

RABBI ELIEZER BERKOVITS: HALAKHAH AND MODERN ORTHODOXY

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I. Introduction

Rabbi Eliezer Berkovits (1908–1992), one of the great twentieth-century theoreticians of *halakhah*, challenged Modern Orthodoxy to rethink the way in which it defines itself¹. A leading student of Rabbi Jacob Jehiel Weinberg (1885–1996; author of *Responsa Seridei Eish*), Berkowitz differed sharply from the typical Modern Orthodox rabbi. His uniqueness, and the ways in which he differed from his counterparts, are evident in two of the letters he wrote to his teacher. In the first, dated 7 Tevet 5726 (30 December 1965), he pours out his heart in distress over the efforts by American rabbis to preclude publication of his book, *Tenai benisu'in u-ve-get* [Conditions in marriage and divorce]:

I have long known our “giants” [*gedolim*] and our “righteous ones” [*zaddiqim*]. On their view, they need not heed the call of mores, propriety, or righteousness because their purpose – of course – is for the sake of Heaven. According to their method, their holy ends justify all means².

These biting comments were written to R. Weinberg without reservation, and one may readily infer that Berkovits sensed his teacher would identify with them. In an even more acerbic letter dated 2 Sivan 5719 (8 June 1959), Berkovits describes the efforts of a group of American Orthodox rabbis, led by R. Aaron Kotler (1892–1962; head of the Lakewood Yeshiva) to prevent the establishment of

a women's college alongside the men's college at the yeshiva in which Berkovits taught. Berkovits wrote:

These fools are destroying Judaism in this country [the United States] just as their colleagues in the Land of Israel are destroying it there. The nation and Torah of Israel must be saved from the plague of the *zaddiqim* ["righteous ones"]. They have imposed on us the verse "Moreover, I gave them laws that were not good and rules by which they could not live" [Ezek. 20:25]. The day will come when we will have to attack these "righteous ones" in public for sake of God and the sake of Judaism.

Let not his honor worry; I do not take part in controversies nor do I have time for them. But the day will come, God willing, when we will set out on our own way in a systematic fashion, independent of these "Torah giants". That is already our obligation in these times, so we may save and revive Judaism within the world³.

It is easy to imagine that Berkovits would be a source of controversy within the Orthodox rabbinate. Nevertheless, his profound learning, the rabbinic rhetoric in his halakhic writings, and the support he received from his great teacher kept him within the world of Orthodox discourse and gave that world a new dimension. What is the nature of his halakhic teachings? What are their intellectual and biographical contexts? How are his teachings in fact linked to Weinberg's intellectual world and how does his meta-halakhic theory figure in his practical halakhic analyses?

I present here an initial consideration of these questions. The study of Berkovits' writings is only beginning⁴, and my analysis below will not draw the connections that ought to be drawn among his theological-philosophical, halakhic, Zionist, historiosophic, and post-Holocaust writings. Those complicated interconnections are a subject too broad for this article, in which I concentrate only on some key aspects of his halakhic thought.

II. Meta-Halakhic Analysis

Rabbi Jacob Jehiel Weinberg and His Student

After his initial education at the Pressburg Yeshiva in Rumania, Berkovits studied with R. Weinberg at the Hildesheimer Rabbinical Seminary in Berlin from the mid-1920s until the start of World War II⁵. In the course of his rabbinic studies, he was exposed to the *Musar* movement (in which his teacher had been educated) and to general scholarship; in 1933, he completed his doctorate in philosophy at the University of Berlin. With the outbreak of World War II, Berkovits emigrated to England, Australia and, later, the United States, settling first in Boston and then in Chicago. He served as a rabbi and taught Jewish philosophy and ultimately moved to Jerusalem, where he died in 1992.

Berkovits' had a particularly strong attachment to his teacher⁶, but any attempt to understand his world take full account as well of the influence of Anglo-Saxon culture on his formulation of his ideas and his concept of the reality he confronted. Weinberg reciprocated Berkovits's affection – not only out of esteem for his student's rabbinic standing (as evidenced by his including one of Berkovits's responsa in his *Seridei Eish*⁷) but also because it was Berkovits who saved his writings from destruction during the course of the Second World War. Beyond that, there appear to be many points of resemblance between the two men's worldviews and their understandings of how *halakhah* operates, as an ideal and in practice.

Humanism and *Halakhah*

An article Berkovits wrote to commemorate his teacher's *yahrzeit* reveals many of the profound connections between teacher and student⁸. In recounting a *pidyon ha-ben* (redemption of the first-born) ceremony that took place at the Rabbinical Seminary in Berlin, Berkovits describes his teacher's halakhic-humanistic dimension. On that occasion, Weinberg delivered a talk based on the weekly Torah reading and, referring to the episode of Reuben's involvement in his father Jacob's marital affairs⁹, said that "Anyone who intrudes in matters of this sort between a husband and wife, moving beds from tent to tent in order to organize their personal lives for them [a rabbinic understanding of what Reuben had done], is as if

he himself had mounted the bed and defiled it”¹⁰. When Berkovits, surprised at what his teacher had said, asked Weinberg what underlay his comments, Weinberg explained:

Some of the seminary students had suspected the young parents of the first-born child of having committed some vile act three or four years earlier, while they were engaged. They had now brought the matter to the attention of the Seminary’s rabbis, and their intervention in this way had compromised the couple’s ability to earn a living... That was what he had in mind, and he was addressing himself specifically to his colleagues on the Seminary’s faculty. At that point, I understood and was stunned. I knew that there was reason to suspect that the allegation was an outright lie, but I also knew that my master and teacher could not himself have known whether it was a lie or not. At that point, I understood the reach of his remarks. The nobility of his soul impressed in a way that will last forever¹¹.

This humanistic sensitivity plays a central role in Berkovits’ own doctrines¹² and becomes one of the pillars of his meta-halakhic thought. At the same time, one cannot understand his meta-halakhic and moral teachings without recognizing his serious reservations about western morality.

Morality: Between Body and Soul

Berkovits’s reservations regarding western morality are closely bound up with his meta-halakhic concept of the connection between spirit and matter, between soul and body. That dualism underlies the distinction between Athens/Greece and Jerusalem, between the Christian West and Judaism, and it bears cultural and moral consequences. Western thought tends to rely on reason to motivate a person to act morally¹³; according to Berkovits, it thereby reveals a failure to understand the essence of man¹⁴ – a failure that results in a lack of cooperation between body and soul¹⁵. That, in turn, leads to the Christian despair about the material world and human nature and the philosophical deprecation of those domains. Judaism¹⁶, in contrast, seeks realization within human reality. “Realization means the blending of spirit and matter”¹⁷; spirit alone lacks power. “No one has ever accomplished anything by merely contemplating an idea. All conscious action is the result of

some form of cooperation between the mind and the body. Matter... without the mind is inanity; mind without matter is, at best, noble impotence"¹⁸.

In contrast to Plato, who saw the soul as imprisoned in the body, Berkovits took the view that the matter/spirit combination was the very embodiment of man and the "divine image" within him – a blending of the higher and lower realms¹⁹, of the good impulse and the evil impulse²⁰. That was why Hillel the Elder considered it a commandment to bathe the body, which was a sort of "royal likeness"²¹; and that is why, Berkovits argues, Judaism senses responsibility for the individual, society, the Jewish people, humanity, and the world²².

The sensitivity to reality is an application of the principle that the Torah was not given to the ministering angels²³. Spiritual seclusion is foreign to it. "One who says 'I have nothing but Torah'... lacks even Torah; one who engages solely in Torah [study] is as one who has no God"²⁴. Everything depends on human deeds. It follows that the performance of the commandments sanctifies world, time, and history. This is not ontological sanctity²⁵; and it is the fulfillment of the commandments that brings about the presence of sanctity in human life and in the world. This position, as we shall see below, is of great importance in Berkovits's meta-halakhic doctrines and enables him to press his halakhic arguments in a manner quite different from his colleagues.

The Importance of the Act: Between Morality and Pragmatism

Notwithstanding Aristotle's and Spinoza's insights regarding the place of feelings and instincts as motivators of human action²⁶, no philosophical system ever formulated a moral theory translated into obligatory action. Judaism differed in this regard, Berkovits maintained, having tied spirit to matter in all areas of existence²⁷. In that regard, Berkovits is linked both to Weinberg's moral pedagogy²⁸ and to the American pragmatism of John Dewey²⁹. Education, he argues, is tied to the obligatory *act*; and, in addressing the body, one must use concepts suited to the body. The body learns by habit, and it therefore is necessary to train the body to be moral; it must be made to "do things"³⁰. *Halakhah* generates training exercises, and, Berkovits argues in a pragmatist spirit³¹, a person learns and is tested on the basis of his actions, not on the basis of discourse about his ideas. Action is guided by the spirit and shapes both matter and spirit³². The *halakhah*, which pervades all

of life, become the basis for values education. It is the conduit by which a person expands his area of concern beyond himself³³, allowing for sublimation of his egocentric tendencies³⁴. This is accomplished through the halakhic restrictions embodied in the negative commandments, such as the Sabbath labor prohibitions, the rules of *kashrut*³⁵, and some of the Ten Commandments:

Any one commandment of the Decalogue – “you shall not commit adultery,” “you shall not kill” or “you shall not covet” – is an ethical injunction directed to a real situation of conflict or temptation. In order to obey it, one must inhibit powerfully aroused passions. But one does not learn the art of self-control merely by reading the Bible. One learns it by actually controlling oneself in the face of a challenge. However, when the challenge actually arises in all seriousness, it may be too late to inhibit and to act ethically and effectively³⁶.

The routine of putting on *tefillin*, the obligation to pray three times daily at set times, and the imperative to recite blessings before eating all require submission, discipline, and sacrifice of “the self-regarding interests of vital needs and inclinations” – but without impairing them. At the same time, the positive commandments are “the exercise of saying ‘yes’ in consideration of an order different from one’s own”³⁷. The laws of Passover shape memory through actions³⁸. The spirit impels the body to remember, and the body, through its actions, allows for collective remembrance: “By refraining from all leaven, by eating matzah, by reclining at the Seder table”, we shape the space that makes the spiritual goal of the festival attainable. The same logic can be found in the value of “honoring the world”, which is to be realized not merely through knowledge or speech. The value is translated into practice through “the negative commandment of ‘do not waste’”, which forbids “destroying any fruit tree – even that of an enemy whom we are fighting and even in the course of fighting against him”³⁹.

“The most instructive example”, Berkovits argues, “is prayer. It is clearly possible to pray inwardly, without words and without movement. One may pray through silent meditation. Prayer of that sort would suit an entity that was entirely intellect or soul, but it is certainly is not the sort of prayer that suits an entity like man”. Prayer requires participation of the limbs; it must be recited in words⁴⁰. Citing the liturgical poem *Nishmat kol hai* as giving voice to the idea⁴¹, Berkovits adds, “What is here said about prayer applies to religion overall”⁴².

Morality and Revelation: Between Truth and Duty

A cursory reading of Berkovits's writings can mislead, leaving the impression that Berkovits maintains human morality trumps *halakhah*⁴³ – but that is not the case⁴⁴. Weinberg himself did not identify with the approach that transforms (and subordinates) the world of Judaism to the world of western values⁴⁵, and he considered the *halakhah* to be an independent moral system (though he expressed some reservations and some daring criticisms of it)⁴⁶. He even thought that morality was problematic and lacking in authoritativeness if it was not backed by divine authority; and one gets a similar sense from Berkovits's writings. Berkovits cites the lack of underlying authority for western morality (and its consequent capacity to slide into nihilism)⁴⁷. In his view, it is not enough to know what is good; “one must also understand why it is imperative to adhere to the good and the right”⁴⁸. Knowledge is not the same as a sense of obligation⁴⁹. Alone, without utilitarian analysis, western morality would find itself lacking in authority. Even if we assume that the good is instilled within us, what obligates us to realize it⁵⁰? Even worse, Christianity – which denies man's ability to ascertain the good through reason and regards him as sunk in wickedness by his very nature – negates the underlying premises on which a rational ethics can be built⁵¹. Marxist materialism conveys a more optimistic sense, but it, too, fails, in Berkovits's view, because it denies the spiritual world that is the basis of all values⁵². And Henri Bergson's doctrine likewise fails, because it transforms moral obligation from an “ought” to an “is”⁵³ – a flaw that goes all the way back to Aristotle, who held the laws of reason to be identical with the laws of nature⁵⁴.

