RESEARCH ARTICLE

Sovereignty, Reason, and Will: Carl Schmitt and Hasidic Legal Thought

Zalman Rothschild

Nonresident Fellow at the Stanford Constitutional Law Center; Nonresident Fellow at the Center for Comparative Constitutional Law and Religion at the University of Lucerne; Adjunct Professor of Law at New York University School of Law

Abstract

The decisionistic strand in Jewish legal philosophy is often neglected by scholars focused on the more common rational explanations for Jewish law. This article brings attention to decisionism in Jewish legal thought by analyzing the legal philosophy of Shneur Zalman of Lyady, the founder of the Habad Hasidic movement. The author uses the legal and political thought of Carl Schmitt—arguably modernity's most influential decisionist—to help elucidate Shneur Zalman's decisionistic legal thought and thereby put into sharper focus an otherwise underappreciated current in Jewish legal philosophy.

Keywords: Jewish law; legal philosophy; Hasidism; Carl Schmitt; Shneur Zalman of Lyady

Introduction

This article brings attention to the decisionistic strand of Jewish legal thought—the understanding of law as based on command rather than reason—by analyzing the legal philosophy of an important early Hasidic master, Shneur Zalman of Lyady (1745–1812), the founder of the Habad Hasidic movement.[1] The decisionistic current in Jewish legal thought is often neglected by scholars attuned to the more common rational explanations for Jewish law. Indeed, while Jewish legal scholarship has focused extensively on the rationales provided for Judaism's commandments in a vast range of sources—the Hebrew Bible, the Dead Sea Scrolls, Hellenism, the Talmud, Christianity, medieval Jewish philosophy, Jewish

---

[1] While Shneur Zalman's mystical ideas have been thoroughly examined, his legal writings, of which there are many, have been mostly ignored. In two articles, Levi Cooper makes the excellent case for the necessity of studying Shneur Zalman the *jurist* and of appreciating him for his immense *legal* contributions to Judaism. See Levi Cooper, "On Etkes' *Ba'al Ha-Tanya*," *Diné Israel*, no. 29 (2013): 177–89; Levi Cooper, "Towards a Judicial Biography of Rabbi Shneur Zalman of Lyady," *Journal of Law and Religion* 30, no. 1 (2015): 107–35. In some respects, this article picks up where Cooper left off, as I respond to Cooper's advocacy to take Shneur Zalman as a legalist seriously by describing and analyzing his legal philosophy. It is important to note, however, that while Cooper calls for studying Shneur Zalman's legal writings (as part of his project of studying the legal writings of Hasidic masters in general), I explore Shneur Zalman's jurisprudential teachings in his theological writings. To gain a sense for Shneur Zalman's vast publications, both mystical and legal, see Roman A. Foxbrunner, *Habad: The Hasidism of R. Shneur Zalman of Lyady* (New York: Jason Aronson Press, 1993).

mystical thought, and modern Jewish thought[2]—there has been little to no scholarly engagement with Hasidism's legal philosophy.[3] This oversight helps to explain scholarship's primary focus on rationalism and the relative lack of attention to the anti-rational aspects of Jewish legal philosophy.[4]

In this article, I use the legal and political thought of one of modernity's most influential decisionists—the Nazi sympathizer Carl Schmitt (1888–1985)—to help elucidate the decisionistic legal thought of Shneur Zalman of Lyady.[5] While scholars have historically emphasized the rational or reason-based aspects of Jewish legal philosophy, analyzing Shneur Zalman through a Schmittian lens illuminates a strain of Jewish legal philosophy that is based not on reason but on command. By mapping Schmitt's concepts, categories, and grammar onto the legal theory of Shneur Zalman, this article puts into sharper focus the decisionism of one of modern Judaism's greatest decisionist thinkers, Shneur Zalman, and thereby of decisionism in Jewish thought more generally.

As I argue, Shneur Zalman and Schmitt share a commitment to a worldview that devalues rationalism and centers instead on the primacy of the sovereign's will. According to Schmitt, especially in his early writings of the 1920s, law is based not on universal rational principles but on the decisions of sovereigns; for Shneur Zalman, the *mitzvot* (commandments) should be performed not because they are rational, but because God commanded them. According to both of these intellectual trailblazers, in the beginning was not reason but deed: "Am Anfang war die Tat."[6]

Schmittian Decisionism and the Role of Rationality

Carl Schmitt's various critiques of liberalism inform much of his ideas about law, its nature, and its origins.[7] Schmitt challenges liberalism's notion that all expressions of state authority

---

[2] See, for example, Ephraim E. Urbach, *The Sages: Their Concepts and Beliefs* (Jerusalem: Magnes Press, 1969); Isaac Heinemann, *The Reasons for the Commandments in Jewish Thought: From the Bible to the Renaissance*, trans. Leonard Levin (Boston: Academic Studies Press, 2008); David Novak, *Natural Law in Judaism* (Cambridge: Cambridge University Press, 2008); Christine Hayes, *What's Divine about Divine Law? Early Perspectives* (Princeton: Princeton University Press, 2015).

[3] Shaul Magid and Elliot Wolfson address the potential of antinomianism in Hasidism (Magid regarding Izbitz and Wolfson regarding Habad), but neither touches on *ta-mamei ha-mitzvot* as such in either school: Shaul Magid, *Hasidism on the Margin: Reconciliation, Antinomianism, and Messianism in Ibizka/Radzin Hasidism* (Madison: University of Wisconsin Press, 2005); Elliot R. Wolfson, *Open Secret: Postmessianic Messianism and the Mystical Revision of Menahem Mendel Schneerson* (New York: Columbia University Press, 2009). While some scholars—including Maoz Kahana, Levi Cooper, and Ariel Mayse—have recently begun to take notice of the importance of studying law in Hasidism, Hasidic *legal philosophy* remains relatively understudied. See, for example, Levi Cooper, "Jewish Law in the *Beit Midrash* of Hasidism," *Diné Israel* 34 (2020): 51–110.

[4] One notable exception is the work of Christine Hayes, who has highlighted the "arational," "will-based" current of Jewish legal thought in biblical and rabbinic Judaism. Hayes, *What's Divine about Divine Love?* See below, note 38 and accompanying text.

[5] Carl Schmitt famously asserted a homology between politics and religion—that the former is a secularization of the latter. In Schmitt's words, "All significant concepts of the modern theory of the state are secularized theological concepts." Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Chicago: University of Chicago Press, 2006), 36; see also Talal Asad, "Religion, Nation-State, Secularism," in *Nation and Religion: Perspectives on Europe and Asia*, ed. Peter van der Veer (Princeton: Princeton University Press, 1999), 184–96. Political concepts are secularized theological concepts not only because they emerge out of a particular process but also because they share the same structure. The political is the secularization of the theological because the notion of the political sovereign is modeled on certain Christological concepts of God. In light of this, it seems appropriate to consider Schmitt's legal theory alongside and together with religious thought.

[6] "In the beginning was the deed"—Goethe's translation of the opening verse of the Gospel of John, a verse that replaces logos or reason with command or action. Johann Wolfgang von Goethe, *Faust: Part One*, trans. David Luke (New York: Oxford University Press, 1987), 39.

[7] William E. Scheuerman, "Carl Schmitt's Critique of Liberal Constitutionalism," *Review of Politics* 58, no. 2 (1996): 299–322; see also Reinhard Mehring, "Liberalism as a 'Metaphysical System': The Methodological Structure of Carl

are, or should be, subject to fixed legal standards that are rational and universal.[8] For John Locke (and other Enlightenment liberals), for example, state action is legitimized only when it is based on cogent, general laws, which Locke saw as a human attempt to replicate universal natural law.[9] Individual legal measures not grounded in the advancement or defense of rational principles were seen as antithetical to early liberalism's universalistic worldview.[10] In Schmitt's estimation, this early legal quest was misguided because it misconstrued the nature of law and of political life.

