace) and *mipnei tikkun ha-olam* (for the sake of healing the world) both of which change laws to ensure that people do not fight and that the legal system as a whole does not crumble because certain laws create resentment when they are followed. The chapter then turns to *lo titgodedu* (avoiding factions), a precept that requires legal conformity to prevent people in the same community from arguing over the "right" way to practice a given law. Finally the chapter looks at two Rabbinic *takkanot* (enactments) that help facilitate peace after a wrong has been done. Both lower the barrier of entry when a person seeks to repent after they have either knowingly or unknowingly erred.

### **Questions:**

1. How did the history of sectarianism color the Rabbinic attitude toward infighting?
2. What do you think about the idea of us being "guarantors" of one another? Is that a good metaphor for communal responsibility? Do you feel this is true?
3. How do you like the metaphors the tradition uses to show disunity - drifting boats or frightened stampedes? Are they apt metaphors for the breakdown of communal cohesion?
4. Do you agree with the Rabbinic decision to prohibit a person from collecting olives under a tree when another person has done the work to get them down? Why or why not is that a smart change to the law?
5. Rabbi Jill Jacobs defines *mipnei tikkun ha-olam* as a law that repairs "the flaw that endangers the stability of the system as a whole, and in doing so, they improve the system." Now that you have seen a few examples, is that how you would define it?
6. If you were Yechiel Yaakov Weinberg, would you allow the different kashrut approaches of the new immigrants when deciding the boundaries of *lo titgodedu*?
7. Which of the two rationales for *lo titgodedu* speak the most to you? Stopping infighting or avoiding the appearance of "two Torahs?"
8. What do you think the boundaries of pluralism should be? How much variation would you permit in your own religious communities?
9. What are examples of *takkanat hashavim* in your own life? Beside paying for the wooden beam in the house, what other concessions would you make to ensure a person will engage in teshuvah (repentance)?
10. *Takkanat ha-shuk* feels a bit confusing when you first learn it. How would you explain it in your own words? Do you agree that the needs of the masses to trust the market supersede any one individual involved in the Talmudic scenario?
11. What do you think of God praying for Jewish unity? If God only had one text in God's tefillin what should that text say?
12. We are in an incredibly divided age. What do the Rabbis have to teach us about addressing the divisions within our own society?

### **Passage to Consider (pg 114):**

What makes mipnei darkhei shalom revolutionary is that it redefines the criteria for what makes a law good. The Rabbis understand that strict legal formalism—the idea that laws should not be changed for social or political reasons—can be dangerous. Instead, their outlook is more akin to legal realism, which acknowledges that outside forces and motivations inevitably play a role in lawmaking. Therefore, one should not pretend that law is neutral but rather lean into those outside forces, making law fluid and employing it to respond to real-world needs.

Mipnei darkhei shalom does just this. Rather than throw up their hands when they realize a person has exploited a loophole in the laws of acquisition, the Sages bend halakhah to accommodate communal cohesion.

Questions on the Passage:

1. According to this passage, what is the difference between legal formalism and legal realism? Which camp do you prefer?
2. How “neutral” should the law be? How much should law be colored by outside forces?
3. How quickly should one correct a law when they see someone is exploiting a loophole in it?
4. How would you define a “good law?”



## **Chapter 7. Employing Tools to Transform Law**

This chapter turns away from the “why” and “what” of the Rabbis’ pragmatic approach to the “how.” If much of the book to date was about the changes the Rabbis make to ensure their laws will work, this chapter explains the legal mechanisms for the change. Rarely will the Rabbis have the right to just walk in and discount or modify a law. More often they need some kind of finessing to make sure that people accept it. After looking at the set of assumptions the Rabbis have when reading the Bible, the chapter looks at the use of proof texts. These biblical texts are often misread or read narrowly in order to provide a biblical, even Divine, basis for Rabbinic legal changes. At other times, however, the Rabbis make whole-scale changes without biblical support to ensure that a law can conform with the times. After looking at these *takkanot*, the author shifts his attention to the role of extra-legal circumstances, like danger or draught as rationale for radical changes. He then examines the place of loopholes in Jewish law, examining in depth two of the most important, the *prozbul* (dealing with forgiveness of debt) and *otzar beit din* (dealing with the use of produce during a sabbatical year). Finally he turns to three less-often explored avenues for change: subterfuge, playing with intent, and legislating around a fluke. Throughout the chapter, the author makes the point that for the Rabbis, even their most radical changes are part of the process of uncovering Torah and have a degree of holiness within them.