Although we find Berkovits agreeing with the view that “a law that could not be subjected to the test of reason was worthless”⁵⁵, the autonomy of ethics nevertheless requires a revelatory dimension⁵⁶. Even if we assume that man has a natural inclination toward the good, morality stripped of revelation will be subjective, socially determined⁵⁷, and lacking in practical support. The law's authority, then, does not rest on its truth; it requires as well the will of a commanding God⁵⁸ (and Berkovits, like Buber before him, thought that Kant sensed the critical absence of God from his theory⁵⁹). “Secular morality”, then, is problematic (as modernity demonstrates⁶⁰), lacking both authority⁶¹ and objectivity⁶².

In contrast to Berkovits's firmly grounded halakhic writings, his philosophical teachings present problems and readily lend themselves to criticism from various perspectives. His concepts are not adequately explicated; his messages, though rational, are not inevitable conclusions and lack clear conceptual definition. For example, the connection among "revelation", "reason" and "human critique" is far from clear. Similarly, the force of "historical development" in relation to "revelation" requires further conceptual refinement. The reader may be left to wonder just what the content of the "revelation" is and what it means to say that Jewish morality has its source in revelation but is nevertheless subject to critical analysis. And if reason has a role in critiquing morality, how does morality avoid the pitfall of subjectivity? If revelation and reason are to be differentiated, how can one draw insights from history and reason yet claim that their source is revelatory? And how can one justify qualifying, on the basis of rational human analysis, commandments grounded in revelation⁶³? One might argue in response that for Berkovits, revelation deals not with the *content* of morality (such as "you shall not murder") but only with the *source of its authority* ("Love your neighbor as yourself – *I am the Lord*"). But that view raises another question: if we are dealing only with formalism, can revelation provide a source of authority for a moral system? In other words: is the distinctiveness of the divine command really to be entirely severed from its content?

Berkovits does not directly confront these difficulties, but he attempts to forge a middle ground that, in his view, is suited to the *halakhah*. The Torah expresses a heteronomous source, while the *halakhah* embodies the link to the many-faceted practical world with all its existential problems⁶⁴. Torah and *halakhah* form a blend that is not exclusively heteronomous or theonomous; it is, he argues, a complex form of theonomy:

The *halakhah*... which guides... the application of the written Torah... through changing times... demands originality and creativity on the part of the sages of Israel, as they uncover the unique intention of the giver of the Torah with respect to every period of history. R. Akiva in his academy taught... novel ideas... that even Moses our Teacher... did not understand; but despite that novelty... R. Akiva found a peg [for his innovation] in that same Torah that the Holy One Blessed Be He revealed to Moses⁶⁵... God's directive is

eternal, but the content of God's directive encompasses a new-old word for each generation – and it awaits the special person who will reveal it. The Oral Torah, accordingly, is the dialectical bridge between the giver of the Torah and its recipient. Of that, R. Yohanan said: The Holy One Blessed Be He entered into a covenant with Israel solely on account of the Oral Law. The covenant is substantive, that is, bilateral. [It follows that] Judaism is not theonomous in the “pure” sense; rather, it joins forces with... “human autonomy”. In the covenant of the Oral Torah, divine governance and human governance are both active. The bilateral nature of the covenant is so significant that, on occasion, the authority bestowed by the Torah-giver on His partner allows the will of the partner to trump the will of the Giver⁶⁶.

The obvious tension between the argument that “the will of the partner... trump[s] the will of the [law] Giver” and the argument that “God's directive is eternal” defies easy resolution, and the fuzzy concepts used by Berkovits (as noted above) fail to shed light on the matter.

The Authentic Torah

The Oral Torah encompasses revealed moral principles embodied in norms. The decisor is called upon to be flexible in the face of an actual situation and its requirements. The Torah encompasses elements of a divine, objective morality that demands a unique attitude toward mankind. This morality, which is uncovered by reading between the lines of the *halakhah*, is transformed into “autonomous” tools in the hands and under the authority of the sages. It is a complex relationship that includes both autonomous moral responsibility and reliance on heteronomous command; and Berkovits often criticized Jewish thinkers in whom he did not discern that sort of complexity⁶⁷. He regards any “extra-halakhic” or “non-Torah-based” moral discourse as “non-Jewish discourse”, and the importance of that assessment pervades his writings⁶⁸. Despite the heteronomous source of these moral principles, people are extremely sensitive to them, and they are expressed in meta-halakhic principles such as “the entire Torah is for the sake of the ways of peace”⁶⁹ and in such biblical verses as “Her [i. e., the Torah's] ways are pleasant ways, and all her paths, peaceful”⁷⁰; “Do what is right and good”⁷¹; “the practices they are

to follow⁷²; “So follow the way of the good⁷³; “Love your fellow as yourself⁷⁴; “My laws and My rules, by the pursuit of which man shall live⁷⁵; and others. Verses and statements such as these are the elements of halakhic “language⁷⁶ and theory – the basis for halakhic decisional categories.

The decisor, as noted, must be sensitive to reality with all its difficulties and challenges. Innovative interpretation is a tool with which he probes the hidden recesses of the Oral Torah (though not thereby undermining the stability of the values inherent in the inherent in the Written Torah). Nahmanides sheds light on the gap between the Written Torah and the Oral Torah, noting the Torah’s limited capacity to embrace everything that may develop in life⁷⁷. Scripture accordingly teaches us “as a general rule to do what is right and good in all matters, to the point of willingness to compromise and to do more than the law requires⁷⁸. In a similar vein, Berkovits cite the well-known comments of R. Joseph Albo⁷⁹.

The *poseq*’s has broad responsibilities: to people and to the world, to the body of learning⁸⁰, and to history⁸¹. This responsibility is a defining feature, according to Berkovits, of “authentic *halakhah*”⁸² or “the Torah of the Land of Israel”⁸³ – a Torah that gives prominence to meta-halakhic tools such as “the judge has only what his eyes see [i. e., must take account of reality]”⁸⁴, “It is time to act for the Lord, for they have violated Your teaching” (Ps. 119:126; taken to mean that the law at times must be voided to advance higher, Godly, interests)⁸⁵, and “*hora’at sha’ah*” (an extra-legal measure enacted to deal with a particular urgent situation)⁸⁶. These tools enhance the decisor’s ability to reach innovative decisions and incorporate the principle that “the Torah was not given to the ministering angels”⁸⁷. The decisor is obligated to rule here and now, “taking account of the human condition in all times and places and paying attention to the moral and practical vision illuminated by the Torah’s overall purpose”⁸⁸.

As noted above, this dynamism stands at odds with the tendency to stability that characterizes divine revelation, but Berkovits was untroubled by that tension. In his view, the imperative to act responsibly ensured the flexibility of the *halakhah* as applied by the sages; and the *halakhah* could also rely on a renewed sense of “divine truth”, as expressed in the *midrash* asserting that in a given situation “there were forty-nine aspects [warranting a ruling] to forbid and forty-nine aspects [warranting a ruling] to permit”⁸⁹. At the same time, he sees a contradiction between the need for halakhic creativity and the processes of halakhic codifi-

cation as expressed in the various efforts to compile definitive restatements of the halakhic literature (or even popular halakhic manuals)⁹⁰. Even if those works were vitally important in their day⁹¹, they pose a great risk to halakhic innovation⁹², especially when they become in their own right a key element of rabbinic study and decision-making⁹³. (In that regard, Berkovits even criticizes Maimonides and the grounding of the *halakhah* on the Babylonian Talmud⁹⁴).

Historical Critique of the *Halakhah*

In light of his foregoing comments, Berkovits identifies four points that distinguish the *halakhah* from the law of the Torah. He argues that Halakhah is not the Law but the law applied – and by the manner of its application rendered meaningful – in a given situation.

The purpose of the Halakhah is to render the Torah in a given historic situation a) practically feasible; b) economically viable; c) ethically significant; d) spiritually meaningful⁹⁵.

Not everything written in the Torah will lend itself to straightforward application once the practical, economic, moral, and spiritual assessment has been conducted (and it appears that the critical, analytical, and conceptual questions I raised earlier regarding Berkovits's teachings apply with even greater force here). The decisor must bear the burden of wrestling with reality, morality, and the spiritual purpose of the Torah itself; and he must set those factors against the commandment itself in order to decide how it should be realized. The tools, principles, and values learned from the Torah itself (in a heteronomous and theonomous manner)⁹⁶ are the very tools the autonomous decisor must use in critiquing the Torah⁹⁷. The decisor therefore must discern and assess (1) the commanded law he is to consider; (2) the vision or purpose the Torah sought to be achieved through this command; (3) the complexity of the human situation in which the *halakhah* is to be applied; and (4) the halakhic solution required in light of that complexity⁹⁸.

According to Berkovits, the shunning of this sort of autonomous, value-based, interpretive, and moral confrontation results in the distortions of *haredi*, exilic *halakhah* – a *halakhah* cut off from real life:

From time to time, one hears of rabbis... who advise a questioner that “religious people are better off not joining the police force”. Is it... the view of the Torah that religious Jews should not serve in the police force of a Jewish state? Or, for example, is it possible to sever links with the international community with respect to aviation?.. [Is it possible to discontinue] telecommunications on the Sabbath... to the point of not knowing what is going on outside the State? It follows that as [these] faithful Jews understand the Torah and the *halakhah*, a Jewish state needs tens of thousands of secular, non-believing Jews... The existence of the Jewish state thus depends on Jewish “Shabbes goys”⁹⁹.

III. Halakhic Analysis

In his book *Ha-halakhah – kohah ve-tafqidah*¹⁰⁰, Berkovits tries to situate his meta-halakhic principles within the halakhic literature and identify rabbinic sources for his theories. He points to the great force of reasoned analysis (*sevara*) as a shaper of *halakhah*: it is considered equivalent to scriptural text¹⁰¹ and it can preempt halakhic rules (such as deciding in accord with the majority view) and lead to decisions not in accord with those rules¹⁰². He displays the wealth of rabbinic decisions that take account of the human condition (“the Torah was not given to the ministering angels”¹⁰³); of psychological characteristics¹⁰⁴ and changes in nature¹⁰⁵; of the need for *tiqqun olam*¹⁰⁶; and of the rule that “the Torah protects Jewish assets”¹⁰⁷. Berkovits sets forth the moral principles embodied in rabbinic deliberations¹⁰⁸, from “pleasant ways”¹⁰⁹ to “do what is right and good”¹¹⁰ to “great is the dignity of [God’s] creatures”¹¹¹. He even stresses the power of moral arguments in matters of marriage and divorce: the court’s power of compulsion over one who refuses to grant his wife a divorce¹¹²; the halakhic consequences of concern about the plight of an *agunah* (a woman unable to remarry because her first husband’s death is unproven or because he is withholding divorce); and the power of the sages to annul a marriage *ab initio*¹¹³. Berkovits explores at length the sages’ power and consequent responsibility to shape the *halakhah*; he describes their authority¹¹⁴; their task of deciding solely on the basis of “what their eyes see”¹¹⁵; their authority *vis à vis* predecessor courts¹¹⁶; and their power to uproot a rule of the Torah¹¹⁷.

Berkovits did not serve in a rabbinic position that required him to compose halakhic decisions, and he wrote to Weinberg that his main purpose was to express himself as a theoretician of *halakhah*¹¹⁸. He therefore left no responsa that would allow for close study of how he applied his principles. To get a sense of the uniqueness of his views, however, we can examine his writings on the sabbatical year, autopsies, the status of women, and “conditions in marriages”. On these issues – especially the last – there developed a conflict between Berkovits and the Orthodox rabbinate that showed the extent of his deviation from the halakhic and rabbinic norm within the framework of the modern Orthodox world. In this limited context, I will present a brief, comparative review of these questions and provide examples of his innovativeness and his ties to the principles noted above.