For Schmitt, parliamentary practices of his day in Weimar Germany illustrated the flaws of liberalism's understanding of law.[11] Parliament, in Schmitt's view, sees itself in its collective state as the embodiment of reason—a cool, dispassionate body whose elected representatives are guided by the most convincing and rational arguments presented to them.[12] In a word, rationalism is configured as the ultimate force that shapes political action.[13] Schmitt takes exception to this approach, arguing that rather than dispassionate reasoning, it is individual politicians' particular wills, motivated by the various power struggles at play, that drive their political decisions.[14] While contemporaries revered legal norms in themselves, Schmitt sought to show that all norms necessarily derive their validity from authoritative acts. As Schmitt sarcastically observed, "the legal idea cannot realize itself."[15] Rather, every norm rests on a decision made on the basis of a concrete will and in response to a "concrete situation."[16] It is in this vein that Schmitt asserts that "all law is situational law."[17]

According to Schmitt, politics are the byproduct of an existential confrontation—that is, a life-threatening conflict to which abstract, reason-based norms are incapable of responding.[18] Determining how to respond to existential threats "can neither be decided by a previously determined general norm[,] nor by the judgment of a disinterested and therefore neutral third party."[19] Rather, a political community is "constituted" only when it evokes its capacity to respond with violence to an existential threat, by which it is "awakened" to its

---

Schmitt's Critique of Political Rationalism," in *Law as Politics: Carl Schmitt's Critique of Liberalism*, ed. David Dyzenhaus (Durham: Duke University Press, 1998), 131–56, 134 ("Schmitt's critique of liberalism is omnipresent in his oeuvre.").

   [8] Schmitt, *Political Theology*, 48.

   [9] John Locke, *Second Treatise of Government* (Cambridge: Hackett, 1980), 30–82; see also Schmitt, *Political Theology*, 13–14; Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. Ellen Kennedy (Cambridge, MA: MIT Press, 1998), 42, 101n28.

   [10] Schmitt, *The Crisis of Parliamentary Democracy*, 42.

   [11] For an excellent and succinct overview of the Weimar Republic, see Peter Gay, "A Short Political History of the Weimar Republic," in *Weimar Culture: The Outsider as Insider* (New York: W. W. Norton, 2001), 147–164.

   [12] Schmitt, *The Crisis of Parliamentary Democracy*, 5, 35, 48–50; see also Gopal Balakrishnan, *The Enemy: An Intellectual Portrait of Carl Schmitt* (New York: Verso, 2000), 66–76.

   [13] Schmitt, *The Crisis of Parliamentary Democracy*, 8, 34–35, 42, 44–49; Mehring, "Liberalism as a 'Metaphysical System,'" 137.

   [14] Schmitt, *Political Theology*, 6–7.

   [15] Schmitt, 6–7.

   [16] Schmitt, 6–7.

   [17] Schmitt, 13. Further, Schmitt argued, the norms that liberalism is convinced regulate all political action necessarily stem from the very thing they seek to regulate, namely, political power. According to Schmitt, some form of decisionism—issued by a functional political entity—must always precede normativism, since "norms" are dependent upon concrete "wills." Analytically, that is to say, restraint of an institution requires there to be an institution in need of restraint; liberal constitutionalism must assume a political apparatus that precedes it if its explicit aim is the limitation of institutional and political power. And, Schmitt showed, it must always be a sovereign that decides on constitutional constraints since normativism does not make a political community, but a political community makes normativism.

   [18] Balakrishnan, *The Enemy*, 44–52.

   [19] Schmitt, *The Concept of the Political*, 27.

political enemy.[20] Politics is therefore defined by confrontation with life-threatening situations in which political entities face off against "the other, the stranger," who "in a specially intense way, [is] existentially something different and alien."[21]

For Schmitt, the essence of sovereignty—which Schmitt defines as "the monopoly to decide"[22]—is the sovereign's ability to lift its subjects above the legally constituted order. The legal system for Schmitt boils down to the sovereign's power that stands above it.[23] Meanwhile, as Schmitt understands them, the sovereign's decisions are subjective acts of volition that come not from reason but from nowhere: "Looked at normatively, the [sovereign's] decision emanates from nothingness."[24] As for Thomas Hobbes, the fundamental question for Schmitt is not what is decided but who decides.[25] Laws originate not in abstract, universally accessible reason, but from the sovereign's will and prerogative to decide.[26]

Shneur Zalman's Break from Traditional Jewish Legal Philosophy

Schmitt's insistence that law stems from the will of the sovereign is an idea that shares significant parallels with the thought of Shneur Zalman of Lyady. Schmitt's understanding of law helps clarify a similar emphasis in this important Hasidic thinker whose contributions to Jewish legal philosophy have largely been overlooked. While Schmitt focuses on normativity in the Western legal tradition, Shneur Zalman is concerned with divine law as it is outlined in a particular religious corpus. Yet, despite their disparate points of focus, they share

---

[20] Schmitt, *The Crisis of Parliamentary Democracy*, 11. See also William E. Scheuerman "Carl Schmitt's Critique of Liberal Constitutionalism," *Review of Politics* 58, no. 2 (1996), 299–322, 305–07.

[21] Schmitt, *The Concept of the Political*, 27.

[22] Schmitt, *Political Theology*, 13.

[23] The following passage from *Political Theology* further illustrates Schmitt's position that the source of law stems specifically from the "will" of the sovereign. Arguably the most celebrated passage of *Political Theology* is Schmitt's announcement in the beginning of the book that the "exception is more interesting than the rule" because "it confirms not only the rule but also its existence, which derives only from the exception." Schmitt, *Political Theology*, 15. While the simplest interpretation of this passage is that rules can be deduced from exceptions, there is another reading that coheres well with Schmitt's broader writings and ideas. On this reading, Schmitt is not merely expressing that exceptions imply rules, but that the exception, as a category, informs us about the nature and genealogy of rules. Schmitt is saying that rules themselves were at one-point exceptions. Rules are not and never were "out there," accessible to the discerning mind, historically realized by legislatures. Rather, every rule itself must have at one point been an exception, as rules are not generated by rational inquiry but by a particular authority's power to decide.

[24] Schmitt, *Political Theology*, 31–32.

[25] Schmitt, *Political Theology*, 33–35; see also Jeffrey Seitzer, "Carl Schmitt's Internal Critique of Liberal Constitutionalism: Verfassungslehre as a Response to the Weimar State Crisis," in *Law as Politics: Carl Schmitt's Critique of Liberalism*, ed. David Dyzenhaus (Durham: Duke University Press, 1998), 281–311, 284.