### **Questions:**

1. What do you think of James Kugal’s four key points? How have you seen them in play already in this book?
2. What is your optimal definition of “Torah?” What do you tend to mean when you say the word?
3. Why do you think the Rabbis emphasize proof texts so much? Why not just make the changes without them?
4. How do you feel about the “creative misreadings” and “narrow readings” examples in the chapter? Have you seen other examples of this way of thinking in Rabbinic literature you have studied?
5. What are the advantages and disadvantages of making changes through *takkanot*?
6. What political calculations did Rabban Yochanan make when he made his *takkanot*?
7. When do you think a situation rises to the level of invoking *sha’at ha-dehak* or *sha’at ha-sakanah*?
8. Looking at the loopholes in the chapter, do you like how they are utilized? When is a loophole cheating?
9. Why do you think the *prozbul* and *otzar beit din* have become such famous examples of loopholes? How do they convey the Rabbinic pragmatic strain of thought?
10. Do you agree with the use of subterfuge to change law? Was Rabbi Yochanan correct in lying to the Roman matron. Based on what we studied in chapter 5, was it smart?
11. What is the line between usefully playing with intent and something that might fall into the category of *pesik reisha*?
12. Is it fair to legislate around a fluke? Can we extrapolate trends from a very small number of cases and make legal changes based on that information?
13. Do you think there is something “holy” about these Rabbinic tools?

14. How does our secular laws change? Can you see any of these tools employed in the modern world?

Passage to Consider (pg 127-128):

To the Rabbis, the Bible's text is meant to address their pressing needs of the day. They read its words with a set of assumptions summarized in four key points by Bible scholar James Kugel:

1. The Bible is fundamentally cryptic, meaning that there are hidden messages within the words. Just because the Bible says something doesn't mean it can't be read in an opposite way.
2. The Bible is meant to speak to us in our day, about our concerns. It's not fundamentally history and miraculously can speak with authority about events that occur centuries or millennia after its production.
3. There are no mistakes in the Bible. If it seems so, it invites the reader to create interpretations that smooth out these mistakes. The Bible also cannot contradict the reader's religious norms and creeds. Thus if it says something about God or Jewish practice that no one believes today, the reader is invited to explain away these errors.
4. The Bible is God's word, whether directly or through inspiration.

Taken together, these assumptions explain why the Rabbis are able to be widely creative while simultaneously careful to point back to the Bible during those times of creativity. If the Bible is from God, the Rabbis can't just change its text willy-nilly. Its words are eternal.

However, counter to its actual text, the Bible's message may change. Because God is God, God's Divine text can prefigure the Romans, a civilization not yet born at the time of Sinai. The Torah can guide us on how to shake a lulav, even though there is no evidence that Sukkot was celebrated with the waving of four species in biblical times. It can teach us the laws of marriage from certain verses even though those verses focus exclusively on divorce.

Questions on the passage:

1. Do you find any of these four criteria surprising? Which feels the most palpable in your reading of Rabbinic literature?
2. What is so important about keeping the Torah text "as is." Why not just change it?
3. What role does God play in the Torah text? How "Divine" do you think it is?
4. How much can and should the Bible speak to us in our day?

## **Chapter 8. Sinning for the Greater Good**

This chapter deals with the question of what wrongs we are able to do in the service of a greater good? Beginning with an examination of the challenge of moral conundrums - that often we are actually deciding between two rights not a right and wrong - the chapter continues by examining a series case studies where one's "sins" might be performed for the greater good. Beginning with examinations of the biblical characters, Lot's daughters, Tamar, and Yael, the chapter examines how the Rabbis praise these women for seduction, rape, and adultery, all of which serve a more noble purpose in the narrative. The chapter then turns to asking when the killing of informers, robbers, and murderers are justified. Finally the chapter examines the concept of torture, first why it might be wrong, and then when it is permitted. In total these acts, though often considered reprehensible, provide interesting cases around the margins of what pragmatism may allow. The chapter does conclude by teasing an important issue which appears in the next chapter: can this kind of pragmatic thinking go too far, and what hedges can the Rabbis put in place to keep it in check?