The Sabbatical Year ❧

In 1910, the halakhic world was roiled by Rabbi A. I. H. Kook’s (1865–1935) “*heter mekhirah*”¹¹⁹, a measure that led to R. Kook being regarded as the paradigmatic Zionist decisor. His halakhic authorization, which relied on an earlier halakhic authorization¹²⁰, was sensitive to the economic difficulties faced by the Zionist settlement, and his ruling took account of both new circumstances and halakhic limits. The ensuing confrontation with the *haredi* world was harsh and intense¹²¹. As a practical matter, however, R. Kook’s ruling was quite limited. It allowed only a temporary abrogation of rabbinic law, and obliged a sale of the Land of Israel to gentiles. It never entered Rabbi Kook’s mind to abrogate a Torah-based law for economic reasons¹²² (that principle applied not only to the sabbatical year; it was a general principle in Rabbi Kook’s system and was expressed even more forcefully in connection with the prohibition on milking cows on the Sabbath¹²³). The solution of selling the land to gentiles was thus a standard aspect of Rabbi Kook’s halakhic writings and one of the tools he used in his halakhic encounter with Zionism¹²⁴.

This halakhic approach was roundly criticized¹²⁵, and the most prominent halakhist to do so was R. Weinberg:

I have expressed my opinion that, nowadays, selling the Land of Israel to an Arab is something that simply cannot be done, for it causes the Torah to

be disparaged by Jews in the Land of Israel and by the world as a whole; as those who understand such matters will recognize. And because we are fighting to strengthen the laws of the Torah and their rule within the Land of Israel, it is forbidden for us to propose things *that make no sense* and significantly undermine [those laws]¹²⁶.

Reliance on gentiles as a means of dealing with halakhic problems struck Weinberg as an evasion of reality and its challenges. Berkovits agreed, but he formulated the position more sharply than did his teacher. Not only did he reject reliance on gentiles; he also saw a need to use historical criticism in examining whether the laws of the sabbatical year should be straightforwardly applied. More specifically, he saw a need to distinguish between the *law of shemittah* and its *purpose* and *vision*, for the latter must be assessed in light of economic, historical, and national reality. Only if those factors are taken into account will it be possible to arrive at the desired halakhic *solution*. In Berkovits's analysis, the biblical law of *shemittah* is not consistent with the new reality of the modern State of Israel, and meta-halakhic mechanisms allow for certain conclusions to be drawn regarding it:

The tragic aspect of the situation is that, at this time, there is no one... who knows how to run a Jewish state in accord with Torah and *halakhah*, [for example]... observance of... the sabbatical year... The agricultural system to which the Torah was directed was a primitive one, having as its sole purpose the provision of enough food from the land to sustain the people. In those circumstances it was (relatively) easy to allow the land to "rest" one year out of every seven. And that is why the Torah reinforces the people's faith with its statement that... "should you ask, 'What are we to eat in the seventh year... I will ordain My blessing for you in the sixth year...'" (Lev. 25:20–21). In our day... the situation is entirely different. The role of agriculture today is not to provide day-to-day subsistence... rather, it produces products... for export, without which the state's international commerce would be crippled. The rabbis try... to solve the problem by selling lands to gentiles for the duration of the sabbatical year. When it was only individuals who owned fields and vineyards in the Land, this sort of bizarre solution could be justified. But in the time of the State, doesn't the sale to a non-Jew of the State and all the

lands within it, for the entire sabbatical year, make a joke of the exalted idea of “the land shall rest”¹²⁷.

Also rejecting the *haredi* solution to the problem¹²⁸, Berkovits emphasizes the differences between the ancient economy and today’s and between the sale of isolated farmers’ parcels and the sale of the entire State of Israel. The distinctions of time and place should generate a change in the halakhic attitude toward the issue of *shemittah*.

This analysis only sharpens the questions I posed earlier regarding the ill-defined authority of reason and historical criticism *vis à vis* revelation. In what sense can we say that Berkovits’s historical critique – which touches on the Written Torah in his historical context – draws on sources within the *halakhah* itself? What do we mean when we argue that there is some connection between this critique and the concept of revelation? What distinguishes Berkovits’s halakhic process from the modes of analysis, grounded in historical criticism, that are reflected in the Conservative responsa literature¹²⁹?

Autopsies

Berkovits’s comments on the question of autopsies similarly give voice to his underlying halakhic conceptions. R. Kook’s ruling on the matter was concise and unambiguous: autopsies are absolutely forbidden to Jews:

for the prohibition on mutilating a corpse is one of the prohibitions unique to Jews, for the Holy One Blessed Be He commanded us regarding the sanctity of the body, just as he warned us against eating forbidden foods... because of Israel’s unique holiness, for God, may He be blessed, called them a holy nation. But just as non-Jews restrict what they eat only in accord with natural [limitations], so, too, they need not be at all concerned about the mutilation of a corpse for some natural purpose such as medicine. Accordingly, we must pay full price to purchase gentile corpses for scientific purposes. And there is no need to be concerned about incurring the hatred of gentiles, for the righteous among them will understand that, when all is said and done, this nation [of Israel], which was chosen to bring the holy light of knowledge of God... and suffers immeasurably on that account, is deserving as well of some privi-

leges of sanctity. And the corrupt among them will not stop slandering us even if we dissect Jewish corpses... the prohibition on mutilating the dead is derived from the image of God in man, which is made clearer in Israel by reason of the sanctity of the Torah, partaking of a greater share of the supernal¹³⁰.

R. Kook's ban on autopsies thus follows from his metaphysical concept of Israel¹³¹: the prohibition on destroying the body is tied to the obligation to preserve Jewish souls, which bear "the image of God"¹³². He believes that this preservation of the body will facilitate the full expression of Israel's virtue, a virtue that benefits the entire world¹³³. It is only natural, then, that gentile corpses be imported for the needs of medical research.

Rabbi Weinberg objected to this approach as a matter of principle, arguing as follows:

It must be emphasized that the question of autopsies has become a political question nowadays, a question affecting the people living in the state... a question affecting the entire nation... and a question bearing on the state's *standing within the broader world, which pays attention to everything that goes on in the Land...* It goes without saying that *the attitude of the civilized world toward our new state is one of the important factors sustaining our Land...* With God's help, we will be able to fulfill the Torah in the Land, if we demonstrate that our Torah is a Torah of life¹³⁴.

Weinberg did not believe that R. Kook's solution would be accepted by the nations of the world. He saw a need to understand the difficult moral implications of R. Kook's ruling and to recognize that the establishment of a sovereign Jewish state requires a radical transformation of *halakhah* to allow for a modern state to be administered in accordance with it.

Here, too, Berkovits's formulations are based on those of his teacher but carry a sharper tone. He argues that the issue is a crucial one because of its novel historical and social aspects: "The question is extremely serious, particularly now that the State of Israel has been established in the ancestral land... The people of Israel require first-rate medical care... and the fundamental question is whether that goal can be achieved on a halakhic basis"¹³⁵. Expressing some doubt on that score, Berkovits asserts that "the inadequacy of the halakhic decisors in Israel

with regard to the halakhic problems posed by the new reality manifests itself in almost all areas that are vital to the nation's existence in our Land." For example:

The question of autopsies in the state. In general, the halakhic rulings on the issue rely on the opinion of the author of the *Noda bi-Yehudah*... that an autopsy is permitted by the Torah only where it can contribute to the treatment of another ill person in the same place, or the same city. Contemporary halakhic decisors seem not to distinguish between the question that was before the *Noda bi-Yehudah* and the question confronting them in the context of the State... The Prague community [of the *Noda bi-Yehudah*] faced a typical Diaspora-type question... pertaining to Jews in the Diaspora. At that time, medical care was not the Jewish community's responsibility. Medical schools, physician education, medical research, and the establishment and operation of hospitals were all the responsibility of the non-Jewish state in which Jews lived as a minority, sometimes even lacking equal civil rights. The question of autopsies within the State of Israel is fundamentally different. All medical services [and research]... are the responsibility of the nation as a whole¹³⁶.

Authentic *halakhah* must be responsive to novel halakhic, existential, and moral challenges. Deliberations regarding a specific community or a particular, identified patient¹³⁷ are not the same as those involved in setting health care policy for a sovereign entity. In the spirit of the meta-halakhic principles described earlier, Berkovits forcefully rejects Rabbi Kook's arguments and permits autopsies, offering two reasons:

(1) Preservation of human life takes precedence over everything except the refusal to commit acts of incest or adultery, of bloodshed, and of idolatry. (2) If what is done to the corpse serves the needs of the living, it does not entail degradation of the deceased or the corpse. And the prohibition on deriving benefit from a corpse does not extend to its use in medical education... Nor should a distinction be drawn between Jewish and gentile deceased. What is permissible for medical purposes is permissible even with respect to a Jewish corpse, and what is forbidden is forbidden even with respect to a gentile corpse. *Especially in our time, one must not articulate such a distinction in writing or even think it; it should not be written and not be thought of, for there*

is no greater desecration of God's name. Any handling of limbs or flesh should be done with respect and awe... in proper accord with *halakhah*... We protect the Scriptural "image of God" in which every person was created¹³⁸.

The Status of Women and Conditional Marriage and Divorce

Like Weinberg before him, Berkovits wrote a major halakhic work that provoked a vigorous confrontation with other Orthodox rabbinic authorities and showed the extent of the gap between them. In Weinberg's case, the issue involved the electronic stunning of animals before they were slaughtered for food¹³⁹. His adversary on the issue was R. Hayyim Ozer Grodzinski¹⁴⁰, and their confrontation showed the great distance between R. Weinberg's halakhic world and that of eastern Europe. For Berkovits, the issue was the subject of his major treatise, *Tenai be-nisu'in u-ve-get* [Condition in marriage and divorce]¹⁴¹; it was after he wrote that work that his divergence from the view of the Orthodox rabbinate became evident. In treating the issue – and the issue of women's status generally¹⁴² – Berkovits explored the process of halakhic analysis in all its depth and breadth; his resulting study cannot here be given the full consideration it warrants.

A review of the confrontation between Berkovits and the Orthodox rabbinate in general and R. Menahem Kasher in particular highlights how close Berkovits was to his teacher. He treated the issues of conditional marriage and the status of women on the premise that the problems arising today stem not from the structure or values of the *halakhah* itself¹⁴³ but from a failure to deploy halakhic resources to deal with contemporary issues and changing times. The *halakhah* (or the sages), he maintained, had always diligently protected women's rights; an example is their institution of the *ketubbah*, which imposed extensive and unavoidable financial obligations on the husband in the event of divorce ("so divorcing her would not be taken lightly")¹⁴⁴. Contemporary decisors are obliged to act as their predecessors did in this regard. It is clear to Berkovits that the social situation of women today differs from that in the past. Maimonides, for example, was reflecting mediaeval social mores when he ruled that "it is demeaning for a woman to go out... in the public square, and a husband should keep his wife from doing so... for it is fitting only for a woman to remain in the recesses of her house"¹⁴⁵ and that "each woman should wash her husband's hands, face, and feet... and stand ready

to serve her husband”¹⁴⁶. This is legislation that “today we neither sympathize with nor understand”¹⁴⁷. Berkovits’s critique stands in sharp contrast to various Orthodox efforts to characterize these laws in positive terms as idealized descriptions that reflect a woman’s natural modesty¹⁴⁸. The sages themselves¹⁴⁹ sensed that the situation of women in antiquity was one of servitude¹⁵⁰, and they sought to free them from it. Still, the situation of women must also be seen as resulting from the rabbis’ concept that women were frivolous and flighty¹⁵¹, “not educable and not worthy of having their word relied on”¹⁵². But, Berkovits argued, the morality of the Torah is quite different. The Bible tells of women who are superior to men in various ways (such as the matriarchs and Zelfhad’s daughters)¹⁵³. On that basis, he continues, the sages concluded that “blessing is to be found in a man’s house only on account of his wife”¹⁵⁴ and that a man is to love his wife as himself and honor her more than himself; “of such a man it is said ‘you shall know that peace is in your tent’”¹⁵⁵. The entire gap between these messages and the negative statements about women “is based on social circumstances” and changing times¹⁵⁶. It follows that the lack of Torah study for women and the refusal to accept their testimony in court are grounded in “time-bound opinions. And when the time passes – so does their rationale and truth”. In a sharper statement regarding the refusal to accept a woman’s testimony in court, Berkovits says: “This is a desecration of God’s Name, a desecration of the Torah”¹⁵⁷.