[26] Schmitt, *Political Theology*, 23, 32–33; see also Balakrishnan, *The Enemy*, 47. Schmitt's later thought, it must be pointed out, tempers but never abandons his insistence that decisions, born of sovereigns' "wills," lie at the foundation of the legal order. In *On the Three Types of Juristic Thinking*, Schmitt begins to realize a weakness with his emphasis on decisionism (and thereby his work in the 1920s) and, in this later work, he highlights the importance of institutionalism. Schmitt's later writing is concerned with the question how the original decision is perpetuated. Schmitt's writings in Weimar were a plea for strong leadership and to break free from parliamentary rationality; his later writing represents a turn towards institutional stability. In this later work, Schmitt acknowledges the symbiotic relationship between political institutions and the sovereign in providing a stable social order in which rules, decided upon by a sovereign, can take effect and be maintained. Schmitt's continued allegiance to decisionism in his later writings is more nuanced than in his earlier writings, but he does not take issue with decisionism as regards the moments of the foundation of a political entity. Rather, he adds to his "pure decisionist" account of reality in that *after* the constitutive decision, law acquires a settled-upon life as its concrete legal order. It is this legal order that sustains the set of norms established by the decision. Sovereignty, more specifically the sovereign's *will*, however, is still that which constitutes the political entity and is prior to and foundational for society.

similar understandings about the nature of law. Viewing Shneur Zalman through a Schmittian lens helps to highlight an arational, decisionistic strand of Jewish legal philosophy that has not been widely appreciated.

The best place to begin analyzing Shneur Zalman's legal philosophy is with the principle that underlies much of his theology, including and especially his philosophy of law: the doctrine of *dira betachtonim*, which can be roughly translated as "a home for God in the physical world." This doctrine asserts that God, who resides in the highest of heavens, desires to have an abode in the lowest of "worlds"—the physical world.[27] In *Tanya*, Shneur Zalman's manual for religious living and philosophy, in the context of emphasizing the primacy of action over study, Shneur Zalman explains the doctrine of *dira betachtonim*: "Study is not the essential thing, but rather, as it is written, action is 'today to do them,' which is why one interrupts Torah study to fulfill an actionable *mitzvah* when it cannot be fulfilled by others, because this is the entirety of man and the purpose of his creation and descent into this world, which is for God to have a home in the lowers specifically and transform the darkness to light such that God's will fills all of the physical earth, specifically."[28]

Evident in this passage is Shneur Zalman's prioritization of *mitzvot* over Torah study, a point to which I will return below. For current purposes, what is important is the fact that when Shneur Zalman states that God desires a home in the lowest of worlds, he intends the paradoxical union of the transcendent with the immanent. What is noteworthy is not so much that this is what God desires, but *why* God desires it. Shneur Zalman's explanation can be distilled into two words: God's will. Why would God desire the lowest of worlds in the Kabbalistic imagination to be God's "home"—that is, as Shneur Zalman puts it, the exclusive place where God's essence (in contrast to God's mere "reflection") can be revealed? Shneur Zalman teaches that "paradox" lies at the heart of the answer.[29] The "explanation" Shneur Zalman provides is the antithesis of a reason and thus highlights the nonexplanatory nature of God's will. God wills the transformation of the lowest world into a home for no other reason than the very paradox of the project itself: "reasonably" it is impossible for God—who is infinite—to merge with the lowly, finite world, let alone be fully expressed in it.[30]

---

[27] The expression "God desired to have a home in the lower worlds" comes from Midrashic texts *Tanchuma*, Nasso 16, Bechukotai 3; *Bamidbar Rabba*, 13:6; see also *Bereishit Rabba*, 19:7. Unless otherwise noted, all translations from Hebrew are mine.

[28] Shneur Zalman of Lyady, *Tanya: Liqqutei Amorrim*, 49.

[29] God's will is for the paradox that God should be revealed specifically in the lowest of places. See Shneur Zalman of Lyady, *Ma-amarei Admor ha-Zaqen* 5568, at 416. (Subsequent citations to this text reference *Ma-amarei Admor ha-Zaqen* and indicate the volume by the year of publication according to the Jewish calendar.)

[30] It is important to understand what Shneur Zalman means by "God." *Sovev/memale* ("surrounding" and "filling") is a common dyad in Lurianic and Hasidic theology. As a general rule, *memale* refers to the immanent and *sovev* to the transcendent aspects of God's influx. Put differently, *memale* represents the customized divine light (to ensure that its recipient, the world, is not eclipsed by its intensity), while *sovev* represents the light in its transcendent state which does not penetrate the world (lest it overwhelm and destroy it). Shneur Zalman teaches, however, that these two standard Lurianic modes of relation vis-à-vis God's light are identical in relation to God "Himself." God's light relates to the world in different ways, transcendently and immanently, and therefore the world's inhabitants can relate to God's light in one of these two way. But *God* is unrelatable. In the final analysis, *sovev*, like *memale*, is a description of a relationship between the divine light and the world, only, in the case of *sovev*, it connotes a relationship with God that is (paradoxically) a nonrelationship. God, however, transcends even transcendence. While *sovev* is beholden to the definition of not being in relation to God, God is beyond all *non*'s (God is the *non*-non, one could say). God is beyond the category of relation altogether, even the relation of non-relation. By "God Himself," and "God's essence," Shneur Zalman intends that which by definition is nondefinable. Yet, despite this understanding of God—and herein lies the thrust of Shneur Zalman's *dira betachtonim* doctrine—Shneur Zalman goes on to posit a theology according to which God unites with the world. The nonrelatable "Being" ultimately places itself in relation to and with the world. See Shneur Zalman of Lyady, *Torah Or*, 24b, 52a, 76b, 98b,

In this vein, Shneur Zalman's grandson, Menachem Mendel of Lubavitch (the Tzemach Tzedek)—the third leader of Habad Hasidism—explains in his grandfather's name the arational nature of God's will: "the 'lowers' means the most concealed, for what is most concealed is called 'lowest,' and God desires to have a dwelling in the lowest, meaning that His essence should be revealed below ... just like a home of a man is where his essence is revealed ... and why God desires this is unknown, only *that* He desires it (and I have heard that when Shneur Zalman said in his old discourses in Liozna that God desires a home in the lowers, [he said] 'regarding a desire one cannot ask questions')."[31]

The home is the unique place where one exposes one's full and true self, in Habad terminology, one's essence, and this is precisely what God desires of the physical world: that it be transformed into God's home. Such a "desire" is incomprehensible, indeed it is analytically impossible, but all inquiries abruptly dissolve when one accepts, simply and definitively, that with respect to "desire[,] one cannot ask questions."[32] One cannot make sense of God's will, as it is beyond sense. Put differently, its sense lies precisely in its *non*-sense. What can be inferred from Shneur Zalman's teaching of *dira betachtonim* is not only that God's will to have a home in the world is the raison d'être of Judaism but also that the overarching will that the lowest world should be transformed into God's home serves as the legal reasoning that underlies all of performative Judaism. *Dira betachtonim* explains why one should "perform," which is to say, obey, Judaism's laws; according to Shneur Zalman, it is exclusively by fulfilling Judaism's commandments that *dira betachtonim* is effected.

Mitzvot have the unparalleled ability to draw from that which is otherwise inaccessible because *mitzvot* alone can draw from what is highest: God's essence.[33] In Shneur Zalman's words, the objective of religion is "not to receive a reward, which is the world to come and the supernal *gan eden* (heaven), but rather only 'and with You'—God Himself and His essence —'to Him and not His attributes.' And how can one draw down God Himself and His essence? This is through the *mitzvot*."[34] What is it about *mitzvot* specifically that makes them uniquely able to traverse the boundary between the infinite and finite and effectuate the former's descent into the latter? Once again, it is God's "will" that provides the answer for Shneur Zalman. Every *mitzvah* stems from God's will: "The *mitzvot* themselves are the will of God, [so that there can be] a drawing down of the *or ein sof* (infinite light) Blessed Be He below in the six-hundred-thirteen biblical *mitzvot* and seven rabbinic ones which comprise six-hundred-twenty pillars of light, and similar to a pillar, they unite that which is above with that which is below; for it is God's will that He should have a home in the lowers."[35] Since God's overarching will is to have a home in the physical world, God extends the *mitzvot*, each of which is ontologically made up of God's "will," such that Jews can fulfill them and thereby draw God into the world. With this explanation, Shneur Zalman communicates that the underlying mystical reason for Judaism's legal system is God's "will" in a general sense, but also that God's multiple particular "wills" for specific *mitzvot* endow each *mitzvah* with the

---

114b [hereafter *Torah Or*]; Shneur Zalman of Lyady, *Liqqutei Torah*, Bamidbar 37c-d, 52b, Shir ha-Shirim 29c [hereafter *Liqqutei Torah*]; *Ma-amarei Admor ha-Zaqen* 5562, at 462; *Ma-amarei Admor ha-Zaqen* 5563, at 532; *Ma-amarei Admor ha-Zaqen* 5566, at 121–22, 312.

