

Talmudic Destiny

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Suppose a property owner has two houses for sale, Reuven knows he wants to purchase one of them, but he would like his wife to choose which one. The problem is his wife is out of town until next week, and the owner needs to finalize the deal immediately. An agreement is reached whereby Reuven pays the owner a sum of money to purchase immediately a house that is specified as follows: "the house Reuven's wife will choose next week." Question: When Reuven's wife chooses a particular house the following week is it retrospectively revealed that he had already purchased that house a week before she chose it?

This question is an instance of a general issue in the Talmud called bererah (ברירה). My overall aim in this paper is to explore various connections between the topic of bererah and philosophical issues related to time and destiny. But I also have a more specific and ambitious aim. The person often regarded as the preeminent medieval Talmudist is Rashi. In the topic of bererah Rashi expresses a position that is extraordinarily perplexing and tantalizing, and I want to try to explain what it means. When one considers the example I mentioned it seems immediately apparent that it is possible to argue for either of two answers to the question: first, that Reuven purchased the house that his wife later chooses, or, second, that he did not succeed in purchasing any house. Rashi,

however, presents a surprising third position: Reuven may indeed have purchased one of the houses but it can never be known which one.<sup>1</sup>

The critical question, according to Rashi, is which (if any) house was rauy (רָאָה) to be chosen by Reuven's wife, where to say that something is "rauy to happen" means that it is in some sense destined to happen.<sup>2</sup> We know that Reuven intended to purchase the house destined to be chosen by his wife, but we have no way of knowing which house that is. The fact that she chooses a certain house leaves it open that there may have been a "change of destiny" whereby Reuven's wife chooses a house different from the one she had been destined to choose. That is why we can never say which house Reuven purchased.

What can these amazing claims mean? I will try to show that Rashi's position implies a highly interesting philosophical

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<sup>1</sup>I am adapting to my simple example Rashi's comments with respect to somewhat more complicated examples. See Rashi Gittin 25a beginning "Lekuchot hen"; Rashi Gittin 74a beginning "Rabbi Yossi omer"; Rashi Eruvin 37b beginning "Vechachamim omrim tsarich laasur"; and see especially the account of Rashi's position in Mishnat Rebbe Aharon, Gittin, "Beinyan Bererah", chapter 25.5, wherein it is explained that Rashi intends his position as an explication of the verdict in a certain Mishnaic controversy (between R. Yehuda and R. Yossi).

<sup>2</sup>A literal translation of "p was rauy to happen" might be "p was fit to happen", but it is clear that Rashi is not talking about any kind of ethical, esthetic, or probabilistic fit; he simply means that p was what was to happen. In some of the Talmudic literature (especially in Mishnat Rebbe Aharon) "p was rouy to happen" is used interchangeably with "p was omad (רָמַד) to happen", where a literal rendering of the latter might be "p was set to happen." I think there is no question that both formulations are intended to convey the idea that p was in some sense destined to happen. The relevant Talmudic sense of "destiny" is one of the central issues of this paper.

alternative to the standard Aristotelian, Ockhamist, and predestinationist views about the openness of the future. But before I can broach Rashi's position I need to enter into a general explanation of the issue of bererah.<sup>3</sup>

## I

The Hebrew word "bererah" means choice or decision, and in the Talmudic context the word refers to the retrospective choice of some element of a transaction. In the initial Mishnaic examples (Gittin 24a-24b and Eruvin 36b) the retrospective choice is made by an agent of the transaction, such as a case in which the house to be purchased is specified as the one Reuven himself will choose the following week. Such examples are generalized in the Talmudic discussions to include cases in which someone other than the agent (e.g., Reuven's wife in our example) makes the retrospective choice. Furthermore, examples of bererah are introduced in which a "choice" unrelated to the transaction determines an element of the transaction, such as a case in which the house to be purchased is specified as "the one that such-and-such a wise man will first enter" -- here the wise man may have no idea that his entering one of the houses is going to determine the nature of any transaction. Finally, examples of bererah are

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<sup>3</sup>I feel obliged to say something about my competence to undertake this project. I have tried to look closely into a number of standard Talmudic sources on the topic of bererah. However, my general knowledge of the Talmud is limited, and I am surely ignorant of many issues that impinge on this topic. To what extent these shortcomings undermine the analyses presented here I will have to learn from others.