These views could not differ more from those of R. Kook, who pointed to the psychological and cognitive differences between the sexes¹⁵⁸. In his view, women partake of “soul” (*nefesh*), while men partake of “spirit” (*ruah*); women need few commandments, while men, because of their inferior souls, need more¹⁵⁹. A man’s need to study can be compared to a sick person’s need for medicine; a woman, meanwhile, possesses an “enhanced understanding” and is not involved in “the worldly ways of princes and kings and their cruel wars” nor does she rub up against “the filth of... murder and hatred of people”. It follows that she has no need “to perfect the lovely and pleasing quality of domesticity or for any study whatsoever”¹⁶⁰. Accordingly, R. Kook rejects any mixing, in social life or in study, between men who work outside and women who dwell in the house¹⁶¹. That is why the Talmud states that “one who teaches his daughter Torah is as if he had taught her lewdness”¹⁶². Recognition of the ontological differences between men and women generates social, professional, and educational differences¹⁶³. It

is clear that Berkovits's historical criticism – which pertains to normative sanctity rather than the immanent sanctity that Rav Kook is concerned with¹⁶⁴ – is entirely foreign to Rav Kook's genre of decision-making.

This difference in approach reaches its pinnacle in the matter of conditions in marriage and divorce. Berkovits want to find a way to each the plight of the *agunah*; and here, too, he believes the problem should be attributed not to the halakhic system itself but to the decisors' lack of daring. Every problem has a solution, and to prove that proposition, he cites his halakhic responsum (incorporated by Weinberg in his *Seridei Eish*¹⁶⁵ resolving the problem of the *agunah*¹⁶⁶.

Weinberg's closeness to Berkovits – as well as the former's skittishness about direct confrontation with this Orthodox colleagues – are clearly conveyed in Weinberg's letter of approbation for Berkovits's *Tenai be-nisu'in u-ve-get*. Weinberg writes:

I have seen the extensive essays by the great rabbi R. Eliezer Berkovits... and they excel in their vast erudition and penetrating analysis. With transparent and straightforward logic he probes the foundations of the *halakhah* and harvests pearls... I have not seen one like him among the works of the *aḥaronim* [post *Shulḥan Arukh* halakhic authorities] in our time.

It is known, however, that in the previous generation, a book was published entitled *Ein tenai be-nisu'in* [A condition may not be imposed on a marriage]¹⁶⁷, in which the great sages of the generation, may their memory be for a blessing, set out to impose a stringent ban on the imposition of a condition on betrothal or marriage... But because the situation has deteriorated greatly, and serious new difficulties have arisen – difficulties that the great sages of the previous generation were not caught up in – I decided that one should not remain silent and refrain from acting with regard to the appearance of this breach. Rather, there is a pressing need to consider the possibility of, and vital need for, halakhic enactments to remove these great snares from wide circles [of Jews], including the Jews fully committed to their faith¹⁶⁸.

Although R. Weinberg declined to rule on the point in practice – perhaps as a matter of political prudence; perhaps because of his physical frailty¹⁶⁹ – he does not conceal his inclination¹⁷⁰ to conclude that the sages are empowered, in accord with the plain meaning of the sources, to annul a wedding *ab initio*.

Berkovits encountered numerous difficulties in publicizing his book. Rabbi Dr. Leo Jung, himself a student of Weinberg, supported Berkovits and his ideas. Jung was affiliated with the journal *No'am* – edited by R. Menahem Kasher – and suggested that Berkovits publish his ideas there. Berkovits agreed and submitted his manuscript to the editor, but it became evident, in a conversation between the two, that there was a misunderstanding between them, grounded in Kasher's discomfort with the content of the article. Eventually, Kasher conditioned acceptance of the article on receipt of a letter of approbation from Weinberg. Weinberg sent the letter but Kasher's concerns were not allayed. On the basis of ensuing correspondence with Weinberg, Kasher concluded that Weinberg had changed his mind and regretted the approbation; in addition, he described Weinberg's embarrassment at having been drawn into internal debates within the American rabbinate that he was unfamiliar with. Kasher accordingly declined to publish the article as written¹⁷¹. Surprised, embarrassed, and disconcerted, Berkovits wrote to his teacher (on 7 Tevet 5726 / 30 December 1965), who was already on his deathbed, to ascertain what had in fact transpired:

Rabbi Kasher showed me a passage in a letter he received from his honor (why only a paragraph?), and it appears, as R. Kasher explains it, as if his honor regrets his recommendation for my work on matters of conditional marriage, and so forth. I was amazed to see that his honor thinks we want to draw him into involvement with matters already decided or under consideration by the great Torah authorities in the United States, as if we wanted to take advantage of his lack of knowledge about what was transpiring with respect to those matters here.

The intent to cause his honor distress is as far from me as east is from west, or even further. I did my work faithfully and acted toward his honor with sincerity. Indeed, on the contrary – it is now I who am caught up in the intrigues of our "great Torah authorities"¹⁷².

Berkovits recounts for him the history of the article and Kasher's reaction and notes with disappointment that even his receipt of Weinberg's original approbation failed to produce the desired results:

After receiving his honor's remarks, we were certain that no one would dare raise a voice against the suggestion to at least rethink the problem before us in

light of current realities, which are fundamentally different from the past. We were wrong once again. They [i. e., the “great ones” and “righteous ones” mentioned at the beginning of this article – A. R.] served God if not corruptly at least slyly¹⁷³.

As Berkovits surmised, Weinberg had not changed his mind, and R. Butsko, who was staying with Weinberg at the time, got in touch with Berkovits and told him of Weinberg’s supportive reaction¹⁷⁴.

Here, too, Berkovits’s position may be compared to those of other halakhists. Consider the opposition to “condition in marriage and divorce” on the part of one of the leading figures in modern Orthodoxy in America, Rabbi Joseph B. Soloveitchik¹⁷⁵. In a summer 1975 lecture before a rabbinic gathering¹⁷⁶, R. Soloveitchik expresses his opposition to Berkovits’s book on marriage and divorce, and his meta-halakhic rationales demonstrate his agreements and disagreements with Berkovits:

<When ‘Modern Orthodoxy’ seeks ways to annul marriages and cancel the need for bills of divorce, perversely reinterpreting the presumptions relied on by our sages of blessed memory in accordance with modern notions in order to avoid the problem of *mamzerut* [the status of the child of a forbidden union, barred from *halakhah* from marrying anyone except another *mamzer*] – it is engaging in the antithesis of the principle of submission and self-denial before the One Who is above all, may His Name be blessed>.

The *poseq* is obligated, R. Soloveitchik argues, to reach his conclusion in a state of humility, rejecting the logic of this-worldly life and accepting the yoke of the logic of Sinai. One may not bring to bear any external logic or other external considerations; one must not judge the *chukei mishpatim* [13 – The laws of judgments] <the Hebrew text reads *huqim u-mishpatim* (laws and judgments)> in terms of the secular system of things. Such an attempt, be it historicism, be it psychologism, be it utilitarianism, undermines the very foundations of torah ume-sorah, and it leads eventually to the most tragic consequences of assimilationism and nihilism.

Moreover, R. Soloveitchik makes plain, “we must not yield – I mean emotionally, it is very important – we must not feel inferior <...> yehadus (Judaism) does

not have to apologize <...> to the modern woman <...> we should have pride in our mesorah.” Efforts may be made to reconcile the two systems, but it must never be forgotten that the sages of the tradition must be esteemed as the “final authorities.” Anyone who denies the truth and authenticity of the Torah is an apostate.

These remarks differ in their spirit from Berkovits’s position, yet they embody the kernel of a shared premise. As noted earlier, Berkovits, too, cited the sages’ internal moral dimension and their independence of western morality. But Berkovits does not assert the obligation of submission, self-denial, and negation of human logic. Accordingly, the two reach different conclusions, and meta-halakhic gap between them is evident in R. Soloveitchik’s comments on the sages’ “*hazaqot*” (factual presumptions relied on in halakhic deliberations):

not only the halachos but also the chazakos [19 – Statements about human nature which have halachic ramifications stated by the Sages and recorded in the Talmud.] which chachmei chazal have introduced are indestructible. We must not tamper <...> for the chazakos <...> rest not upon transient psychological behavioral patterns, but upon permanent ontological principles rooted in the very depth of the human personality, in the metaphysical human personality, which is as changeless as the heavens above. Let us take for example the chazaka that I was told about: the chazaka tav l’meisiv tan du mil’meisiv armalo [20 – It is better to live two together than to live alone (Rashi defines tan du as “two bodies”); or, It is better to live in trouble than to live alone (Jastrow defines tan du as “in trouble”). Yevamot 118b; Ketubot 75a; Kidushin 7a, 41a; Bava Kama 111a]. R. Emanuel Rackman had stated or written that this Talmudic dictum does not apply anymore]. has absolutely nothing to do with the social and political status of women in antiquity. This chazaka is based not upon sociological factors, but upon a verse in breishis – harba arbey itz’voneich v’heironeich b’etzev teildi vanim v’el isheich t’shukaseich v’hu yimshal bach – “I will greatly multiply thy pain and thy travail; in pain thou shalt bring forth children, and thy desire shall be to thy husband, and he shall rule over thee” [21 – Genesis 3:16]. It is a metaphysical curse rooted in the feminine personality <...> This is not a psychological fact; it is an existential fact <...>.

Soloveitchik therefore takes a negative view of Berkovits's entire critical enterprise:

if you should start modifying and reassessing the chazakos upon which a multitude of halachos rest, you will destroy yehadus. So instead of philosophizing, let us rather light a match and set fire to the beis yisrael, and get rid of our problems.

I also was told that it was recommended that the method afkinu rabanan l'kidushin minei [23 – Afterwards the Rabbis can take the marriage away from him. Yevamot 90b, 110a; Ketubot 3a; Gitin 33a, 73a; Bava Batra 48b...] be reintroduced. If this recommendation is accepted, and I hope it will not be accepted, but if it is accepted, then there will be no need for a get <...> every rabbi will suspend the kidushin. <...> what are you, out to destroy all of it? <Chaos will ensue, God forbid, in place of the Torah>.

Soloveitchik does not forswear modernity; he is not afraid of it and he recognizes the perplexities it brings about. Nevertheless – perhaps, indeed, on that account – he is unwilling to yield an inch:

I know that modern life is very complex. I know your problems <...> It is self-evident – many problems are unsolvable, you can't help it. For instance, the problem of mamzerim in eretz yisrael <...> – you can't help it. <...> It is a pasuk in chumash: lo yavo mamzer bi k'hal hashem [29 – A mamzer shall not enter the congregation of the Lord. Deuteronomy 23:3]. It is very tragic, <...> This is toras moshe; this is surrender; this is kabalas ol malchus shamayim. We surrender. The Torah summons the Jew to live halachically. We cannot allow an eishes ish (married woman), no matter how tragic the case, to remarry without a get. We cannot permit a giores [31 – A female convert. A kohein {priest} is prohibited from marrying certain women, including a divorced woman and a convert. See Leviticus 21:7 and 26:7, and the Sefer haMitzvot, negative commandments 158 to 162] to marry a kohein, and sometimes the cases are very tragic, as I know from my own experience. <...> We surrender to the will of the Almighty <...>. On the other hand, to say that the halachah is not sensitive to problems <...> is an outright falsehood. The halachah is responsive to the needs of both the community and the individual. But the

halachah has its own orbit, moves at its own certain definite speed, has its own pattern of responding to a challenge, its own criteria and principles.