[31] Menachem Mendel Schneerson (Tzemach Tzedek), *Or ha-Torah: Bamidbar*, vol. 3, *Balak* (New York: Kehot Publication Society, 1998), 997.

[32] Schneerson, *Or ha-Torah*, 997.

[33] See *Liqqutei Torah*, Vayikra 12c; *Torah Or*, 41c; *Ma-amarei Admor ha-Zaqen* 5564, at 165. According to Shneur Zalman, it is uniquely this mundane world, to the exclusion of the myriad more "elevated" worlds, that is endowed with the ability to draw God into it because it is in this world exclusively that *mitzvot* can be performed.

[34] *Torah Or*, 10b. See also *Torah Or*, 9c, 10a–b, 33a, 57c; *Liqqutei Torah*, Vayikra 17a, 34b; *Ma-amarei Admor ha-Zaqen* 5564, at 165, 175.

[35] *Liqqutei Torah*, Bamidbar 39a; see also *Torah Or*, 29c, 54a, 55a.

ability to draw God into the world. Because each *mitzvah* originates in God's will, it is a manifestation of God and effectuates a descent of God into the world.[36]

Based on this understanding, we arrive at a more crystallized framework with which to appreciate Shneur Zalman's contribution to Jewish legal philosophy. Before continuing, though, it is worth pausing to briefly take account of the enterprise of Jewish legal philosophy that preceded Shneur Zalman, which is marked not by broad deference to God's will but by the project of *ta-amei ha-mitzvot*—providing elaborate rationalizations for performing each of Judaism's commandments.

Rationalizing Jewish Law

Over the centuries, noted Jewish authorities and texts have tried to rationalize Jewish law. The Hebrew Bible, for example, has been interpreted to contain multiple, at times contra-dictory, positions on the origins of law.[37] In some passages, God's laws are described as stemming from God's sheer will rather than from a predetermined natural order.[38] But the Hebrew Bible has also been understood to contain indicia that its laws are innately right, stemming from a higher truth and accessible to human reason without resort to revelation from God.[39] For example, despite the absence of a law forbidding murder, Cain is held accountable for murdering his brother in the early chapters of Genesis.[40] This familiar story lends credence to a biblical understanding of universal natural law.[41] And in the biblical narrative of Abraham confronting God after God informed him of God's intention to obliterate Sodom and Gomorrah, Abraham demands that God abide by the principle of justice.[42] According to David Novak, Abraham's challenge to God is "the most unambiguous example of a natural law type position in scripture"[43] because God cannot be wrong in the decision to destroy two "corrupt" cities unless we assume the existence of a natural, universal moral code.

Like the Hebrew Bible, Talmudic literature[44] contains two alternative understandings of the source of its laws: one that Jewish law stems from God's wisdom and the other that it

---

[36] Continuing in the Cordoverian and Lurianic tradition, Habad theology understands the creation of the world as a product of *seder hishtalshelut* (chain of being) whereby God's light descends from one world and one *sefira* to the next, such that the divine light is incrementally diminished as a result of the "garments" and "concealments" and "vessels" of each descending level, until the light is eclipsed enough to make space for a world that is completely other than God. The chain of being, of which all the supernal worlds are a part, is a system of limitation. By virtue of being so low, the physical world lies outside the ordered structure of the chain of being. Because the physical world has no capacity to absorb divine light, it has no place in an organism designed precisely for the structuring and tailoring of divine light. Ironically, precisely due to its lowliness and its inability to absorb tailored divine light of any degree, it receives the light that is not (because it *cannot* be) tailored and benefits from receiving that which is outside the ordered chain of being, namely, God's essence. See Menachem M. Schneerson, *Liqqutei Sihot* (Brooklyn: Kehot Publication Society, 1992), 21:47.

[37] Hayes, *What's Divine about Divine Law?*, 14–53.

[38] Hayes, 15–24.

[39] Markus Bockmuehl, *Jewish Law in Gentile Churches: Halakha and the Beginning of Christian Public Ethics* (Edinburgh: T & T Clark, 2000), 91. I thank Professor Christine Hayes for very helpful discussion about the various strands of legal philosophy in the Hebrew Bible and Talmudic literature.

[40] Genesis 4:1–16.

[41] Nahum Sarna, *Understanding Genesis* (New York: Jewish Theological Seminary, 1966), 31. Another good example is the story of the flood, where a predetermined moral code is assumed. Genesis 6:11–13.

[42] Genesis 18:23.

[43] Novak, *Natural Law in Judaism*, 39. For a critique of Novak on his reading of this narrative, see Hayes, *What's Divine about Divine Law?*, 26–28.

[44] The Talmud is the central text of rabbinic Judaism. The term *Talmud* typically refers to the collection of writings called the Babylonian Talmud, although there is also an earlier collection known as the Jerusalem Talmud,

comes from God's will, or, put differently, one that the nature of law is rational and universal and the other that it is decisionistic and particularistic.[45] Numerous teachings in the Talmudic corpus point to a rational basis for Judaism's laws, stressing that they are abstract and eternal,[46] while other teachings suggest that Jewish laws are based on God's revelation and are particular to the Jewish people.[47] One famous midrashic text[48] that addresses the origin of Jewish law and attempts to reconcile these two strands, the Sifra,[49] distinguishes between two general categories of Jewish law, *mishpatim* (judgments), which are rational, and *hukim* (decrees), which are not.[50] By doing so, the Sifra categorizes Jewish laws into those that are universal, based on reason, and independent of revelation and those that are arational, particularistic, and in need of revelation.[51]

Medieval Jewish philosophy is largely marked by its attempt to rationalize the *mitzvot* and thereby expand the Sifra's first category of Jewish law. For example, Saadia Gaon,[52] a noted medieval Jewish philosopher, goes to great pains to prove the rational character of Judaism's laws. He argues that theft, for instance, is prohibited because it undermines the economic basis of society and that lying is forbidden because it disrupts the harmony of society. Regarding "revelational law," which comprises those laws that ostensibly lack a rational basis, Saadia is unwilling simply to chalk them up to God's arbitrary will and instead attempts to explain their utility. For example, Saadia argues that Judaism's holidays help cultivate one's appreciation for community and that Kosher dietary rules combat the primitive drive for animal worship.[53]

Although Saadia inaugurated medieval Jewish philosophy's *ta-amei ha-mitzvot* project, its greatest exemplar was Maimonides.[54] Maimonides rejects Saadia's distinction between

---

or Palestinian Talmud. The Talmud has two components: the Mishnah (c. 200 CE), a compendium of Rabbinic Judaism's Oral Torah, and the Gemara (c. 500 CE), an elucidation of the Mishnah and related writings that expounds on the Hebrew Bible. It is written in Hebrew and Babylonian Aramaic and contains the teachings of hundreds of rabbis on a variety of subjects, including law, ethics, philosophy, custom, history, and lore. The Talmud is the basis for all subsequent codes of Jewish law.

