

When Young Lawyers Meet Ancient Law

Talmudic study in the 1990s: why would someone willingly spend years at this?

BY RONALD COLEMAN

When 20,000 men, women and children descended on New York's Madison Square Garden late April, it wasn't to thrill to a Knicks game or to Bruce Springsteen. The massive gathering—which attracted a number of young lawyers eager to participate in one of the oldest studies of law, a system learned at a lockstep folio-page-a-day pace called *Daf Yomi* (Daily Page)—was a commemoration by Orthodox Jews of the simultaneous completion and recommencement, by thousands the world over, of the Talmud.

Despite having spent countless hours already studying the law, many young lawyers are eager to continue their studies through the Talmud, also called the Oral Torah.

"It was something I'd always dreamed about," says Philip Morgenstein, a lawyer with Chicago's Charles Levy and Associates. Morgenstein spent a year at New Jersey's Rabbinical College of America, a yeshiva—talmudic academy—run by the Lubavitch Hasidim which has a beginner's program. "And I realized that as I was about to become

a professional, in the working world, this was my last chance."

Most of the lawyers who go to yeshiva some time after law school graduation have not been developing their skills since childhood, as in traditional education. Many come from non-religious backgrounds, but have joined the movement "back" to traditional Judaism. Without the traditional foundation, though, their spiritual growth quickly leaps ahead of the Torah knowledge needed to sustain and power it. Attainment of Torah knowledge and involvement in Torah study are on a par with (though not a substitute for) Jewish religious practice. Indeed, proper religious practice requires a certain amount of formal background and proficiency in primary texts.

Lawyers are accustomed to getting the answers themselves, or asking intelligent questions when they're in over their heads. Yeshiva study, full-time for at least some period, is the only way to acquire the skills that enable them to do that.

Why go after law school? Staring down the barrel at decades of billable hour segments, it's usually now

or never. Involved in a pressurized career and saddled with substantial financial commitments, no one can count on being able to set aside the time to study.

Also, many are reluctant to jump into the fray without the proper religious grounding. The tradition says that the patriarch Jacob spent 14 years studying in yeshiva to spiritually, ethically and intellectually prepare himself for the 14 years he would spend with the wily Laban. Faced with like challenges, many of his descendants are taking his cue.

The study of Talmud is central to traditional Jewish life, for the Talmud is about everything. It exposites every subject hinted at in the Written Torah and countless others as well. It definitively explains the Written Torah and provides Jewish legal rules for every area of life, from ritual matters to man's relations with his fellows and with himself. Agriculture and anatomy, botany and biology, math and metaphysics fill its pages. Every facet of human existence, and much that is beyond human, is elucidated in Torah terms.

The yeshiva permeates every aspect of life in "strictly orthodox" Jewish society. Torah Jewry chooses its leaders neither by election, hierarchical investment nor fund-raising ability. Rather, since Moses received the whole of the Torah at Sinai, the criterion for leadership and prestige in the yeshiva has been scholarship of Torah.

Lawyers as lawyers, have no role in the yeshiva. The practice of law has neither historical nor contemporary distinction in classical Jewish life; it is irrelevant in rabbinic law. A talmudic scholar who earns a living driving a truck commands immensely more respect in the world of the yeshivas than a millionaire lawyer who is a "peasant" in Torah learning.

And yet a growing number of young lawyers have made Talmud study central to their lives. Setting aside lucrative jobs, or setting out with no employment in sight, they take time to gird themselves in yeshiva before embarking on their profession. Why?

The Written Torah's core is the Pentateuch, but also includes the

books of the prophets and other writings which together form what is called the Bible in English. Boys and girls begin study of Bible and its commentaries in the original Hebrew while very young.

With this foundation, boys begin learning the Oral Torah which defines and supplements the written. They start with *mishna*, the heart of the oral law transmitted by Moses and codified around the year 150 A.D. Later they begin study of the commentary on the *mishna*, the complex and demanding *gemora*—meaning “learning.”