introduced in which a transaction is determined by a future event that is not directly related to any human choice, such as a case in which the house to be purchased is specified as "the house that will be rained on first." In general, then, we have a case of bererah when some element of a transaction taking effect at a certain time is determined by an event that takes place at a later time.<sup>4</sup> Any such determining future event will be called a "choice" in this discussion.<sup>5</sup>

The Hebrew words "yesh" and "en" mean "there is" and "there isn't", and the two major positions discussed in the Talmud with respect to bererah are yesh bererah (there is bererah) and en bererah (there isn't bererah). The yesh bererist holds that a retrospective choice can validly be made; hence in our leading example his wife's choice of a certain house retrospectively reveals that Reuven had validly purchased that house the week before. The en bererist disagrees with this, but the precise

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<sup>4</sup>A number of different views of the scope of bererah are canvassed -- sometimes explicitly, sometimes implicitly -- in the Talmudic dialectic, especially in Gitten 24a-26a and Eruvin 36b-38a. What I have summarized in this paragraph is the eventual outcome of this dialectic as interpreted by virtually all the major medieval commentators. Note that our leading example -- in which Reuven and the owner attempt to effect an immediate transaction -- must not be confused with a second example, in which Reuven and the owner enact a transaction that is not to take effect until the following week, when Reuven's wife makes her choice. The connection between the second example and bererah is a matter of controversy; see Ketzot Hachoshen on Gitten 25a, beginning "Detanya". (Cf. note 9 below, and also the position of Rashba cited in section III in regard to King Saul's commitment.)

<sup>5</sup>Perhaps the future event must be "contingent" in some relevant sense. I will leave this open.

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issue of disagreement is itself a matter of controversy amongst the medieval commentators. According to Rashi the en bererist holds that a transaction that is determined by a retrospective choice has the legal status of being doubtfully valid -- a safek (פשוט); hence in our example it remains doubtful which, if any, house Reuven purchased. Tosafot, a second major medieval commentator, interprets the en bererist as holding that a transaction based on a retrospective choice is definitely invalid.<sup>6</sup> Since the Talmudic verdict (with respect to the laws of the Torah) is en bererah this dispute between Rashi and Tosafot is also a dispute about what the verdict means.

Now the first point I want to establish is that an Aristotelian ought to hold Tosafot's version of en bererah. What I mean in the present context by "the Aristotelian position" is the view that there are no facts about future contingencies, or, what I take to be an equivalent formulation, that statements about future contingencies are neither true nor false.<sup>7</sup> Suppose that Reuven's wife has now chosen house A. According to Aristotle's position the statement made last week, "House A will

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<sup>6</sup>See Tosafot, Gittin 73b beginning "Tana", and Mishnat Rebbe Aharon, op. cit., chapter 25.5, on Tosafot's position.

<sup>7</sup>Aristotle, De Interpretatione, chapter 9. I assume the second interpretation given in J.L. Ackrill, Aristotle's Categories and De Interpretatione (Oxford University Press, London, 1963), pp. 140-42. A highly lucid exposition of Aristotle's position is presented in Palle Yourgrau, The Disappearance of Time, (Cambridge University Press, Cambridge, 1991), pp. 81-83. Note that in this discussion I draw no distinctions between "It is a fact that p", "It is true that p", "The statement that p is true", and "The statement 'p' is true."

be chosen," was not then true (or false). Since the statement was not true, the expression "the house that will be chosen" was not true of, and hence did not refer to, house A. Consequently no valid sale was transacted with respect to house A, nor surely with respect to the other house B. In short, there definitely was no valid transaction, as in Tosafot's version of en bererah.