[45] Regarding the former strand, see Novak, *Natural Law in Judaism*, 90; Heinemann, *The Reasons for the Commandments in Jewish Thought*, 36; Urbach, *The Sages*, 317; and Moshe Greenberg, "Some Postulates of Biblical Criminal Law," in *Studies in the Bible and Jewish Thought* (Philadelphia: Jewish Publication Society, 1960), 25–41.

[46] The laws' abstraction contrasts with those laws that are often associated with positivism.

[47] Hayes, *What's Divine about Divine Law?*, 246–87.

[48] Midrash is the corpus of rabbinic literature that contains early interpretations of the Hebrew Bible and contains both non-legalistic rabbinic literature (*aggadah*) and Jewish law (*halakha*).

[49] Sifra is an early rabbinic legal commentary to Leviticus. It is frequently quoted in the Talmud. The common edition is by J. H. Weiss: J. H. Weiss, ed., *Sifra* (Vienna: Jacob Schlossberg, 1862).

[50] See *Sifra,* Ahare Mot 9:13; see also Hayes, *What's Divine about Divine Law?*, 247.

[51] For a refreshingly new reading of this midrashic teaching, contrasted with Novak's reading of it, see Hayes, 15–24, 247–253. Yair Lorberbaum contends that pre-medieval Jewish legal thought was dominated by rationalism. See Yair Lorberbaum, "The Rise of Halakhic Religiosity of Mystery and Transcendence," *Diné Israel*, no. 34 (2020): 1–49, at 13–15. Lorberbaum does not engage with the evidence presented by Christine Hayes of an arational, will-based strand of Jewish legal theory in the Hebrew Bible and in Talmudic literature. Hayes, *What's Divine about Divine Law?*, 246–87.

[52] Saadia Gaon (882–942) was the first important rabbinic figure to write extensively in Judeo-Arabic. He is known for his works on Hebrew linguistics and Jewish philosophy. He was a practitioner of the theological school known as the Jewish Kalam. His philosophical work, *The Book of Beliefs and Opinions*, represents a rational defense of Judaism using logical methods drawn from Greek writings. Saadia Gaon, *Book of Beliefs and Opinions*, trans. Samuel Rosenblatt (New Haven: Yale University Press, 1976).

[53] Saadia Gaon, *Book of Beliefs and Opinions*, 138–47.

[54] Moses ben Maimon (1135–1204), commonly known as Maimonides, was a medieval Sephardic Jewish philosopher who became one of the most prolific and influential Jewish scholars of the medieval era. He is acknowledged as having been among the foremost rabbinical arbiters and philosophers in Jewish history. His fourteen-volume Mishneh Torah still carries significant canonical authority as a codification of Talmudic law.

rational and revelational laws. He instead contends that "every commandment and prohibition … is consequent upon wisdom and aims at some end."[55] On Maimonides's account, the aim of Judaism's laws is the betterment and welfare of body and soul. To this end, Maimonides posits that many *mitzvot* are designed to fashion a just society in which individuals may devote themselves to the pursuit of intellectual perfection and "become fully rational."[56] Those commandments that the Sifra categorizes as *hukim*, commandments without reasons, Maimonides prefers to understand as serving specific objectives, the most common of which is combatting idolatry. Should one not realize the rational purpose of a given *mitzvah*, "the lack is in [one's] comprehension."[57]

In explaining the drive of medieval Jewish philosophy—but also of medieval Jewish mysticism—to rationalize the *mitzvot*, Daniel Matt has argued that Jewish philosophers and mystics "were dissatisfied with naive, unreflective observance of *mitzvot* …. [I]t was no longer sufficient to follow God's word simply because He had commanded it."[58] Thus, for both philosophers and mystics, the enterprise of lending reasons to *mitzvot* was marked by the imposition of outside categories—for example the categories of social or individual ethics—to infuse them with meaning. With few exceptions—most notably Judah Halevi—the medieval rational-philosophic tradition understood *mitzvot* as a mechanism for bettering humankind and society.[59] The same could be said of the Kabbalistic mystics, only their focus was less on bettering humankind and more on unifying God and bettering the *cosmos*.[60]

Shneur Zalman's Decisionism

Shneur Zalman diverged from the general mode of *ta-amei ha-mitzvot* of the centuries that preceded him by advancing a rationale for the *mitzvot* in precisely the reverse fashion from both medieval Jewish philosophy and Jewish mysticism. For Shneur Zalman, the only rationale for *mitzvot* is the fact that they are God's *will.* Shneur Zalman thus broke from the rationalist Jewish tradition and forged a new decisionistic Jewish legal philosophy, in some ways returning to the decisionistic strands of earlier Judaism and in some ways establishing an even more radical (and certainly more developed) brand of decisionism.[61]

In contrast to Jewish philosophical thought and previous mystical schools of thought, Shneur Zalman taught that all *mitzvot*, even ostensibly rational ones, are not a means to any end. Although Shneur Zalman taught that the purpose of creation is to effectuate a descent of God's essence, which is achieved through the performance of the *mitzvot*, that raison d'être of the world is itself grounded in God's will alone. And, as Shneur Zalman stressed, *mitzvot* that

---

[55] Moses Maimonides, *The Guide to the Perplexed*, trans. Shlomo Pines, vol. 2 (Chicago: University of Chicago Press, 1974), 3:26. See also Aristotle, *Nicomachean Ethics*, 1:1.

[56] Maimonides, *Guide to the Perplexed*, 3:27.

[57] Maimonides, 3:26.

[58] Daniel C. Matt, "The Mystic and the *Mizwot*," in *Jewish Spirituality: From the Bible through the Middle Ages*, ed. Arthur Green (New York: Crossroad, 1989), 367–404, at 367.

[59] Saadia Gaon, *Book of Beliefs*, 138–47; Maimonides, *Guide to the Perplexed* 3:25–26, 31. Cf. Judah Halevi, *The Kuzari: An Argument for the Faith of Israel*, trans. Hartwig Hirschfeld (New York: Schocken Press 1971), 111–12, 182–83. It should be noted, however, that even Halevi understood many, if not most, of Judaism's laws as rational.

[60] Lurianic Kabbalah, for example, centered on the capacity and objective of *mitzvot* to rectify the cosmos; indeed, Lurianic Kabbalah is best understood as a project devoted to infusing *mitzvot* with *cosmic* meaning. See Lawrence Fine, *Physician of the Soul, Healer of the Cosmos: Issac Luria and His Kabbalistic Fellowship* (Stanford: Stanford University Press, 2003), 187–220.