Soloveitchik and Berkovits would agree that the halakhic system marches to its own its internal rhythm and is not subject to external juridical systems. But beyond that point of similarity, there is a profound gap between them. Berkovits perceives an obligation to confront reality in its full array of historical and psychological elements and to do so with interpretive flexibility. Soloveitchik also recognizes reality as the background against which *halakhah* must be applied, but he refuses to allow the variables within reality (historicism and psychologism¹⁷⁷) to penetrate halakhic evaluations. At the same time, the ideal of sacrifice plays a central role in Soloveitchik's teachings. That ideal is nourished by the gap between one's emotions and one's obligations as a servant of God; but that gap, which Soloveitchik regards as the clear indicator of piety, is considered by Berkovits to be immoral.

The standing of women and the issue of conditions in marriage and divorce provide the background for an examination of the profound meta-halakhic divide within Modern Orthodox halakhic analysis and decision-making. The divide is clearly expressed by the disagreement between R. Soloveitchik and R. Berkovits – both of them numbered among Modern Orthodoxy's leading halakhic thinkers; both of them shaped by the halakhic world on the one hand and an awareness of modernity on the other. Not only does their dispute clarify the question of conditions in marriage and divorce; it also provides insights into the other issues considered earlier.

In the present article, as noted, I have not exhausted the meta-halakhic analysis necessary with respect to Berkovits's thought nor have I fully described his unique position on the complex map of Modern Orthodoxy with its shifting Israeli and American centers. That is a much broader project, extending well beyond the present framework. In this article I have tried only to sketch Berkovits's doctrines, their halakhic and philosophical implications, and their relationship to other foci of halakhic decision-making within Modern Orthodoxy.

¹ A full discussion of the nature and definition of Modern Orthodoxy is beyond the scope of this article. See Rosenak A. *Gevuliyut u-setiyah be-ortodoqsiyah: pesiqah qonservativit ve-ortodoqsiyah post-modernit* [Boundedness and straying: Conservative halakhah and post-modern orthodoxy] / in *Ha-ortodoqsiyah – meḥqarim ḥadashim* [New studies in orthodoxy] / Ed. by A. Ravitzky, J. Salmon. Jerusalem, forthcoming. P. 118–173.

² From ms. (Hebrew). My heartfelt thanks to my friend Prof. Marc Shapiro for allowing me the opportunity to read and quote portions of Rabbi Berkovits's letters for this article.

³ From ms. (Hebrew).

⁴ The study of Berkovits has been directed primarily to his writings about the Holocaust: Braiterman Z. *Do I Belong to the Race of Words? Anti/Theodic Faith and Textual Revision in the Thought of Eliezer Berkovits* / (God) After Auschwitz: Tradition and Change in Post-Holocaust Jewish Thought. Princeton, 1998. Pp. 112–133; Charry E. T. *Jewish Holocaust Theology: An Assessment* // *Journal of European Studies*. 1981. 18:1. Pp. 128–139; Fox M. *Berkovits' Treatment of the Problem of Evil* // *Tradition*. 1974. 14:3. Pp. 116–125; Greenberg G. *The Impact of the Holocaust on American Jewish Thought* // *European Judaism*. 1984–1985. 18:1. Pp. 3–7; Katz S. T. *Eliezer Berkovits and Modern Jewish Philosophy* / *Post-Holocaust Dialogues: Critical Studies in Modern Jewish Thought* / Ed. by S. T. Katz. New York, 1993. Pp. 94–140; *ibid.*, *Eliezer Berkovits' Post-Holocaust Jewish Theodicy* / *Post-Holocaust Dialogues: Critical Studies in Modern Jewish Thought*. Pp. 268–286; Kraut B. *Faith and the Holocaust* // *Judaism*. 1982. 31:2. Pp. 185–201; Morgan M. L. *Eliezer Berkovits and the Tenacity of Faith* / *Beyond Auschwitz: Post-Holocaust Jewish Thought in America* / Ed. by M. Morgan. Oxford–New York, 2001. Pp. 109–120; Raffle C. M. *Eliezer Berkovits: Post-Holocaust Theology* / *Interpreters of Judaism in the Late Twentieth-Century* / Ed. by S. T. Katz. Washington, 1993. A few have dealt with his thought from the perspective of modern philosophy: Carmy S. *Modern Jewish Philosophy: Fossil or Ferment?* // *Tradition*. 1975. 15:3. Pp. 140–152; Shapira D. S. *God, Man, and History in Jewish Thought (A Critical Look at the Approach of Eliezer Berkovits)* / *Orhot: Iuney Tefilah and Pirkey Haqut* [Pathways: Studies in Bible and Philosophy] / Ed. by D. S. Shapira. Jerusalem, 1977; Vermes P. *Eliezer Berkovits, Major Themes in Modern Philosophies of Judaism* // *Journal of Jewish Studies*. 1978. 29:1. Pp. 103–105; Weiss-Rosmarin T. *Major Themes in Modern Philosophies of Judaism by Eliezer Berkovits* // *Judaism and Modern Philosophy*. 1975. 24. Pp. 354–364.

On Berkovits's Zionist thought, see Berkovits D. *Ha-ḥshivah ha-ḥevratit be-hagut ha-zivyonit-datit (iyyun hasva'ati bein ha-re'ayah quq le-vein ha-rav eli'ezer berkovitch)* [Social thought in religious-Zionist philosophy (a comparative study of Rabbi A. ha-Kohen Kook and Rabbi Eliezer Berkovits)] // *Zohar*. 1964. 19. Pp. 83–93; Hazony D. *Eliezer Berkovits, Theologian of Zionism* // *Azure*. 2004. 17. P. 88–119; Rosenak M. *Galut ve-erez yisra'el be-hagut shel eli'ezer berkivitch: ḥshivah meḥudeshet akh normativit* [Exile and the land of Israel in the thought of Eliezer Berkovits: a novel yet normative assessment] / *Erez yisra'el be-hagut*

ha-yehudit ba-me'ah ha-esrim [The Land of Israel in Twentieth-Century Jewish Thought] / Ed. by A. Ravitzky. Jerusalem, 2005. Pp. 539–559.

In contrast to all these studies, there are only a few that have treated Berkovits's halakhic world: Rappel D. Ha-halakhah ve-ha-mezi'ut [Halakhah and reality] // *Petahim*. 1982. 57/58. Pp. 80–84; Nadler A. L. Eliezer Berkovits' Not In Heaven // *Tradition*. 1984. 21:3. Pp. 91–97; Hazony D. Eliezer Berkovits and the Revival of Jewish Moral Thought // *Azure*. 2001. 11. Pp. 23–65.

⁵ See Shapiro M. B. *Between the Yeshiva World and Modern Orthodoxy: the Life and Works of Rabbi Jehiel Jacob Weinberg, 1884–1966*. Portland, 1999; Bleich J. *Between East and West: Modernity and Traditionalism in the Writings of Rabbi Yehi'el Ya'akov Weinberg / Engaging Modernity: Rabbinic Leaders and the Challenge of the Twentieth Century* / Ed. by M. Sokol. Northvale, 1997. Pp. 169–273; *ibid.*, Rabbi Yehi'el Ya'akov Weinberg: Innovator and Conserver // *WCJS*. 1994. 11, B3. Pp. 281–288.

⁶ During periods of sparse correspondence between the two, Berkovits suffered considerable distress. In letter on a Sabbath Eve, “before the afternoon prayer”, written while he was teaching at the Hebrew Theological College of the Jewish University of America in Skokie, Illinois (the year is unclear), he writes: “To my master and teacher, the ga'on [great scholar] Rabbi J. J. Weinberg, greeting. It is more than a year since I have heard from His Honor, nor has he replied to my letters. His honor should be aware that if, God forbid, I have, I have offended him, it was certainly unintended; in any, case, however, I beg his forgiveness. I am certain he will not withhold the good from his student, who loves him sincerely (From ms.).

⁷ R. Weinberg J. J. *Responsa Seridei Eish*. Jerusalem, 1999. Vol. 3, sec. 35.

⁸ See Berkovits E. H-Rav H-Gaon Moreino H-Rav Rabbi Yaakov Weinberg ztl [Our Great Rabbi and Teacher R. Jacob Jehiel Weinberger, May the memory of the righteous be for a blessing]. *Ha-Darom*, 1967. Pp. 9–11; Berkovits E. Rabbi Yechiel Yakob Weinberg My Teacher and Master // *Tradition*. 1966. 8, 2. Pp. 5–14.

⁹ “Reuben went and lay with Bilhah, his father's concubine” (Gen. 35:22).

¹⁰ Berkovits E. Our Great Rabbi and Teacher R. Jacob Jehiel Weinberger, May the memory of the righteous be for a blessing. P. 9.

¹¹ *Ibid.*

¹² A prominent example appears in the record of a class taught by Berkovits in one of the religious teachers' seminaries for women in Jerusalem. See Berkovits E. *Mashber ha-yahadut bi-medinat ha-yehudim* [Crisis of Judaism in the State of the Jews]. Jerusalem, 1987. Pp. 89–90.

¹³ *Ibid.* P. 121.

¹⁴ “The body [according to Berkovits] is a cauldron of material energies, complex and conflicting forces... guided by its needs and appetites, which have no innate knowledge of or care for the demands of moral behavior”. Hazony D. Introduction / Berkovits E. *Essential Essays on Judaism* / Ed. by Hazony D. Jerusalem, 2002. P. xxix.

¹⁵ Berkovits E. *Law and Morality in Jewish Tradition* / Berkovits E. *Essential Essays on Judaism*. P. 19.

- ¹⁶ Berkovits had a tendency to speak of the characteristics of “Judaism” without recognizing the problematic nature and complexity of that general concept.
- ¹⁷ Berkovits E. *Crisis of Judaism in the State of the Jews*. P. 72.
- ¹⁸ Berkovits E. *God, Man and History* / 4th ed., ed. by D. Hazony. Jerusalem, 2004. P. 107.
- ¹⁹ See *Genesis Rabbah* (Vilna) 8:11; *ibid.* 14:4. For additional references, see Urbach E. E. *The Sages: Their Concepts and Beliefs* / trans. Israel Abrahams. Jerusalem, 1975. Pp. 220–222.
- ²⁰ *Genesis Rabbah* (Theodor-Albeck) 14, s. v. *Vayizār shetei yezivot*; *Batei midrashot*, part 2, *midrash haseirot vi-yeteirot* (*Genesis*), s. v. 13 (2:7).
- ²¹ *Leviticus Rabbah* 34:3.
- ²² See *Judah Halevi*, *Kuzari* II:50; Berkovits E. *Crisis of Judaism in the State of the Jews*. P. 73–74. But make no mistake: Berkovits does not regard Judaism as a universal religion. See his *Faith After the Holocaust*. New York, 1973. P. 83–84, 146–147.
- ²³ *Ibid.* P. 91–92.
- ²⁴ *Ibid.*; *Avodah Zarah* 17b.
- ²⁵ Berkovits E. *Faith After the Holocaust*. P. 59. See also Rosenak A. *Parashat Korach: ‘Kol Ha-Eda Kulam Kedoshim’? Masah Beikvot Mishnatam shel Harav Kook Ve-Ishayahu Leibowitz* [The entire assembly are holy? an exploration in the light of Rabbi Kook’s and Yeshayahu Leibowitz’s thought] / *Hogim ba-parashah: parashat ha-shavu’a ke-hashra’ah la-yezirah ve-le-hagut ha-yehudit le-dorotchah* [Meditations on the Parasha: The Weekly Torah Position as an inspiration for Jewish thought and Creativity] / Ed. by N. Rothenberg. Tel-Aviv, 2005. Pp. 458–471.
- ²⁶ Benedict de Spinoza. *Ethics*. IV. Prop. 14 / *A Spinoza Reader* / Ed. and trans. by E. Curley. Princeton, 1994. P. 207; Berkovits E. *Law and Morality in Jewish Tradition* / Berkovits E. *Essential Essays on Judaism*. P. 20; *ibid.*, *Tov va-ra – muhlat o yahasi?* [Good and evil – absolute or relative?] // *Petahim*. *Adar 5740/March 1980*. 1–2 (505–549). P. 8.
- ²⁷ Berkovits E. *Lihyot yehudi be-olam nozri: madrikh la-moreh* [To be a Jew in a Christian world: teacher’s guide]. Jerusalem, 1983. Pp. 54–56.
- ²⁸ Hazony D. *Introduction*. Pp. 30–34.
- ²⁹ Dewey writes: “When we are honest with ourselves we acknowledge that a habit has this power because it is so intimately a part of ourselves. It has a hold upon us because we are the habit”. (Dewey J. *Human Nature and Conduct*. New York, 1948. P. 21.
- ³⁰ Berkovits E. *Law and Morality in Jewish Tradition*. P. 22, 24.
- ³¹ See Wynne J. P. *Theories of Education: An Introduction to the Foundations of Education*. New York, 1963. P. 269.
- ³² Berkovits E. *Law and Morality in Jewish Tradition*. P. 27.
- ³³ Berkovits E. *Good and evil – absolute or relative?* P. 8.
- ³⁴ At the same time, Berkovits confronts the common complaint that humanistic, liberal, neo-Aristotelian education amounts to indoctrination. For a critical analysis of the issue, see Rosenak A. *Filosofiyah, halakhah, ve-regishut hinukhit* [Philosophy, halakhah, and educational

sensitivity]. Jerusalem, forthcoming. Chapter 3.