I want to be careful to properly understand the point of connection between issues of philosophy and issues of Halacha (Talmudic law). When I say that an Aristotelian must hold that Reuven's transaction was invalid I make this claim only against the assumed background of certain Halachic principles. One such principle is that in order for the sale of a certain object to validly go into effect at a certain time the owner and buyer must at that time have already specified (referred to, singled out) the object that is to be sold. The sense of "specifying an object" that is Halachically required is quite modest. The object need not be perceptually present to either the seller or buyer, nor is it even necessary that the object be recognizable as the intended one by either of them if it were present. It is evidently taken for granted in the Talmudic discussions of bererah that the sale of a house would be perfectly valid if the house were specified as "the one Reuven's wife chose last week", where neither Reuven nor the owner can recognize which house this is. All that is required for "specifying an object", evidently, is that some singular term be available to the buyer and seller that is true of the object.<sup>8</sup> The relevant question in our

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<sup>8</sup>Ketzot Hachoshen, op. cit., expounds the view of Rosh

initial example, therefore, is whether the singular term "the house that will be chosen next week by Reuven's wife" was true of any house at the intended time of the transaction. According to Aristotle's position the answer to this question is no. Hence, Aristotle's position in conjunction with the assumed Halachic principles implies that there was no valid transaction.<sup>9</sup>

Tosafot's version of en bererah seems therefore very easy to explain. Let me temporarily pass over Rashi's version, which will be the hardest position to explain. As regards the position of yesh bererah it appears, on the face of it, that any anti-Aristotelian ought to subscribe to this position. (I will

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 that one can financially obligate oneself to someone without being able to recognize the person (or without knowing the person's name). I do not quite understand why this is even a question when all discussions of bererah seem to take it for granted. (Probably I am unaware of some Halachically relevant difference between specifying elements of different transactions.)

<sup>9</sup>Aristotle said that, whereas a prediction of a future event is not true at the time the prediction is made, it may "become true" when the event occurs. Hence if Reuven had predicted last week that his wife was going to choose house A, and she now has chosen house A, the prediction has now become true. (Notice that the future tense sentence Reuven might naturally utter in making the prediction, "My wife will choose A", does not become true; rather the present tense correlate of that sentence, "My wife is (now) choosing A", becomes true, and that is what constitutes for Aristotle the prediction's becoming true.) Now in a variant example (see the "second example" in note 4 above) in which Reuven and the owner stipulate that the sale of the house is not to take effect until the wife makes her choice the following week, it may suffice that the description "the house Reuven's wife will choose next week" comes to specify (becomes true of) A the following week. But in the example we are considering the sale is intended to take effect immediately, and that is not possible for the Aristotelian.

(This is a notoriously difficult formulation of Netivat Ha'mishpat that seems to imply that since en be'erav allows the sale in the variant example to be valid when the choice is made, they will also allow the sale to be retrospectively valid in the original example -- The same of en be'erav covering only in cases does apart from many other overbalancing problems with this position, and that it evidently could not be defended by an Aristotelian. For criticisms of the position see Ma'arechet Ha'Kinyanin, sections 1 and 2; see also the negative comment in Me'atot Rabbot, I, 25. 6.)



eventually qualify this remark to accommodate Rashi's anti-Aristotelian en bererist position.) Assuming that an anti-Aristotelian holds that, in whatever sense there are facts about the past, there are also facts about the future, then the intention to purchase "the house that will be chosen" ought to sustain as valid a transaction as the intention to purchase "the house that was chosen."

Anti-Aristotelian's may hold many different kinds of views in the philosophy of time. An especially interesting version of the anti-Aristotelian position is what a number of recent authors have called "Ockhamism."<sup>10</sup> This is the position that I expect would have been most congenial to the yesh bererists in the Talmud. A central idea of Ockhamism is the distinction between "hard" and "soft" facts about some past time. Suppose JFK ate his last breakfast at a certain past time t. That he was eating breakfast at t is a hard fact about t, but that he was eating his last breakfast at that time is a soft fact. The intuitive idea as expressed by Nelson Pike is that hard facts about t were "fully accomplished" or "over and done with" at t, whereas soft facts were not.<sup>11</sup> Essentially the same idea is expressed by Marilyn Adams, who equates "Statement p expresses a 'hard' fact about a time t" with "p is not at least in part about any time future relative to t."<sup>12</sup> Hard facts about t are also said to be

<sup>10</sup>See John Fisher, "Ockhamism", The Philosophical Review 94, no. 1 (1985), 81-100.

<sup>11</sup>Nelson Pike, "Of God and Freedom: A Rejoinder", The Philosophical Review, 75 (1966), 369-79, at 369-70.

