

May 2, 2024

Dear Shearith Israel family,

**Our Year of Hope.** Two things about Pesah, in addition to the fact that the closing days were beautiful, should provide a pick-me-up for any post-holiday, end-of-week dreariness:

First, as we have explained before, a key melody of our Pesah liturgy (especially in our Prayer for Dew) derives from the antecedent to our most famous Twentieth Century *Song of Hope*: *Hatikvah*. To be reminded of the beginnings and musical connections, see the interesting and in many respects glorious history summarized in my emails of [9/15/22](#), [9/22/22](#), and [9/29/22](#).

Second, during Pesah, our Rabbinic Intern, Baruch-Lev Kelman, held an impromptu teen class – and at least **12** of our future hopes participated. How marvelous.

**Eclipsing the Eclipse with Camaraderie.** Sarah Gross, our Office Manager & Financial Associate, reports that she didn't end up making it outside for the eclipse "unlike a couple of friends who took time off work to drive up to Niagara to watch totality." Instead, she:

*watched the Weather Channel's stream. They partnered with NASA in different cities that were on the path of totality. The livestream had a picture-in-picture kind of thing with live footage on the ground as well as NASA's telescope focusing on the eclipse in each city. It really was amazing to watch the eclipse 'up close' over and over again along with each city's excitement when different parts of the eclipse were achieved.*

Sarah agrees with Michael Schulder's comment:

*I definitely agree that as a collective we are looking for good and wholesome events to celebrate, and it's just as nice to watch strangers enjoy it too. And so many people wouldn't have been able to see any of it if not for having it streamed on whatever digital/virtual medium.*

Beautiful thoughts for our year of hope.

**The Jewish Constitution of Liberty.** Friedrich Hayek's *Road to Serfdom* inveighs against abuses of government. It's his (fatter and) more influential book, *The Constitution of Liberty*, that deals with the equality/equity point we were discussing just last week – how wealth of certain individuals can lead to increased societal wealth but possible greater inequality among individuals or classes.

I want to propose that, for Jews, our own Constitution of Liberty is found not so much in our economic relations but in two other dimensions: (i) our collective relationship to the Almighty, and (ii) our relationship to each other. Both ultimately impact our economic relations, but that is a by-product.

To find a clear and understandable articulation of the fundamentals of our two issues, there is no need to look in a lengthy opus but rather in two related short narratives appearing on page 59b of Tractate Baba Metzia, which we learned at the tail end of last week as part of the worldwide Daf Yomi learning

cycle covering pages 60-66 this week. Big claim, you say? Can I deliver? I think so. Linger with me a minute and listen to the two stories.

The first consists of the rightly famous story, found here more than in any other place in the entire corpus of the Talmud, recording the debate between R' Elazar and all the rest of the Sages over an obscure question of whether an earthenware oven can remain ritually pure if cut widthwise into segments, where sand is placed between each and every segment. Rabbi Eliezer deemed it ritually pure; the Sages did not. The subject of the dispute was immediately eclipsed by what happened. R' Elazar, sure that he was right, invoked nature to weigh in on his side. A carob tree leaps out of the ground, a river changes course, and walls start to close in on the Sanhedrin, in each case responding to R' Elazar's declaration that, if he were right, then these unnatural phenomena should occur and prove his correctness. In each case nature complied. In each case, however, the majority of the Sanhedrin refused to budge. R' Elazar then invoked the Almighty, who tells the group assembled that R' Elazar is in fact correct. Unmoved, the majority stands its ground, quoting the portion of the Torah that says,

*לא בשמים היא*, *lo bashamayim hi* (from Deuteronomy, *Debarim*, 30:12),

or *it is not in Heaven where the answer lies* (a thought to which I adverted deep in Covid-time on [10/1/20](#)). Instead, our Sages invoked another Biblically-sourced rule (which we just read during Hol haMoed) that it is Sages themselves who decide matters, by majority vote (Exodus, *Shemot*, 23:2).