³⁵ Berkovits E. *Law and Morality in Jewish Tradition*. P. 37; see also *ibid.*, P. 25.

³⁶ *Ibid.* P. 24.

³⁷ *Ibid.* P. 25.

³⁸ *Ibid.* P. 30.

³⁹ Berkovits E. *Crisis of Judaism in the State of the Jews*. P. 72.

⁴⁰ Maimonides, *Mishneh Torah*, *Hilkhot Tefillah* 5:9.

⁴¹ He quotes the following extract:

Therefore the limbs which you have apportioned in us,
the spirit and the soul which you have breathed into our nostrils,
and the tongue which you have placed in our mouths,
shall all thank and bless, praise and glorify, extol and revere,
hallow and do homage to your name, our King.

Berkovits E. *Law and Justice* / Berkovits E. *Essential Essays on Judaism*. P. 32. Adapted from Philip Birnbaum's translation in his *Daily Prayer Book*. New York, 1977. P. 334.

⁴² *Ibid.*

⁴³ See Plato, *Euthyphro* / trans. F. J. Church. Indianapolis–New York, 1956. Pp. 1–20; Sagi A., Statman D. *Dat u-musar [Religion and Morality]*. Jerusalem, 1993; Sagi A. *Yahadut: Bein dat u-musar [Judaism: Between Religion and Morality]*. Tel-Aviv, 1998. Chapter 1.

⁴⁴ Rabbi Me'ir Ben-Shahar called my attention to the seeming difference between Berkovits's halakhic writings, in which it appears that halakhah is indeed the factor that determines Jewish morality, and his meta-halakhic and philosophical writings, in which moral and humanistic elements overcome the halakhic system. This discrepancy cannot simply be brushed aside. It may be argued, however, that the distinction is between writings directed to the rabbinic world, in which halakhah dominates, and writing directed to the western Jewish community, dominated by western morality. But neither can we disregard Berkovits philosophical writings, directed to the broader community, that find fault with western morality. It seems to me, therefore, that even if Berkovits was alert to the nature of his readership, he did not adopt the simple view that halakhah was subordinate to western morality.

⁴⁵ See R. Weinberg J. J. *Li-feraqim*. Jerusalem, 2002. P. 295. See also *ibid.*, pp. 197–301; Bleich J. *Between East and West: Modernity and Traditionalism in the Writings of Rabbi Yehi'el Ya'akov Weinberg*. Pp. 223–224.

⁴⁶ See Rosenak A. *Morality and Law in the Halakhic Writings of Rabbi Y. Y. Weinberg: Post-Holocaust Halakhic Rulings / The Holocaust: Jewish Thought and Education* (forthcoming).

⁴⁷ Berkovits E. *Good and evil – absolute or relative?*. P. 8. See also Berkovits E. *Jewish Education in a World Adrift // Tradition*. 1970. 11, 3. Pp. 5–12

⁴⁸ See Berkovits E. *Law and Morality in Jewish Tradition*. P. 9. See also Stork C. W. *Alcibiades: A Play of Athens in the Great Age*. Syracuse, 1967.

- ⁴⁹ Macmurry J. *Reason and Emotion*. New York, 1962; De Burgh W. G. *From Morality to Religion*. London, 1938; Bergson H. *The Two Sources of Morality and Religion* / trans. R. A. Audra, C. Brereton, with the assistance of W. H. Carter. Garden City, NY, 1954.
- ⁵⁰ Berkovits E. *Law and Morality in Jewish Tradition*. P. 10.
- ⁵¹ *Ibid.* P. 11.
- ⁵² *Ibid.*
- ⁵³ Bergson H. *The Two Sources of Morality and Religion*. P. 96, 101. See also Berkovits E. *Good and evil – absolute or relative?* P. 8–9; Bergson H. *Creative Evolution*. New York, 1944; Berkovits E. *Law and Morality in Jewish Tradition*. P. 13.
- ⁵⁴ Aristotle. *On the Soul*. Book III. Chapters 9–10; Berkovits E. *Law and Morality in Jewish Tradition*. P. 15.
- ⁵⁵ *Ibid.* P. 16. We will see below that this position suffers from a lack of clarity if not from more serious flaws.
- ⁵⁶ Berkovits E. *Crisis of Judaism in the State of the Jews*. P. 107. This argument, too, may be challenged.
- ⁵⁷ Berkovits E. *Good and evil – absolute or relative?* Pp. 9–10.
- ⁵⁸ Berkovits E. *Law and Morality in Jewish Tradition*. P. 16–17; Berkovits E. *God, Man and History*. Pp. 12–18.
- ⁵⁹ Berkovits E. *Good and evil – absolute or relative?* P. 10; *ibid.*, Berkovits E. *Crisis of Judaism in the State of the Jews*. P. 108.
- ⁶⁰ Berkovits E. *Good and evil – absolute or relative?* P. 9; *ibid.*, Berkovits E. *Crisis of Judaism in the State of the Jews*. Pp. 106–108.
- ⁶¹ Berkovits emphasizes, however, that “It is not... in the difference in the rigor of its application that the distinction between relative and absolute obligation is reflected. A secular society need not be less exacting in its demand from obedience to its laws than a community governed by a divine law”. (Berkovits E. *Law and Morality in Jewish Tradition*. P. 17). Note that Berkovits cites the transcendent as the source of ethical obligation but does not explain how that source is tied to particular content or who interprets the content given by the transcendent source.
- ⁶² Clearly, the concept of “autonomy” Berkovits uses here differs from the Kantian concept.
- ⁶³ See Part III, below.
- ⁶⁴ Berkovits E. *Authentic Judaism and Halakhah // Judaism*, 1970. 19. Pp. 66–76.
- ⁶⁵ See *Menahot* 29b.
- ⁶⁶ Berkovits E. *Crisis of Judaism in the State of the Jews*. P. 109.
- ⁶⁷ See Berkovits E. *Major Themes in Modern Philosophies of Judaism*. New York, 1974. Berkovits fails to recognize (as in the case of the concept of “Judaism” noted above) the role of interpretation and the “external” influences on it, as well as the extent to which interpretation dominates the shaping of rabbinic “Judaism” as he conceives of it. Here, too, the question warrants separate examination.

⁶⁸ See Berkovits E. *Ha-halakhah: kohah ve tafqidah* [Halakhah: its force and role]. Jerusalem, 1981; *ibid.*, *Tenai be-nisu'in u-ve-get* [Conditions in marriage and divorce]. Jerusalem, 1967; *ibid.*, *Jewish Women in Time and Torah*. Hoboken, NJ, 1990; *ibid.*, *Not in Heaven*. New York, 1983.

⁶⁹ Gittin 59b; Berkovits E. *Crisis of Judaism in the State of the Jews*. P. 87.

⁷⁰ Prov. 3:17.

⁷¹ Deut. 6:18.

⁷² Ex. 18:20.

⁷³ Prov. 2:20

⁷⁴ Lev. 19:18.

⁷⁵ Lev. 18:5. Berkovits E. *Ha-halakhah be-hevrah demokratit* [Halakhah in democratic society]. // *Petahim. Marheshvan 5737* (1976). P. 30.

⁷⁶ Rosenak A. *Gevuliyut u-setiyah be-ortodoqsiyah: pesiqah qonservativit ve- ortodoqsiyah post-modernit* [Boundedness and straying: Conservative halakhah and post-modern orthodoxy; and see Rosenak M. *Roads to the Palace: Jewish Texts and Teaching*. Providence, RI, 1995. Pp. 19–25, 30; *ibid.*, *Tree of Life, Tree of Knowledge: Conversations with the Torah*. Boulder, CO, 2001. ♣

⁷⁷ The Torah, he argues, cannot encompass “all the ways in which a person interacts his neighbors and fellows, all his business dealings, and all the political arrangements”; accordingly, it states only “Do not deal basely [others: ‘go about as a talebearer’]” (Lev. 19:16); “You shall not take vengeance or bear a grudge” (*ibid.*, v. 18); “Do not profit by [lit.: ‘stand upon’] the blood of your fellow” (*ibid.*, v. 16); “You shall not insult the deaf” (*ibid.*, v. 14); “You shall rise before the aged” (*ibid.*, v. 32), and other similar general prescriptions. (Nahmanides, Commentary on Deut. 6:18.)

⁷⁸ *Ibid.*; Berkovits E. *Halakhah: its force and role*. Pp. 89–90. See also Maggid Mishneh on Maimonides, *Mishneh Torah, Hilkhhot Shekheinim 14:5 s. v. qadam ehad*.

⁷⁹ Albo R. G. *Sefer ha-Iqqarim*. Part III. Chap. 23. See Berkovits E. *Good and evil – absolute or relative?* P. 10.

⁸⁰ Berkovits E. *Crisis of Judaism in the State of the Jews*. P. 131.

⁸¹ Berkovits E. *Authentic Judaism and Halakhah*. P. 67; *ibid.*, Berkovits E. *Halakhah in democratic society*. P. 31.

⁸² Berkovits E. *Authentic Judaism and Halakhah*. Pp. 72–75.

⁸³ This “Torah of the Land of Israel” differs from the “Torah of the Land of Israel” as referred to in the teachings of the Zohar, the *Neziv* (R. Zevi Yehudah Berlin), and Rav Kook. See Blidstein Y. *Torat erez yisra’el ve-torat bavel be-mishnat ha-neziv mi-valushin* [The Torah of the Land of Israel and the Torah of Babylonia in the teachings of the *Neziv* of Volozhin] / *Erez yisra’el be-hagut ha-yehudit be-et ha-hadashah* [Land of Israel in Modern Jewish Thought] / Ed. by A. Ravitzky. Jerusalem, 1998. Pp. 466–479, esp. Pp. 466–467; Idel M. *Erez yisra’el ba-mahshavah ha-mistit bi-yemei ha-beinayyim* [The Land of Israel in medieval mystical thought]

/ Erez yisra'el be-hagut ha-yehudit bi-yemei ha-beinayyim [Land of Israel in Medieval Jewish Thought] / Ed. by A. Ravitzky, M. Halamish. Jerusalem, 1991. Pp. 193–214. See also Rosenak M. Exile and the land of Israel in the thought of Eliezer Berkovits: a novel yet normative assessment. Pp. 539–559.

⁸⁴ Bava Batra 131a; Sanhedrin 6b

⁸⁵ Tosefta Berakhot (Lieberman) 6:24; Berakhot 63a.

⁸⁶ Berkovits E. Good and evil – absolute or relative? P. 10.

⁸⁷ Berkovits E. Halakhah: its force and role. P. 34.

⁸⁸ Berkovits E. Halakhah in democratic society. P. 31; *ibid.*, Berkovits E. Authentic Judaism and Halakhah. Pp. 72, 76.

⁸⁹ See Ritva on Eiruvim 13b; Berkovits E. Halakhah: its force and role. P. 164. See also Yerushalmi, Sanhedrin 4:2; Berkovits E. Crisis of Judaism in the State of the Jews. P. 78.