[61] The others who may be associated with this line of thinking are Judah Halevi (1075–1141), who preceded Shneur Zalman, and Yeshayahu Leibowitz (1903–1994), who succeeded him.

achieve that descent are phenomenologically to be *seen* and *performed* as ends in themselves.[62] According to Shneur Zalman, all commandments transcend intellectual comprehension and are rooted solely in God's will. Thus, "[God's] will underlying the commandments to wear fringes is [] equivalent to [God's] will underlying [the commandment to wear] phylacteries. Both (and, by extension, all commandments) are simply God's will, lacking any understanding or reason."[63] The only "reason" for a given *mitzvah* is precisely its non-reason, simply that it is the "will" of God. As Shneur Zalman explains, "the *mitzvah* that one does not understand its reason is higher [than the one that one understands] ... what is essential is action without [feeling or] enjoyment."[64] Given Shneur Zalman's commitment to viewing *mitzvot* as grounded exclusively in the sovereign's will, he taught that as a practical matter, those performing *mitzvot* need not—indeed, *should* not—have reasons for doing so. Having specific motivations or justifications for performing the *mitzvot* is a weakness in need of overcoming. To be motivated to perform *mitzvot* for specific reasons is to misunderstand the true meaning of religious observance: that the performance of *mitzvot* is highest when it lacks external legitimization.[65]

Shneur Zalman's heightened focus on command is further illustrated by his rejection of the notion that *mitzvot* should be performed with emotion or spirituality. In this regard, Shneur Zalman broke not only from the legal tradition that preceded him but also from other prominent Hasidic leaders of his time. For many other Hasidic masters, *mitzvot* are valuable only insofar as they are infused with intentionality and feeling—qualities typically referred to as *kavana* (intention). For example, Dov Ber of Mezeritch, one of early Hasidim's most important theologians, taught that the purpose "of performing the *mitzvot* is religious ecstasy ... only, religious ecstasy must be anchored (as it lacks 'vessels'), and thus requires religious practice to ground it."[66] For these Hasidic leaders, the "deed" component of *mitzvot* is envisioned merely as a framework for the "internality" that is the true objective of the *mitzvot*.[67] Conversely, *mitzvot* that are unadorned by intention and feeling were deemed essentially worthless by much of early Hasidism.

For Shneur Zalman, by contrast, sheer action is prioritized above all else.[68] As Shneur Zalman states, "it is not as the world thinks that the essential thing is the heart ... rather,

---

[62] Of course, Shnuer Zalman's account of *dira betachtonim*, explored above, could be construed as the ultimate "end" of the *mitzvot* and thus would be in tension with his teachings that *mitzvot* are ends in themselves. But it is important to appreciate that Shneur Zalman's thought is not without paradox. And even accepting the paradoxical nature of Shneur Zalman's theology, it is also important to remember that *dira betachtonim* itself is premised on God's will alone and that regardless of whether *mitzvot* are in some sense a means to an end, that proposition is not mutually exclusive with Shneur Zalman's teachings that *mitzvot* should be *seen* as ends in themselves and should be performed *as* ends in themselves.

[63] As explained by Menachem Mendel Schneerson, the Tzemach Tzedek, in *Derekh Mitzvotecha*, 42a. See also *Torah Or*, 55a.

[64] *Torah Or*, 17b.

[65] Shneur Zalman does not deny that some *mitzvot* are endowed with reasons in some authoritative texts. Shneur Zalman does not posit that *mitzvot* are necessarily *irrational*. Rather, he seeks to reorient his reader away from a prioritization regarding *mitzvot*'s reasons to a deeper appreciation of the nature of law in general, and Jewish law in particular, namely, that it originates in God's *will* despite and regardless of any posited rationale. Shneur Zalman demotes the performance of *mitzvot* for their reasons and promotes performing them for nothing save for the fact that God has commanded, which is to say, willed, them. Performing *mitzvot* for no reason is more elevated than fulfilling them for reasons. Similarly, and as we will see below, Shneur Zalman shifts the focal point away from *understanding mitzvot* to *doing* them.

[66] Dov Ber of Mezritch, *Magid D'vorav L'Yaakov* (New York: Kehot Publication Society), 169. Dov Ber explains that the action of *mitzvot* serves little purpose on its own and rather is merely a means to the end of emotionality.

[67] See Rivka Schatz-Uffenheimer, *Hasidism as Mysticism: Quietistic Elements in Eighteenth-Century Hasidic Thought*, trans. Jonathan Chipman (Princeton: Princeton University Press, 2015), 115.

[68] According to Shneur Zalman, even when there is no internal feeling and only sheer action, that is perfectly valid (indeed, even more elevated) divine worship. See *Torah Or*, 17b.

what is essential is the deed without enjoyment; the heart is there only to assist."[69] Shneur Zalman's teachings prescribe many meditations. In most, one is directed to concentrate on God's greatness, which in turn is meant to arouse love and fear of God, yet the love and fear are never Shneur Zalman's objective. Rather, love and fear are designed to direct one *to* action; the two foundational emotions are meant only to propel one to obey the commandments.[70] In this sense, Shneur Zalman's theology defies the law/spirituality binary often projected onto early Hasidic thought.[71] For him, spirituality leads one to the law itself, which is understood as spirituality's greatest expression.

According to Shneur Zalman, performing *mitzvot* without emotion—for no purpose other than that God commanded them—is key to achieving the ultimate goal of drawing God into the world.[72] Shneur Zalman's promotion of action over contemplation is reflected in his interpretation of the biblical story of the spies in the desert.[73] On Shneur Zalman's version of the narrative, the Hebrew Bible recounts the schism between Moses, who wanted to enter the land of Israel, and the spies, who preferred to stay in the desert and serve God by living a life of contemplation. The spies preferred *machshava* (thought), while Moses favored *ma-asa* (action).[74] The spies were confused as to why they had to enter the land of Israel and devolve to the level of action; they believed they could just as well fulfill all *mitzvot* by way of *machshava* (meaning, spiritually), to which they were accustomed.

For Shneur Zalman, Moses's victory over the spies represents action's superiority over spirituality. As Shneur Zalman explains, the spies "were gravely mistaken," "for through

---

[69] *Torah Or*, 17b.

[70] Love as a motivator for complying with the positive commandments and fear for the negative ones. Regarding love, for example, Shneur Zalman teaches that "love is the source of all two hundred forty-eight positive commandments and from there they are derived ... one who loves God and desires to cleave unto Him truthfully and [he knows] it is impossible to cleave unto him truthfully other than through fulfilling the two hundred forty-eight commandments which are the two hundred forty-eight limbs of the king, as it were." *Tanya*, *Liqqutei Amorim*, 8a.

[71] Ariel Mayse and Maoz Kahana have recently challenged the law/spirituality binary projected onto much of Hasidic theology by exploring three dimensions of Hasidism: Hasidic communities' adoptions of Lurianic legal customs; that some Hasidic masters adjudicated by way of divine inspiration; and that there are Hasidic teachings regarding the anatomies of the souls of certain ancient rabbinic authorities. See Maoz Kahana and Ariel Evan Mayse, "Hasidic Halakhah: Reappraising the Interface of Spirit and Law," *AJS Review* 41, no. 2 (2017): 375–408. Mayse and Kahana's informative study—as much as it seeks to undermine the law/spiritualism binary in Hasidism—is itself beholden to such a framework. Mayse and Kahana argue that spirituality and law are not inherently mutually exclusive in Hasidism, as evidenced, for example, by certain Hasidic masters who also occupied themselves with Jewish law (some of whom went as far as using their *spiritual* faculties to clarify and determine legal norms), but spirituality and law are still compartmentalized. That is, according to Mayse and Kahana, some Hasidic masters *also* engaged in law, and in some cases used mystical categories and concepts to explain it. Spirituality and law, in the final analysis, are still separate enterprises in Hasidism according to Mayse and Kahana. Furthermore, Mayse and Kahana suggest that law and spirituality as distinct enterprises had *equal* standing for Hasidic masters. Shneur Zalman's theology provides a useful framework for challenging the assumptions that underlie Mayse and Kahana's study and forces us to push past the boundaries between law and spirituality that scholarship imposes on Hasidism. According to Shneur Zalman, the performance of *mitzvot* is hierarchically far *more* elevated than meditation, religious emotionality, and spirituality. Indeed, for Shneur Zalman, as I have explained, the latter serves merely as a means for the former. Yet, despite Habad's clear prioritization of action-based Judaism over meditative-emotional and spiritual performance, and as much as Habad theology does quarantine law so as to preserve its elevated status vis-à-vis spirituality, these two expressions of religiosity are not compartmentalized as two distinct phenomena. Spirituality does not just inform law from a distance; it constantly leads one *to* the practice of law. In Shneur Zalman's analysis, law is spirituality's culmination and its greatest expression.