<sup>12</sup>"Is the Existence of God a 'Hard' Fact?", The Philosophical Review, 76 (1967), 492-503, at p. 494.(\*?)

"fixed" or "settled" at t, hence "unalterable" after t, whereas such description do not apply to soft facts about t. The distinction between hard and soft facts seems intuitively cogent, even though it has proven surprisingly difficult to clarify rigorously.<sup>13</sup> The main use made of the distinction in the Ockhamist literature has had to do with the problem of divine foreknowledge and free will, but my present interest in the distinction is unrelated to that problem. I am interested in how the distinction bears on the issue of bererah.

An Aristotelian will accept the distinction between hard and soft facts but not on the terms proposed by the Ockhamist. The Aristotelian would say that, whereas it is now a fact that JFK ate his last breakfast at t, this was not a fact at t.<sup>14</sup> Since a soft fact about t is in part about a time future relative to t, this fact did not obtain at t. A soft fact about t is about t but not (a fact) at t. The reason why a soft fact about t was not fixed or settled at t is simply that there was no such fact at t. Ockhamists evidently do not view the matter in this way.

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<sup>13</sup>See John Fischer, "Freedom and Foreknowledge", The Philosophical Review 92, no. 1 (1983), 67-79; Joshua Hoffman and Gary Rosenkrantz, "Hard and Soft Facts", The Philosophical Review 93, no. 3, 419-34; John Fischer, "Hard-Type Soft Facts", The Philosophical Review 95, no. 4 (1986), 591-601.

<sup>14</sup>I am making the intuitive assumption that the fact expressed by a past-tense statement such as "JFK ate his last breakfast at t" can be said to have obtained at t if and only if the statements's present-tense correlate ("JFK is eating breakfast at t") was true at t. On some other assumption my point in this paragraph might have to be slightly reformulated but it's essential content is not affected.

Indeed in the Ockhamist literature I have seen no distinction is drawn between "fact about a time" and "fact (that obtains) at a time." One must surmise that Ockhamists think that the fact that JFK ate his last breakfast at  $t$  is not just a fact about  $t$  but is also a fact (that obtained) at  $t$ . It is possible that Ockhamists think that just as a soft fact about  $t$  is only partially about  $t$  (and partially about a time future relative to  $t$ ), this fact is only partially at  $t$ . Whether it makes any sense to talk about a fact obtaining only partially at a time seems to me highly questionable. But the main point that concerns me at present is that Ockhamists evidently do not accept the Aristotelian idea that, whereas there are facts about the past, there are no facts about the future. Let  $F$  be the fact that JFK had his last breakfast at  $t$ , and let  $F'$  be the fact that JFK had his  $n$ th breakfast at  $t$  (filling in the correct number for  $n$ ).  $F$  is a soft fact about  $t$  and  $F'$  a hard fact, but both facts are only partially at  $t$  in the sense Ockhamists apparently have in mind. (Neither fact is "intrinsic" to  $t$ .) Therefore Ockhamists will say that in the same sense that  $F'$  obtained at  $t$ ,  $F$  obtained at  $t$ . Aristotelians, by contrast, will say that  $F'$  obtained at  $t$  but  $F$  did not.

It follows that Ockhamists must be yesh bererists. Compare our initial example, in which Reuven and the owner intend the immediate sale of "the house that will be chosen next week", with a modified example in which they intend the sale of "the house that was chosen last week." I assume as a Halachic given that

the latter transaction is valid (if a certain house was chosen last week). But Ockhamists cannot draw any Halachically relevant distinction between the modified example and the initial one. Suppose that in both examples the conversation between Reuvan and the owner took place at some time  $t$  in the past, that house  $A$  was chosen in the initial example, and house  $A'$  in the modified example. Ockhamists would say that the fact that time  $t$  was one week prior to the time  $A$  was chosen is a soft fact about  $t$ , whereas the fact that  $t$  was one week after the time  $A'$  was chosen is a hard fact about  $t$ . But that distinction has no Halachic relevance. All that is relevant Halachically is that the statement " $A$  will be chosen next week" was true at  $t$ , just as the statement " $A'$  was chosen last week" was true at  $t$ .