⁹⁰ There are many such instances, including Maimonides' Mishneh Torah and R. Joseph Karo's Shulhan Arukh in the Middle Ages and R. Solomon Ganzfried's Qizzur Shulhan Arukh and R. Yehoshu'a Yeshayahu Neubart's Shemirat Shabbat ke-Hilkhatat in modern times. See further below, end of n. 94.

⁹¹ For example, when the radical step of committing the Oral Torah to writing was taken in the time of R. Judah the Prince, it was done under the rubric of "It is time to act for the Lord, for they have violated Your teaching". On the historic debate over that step, see Abramson S. Ketivat ha-mishnah (al da'at ha-ge'onim) [The writing of the Mishnah (from the geonic perspective)] / Tarbut ve-hevrah be-toledot yisra'el bi-yemei ha-beinayyim [Culture and Society in Medieval Jewry] / Ed. by R. Bonfil et al. Jerusalem, 1989. Pp. 27–52.

⁹² Berkovits E. Essential Essays on Judaism; see Hazony D. Eliezer Berkovits and the Revival of Jewish Moral Thought. P. 23–65, esp. Pp. 28–31.

⁹³ See Friedlander D. Sendschreiben an seine Hochwürden Herrn Oberconsistorialrath und Probst Teller zu Berlin, von einigen Hausvätern Jüdischer Religion / Heb. trans. by M. Di-nur. Jerusalem, 1975.

⁹⁴ Berkovits E. Halakhah: its force and role. P. 198.

⁹⁵ Berkovits E. Authentic Judaism and Halakhah. P. 72. And see my critical note below regarding the relationship between these principles and the halakhic thought of the Conservative movement.

⁹⁶ These include the maxims of meta-halakhic analysis, such as "hora'at sha'ah" (Mishnah Parah 7:6); "reason" (Shabbat 96b); "It is time to act for the Lord", (above, n. 85); tiqqun olam ("repair of the world", that is, efforts to improve society) (Mishnah Gittin 4:3); seyag la-torah ("a fence around the Torah", that is, a prohibition enacted to limit the risk of violating a serious prohibition) (Mishnah Avot 1:1); "the Torah protects Jewish assets" (by not seeking ways to avoid incurring excessive losses in order to comply with halakhic requirements; Yoma 39b); "where [something is] possible, it is possible; where [it is] impossible, it is impossible" (Bava Qamma 84a); "the Torah was not given to the ministering angels" (Qiddushin 54a); "the judge has only

what his eyes see” (Bava Batra 131a). They also include principles of halakhic morality, such as “the dignity of [God’s] creatures is a great thing” (Berakhot 19b); “Her ways are pleasant ways” (Yevamot 87b); “love your fellow as yourself” (Mishnah Nedarim chap. 9); “you shall do what is right and good” (Bava Mezi’a 16b). See, broadly, Berkovits E. Halakhah: its force and role.

⁹⁷ Berkovits E. Crisis of Judaism in the State of the Jews. P. 107.

⁹⁸ Berkovits E. Halakhah in democratic society. Pp. 30–31; *ibid.*, Ma’amad ha-ishah ba-yahadut, hcbet hilkhati hevrati [The status of women in Judaism: a socio-halakhic perspective] / Ha-peninah: ha-ishah ha yehudit ba-hevrah, ba-mishpahah, u-ve-hinukh [The pearl: Jewish woman in society, family, and education] / Ed. by D. Rappel. Jerusalem, 1989. Pp. 43, 46; Berkovits E. Halakhah: its force and role. Pp. 153–154; and below, n. 109. See also Isaacs A. Kevod ha-zibbur: behinah historit shel musag hilkhati [Dignity of the congregation: a historical analysis of a halakhic concept] / Ha-filosofiyah shel ha-halakhah: iyyun rav tehumi / Ed. by A. Rosenak. Forthcoming.

⁹⁹ Berkovits E. Crisis of Judaism in the State of the Jews. Pp. 50–51, 81, 87, 98–99; *ibid.*, Samkhut datit be-medinah demoqratic – ha-keizad [Religious authority in a democratic state – can it be?] // Sinai. 1986. № 99. P. 91. The connection between Berkovits’s halakhic-cultural perspective here and his Zionist doctrines warrant separate inquiry. Similarly, there is room for a broad comparison of these views and Yeshayahu Leibowitz’s philosophical, Zionist, and meta-halakhic vision.

¹⁰⁰ Berkovits E. Halakhah: its force and role.

¹⁰¹ What reason dictates is Torah law (*ibid.*, p. 11). See also Bava Qamma 47b; Nimmuqei Yosef, Rif pages 28b.

¹⁰² Shabbat 60b; Ketubbot 100a, Rashi, s. v. leima be-ha peligei; Berkovits E. Halakhah: its force and role. Pp. 15–16, 19. So, too, regarding the rules of decision-making: *ibid.*, Pp. 20–23.

¹⁰³ The locus classicus for this concept is Me’ilah 14a, s. v. bonin ba-hol ve-ahar kakh maqdishin; Maimonides, Mishneh Torah, Hilkhhot Qeri’at Shema 3:18; Berkovits E. Halakhah: its force and role. Pp. 34–41.

¹⁰⁴ *Ibid.* Pp. 42–48.

¹⁰⁵ *Ibid.* P. 48.

¹⁰⁶ Mishnah Shevi’it 10:3; Rashi in Gittin 36a, s. v. ba-shevi’it bi-zeman ha-zeh; Berkovits E. Halakhah: its force and role. Pp. 6–63.

¹⁰⁷ *Ibid.* Pp. 64, 68, 74. See also Pesahim 20b; Shabbat 154b; Beizah 36a, et al.

¹⁰⁸ Gittin 59b; see Berkovits E. Halakhah: its force and role. P. 75.

¹⁰⁹ Yevamot 87b; Berkovits E. Halakhah: its force and role. Pp. 75–76.

¹¹⁰ Bava Mezi’a 30b; Berkovits E. Halakhah: its force and role. Pp. 88–96

¹¹¹ *Ibid.* P. 105. With regard to preempting rabbinic laws, see Berakhot 19b; Berkovits E. Halakhah: its force and role. Pp. 105–107. Laws have been enacted to prevent disgrace (Hagi-gah 26a; Berkovits E. Halakhah: its force and role. Pp. 108–109); so, too, “at times, responsibility for one’s fellow, even an individual, requires a person even to sin in order to save his fellow from committing a more egregious sin” (*ibid.* pp. 112–113).

¹¹² Maimonides, *Mishneh Torah*, *Hilkhot Geirushin* 2:20; see Berkovits E. *Halakhah: its force and role*. Pp. 132–151.

¹¹³ *Yevamot* 110a; Rashbam on *Bava Batra* 48b, s. v. *mar bar rav ashi*; Berkovits E. *Halakhah: its force and role*. P. 152.

¹¹⁴ Berkovits analyzes the episode of the Akhnai oven (in which the sages rule in accord with the majority decision despite a heavenly voice to the contrary; *Bava Mezi'a* 59b); the dispute between Rabban Gamaliel and Rabbi Joshua regarding determination of the New Moon (*Mishnah*, *Rosh ha-Shanah* 2:9); and the topic of “you must not deviate from the verdict that they announce to you either to the right or to the left” (*Deut.* 17:11; *Nahmanides ad loc*; *Sifrei Devarim* 154) including the disagreement over the matter between the Babylonian Talmud and the Talmud of the Land of Israel (Berkovits E. *Halakhah: its force and role*. Pp. 158–160).

¹¹⁵ *Sanhedrin* 6b. See also *Rosh ha-Shanah* 25b; Berkovits E. *Halakhah: its force and role*. Pp. 164–166.

¹¹⁶ He clarifies the three positions – those of Tosafot, Maimonides, and *Nahmanides* – regarding the principle that “a court may not reverse the decision of its fellow court unless it is greater than [the earlier court] in wisdom and in number”. See Berkovits E. *Halakhah: its force and role*. Pp. 166–167.

¹¹⁷ *Ibid.* Pp. 199–214.

¹¹⁸ He wrote as follows to Weinberg during the 1950s; the exact date is unclear: “The new book I am now working on is on the subject of Jewish philosophy. I have already completed a first draft, which I am now reviewing and revising. My hope is that the ms. will be complete at the end of July, God willing. But my principal interest, when all is said and done, is in the study of halakhah. I have several work-plans, but no leisure in which to work at them”.

¹¹⁹ An arrangement under which land was sold to a gentile for the duration of the sabbatical (*shemittah*) year, thereby permitting consumption of its otherwise forbidden produce.

¹²⁰ Weiss M. *Al ha-shemittah lifnei shenat 5689 [On shemittah before 1929] / Be-hevlei masoret u-temurah [In the pangs of tradition and change]* / Ed. by M. Kahana. Rehovot, 1990. Pp. 75–90.

¹²¹ Rosenak A. *Ha-Rav Kook [Rabbi A. I. Kook]*. Jerusalem, 2006. Pp. 81–92.

¹²² See Rosenak A. *Ha-halakhah ha-nevu'it: ha-filosofiyah shel ha-halakhah [Prophetic halakhah: philosophy of halakhah]*. Jerusalem, 2006. Pp. 222–226.

¹²³ He puts it as follows: “Milking on the holy Sabbath is absolutely forbidden to a Jew and constitutes a terrible desecration of the Sabbath, and God forbid one should rule leniently with respect to it. There is no way out other than to have the milking done by a gentile, as our ancestors always did, and, as a general matter, a Jewish settlement cannot exist without the presence of some gentiles, required because there are some things that may be done on Sabbath and festivals only by a gentile, and the laws of our holy Torah are without doubt immeasurably more powerful than any imagined practice invented by human beings. They are our lives and the length of our days, and the basis for our revival on the holy land”. R. Kook A. I. *Da'at Kohen*. Jerusalem,

1993. P. 427; see also *ibid.*, *Orah Mishpat*. Jerusalem, 1985. P. 74 col. a (written in 1939).

¹²⁴ See *ibid.*, responsum 50, pp. 64–5, col. a–b; *ibid.*, responsum 54, p. 66, col. a; *ibid.*, responsum 136, pp. 168–169; *ibid.*, responsum 101, p. 100, col. b.; *ibid.*, *Iggerot ha-re'ayah*. Jerusalem, 1981. Vol. 1. P. 358; *ibid.*, *Mishpat Kohen*. Jerusalem, 1985. Responsum 61. P. 125, col. b; *ibid.*, responsum 64, p. 130, col. b; Peles II. Y. Shitato shel ha-rav kuk z. g. l be-qesher le-halivah ve-hitqablutah bi-nevei ya'aqov [Rav Kook's treatment of the question of milking and its acceptance] / *Beirurim be-hilkhot ha-re'ayah* [Clarifications of Rav Kook's halakhah] / Ed. by R. M. Z. Neriya, R. A. Stern, R. N. Gotel. Jerusalem, 1992. P. 316; *ibid.*, Rosenak A. Prophetic halakhah: philosophy of halakhah.

¹²⁵ Schweid E. Ha-hiloniyut mi-nequdat ha-re'ut ha-datit [Secularism from the religious viewpoint] / *Ha-yahadut ve-ha-tarbut ha-hilonit* [Judaism and secular culture]. Tel-Aviv, 1981. Pp. 136–137; *ibid.*, *Moledet ve-erez ye'udah* [Homeland and a Land of Promise]. Tel-Aviv, 1979. P. 199.

¹²⁶ Weinberg, letter to Rabbi Untermann, 15 Sivan 5725 (15 June 1965); *Shevet mi-yehudah*. Jerusalem, 1993. Sec. 12. P. 265.

¹²⁷ Berkovits E. *Crisis of Judaism in the State of the Jews*. P. 51.

¹²⁸ He rejects the *haredi* solution itself and the spiritual inclination implicit in it:

As we know, the *haredim* have another solution: they leave the fields and gardens uncultivated and organize funding in the Diaspora to support those farmers who help during the sabbatical year. But, we ask, could the Torah have intended that fulfillment of the sabbatical year commandment depend on the United States and other countries throughout the world (*ibid.*)?