Talmud study is regarded as the definitive meaning of the word “learning.” It is a lifetime undertaking. Although *Daf Yomi* participants finish the whole Talmud in about seven and a half years, advanced talmudic study can move at a page or less a week. The density of the Talmud, which was put in its present form around the year 500 A.D., is such that entire libraries have been filled in attempting to understand it and codify it.

Very few people in the world today can accurately be described as masters of the whole Talmud, and they would readily admit that they pale in comparison with earlier generations. Jewish tradition holds successive generations weakening in intellectual and spiritual strength. Thus the earliest commentaries wield the most authority in the exposition of the Talmud’s terse, idiosyncratic and unpunctuated text.

The *gemora* is essentially a transcript of an immensely long debate over the meanings of the words of the *mishna*. Unlike the *mishna*, which is in Hebrew, the *gemora* is written in Aramaic, the everyday Jewish language of antiquity.

It is virtually impossible to understand even the simple meaning of the words of the *gemora* without the guidance of Rashi, medieval French author of the definitive commentary, and other early authorities whose writings may challenge the internal logic of a given understanding of the *gemora*, or challenge the rulings in other, seemingly contradictory topics in the Talmud, harmonizing or distinguishing different approaches. Later commentaries build on this network of analysis.

The give and take, the intense logical acrobatics, the seemingly diverting narratives, all make the Oral Law so deep and vast that it is sometimes called “the Sea of the Talmud.”

The *gemora* can only be learned according to the *mesora*, which literally means something handed from master to disciple. One cannot learn it oneself by merely acquiring the requisite Hebrew and Aramaic, or by reading an English translation. Understanding the text and the commentaries themselves requires substantial skill and effort. The *mesora* is the heart of Jewish tradition.

Those who learn Talmud seldom seek mastery of specific Jewish law. Entire tractates relating to the Temple sacrifices, administration of rabbinic criminal law and other subjects not applicable at present, are still pored over in earnest Talmud study for its own sake. The tradition regards Torah as God’s compact with the Jewish people, and thus its study pulls its students ever closer towards an understanding of the Creator, His universe and what He wants from us.

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Exile yourself to a place of Torah, and do not assume that it will come after you, for it is your colleagues who will cause it to remain with you, and [as it says in the Book of Proverbs 3:5], “do not rely on your own understanding.”

Ethics of the Fathers, 4:18

It is in the yeshiva that “learning” is learned. The yeshiva is the repository of the *mesora* which links them in a chain of yeshivas forged in Europe, Northern Africa, the Middle East, and Asia Minor, to the Babylonian and Jerusalemite sages themselves—and ultimately to Moses.

Advanced students are encouraged to continue their study in *beis medrash* (literally meaning “study hall”). The yeshiva day officially starts at around 9:30 (after 8 a.m. prayers and breakfast), breaks for lunch and midday prayers from about 1:30 to 3:30, and for dinner from 7 to 8 p.m. Required attendance ends at dinnertime for married students, and for unmarried men,

ends after evening prayers at 10 p.m. Yeshiva is in full session all but perhaps six weeks a year, though it never closes and is never empty.

Those who keep this schedule for four years, eight years, ten or 20 years, stand the best chance of becoming the sages, and leaders, of what the yeshiva calls “Torah Jewry.” Those who do not reach the pinnacle have still forged the tools needed to live the full Jewish lives of their ancestors, and to always keep learning more.

The yeshiva educational system is centered around the *chavrusa*, the study partner. Although lectures are given several times a week, the essential learning takes place between partners, who goad each other, complement each other, encourage each other, teach and learn from each other. Finding the right *chavrusa* is the key to the entire yeshiva semester. The partnerships formed in youthful Torah study are often maintained and enlarged for life.

After years of study most students find work. Sometimes they acquire secular credentials such as college and law or business degrees, but many go directly into business without college. A small number go into Jewish education or the rabbinate. Some endeavor to spend their lives in study staying in the *kollel*, the advanced study group for married students which usually pays a small weekly stipend.