## II

But this last claim opens up an important question that must now be carefully looked at. It may be objected that, contrary to what I have claimed, Ockhamists would have an excellent reason to reject yesh bererah. For suppose we tried to say with the yesh bererist that, house  $A$  now having been chosen, it is retrospectively revealed that the sale of  $A$  took effect last week. Then we evidently must say that it was a soft fact about last week that the sale of  $A$  took effect then. But this, it may be said, is absurd. If an object is sold at a certain time then surely the sale must be over and done with at that time. A transaction such as a sale cannot be a soft fact; when it occurs it must be settled that it occurs and its occurrence must not be

thereafter alterable. This line of argument may suggest that the only person who could be a yesh bererist is a fatalist or predestinationist, who thinks that all facts have been settled and unalterable since the beginning of time.<sup>15</sup>

I think, however, that this argument is misguided in two ways, both Halachically and philosophically. There is, first of all, decisive evidence that even the en bererists in the Talmud agree that a transaction can be a soft fact. This point applies to a variety of legal transactions, including sales, gifts, marriages, divorces, and numerous other examples. The proof of this point is that there is in Halachah such a thing as a tenai (תנאי), which refers to a condition attached to a transaction. A man may marry a woman on the condition that he will give her a sum of money the following day. The principle of tenai says that if he gives her the money the next day the marriage is retrospectively valid, if he does not give it to her then the marriage is retrospectively invalid. Since even en bererists accept the principle of tenai it cannot be that their doctrine is based on the argument that transactions must be hard facts.<sup>16</sup>

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<sup>15</sup>See Richard Taylor, "Fatalism", The Philosophical Review, 71 (1962), 56-66.

<sup>16</sup>My exposition of the relationship between bererah and tenai attempts to follow closely the explanations given in Mishnat Rebbe Aharon. At a certain point in Gittin 25b it seems to be implied that en bererah would require certain extreme restrictions on the principle of tenai (see Rashi beginning "Valechi maayit" and Tosafot beginning "Valechi maayit"), but the dominant view amongst the commentators is that in the final analysis such restrictions are dropped. In any case the example of tenai mentioned in the text satisfies the restrictions and even such examples suffice to show that everyone agrees that transactions need not be hard facts. (I cannot go into the details here of what motivated the alleged restrictions and why they were eventually

But is there something philosophically suspect about soft legal transactions? I think not. As people sometimes say, "If it's the law it's the law." The legal code defines what constitutes the valid sale of an object. There is nothing to prevent a legal code from saying, "Here is something you can do: you can attach a tenai, a condition, to the sale of an object, and then the sale is retrospectively valid if and only if the condition gets fulfilled." This rule defines into existence the legal transaction of a "conditional sale." There is no a priori philosophical problem with this.

This point must hold not just for the Ockhamist but even for the Aristotelian, who is at present our prototype of the en bererist. The Aristotelian will say that when a tenai is fulfilled it is retrospectively revealed that the transaction was valid, though at the time that the transaction took effect it was not yet a fact that the transaction took effect. (Compare: When JFK was eating his last breakfast it was not yet a fact that JFK was eating his last breakfast.) There is still no philosophical problem here. If that's the law then that's the law.

But now one may feel that one has lost one's grip on what the philosophical issue was that supposedly forced the Aristotelian to be an en bererist. It is necessary to be clear on why the Aristotelian can accept cases of tenai but not cases of bererah. The crucial question in each case is whether there

is anything in the Halachic code that requires for the validity of a transaction that there be some fact about the future. The Halachah with respect to tenai implies no such requirement. There is no requirement that, if a conditional transaction retrospectively takes effect at a certain time, there be at that time any true statement about the future. In our example of bererah, however, the Halacha requires that, if house A is to be sold, that house must be specified at the time of the transaction, which implies that the statement "A will be chosen" must be true at the time of the transaction.

The above explanation of the distinction between bererah and tenai is expressed incisively in Mishnat Rebbe Aharon, from which I would like to quote a passage. That discussion, however, follows Rashi in framing the issue of bererah in terms of "destiny." Let me first explain, therefore, what "destiny" means in the context of these Talmudic discussions. I think the answer to this should be quite clear at this point. Rashi implies (and so does Mishnat Rebbe Aharon) that the central question of bererah is whether the occurrence of a choice retrospectively reveals that it was "destined" ( נִיָּחַן , נִיָּחַן ) for that choice to occur. In terms of our standing example:

- (1) House A having now been chosen, it is retrospectively revealed that house A had been sold last week only if it is retrospectively revealed that it had been destined for house A to be chosen.