### **Questions:**

1. Do you agree that hard moral questions are usually a matter of two competing "rights"? Beside the values expressed in the opening paragraph what other competing values can you think of?
2. If you were Sartre, how would you advise the student? What do you think of his answer?
3. What do you think of the idea of "transgressions for the sake of God?" Can you think of examples from your own life?
4. In your view were the actions of Lot's Daughters, Tamar, and Yael warranted?
5. How should Rabbi Zekharya have dealt with the informer? Did he do right by doing nothing?
6. Do you think the Rabbis are correct in their assessment of the danger of letting an informer live?
7. Are thieves as dangerous as the Rabbis say? What do you think of the idea of proactively killing one you find in your home?
8. Of the two rationales for killing the *rodef* (to save the victim or to save the *rodef's* soul) which do you find more compelling?
9. In your opinion, should torture ever be sanctioned? If so, when? Do you agree with the Rabbinic cases?
10. When is the kind of thinking expressed in this chapter dangerous? If you haven't read the next chapter, what hedges would you put around pragmatism to make sure it doesn't run amok?

### **Passage to consider (pg 161):**

In the third century, the Rabbis condemn Rabbi Zekharya for his fundamentalist commitment to religious and ethical purity. Rabbi Yochanan writes: "The excessive humility of Rabbi Zekharya ben Avkolas destroyed our Temple, burned our Sanctuary, and exiled us from our land."

Note that the Rabbis choose to attack Rabbi Zekharya's humility. In essence they malign him for shirking hard decisions (i.e., the murder of one informant) when bad and worse options are the

only possibilities. Because he retreats from formidable action in the face of anticipated calamity, the Jews pay the ultimate price of losing their Temple and their sacred land.

Questions on the passage:

1. Can someone be so “humble” that they end up making unwise decisions?
2. In your mind would murdering the informant have led to a better outcome?
3. If you were the Rabbis, would you have done everything possible to stop the informant?
4. What do you think the boundaries are for “sinning for the greater good?”

## **Chapter 9. Hedging Against the Misuse of Pragmatism**

This chapter deals with the many ways that the Rabbis push against excessive pragmatic thinking. Knowing that one can be a “scoundrel within the bounds of Torah,” they create a number of important hedges to ensure that one does “what is right” even as they do “what works.” These include the command to go above the letter of the law (*lifnim mishurat hadin*) as well as the warning to look closely at the deeds of Sodom and avoid acting in their self-interested way. They also tell us to imagine that God is watching so that even if the legal system permits something, God may still condemn us for acting in a certain way. The chapter then goes on to examine the biblical character of Solomon and how the Rabbis condemn him for trying to “think” his way out of morality. In their mind, those who preserve tradition (called Sinai) should often take precedence over those who can craftily make a law say whatever they want (oker harim). The chapter finishes by looking at the Rabbinic use of narrative (aggadah) as a mediating force against law. Sometimes by telling a good story, they can up the stakes of a law and humanize it, ensuring that someone does not take it too far.

### **Questions:**

1. What do you think Nachmanides means when he says someone can be a “scoundrel within the bounds of Torah?” Can you think of examples?
2. Do you agree with Rav that Rabba bar bar Hanan has to return the workers’ clothing?
3. What do you think it means to go “beyond the letter of the law?” Why do you think it’s such an important precept?
4. Explain *dina d’bar metzra* in your own words. Seeing that it appears a few times in this section, why do you think it’s held up as the model for “doing what is good and right.”
5. In your own words what was wrong with the residents of Sodom. When are you like them and what do you do, to ensure you aren’t? Is radical self interest so wrong?
6. What do you think the definition of a “saint” is? How close do you come?
7. How can imagining God watching our actions be a mediating force in the way we behave in the world?
8. Do you know people like Solomon? What are the risks in trying to be too smart or too crafty?
9. Where do you fall in the debate between the Sinai and the oker harim? Who do you think takes precedence?
10. What is the role of narrative in mediating law? Can you think of examples besides the ones in this chapter?
11. Were the Rabbis warranted in their critique of Judah’s failed gamble?