[72] Indeed, on one occasion Shneur Zalman states that *dira betachtonim* occurs *only* due to the action of *mitzvot*. He states: "God has no *dira betachtonim* other than because of the action of *mitzvot* specifically." *Ma-amarei Admor ha-Zaqen* 5564, at 164–65.

[73] *Liqqutei Torah,* Bamidbar 37a.

[74] *Liqqutei Torah,* Bamidbar 37a.

dibur and *ma-ase* (verbal actions and physical actions)[75] alone is a revelation of the *or ein sof* (infinite light) drawn down with ever increasing intensity and without limit."[76] Only action has the capability of drawing from that which is highest, whereas more spiritual forms of religious practice fall short in this regard.[77] Only the former directly points to God's will, and therefore it alone achieves the very objective for which the world was created.[78]

Shneur Zalman's prioritization of action over spirituality remains central to modern Habad Hasidism. Menachem Mendel Schneerson, Habad's influential seventh and last *rebbe*, pressed this priority, making it the cornerstone of his theology. In one discourse, for example, Schneerson contrasts the Israelites' observance of the *mitzvot* post-Sinai with that of their forefathers pre-Sinai: before God commanded their performance at Mount Sinai, the *mitzvot* were performed based on spiritual intuition; after Sinai, they could be performed based on command, which is superior.[79]

Taking after Shneur Zalman, Schneerson broke from rabbinic tradition. While rabbinic teachings suggested that pre-Sinai performance of the *mitzvot* was equivalent to or more elevated than post-Sinai performance,[80] Schneerson was unsatisfied with the rabbinic position that the patriarchs had observed the *mitzvot* in the same way as, or in a more elevated way than, the Israelites did after being instructed with the law at Sinai. According to Schneerson, while the patriarchs performed the *mitzvot* only spiritually, Sinai ushered in the unprecedented opportunity to perform them *physically*; while the forefathers arrived at the *mitzvot* on their own, Sinai for the first time offered the chance to perform them as *commands.*

Drawing on Shneur Zalman's decisionist view of the law, Schneerson upturned the assumption that reason-inspired religious practice is more desirable than mundane practice performed out of sheer obedience. While some Hasidic masters who addressed the patriarchs' observance of the *mitzvot* saw their ability to fulfill them from reason as superior to the Israelites' inability to do so,[81] Habad theology sees things exactly in the reverse. For Schneerson, the chance to perform *mitzvot* for the sole reason that God commanded them is infinitely more elevated. The patriarchs, though not commanded by God, discerned on their own what God would want of them. Their performance of the *mitzvot* was predicated on their longing to connect to God and on their rational and spiritual acumen, which enabled them to

---

[75] By verbal expression, Shneur Zalman does not intend intellectual conversation or deliberation but the sheer act of verbalizing (which satisfies the requirement of the *mitzvah*).

[76] *Liqqutei Torah,* Bamidbar 37a, 37b.

[77] *Liqqutei Torah,* Bamidbar 37a.

[78] Shneur Zalman explains that while contemplation cultivates religious feeling, this practice only reinforces itself. Contemplation merely inspires a yearning for God, which in turn begets further pining such that meditative practice operates as a revolving door. Further, in addition to his criticism of meditative practice in that it never culminates into anything other than itself, this practice is also deemed to be limited considering that via it one acquires cognition only of God's existence but not of God's essence. Reflecting on God, at most, allows one to cognize God's sheer existence, the simple fact that God is. This is contrasted with actionable *mitzvot* that allow one to grasp God's essense. With action, defined as the practice of *mitzvot*, one has the unparalleled opportunity to access not only a *reflection* of God, but God's essence, that is, *atzmuto u-mehuto.* By way of *mitzvot*, one not only cognizes the reality of God but experiences God; one not only acknowledges God's existence in the abstract but connects to God in the here and now. *Liqqutei Torah*, Vayikra 12c; *Ma-amarei Admor ha-Zaqen* 5564, at 165.

[79] See Schneerson, *Liqquṭei Siḥot*, 25:52.

[80] As one famous rabbinic dictum put it, "Abraham our Father fulfilled the entire Torah before it was given, even '*eruv tavshilin*' (that is, the rabbinic device for permitting the preparation of Sabbath food on the preceding festival day)." *Babylonian Talmud,* Yoma 28b. This teaching can be understood as a reaction to Paul's polemic against Jewish law, that the biblical forefathers had not received the law, yet they were deemed righteous in God's eyes. The rabbis taught that the biblical forefathers *did* observe all of Jewish law even before it was revealed.

[81] Arthur Green, *Devotion and Commandment: The Faith of Abraham in the Hasidic Imagination* (Cincinnati: Hebrew Union College Press, 1989), 10–16.

intuit what to do. But observing the *mitzvot* as a result of one's own reasoning and spirituality implicates one's *self*.[82] Once the *mitzvot* were commanded, they could be grounded not in one's self but in *God*'s will alone; one could obey them not because one understands them but because they are commanded.[83]

Shneur Zalman's emphasis on the sheer action of *mitzvot* and on obeying rather than understanding contrasts sharply not only with the views of the vast majority of traditional medieval Jewish authorities who preceded him and of other contemporary Hasidic masters, but also with those of his more traditionally oriented contemporaries, in particular with the ideal model of religiosity as espoused by Elijah of Vilna (1720–1797).[84] Elijah, one of the most influential rabbis of his time and avowed opponent of Shneur Zalman,[85] pits Torah study against the fulfillment of the commandments.[86] According to Elijah, "Torah is … kneaded constantly like bread; but the *mitzvot* are like a confection, which is good [only] periodically and at the proper time."[87] Similarly, for Elijah's principal student, Haim of Volozhin (1749–1821),[88] cerebral Torah study is championed as far more worthy than the performance of *mitzvot*. Since the latter is "of this world," it is of lesser value, whereas the former is far greater because it is identified with an idealism "of the outside world." Thus, according to Haim, "all the *mitzvot* do not equate with a single word of Torah."[89]

The Torah study that was most championed as the ideal of religiosity for both Elijah of Vilna and Haim of Volozhin was the study of Talmud,[90] which mostly consists of reasoning and deliberation. The point for Shneur Zalman, in contrast to Elijah and Haim, is not to understand the *mitzvot* but to perform them. For Shneur Zalman, the will of the sovereign is

---

[82] For this reason, although the forefathers never reached the heights of religious performance known to their descendants post-Sinai, God's instruction to Abraham, the first command to the first Jew, to "go forth from your father's land," was an instruction to divest of his religious performance based on human motivation and spirituality. In Schneerson's words: "'Go to yourself, from your land'—go away from your wants (*eretz*, similar to the word *ratzon*); 'and from the land of your birth'—from your habits (and feelings); 'and from your father's home'—from your intellect ('father,' which is wisdom). The way to unify oneself with God is specifically and exclusively through leaving one's existence (that is, one's wishes, emotions, and intellect), including one's existence in terms of holiness." Schneerson, *Liqqutei Sihot*, 25:52.