¹²⁹ See Golinkin D. *Halakhah le-yameinu – gishat ha-tenu'ah ha-mesoratit la-halakhah* [Halakhah for Today – the Halakhic Approach of the Mesorati Movement] / 4th ed. Jerusalem, 1998. P. 24.

¹³⁰ R. Kook A. I. *Da'at Kohen*. Jerusalem, 1931. Responsum 199. P. 383.

¹³¹ Rosenak A. Prophetic halakhah: philosophy of halakhah. Pp. 59–88.

¹³² This is not to say that the other nations of the world do not also bear the image of God. R. Kook explicitly affirms that they do: “We profess the Name of the Lord, God of the world, Who created the entire world in His image; in the image of God He created it”. (R. Kook. *Shemonah Qevazim* [Eight files]. Vol. 3. File 8. (London, 1916–1919). Hevron-Qiryat Arba–Jerusalem, 1999. Sec. 99. P. 275). In his view, however, the divine image in Israel is distinguished by its “greater clarity”.

¹³³ Rosenak A. Prophetic halakhah: philosophy of halakhah. P. 69.

¹³⁴ R. Weinberg J. J. *Nituchey Metim Be-Medinat Israel* [Autopsies in the State of Israel] // *Tehumin*. 1991. 12. Pp. 383–384.

¹³⁵ Berkovits E. *Birur halakhah be-din nituhei meitim* [Clarifying the halakhah regarding autopsies] // *Sinai*. 1971. 69. P. 45.

¹³⁶ Berkovits E. *Crisis of Judaism in the State of the Jews*. P. 51.

¹³⁷ R. Ezekiel Landau, *Noda bi-Yehuda*, part 2, *Yoreh De'ah*: “R. Judah argued that preservation of life supersedes all the commandments (*Yoma* 84b); therefore, saving the patient who

is before us [warrants] permitting the autopsy". R. Jacob Etlinger objected to this ruling; see Responsa Binyan Ziyon, part 1, 170–171. See also Responsa Hatam Sofer, Yoreh De'ah, 336; Responsa Maharam Schick, Yoreh De'ah, 347–348; Responsa Ziz Eli'ezer, part 4, Yoreh De'ah.

¹³⁸ Berkovits E. Clarifying the halakhah regarding autopsies. Pp. 65–66.

¹³⁹ See Responsa Seridei Eish, part 2, sec. 4.

¹⁴⁰ R. Hayyim Ozer Grodzinski (1863–1940), author of Responsa Ahi'ezer and chief judge of the Jewish court in Vilna, was one of the great Lithuanian Torah authorities. He was a leader of the Agudath Israel Council of Torah Sages.

¹⁴¹ Berkovits E. Halakhah: its force and role. In very general terms, the "condition" is intended to facilitate the remarriage of a woman whose husband cannot or will not give her a bill of divorce; it thereby also prevents the child of such a woman by her second marriage from being considered a mamzer, the offspring of a forbidden union barred under halakhah from marrying anyone except another mamzer.

¹⁴² Berkovits E. Jewish Women / Berkovits E. Halakhah: its force and role.

¹⁴³ "I am convinced that as a moral matter, the position of the wife in the Jewish family through the ages was more important and central than it was in any other culture" (Berkovits E. The status of women in Judaism: a socio-halakhic perspective. P. 43).

¹⁴⁴ On the origin and standing of the ketubbah, see Berkovits E. Jewish Women. Pp. 8, 45 et passim.

¹⁴⁵ Maimonides, Mishneh Torah, Hilkhot Ishut 13:11.

¹⁴⁶ Ibid. 21:3.

¹⁴⁷ Berkovits E. The status of women in Judaism: a socio-halakhic perspective. P. 45.

¹⁴⁸ See Midrash Tanhuma, Vayishlah, sec. 6. Commenting on the opening of the account of the rape of Dinah in Gen. 34, the midrash states: "And Dinah the daughter of Jacob went out – this is as scripture states (Ps. 45:14) 'All glorious is the king's daughter within the palace' [OJPS]: R. Yosi said: when a woman conceals herself within the house, she is worthy of marrying the High Priest and establishing a line of High Priests". See also R. Shlomo Aviner. Barukh she-asani isah [Blessed be He Who has made me a woman]. Online source: <http://www.nfc.co.il/archive/003-D-14767-00.html?tag=5-58-06>; R. Kook. Shemonah Qezavim. File 3. Sec. 114. P. 54; *ibid.*, Iggerot ha-Ro'ayah. Jerusalem, 1984. Vol. 4. Pp. 50–53; Ahituv Y. Mered ha-qodesh [Rebellion of the sacred] // Amudim. Sivan 5757 (1997). Pp. 264–265; R. Ratzabi Y. Online source: <http://www.temani.net/http/sprot-timan/znyut/4.htm>, and many others.

¹⁴⁹ Menahot 43b–44a and Rashi ad loc: "that is a woman".

¹⁵⁰ Eruvin 100b, s. v. rav dimi amar and Rashi ad loc: "restrained in prison – 'all glorious is the king's daughter within the palace'".

¹⁵¹ Qiddushin 80b; Shabbat 33b.

¹⁵² Berkovits E. The status of women in Judaism: a socio-halakhic perspective. P. 45.

¹⁵³ Pirqei de-Rabbi Eli'ezer, 80:45; Tanhuma Shemot, Tissa, 19; Berkovits E. The status of women in Judaism: a socio-halakhic perspective. P. 46

¹⁵⁴ Bava Mezi'a 59a.

¹⁵⁵ Yevamot 62b; Sanhedrin 76b.

¹⁵⁶ Berkovits E. The status of women in Judaism: a socio-halakhic perspective. P. 46.

¹⁵⁷ Ibid. P. 47. The reference to "time-bound opinions" is a play on the rabbinic rule that women are exempt from "time-bound positive commandments".

¹⁵⁸ R. Kook. Olat Re'ayah. Jerusalem, 1989. Vol. 1. Pp. 71–72; *ibid.*, Ayin ayeḥ. Berakhot 1. Jerusalem, 1987. Pp. 59–60.

¹⁵⁹ R. Kook, Shemonah Qevazim. File 1. Sec. 421. Pp. 139–140.

¹⁶⁰ R. Kook, from ms.

¹⁶¹ R. Kook, Shemonah Qevazim. File 3. Sec. 351. P. 124; Ayin ayeḥ. Pp. 59, 88–89, 168–169, 176, 215, 332–333.

¹⁶² R. Kook, Shemonah Qevazim. File 1. Sec. 514. P. 165.

¹⁶³ On the prohibition against teaching women how to slaughter animals for food, see R. Kook. Mizvat Re'ayah. Jerusalem, 1985. Yoreh De'ah. Responsum 1. P. 106, col. a. On the prohibition against teaching Torah to women, see *ibid.*, and see Iggerot ha-re'ayah. Vol 1. Pp. 116, 287.

¹⁶⁴ See Rosenak A. The entire assembly are holy?

¹⁶⁵ R. Weinberg J. J. Responsa Seridei Eish.

¹⁶⁶ He there considers the case of a mentally ill man who did not disclose his illness before his wedding. Later, after the couple had a child, the wife wanted to flee Nazi Germany but her husband's illness precluded his giving her a get (bill of divorce) because he lacked the needed mental capacity. Berkovits writes: "In my book Tenai be-nisu'in u-ve-get I likewise showed that all of the problems can be solved within the framework of the halakhah" (Berkovits E. The status of women in Judaism: a socio-halakhic perspective. P. 48).

¹⁶⁷ Ein tenai be-nisu'in [There is no conditional marriage] / Ed. by J. Lubsky. Ashdod, 1997. The book's subtitle reads as follows: "encompassing clarification of the halakhah and letters of protest, by the great elders of the previous generation, regarding the practice of some rabbis in France to incorporate conditions in a marriage. Signed by more than four hundred rabbis, the great sages of Israel, from all lands".

¹⁶⁸ Introduction by R. Jehiel Jacob Weinberg, may his memory be for a blessing / Berkovits E. Tenai / Berkovits E. Halakhah: its force and role.

¹⁶⁹ "Illness has assailed me... and I am overcome by weakness... and I am prevented from plumbing the depths of this great sea [of issues]... which the great author Rabbi Berkovits has been favored with" (*ibid.*).

¹⁷⁰ "Because of the importance of the matter and my affection... I will not conceal what is on my mind" (*ibid.*).

¹⁷¹ The letters surrounding the episode are in my possession, having been made available to me by Marc Shapiro. I hope he will soon publish them in their entirety.

¹⁷² R. Berkovits to R. Weinberger, 7 Tevet 5726.

¹⁷³ He continues: "His honor knows that the number of pious rabbis of the new generation who

despair of ever attaining anything from the 'Torah greats' of the current orphaned generation is increasing. Each day they see more clearly that the future of Judaism and the Jewish people must not be left in their hands" (ibid.).

¹⁷⁴ Berkovits writes as follows to Kasher:

I was shocked to hear that according to his honor's opinion, the ga'on Rabbi J. J. Weinberg, may the memory of the righteous be for a blessing, regretted his approbation in its entirety... I wrote to [Rabbi Weinberg] to ask him directly, and Rabbi Butschko, may he live long, replied in his name that [Rabbi Weinberg] stands by his recommendation of my work "one hundred percent" as before, and it is his desire that it be published in No'am. Nor can he understand why his honor changed his mind about the matter. Has his honor not seen the letter in the possession of Rabbi Jung?" (A letter dated Thursday of the week of Parashat Tezavveh, 5726 [11 Adar 5726 / 3 March 1966]). Berkovits had to confront conflicting reports disseminated by R. Kasher and his associates; he writes: "I know that there are people who, in order to weaken the influence of my book, are spreading rumors that R. Weinberg, may the memory of the righteous be for a blessing, changed his mind about his recommendation. Those words lack any basis, and they are contrary to the truth" (Berkovits E. *The status of women in Judaism: a socio-halakhic perspective*. P. 49, n. 20).

¹⁷⁵ See Rakeffet-Rothkoff A. *Biyografiyah al ha-rav y. d. soloveitchik* [Biography of Rabbi J. B. Soloveitchik] / *Emunah bi-zemanin mishtanim* [Faith in changing times] / Ed. by A. Sagi. Jerusalem, 1996. Pp. 17–37.

¹⁷⁶ The lecture was given before the Rabbinical Council of America; it is the introduction to a discourse on the laws of conversion. An annotated partial transcript of the original English lecture, entitled "Talmud Torah and Kabalas Ol Malchus Shamayim" [Torah study and accepting the yoke of the kingdom of Heaven], appears at online resource: http://mail-jewish.org/rav/talmud_torah.txt; in accordance with the stipulation at that website, it is quoted from here without any changes, retaining the transliterations that appear on the website even where they depart from the conventions otherwise employed here. Editor's annotations to the transcript, which appear on the website as endnotes, are set forth here in square brackets, preceded by the number of the annotation. A Hebrew translation of the lecture, entitled "Zeh sinai" [This is Sinai], appears at online resource: <http://www.katif.net/art.php?table=jew1&id=838>

¹⁷⁷ a limited number of instances, passages are here cited from the Hebrew that do not appear in the English; those passages have been translated by the present translator and are marked by < >; the present author's ellipses and the present translator's annotations to the transcript are similarly marked.

¹⁷⁷ R. Soloveitchik J. B. *Divrei hagut ve-ha'aracha*. Jerusalem, 1982. P. 76.

Abstract (Ukrainian)

У статті подається панорамне зображення філософії Галахи равина Еліезера Берковіца. Описується глибокий зв'язок між учителем і учнем: равиним Яковом Єхієлем Вейнбергом, одним із найбільш помітних галахічних авторитетів – законодавців (*позек*) після Голокосту, та р. Берковіцем. Обидва були ортодоксальними равинами, вченими і в той самий час релігійними гуманістами. Аби пояснити унікальну філософію Галахи р. Берковіца, в статті розглядаються його критика західної моралі та питання взаємодії тіла й душі. Стаття ілюструє метагалахічні підходи р. Берковіца у світлі трьох галахічних питань: суперечки стосовно *шміти*, посмертних медичних оглядів та статусу жінки в галахічній єврейській громаді.