### **Passage to Consider (pg 185):**

So, too, the Rabbis recognize the danger of law running amok, divorced from the human element of the halakhic enterprise. To reground the law in the lives of the people it is intended to serve, they utilize aggadah (narrative) as a key mediating force.

Narrative, they realize, can both bolster and temper law. Couching a hard legal precept in a story can show how it functions in the real world, and the story can also act as an implicit critique of the law, revealing the inequities inherent in a given legal system. Where law provides

the letter, the agaddah supplies its animating force, its spirit. Israeli poet Chayim Nachman Bialik majestically explains this dichotomy:

Halacha wears a frown, Aggadah a smile. The one is pedantic, severe, unbending—all justice; the other is accommodating, lenient, pliable—all mercy. The one commands and knows no half-way house; her yea is yea, and her nay is nay. The other advises and takes account of human limitations; she admits something between yea and nay. . . . On the one side is the dryness of prose, a formal and heavy style, a gray and monochrome diction: reason is sovereign. On the other side is the sap of poetry, a style full of life and variety, a diction all ablaze with color: emotion is sovereign.

Questions on the Passage:

1. What kind of stories do you tell that help form your ethics?
2. Is it possible for law to work in a vacuum but not in the real world?
3. What does a good story do for you? How does it animate the subject matter?
4. Look at the different metaphors that Bialik uses. Which do you find the most compelling?

### **Final Thoughts: Yochanan's Uncertainty**

This final section returns to Yochanan ben Zakkai. It examines his fears on his deathbed that he might not have done right throughout his life. Using this story, the author raises the question about whether we can ever truly know we did right. The answer, he posits, is that we have to act as *if* we are correct while being open to the possibility that we are wrong.

#### **Questions:**

1. The chapter begins with the quote “history has been kind to Yochanan.” Do you agree?
2. Do you think Yochanan really had something to fear as he headed into the next world?
3. What do you think it would have taken for Yochanan to feel comfortable with his death?
4. What is the difference between skepticism and fallibilism? Which do you gravitate more toward?
5. Looking at the major themes of this book outlined in the list, which do you feel the most drawn to? Which are you best at? Which do you struggle with?
6. Do you normally feel uncomfortable when you take risks?

#### **Passage (pg. 192):**

If Yochanan could not go into death free of worry, many of us may fear the same for ourselves. *Can I expect to make a smooth transition from this world? Day after day I take risk after risk. Can I be certain I am forging my own right paths?*

“If the great Rav Yochanan ben Zakkai never ceased blaming himself for that historic decision [i.e., asking for Yavneh over Jerusalem],” twentieth-century thinker Rabbi Joseph Soloveitchik observes, “assuredly the dilemma of the two paths must always be before us as well. We should not vaingloriously assume that our actions are always the right ones.” Throughout this volume we have seen the Rabbis take chances, innovating and experimenting often despite uncertain outcomes. In this sense, there is something deeply religious about the Rabbis’ pragmatic outlook: on the whole, their decision-making involves a leap of faith. If moral living is an imperfect enterprise, one needs to act, and to be willing to admit that in acting, we might get it wrong and have to pivot.

Philosophers call this way of thinking fallibilism. Unlike its cousin, skepticism, which holds that we can never know anything for certain, fallibilism teaches that if we try our best and behave with integrity, analyzing the information available to us and acting upon it, then we may call our beliefs valid until proven otherwise. Meanwhile, even as we behave as if we have the answer, we simultaneously accept that future evidence might impel us to change our approach.

#### **Questions on the Passage:**

1. Do you agree with Rabbi Joseph Soloveitchik in the quote above?
2. Would you agree with the author that “there is something deeply religious about the Rabbis’ pragmatic outlook?”
3. How good are you at practicing fallibilism? What place does that way of thinking have in our world today?
4. What are the most important pragmatic gambles you have taken in your life?