[83] This teaching can be compared with the legal philosophy Yeshayahu Leibowitz would eventually develop. See Yeshayahu Leibowitz, "Religious Praxis: The Meaning of Halakha," in *Judaism, Human Values, and the Jewish State*, ed. Eliezer Goldman, trans. Eliezer Goldman et al. (Cambridge, MA: Harvard University Press, 1995), 3–29.

[84] And, for that matter, of Haim of Volozhin. A detailed discussion of Torah study comprises the entirety of the fourth and longest section of Haim's *Nefesh ha-Haim.*

[85] Immanuel Etkes, *Rabbi Shneur Zalman of Lyady: The Origins of Chabad Hasidism*, trans. Jeffrey Green (Waltham: Brandies University Press, 2014), 132–36.

[86] Mordecai Wilensky, the scholar who studied *mitnagdicism* most deeply, goes as far as asserting that all the complaints issued by the *mitnagdim* were tangential to their complaint that Hasidism misplaced the value of Torah study. See Mordecai Wilensky, *Hasidim and Mitnagdim: A Study of the Controversy between Them in the Years 1772–1815* (Jerusalem: Bilalik Institute, 1970), 1:18–19. Other noted scholars, including Haim Hillel Ben-Sasson, Immanuel Etkes, and Allan Nadler, all concur with Wilensky. See Haim Hillel Ben-Sasson, *The Personality of the GRA and His Historical Influence* (Jersusalem: Zion, 1966), 39–86, 197–216; Immanuel Etkes, "Shitato U-Faalo Shel Rabbi Hayyim mi-Mi-Volozhin kiTeguvath ha-Hevrah ha-Mithnagdith la-Hasiduth," *Proceedings of the American Academy for Jewish Religion* 38/39 (1970–1971): 1–45; Allan Nadler, *The Faith of the Mithnagdim: Rabbinic Responses to Hasidic Rapture* (Baltimore: Johns Hopkins University Press, 1999), 151–70. On Torah study's role in the Mitnagdic-Hasidic debate, see Schatz-Uffenheimer, *Hasidism as Mysticism*, 320–25; Nadler, *Faith of the Mitnagidm*, 162–65; Joseph Weiss, "Torah Study in Early Hasidism," in *Studies in East European Jewish Mysticism and Hasidism*, ed. David Goldstein (Oxford: Littman Library of Jewish Civilization, 1985), 56–68.

[87] See Elijah ben Solomon, *Sefer Mishley im Biur ha-Gra* (Petach Tikvah: 1991), Proverbs 4:4.

[88] See Norman Lamm, *Torah Lishmah: Torah for Torah's Sake* (Hoboken: Ktav Publishing House, 1989).

[89] Haim of Volozhin, *Nefesh ha-Haim*, 281.

[90] Elijah ben Solomon, *Sefer Mishlei Im Beur HaGra* (Petach Tikvah: 1991), Proverbs 1:23. See Eliyahu Stern, *The Genius: Elijah of Vilna and the Making of Modern Judaism* (New Haven: Yale University Press, 2013), 90–95.

what reigns. Torah study in itself, as a cerebral exercise, is about vying to understand rather than obeying God. For Shneur Zalman, religion is configured as a system of commands emanating from the ultimate decider, God, and is not about pondering, but about doing.[91]

Indeed, the dueling theologies of Shneur Zalman and Elijah of Vilna reverberate to this day. One major expression of contemporary Jewish Orthodoxy is the "yeshiva movement," which prioritizes Torah study above all else. The yeshiva that has arguably had the most impact in defining this movement was Haim of Volozhin's, which opened its doors in 1802.[92] It was Torah *lishma*, Torah study in the abstract and for its own sake, that was the central tenet of Haim's theology.[93] Torah study was so paramount that even *halakhically* mandated times for prayer were considered far less significant than Talmud study.[94] Importantly, the Volozhiner yeshiva did not value, indeed it opposed, teaching its students how to render Jewish legal decisions,[95] since practical law was deemed less important.[96] Rather, only abstract reasoning and dialectic argumentation were held in esteem. Little if any thought was given to how the Talmud's legal abstractions could be translated into real-world applications.[97]

In a deep sense, the Volozhiner yeshiva resembled Carl Schmitt's description of Parliament in his day and his definition of the liberal bourgeoisie as "a 'discussing class' [that,] wanting to evade the decision ... shifts all political activity onto the plane of conversation."[98] Shneur Zalman, on the other hand, who shares Schmitt's preference for concrete decisionism, shifts the religious ideal from abstract theorizing to practical decision-making about law. In this respect, it is worth noting that while both Elijah of Vilna and his student Haim of Volozhin refused to author practical guides to Jewish law, Shneur Zalman penned a masterful four-volume legal code as well as concrete legal decisions that address actual legal situations.[99]

Conclusion

Carl Schmitt and Shneur Zalman were engaged in similar intellectual projects. Both hold that will is the foundation of our central institutions. For Schmitt, will is the basis of political life; for Shneur Zalman, it is the basis of the world. For both, universal reason is not the cornerstone of law. Rather, law is the product of the sovereign's decision. On its own terms, law is incapable of explaining its foundations. There is something—the will and the decisions that flow from that will—that is prior to law and that the law often both ignores and obscures.

---

[91] By this I do not mean to suggest that Shneur Zalman did not value Torah study. Nothing could be further from the truth. But, I would argue, Torah study is valuable for Shneur Zalman chiefly because it is a *commandment.*

[92] Jacob Katz, "Jewish Civilization as Reflected in the Yeshivot—Jewish Centers of Higher Learning," *Journal of World History* 10, no. 4 (1967): 674–704, at 701.

[93] See Haim of Volozhin, *Nefesh ha-Haim*, 190, 191, 280, 282–83, 293. See also Tamar Ross, "Shnei Perushim le-Torat ha-tzimzum: R Hayim mi-Vilozhin ve-R Shneur Zalman mi-Liadi," *Jerusalem Studies in Jewish Thought* 1, no. 2 (1982) 153–69.

[94] Norman Lamm, *Torah Lishmah*, 158n14.

[95] Mordechai Breuer, *Ohalei Torah* (Jerusalem: Zalman Shazar Center, 2004), 137–43.

[96] For an excellent discussion of Haim of Volozhin's yeshiva, see Chaim Saiman, "Legal Theology: The Turn to Conceptualism in Nineteenth Century Jewish Law," *Journal of Law and Religion* 22, no. 1 (2005–2006): 42–50.

[97] Shaul Stampfer, *Ha-Yeshiva Ha-Litait Be-Hithavuta* (Jerusalem: Zalman Shazar Institution Press, 1995), 39–100, at 99–100.

[98] Schmitt, *Political Theology*, 59.

[99] See Levi Cooper, "Mysteries of the Paratext: Why did Rabbi Shneur Zalman of Liady Never Publish His Code of Law?," *Diné Israel*, no. 31 (2017): 43–84.

Both thinkers engaged in revolutionary intellectual projects that forced a reevaluation of the central institutions of their respective times. In the case of Schmitt, Parliament and the Weimar legal order required rethinking. In the case of Shneur Zalman, yeshiva study should not be at the center of Jewish life. Rather, according to Shneur Zalman, the everyday practice of *mitzvot* is meant to be the hallmark of Judaism.

Shneur Zalman insisted that, rather than reason, God's inscrutable will is the foundation of worship and the world. This rejection of rationalism in favor of decisionism contributed to a revolution in Jewish life that has cultural ramifications to this day: Jewish laws are to be obeyed because God commanded them, not because they are rationally justified. This shift is in large part the product of Shneur Zalman's insight about the centrality of will and decision—an insight that lines up with Schmitt's core thesis in a way that may be uncomfortably provocative.