Today, there’s a lawyer in every major American *kollel*. Some of them are former lawyers who returned to their true love after a run at the legal profession. But a growing number are lawyers in the prime of their careers, who take time after the bar exam or after a couple of years in the profession to, as many say, “build themselves up.”

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Say not: When I have leisure I will study, lest you may not have it!

Chapters of the Fathers, 2:4

Toronto attorney Murray Nightingale attended Jerusalem’s Aish HaTorah before embarking on his career. He needed the skills, he says, so that he could live a proper Jewish life. But just as much so, he says, “I wanted to work on myself,

on my *midos*," his personal character traits, adding that he felt that the emphasis on personal development was a strength of Aish HaTorah, one of the oldest and biggest beginner's yeshivas.

Even those who have a yeshiva background find the first years after law school an opportune time to return to yeshiva. Jay Friedman studied at Brooklyn's Torah Vodaath, one of the top yeshivas in the country. After marriage he continued in the *kollel* of Beis Medrash Gevoha—the "Grand Beis Medrash" (the largest yeshiva in America, with over 1,400 students in Lakewood, New Jersey). He says that when he decided to go to Columbia Law School, he, with his wife's encouragement, made himself promise "that at the end of three years of law school, if it were still feasible, I would go back to yeshiva." After graduation he secured a job with New York's Dewey, Ballantine—with a built-in *kollel* deferment spent at Brooklyn's Mir yeshiva. Last year he attended mornings at Torah Vodaath and worked part-time at the firm.

Ken Girshenfeld, an associate at New York's Sullivan & Cromwell, went to Ohr Somayach, a yeshiva specializing in beginners and located in Monsey, New York, after graduating from the University of Pennsylvania. Then he attended the Mir yeshiva and law school at Boston University, where he was on the law review. He returned to yeshiva at Lakewood after a federal district court clerkship.

He had committed to clerking two years before graduation, he says, "but I determined it was worth my while to go back and learn. Even at the beginning of law school I had thought about it. There's an idea that there is a secular world, and after every couple of years in it, you integrate it, and then go back and strengthen yourself." Sullivan & Cromwell also extended his clerkship deferral for his yeshiva time, and granted him seniority for all the time he'd missed while studying Jewish jurisprudence.

Sometimes law school itself provides the nudge. Between years of law school, David Rosengard, a Boston lawyer now in solo practice, went to Machon Shlomo, a highly

structured beginner's program in Jerusalem. His interest in returning to yeshiva was piqued by a course on Jewish law at Boston University's law school. "It helped me identify certain issues I wanted to follow up in yeshiva," he says. After working out a deferred starting date with a small Boston firm, he went to the Kol Yaakov Torah Center in Monsey, New York.

Others responded to the call at different points in their careers. Neil Auerbach, of New York's Shearman & Sterling, had a solid background, which he strengthened during law school by spending time at Ohr Soameach. He decided then that he would return to yeshiva later. But he waited two years until he had established himself at Shearman, and then took a year's sabbatical, which he spent at Jerusalem's Keser Torah yeshiva.

And then some get it whenever they can. Alexander Novak, who as a beginner had intermittently attended New York's Shor Yeshuv yeshiva during college, took a post-law school fellowship in Austria, then deferred a position with a European firm to study for a year at Israel's Torah Ohr yeshiva. After two years in Europe and a stint on Park Avenue, he and his new wife packed up their kids and returned to Israel for further study and rabbinical ordination. "It was always in my mind," he says. "Whenever I could grab some time to learn—between jobs, between situations—I'd grab it," adding that the decision to "grab some time" even without guaranteed employment on their return was a joint one.

"You have to have faith," he says. It took him nine months to find a job in New York.

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Whoever fulfills the Torah despite poverty, will ultimately fulfill it in wealth; but whoever neglects the Torah because of wealth, ultimately will neglect it in poverty.