Now consider the story that immediately follows. It turns out that R' Elazar refused to follow the will of the majority on this (and other?) matters. As a result, the Sages excommunicated him. Was that an overreaction? It's not clear. The story continues that R' Akiva was dispatched to give the bad news of excommunication to R' Elazar, who seems to have reacted with contrition but then still didn't agree to change his legal approach. However, his power over nature was so strong that, forever after that, his wife needed to stop him from reciting the penitential *tachanun* prayer, for if he did it would overpower even the head of the Sanhedrin who dictated the excommunication, R' Yehoshua. R' Yehoshua, it turns out, was R' Elazar's brother-in-law, the wife in question being R' Yehoshua's sister. When once the sister was busy (on one account) tending to the poor, and she did not stop R' Elazar from saying *tachanun*, in fact R' Yehuda died right then and there.

These stories occupy less than a single side of one of the 2,711 double-sided pages of the Talmud. In my view, however, they are our constitution of liberty: We are partners with the Almighty in righting the world. As communities, we can exercise power far greater than what even the mightiest of individuals can accomplish. But if we neglect the needs of the individual, we will lose both our legitimacy as a community and an integral part of ourselves --perhaps even more.

This is a simple, powerful, eternal truth.

***From the Small and Curious World Department.*** We are in the middle of the Baba tractates and so are never far from thoughts of torts, causation, and imposition of liability (or not) for indirect harm. Indeed, we have several times discussed the Talmudic concepts of indirect harm, *gramah* and *garmi* (see, e.g., our emails of [12/7/23](#) and [12/28/23](#)) – concepts that our Sages grasped more than a millennium before the common law did.

When we think of twists of facts leading to challenging legal doctrines about indirect causation, every law student and every lawyer thinks about the great case of Mrs. *Palsgraf vs The Long Island Railroad*. The facts are fun: Mrs. Palsgraf and others were on the platform at the East New York station of the LIRR when a train, not theirs, pulled in. As it began to move again a man carrying a package leapt aboard, with the help of a platform guard pushing him from behind as a member of the train's crew pulled him into the car. In the process, the man lost the package, which dropped and exploded, for it apparently contained fireworks, which then caused a tall, coin-operated scale to topple onto Mrs. Palsgraf. Palsgraf sued the LIRR. New York's Highest Court, in a decision written by our congregant, Justice Benjamin Cardozo, held that there was no liability from the railroad to Mrs. Palsgraf – too indirect, too far removed. It's a hoot of a case – and elemental in learning common law tort concepts.

Why, you might ask, am I mentioning this in the S&CW Department? The answer is because Henry Edinger just mentioned to me the even stranger and curiouser fact that Lisa Newell, first cousin four times removed of Justice Cardozo, married Palsgraf's great-grandson, J. Scott Garvey. OMG! I think Henry got that fact from the masterful biography of Justice Cardozo by Andrew Kaufman, who by the way I had as a professor in law school, oh, about a century ago. Small and curious world.

***Shearith Israel Songs in the Key of AI.*** Our email of [4/11/24](#) thanked our nextgen editor SM Rosenberg for the clever use of an AI program to create an interesting and listen-to-able song about our past. No one else seems to have mastered the use of AI for these purposes, since I've received no other attempts. But the concept seems to be too interesting to abandon just yet. So, calling again for an AI-generated song with lyrics about some part of our Congregation, including its past.

***Shearith Israel GOAT Long and Short Songs.*** As a community, we should be SO proud of our GOAT Long and Short Song lists. An eclectic group of us remembered an eclectic array of excellent songs of both the long and short variety. I hereby present it to you, in a document link created by our nextgen editor SM Rosenberg, [HERE](#), and it will be Spotted by Lia A. Solomon (forthcoming right after finals). For those of us who observe s'fira these days in a way that includes not listening to music, as such, save this for after Lag B'Omer (we say Lag La Omer, by the way, which is consistent with the way we count).



Thank you all. Bless us all. Shabbat shalom. *B'yachad* (united together). יהיה טוב *Yihiyeh tov* (things will be good).

Louis Solomon, Parnas