Ethics of the Fathers, 4:8

The yeshiva-going lawyers don't typically see yeshiva as a career hindrance. Despite his long search for a position, Novak says, "I wasn't so worried about my career. You're

not a rich lawyer because you're a lawyer, you're rich because *Hashem* (conversational term for God) makes you a rich lawyer—or He makes you a poor lawyer." Jewish tradition teaches that the only thing one truly owns in this world, the only thing that the sweat of his brow makes "his," is his Torah learning. Since Adam was expelled from the Garden, work has been man's fate, but material sustenance is still Heaven's fiat.

Novak's sentiments are echoed almost to the man. Murray Nightingale made a point of not looking for a job before he went to Israel, wary of the temptation to stay in Toronto that it might offer. Phillip Morgenstein says he had no job waiting when he packed up for Morristown. "*Hashem* is the one who finds people jobs," he says. Even those in the enviable position of having a job waiting for them evince a similar attitude. Asked if he was concerned at how the interruption would affect his career, Jay Friedman avers, "Law school was the only interruption."

Even on a "practical" level, all agree that a year or two off the fast track is unlikely to derail an otherwise promising career. Ken Girshenfeld says his decision to return to yeshiva "was something I needed at the time to help myself grow, and I saw no hindrance in starting one year later. That's turned out to be true." In conversation while seeking to recruit Girshenfeld for their firms during his Eastern District of Pennsylvania clerkship, "Three or four senior partners from major Philadelphia law firms [told me] it was a great idea," he says, "and two of them wished they'd done the same—now they couldn't get away. These were non-Jews, but they were extremely helpful, and they highly recommended that I go through with my plans."

Still, the idea of learning "for its own sake" is hard for outsiders to understand. Even those who go to non-professional graduate schools have a degree in mind at some point. Some people mistake a commitment to talmudic study with intellectual dilettantism, or an "outside interest"—a hobby. Although an academic rabbinical ordination is one way to deal with that perception, it

doesn't always track with the kind of learning they're doing—many top talmudic scholars are not formally ordained. And some of the top yeshivas don't offer it as part of their normal programs.

Novak's difficulty in finding a job on his return, which dates back several years, is more the exception than the rule these days. Murray Nightingale says the yeshiva experience on his resume actually got him the job in his predominantly non-Jewish firm. "It stood out," he says. Most law firms like hiring interesting people, as long as they perceive stability—which, in fact, is one of the strongest points for traditional Jewish life. Jay Friedman notes that many firms are up on candidates with a yeshiva background. "They're stable," he says, "and perceived as honest and trustworthy."

On another level, there is the matter of how a background in talmudic learning affects one's lawyering abilities. Common wisdom has it that a yeshiva background is an advantage in lawyering, and most of the yeshiva-trained lawyers agree, though for different reasons.

Philip Morgenstein says that "learning *gemora* opens up your brain passages. You learn to think quickly, to see alternatives . . . you learn how to see two sides of an issue quickly." That, he says, is a big asset in analyzing a case. The advantages in writing a brief—anticipating the opposition's arguments—go without saying. Ken Girshenfeld says the time spent learning *gemora* was a boon both in law school and practice.

Aside from the limited analogy between talmudic and modern legal analysis, the very intellectual rigor of Talmud study is regarded as a valuable mental exercise for law or any thinking endeavor. Neil Auerbach says that the time he spent learning was in many ways at least as challenging as anything he does in practice. "When learning, say, 12 hours a day, the whole 12 hours is spent in intellectually challenging pursuits, applying one's mind," he points out. "Whereas in the practice of law, there's a lot of downtime, even in something as intellectually demanding as tax." As brilliant as many purveyors of the tax law are,

says Auerbach, they're no match for the minds that produced the rich talmudic literature of the last 16 centuries. "You get an appreciation for the depth of the sages," he says.

"You use much more of your brain when you're learning," says David Rosengard. "The analytical skills are just much more toned in yeshiva than in law school." Murray Nightingale points out that the difficulty in *gemora* isn't only conceptual. A simple understanding of a *gemora* topic can be maddeningly elusive. "After breaking your teeth over a *gemora* for a year and a half, reading cases in English is a cinch."

Some yeshiva-trained lawyers, in contrast, say that people who succeed in the legal profession usually have, in their own ways, developed the analytical skills needed to do their jobs, with or without yeshiva. That would explain why, as Neil Auerbach says, "The skills cut both ways—they're very transportable." Rabbi Leib Tropper, Dean of Kol Yaakov, agrees, saying that beginners with a legal education "are amazed at how their skills transfer so well to *gemora*—and of course, they're shocked that there's a vast body of law out there that they didn't hear about in law school, and which is so sophisticated."

Steve Resnicoff, a professor at DePaul University's law school in Chicago, maintains that there is something even more valuable for lawyers than the reasoning skills sharpened by Talmud study. Resnicoff himself spent five years in yeshiva after graduation from Yale Law School. After receiving ordination from Lakewood, he briefly practiced there before deciding to teach.

Learning *gemora*, Resnicoff says, does enhance one's lawyering skills, but not because of the intellectual stretching it engenders. Rather, he says, *gemora* is "about literary interpretation and construction of texts. . . . You're basically looking for underlying conceptualizations that flow through the cases." Eventually, says Resnicoff, those concepts begin to emerge as a thread that binds together seemingly unrelated topics, chapters, tractates, and all of the Talmud.

Of course, that ultimate underlying concept, if it is discernible

through what for most is a talmudic jungle, is one that profoundly distinguishes the study of the common law from the study of rabbinic law. For people to whom the revelation at Sinai is more real than the claims of the morning paper, it is easy to agree with David Rosengard's statement that the main difference between "the law" and "the Law" is that "*gemora* is much more reality oriented."

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Excellent is the study of Torah together with worldly pursuit.

Ethics of the Fathers, 2:2

At a certain point, comparing the two systems of law begs the question. They are two systems with different origins, purposes, and outlooks. Asked to compare the degrees of rigor in the respective system, and the intellectual reward of mastering a *shtickl gemora* (Yiddish for "a piece of *gemora*"), Neil Auerbach explains, "The reward touches at a deeper level, both intellectually and spiritually. . . .

"They're two very different disciplines with a very fundamental difference, like night and day. Torah is divine and you're trying to understand the will of God. The assumption is—it's an article of faith—that it works. Now *you* have to understand it. With secular law, there's no assumption that it's perfect—far from it, and the better you are at finding the holes the better off you are."

While secular law uses the same *a fortiori* reasoning and other logical methodologies of the Talmud, he says, case and code law have no *gezera shava*—similar expressions in two Torah passages which signal an analogy and suggest a legal result. An evaluation of how the word "income" is defined in different places may boil down to precedent, regulations, or legislation—but never Revelation. There's no comparing Mosaic tradition and legislative history.

Yet the transcendent lessons of the *gemora* do of course permeate the lives of its students. Steven Resnicoff explains, "As a teacher it's easiest to sensitize people to moral or ethical problems in classroom situ-

ations, because you have people who are receptive to that kind of education, unlike in practice. It's not necessarily a matter of what the bottom-line Jewish law is, but how it sensitizes people to the issues.

"The [Chicago Community] Kollel has a monthly program for lawyers. I gave a lecture on bottom-line rules and procedural rules that Jewish law might proscribe . . . it enriches not only the ethical situation in the classroom but the whole community—and not only lawyers. Other professionals, like accountants, come, wanting to learn about Jewish ethics."

Sometimes the interest is surprising. Murray Nightingale reports that colleagues often swing by his office and ask, only half-joking, "Murray, what does the Talmud say about this?" He adds, "I work with Italians, serious Catholics . . . so they appreciate it. They treat me with the utmost respect." Speaking of the need for Sabbath observers to leave the office early on short winter Fridays, he says, "The first week I was there, Friday at two o'clock they said, 'Murray, shouldn't you get going already?'"

And sometimes the effects are surprising. The yeshiva lawyers define

themselves as Jews, who practice law. Many people, of course, define themselves as something other than a job description. But for their part, being observant Jews means putting certain things ahead of their careers, starting with their Torah learning, in a profession known for demanding all.

The sacrifices continue back at work. Client lunches, a central part of doing business, are difficult or impossible for Jews who observe the strict dietary laws of the Torah. Understanding these laws—What is kosher slaughter? What does the Torah prohibit when it forbids "cooking a calf in its mother's milk"? How can any meat be eaten if consumption of blood is forbidden?—would be impossible without the Oral Law.

And every Friday afternoon, they're the first ones out of the office, unconditionally unreachable until Saturday's sunset. Sabbath observance, crucial to traditional Judaism, is ubiquitous in the Talmud. What are the forbidden labors that the written Torah only describes as "no manner of servile work"? What is the authority for the mandate that saving a life takes precedence over observing Sabbath restrictions? Without the Talmud, the Torah is, as

it were, stripped bare. That's why Talmud-learning professionals, storekeepers and truck-drivers aspire to leave the *bis medrash* only in body, to always "stay in learning," to the extent possible while in practice.

It isn't always easy. But the talmudist-lawyers' commitment is testimony to their belief that without the Torah, there would be no Jewish lawyers at all—that the continuing existence of the Jewish people depends on it. The Sadducees (*tsadukim*) espoused a Judaism without the Oral Law two thousand years ago; now they are forgotten. The words of their rivals, the sages of the Talmud, live on in yeshivas around the world.

The lawyers who went to yeshiva after law school made their choices in the knowledge that no one loses out—in terms of reality—by doing the right thing. Alexander Novak put it best. When asked if he thought learning Torah would affect his ability to flourish in the legal profession, he shrugged. "Sure," he said. "Because I think *Hashem* is happier with me that I learned."

Ronald Coleman is a frequent contributor to Barrister.

Letters

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not imaginary. A recent church study surveyed more than 10,000 physical healings reported from 1969 to 1988. Of the 2,337 cases which were medically diagnosed, 222 were declared terminal or life-threatening. Of the more than 2,000 cases, 623 were subsequently medically examined, confirming healing.

Christian Science clearly is not, as the article suggested, "Jonestown in slow motion." With over 1,000 children dying *every week* under the best our country can do medically, it's surprising society hasn't taken a closer look at what has made the Christian Science method so successful.

David N. Williams
Federal Representative,
The First Church of
Christ, Scientist
Washington, D. C.

Be All That You Can Be? "Not Me"

Every issue of *Barrister* magazine does it to me. You'd think by now I'd have learned to anticipate it, but each time it still strikes me an unexpected slap when I least expect it. One minute I'm engrossed in an interesting article on an emerging legal issue and the next, I've turned the page to "The Ad." It's always in there somewhere.

"The Ad" lures me with photos of scenic foreign places and descriptions of exciting legal challenges. It tells me to be all I can be, but it doesn't tell me that Department of Defense regulations won't permit *me* to be all that I can be. Every time, it still makes my face hot and my hands shake. "The Ad" is for the Army JAG Corps. How I wish *Barrister* would quit sticking that intrusive ad in my face every issue!

About four years ago, I was categorically rejected as a candidate for the Army JAG Corps. The rejection was not based on merit or competence; I had graduated first in my law school class and had clerked, then practiced, with a respected civil litigation firm. Nor was it based on health or physical ability; at the time I was in my mid-20s and in good physical shape. The sole reason for rejection was an immutable characteristic I share with millions of other Americans: I happen to be gay.

It doesn't matter if one is the next Oliver Wendell Holmes; if you're homosexual the Department of Defense doesn't want you or your talents—period. This is by DOD regulation. The discrimination is *mandatory*. It's not even based on conduct—status alone automatically "disqualifies" homosexuals.

Seeing "The Ad" in every issue is bad enough, but my usual consternation was compounded in your