But our entire discussion has shown that:

(2) House A having now been chosen, it is retrospectively revealed that house A had been sold last week only if it is retrospectively revealed that it had been a fact that house A was going to be chosen.

Putting (1) and (2) together it is clear that "It was destined for house A to be chosen" means "It was a fact that house A was going to be chosen" (equivalently, "The statement 'House A will be chosen' was true"). In general, "It is destined that in the future p" means "It is a fact that in the future p." Note that this Talmudic sense of "destiny" is very weak, implying nothing in the way of fatalism or predestination. Ockhamists believe in "destiny" in this sense. Aristotelians, however, do not. We will see what Rashi's view is about "destiny" shortly.

Here now is the quotation from Mishnat Rebbe Aharon (as loosely translated by me from the Hebrew original):

When a condition is attached to a transaction this does not depend on bererah. The reason is that [the condition now having been fulfilled] even if it is not retrospectively revealed that the condition was destined (qN/8) to be fulfilled, the transaction is anyway [retrospectively] valid. For one is permitted to enact a transaction with a condition attached to it.<sup>17</sup>

<sup>17</sup>Mishnat Rebbe Aharon, op. cit., chapter 25.9. A very different view of tenai seems to be suggested in Chidushe Rebbe Shimon Yehuda Hacoheh on Gittin, "Kuntris Beinyani Tenai", chapter 6 (opening pages). The view there may indeed imply that there are no soft facts about the validity of transactions. According to this view, when a tenai is attached to a transaction we temporarily have a "defective" transaction (e157) until either the condition is fulfilled, and the transaction becomes complete, or the condition is

in Kovetz  
Hagbasha  
on Gittin



## III

Much of the medieval literature on bererah is an attempt to clarify the respective scopes of the law of bererah and the law of tenai. One central problem can be illustrated as follows. In our initial example Reuven says, "I am purchasing the house my wife will choose." Suppose he says instead, "I am purchasing house A on the condition that my wife will choose it, and I am purchasing house B on the condition that she will choose it." If merely rewording a transaction can convert it from a case of bererah to a case of tenai then the distinction has become inoperative.

One widely discussed answer to this question was given by Ramban (Nachmanides), who (adapting a formulation in the Gemara in Eruvin 36b) stated that it is not permitted to have "conditions on two things."<sup>18</sup> It is necessary to understand what Ramban means by this. Imagine a variant of our original example in which only one house is for sale, and Reuven says, "I am purchasing this house on the condition that my wife won't object when she sees it, and also on the condition that I am not offered

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 violated, and the transaction becomes nullified. In neither case is anything retrospectively revealed about the validity of the initial transaction. It is admitted that this is not the standard view of the matter (יב"ב י"ג), which I take to be the one expressed by Mishnat Rebbe Aharon. [Addition p 16a]

<sup>18</sup> פ"ק פ"ק פ"ק פ"ק פ"ק פ"ק  
 ← Ramban on Gittin 25a, beginning "Toleh badaat." I am ignoring a certain extraordinary complication in Ramban's position (he appears to hold that there is one special case in which the validity of a tenai does require bererah).



a job out of town during the next week." This is merely a conjunctive condition and is surely a valid tenai; it is not what Ramban means by "conditions on two things." Ramban means that the principle of tenai applies only when the elements of a transaction have been properly specified and a condition is then attached to the whole transaction. The principle of tenai does not permit one to attach a condition to the specification of an element of the transaction, as in, "I intend house A if such-and-such, otherwise I intend house B." That is a case of "conditions on two things," and it therefore cannot qualify as a case of tenai but must be treated as a case of bererah.

Another famous formulation, which seems however not to differ substantively from Ramban's, is that of Ran, who stated that a case of bererah is one in which "if this one than not that one."<sup>19</sup> This seems again to mean that we have a valid case of tenai only if the elements of a transaction have already been properly specified, not in a case where "if it's this house that's being sold then it's not that one."<sup>20</sup>

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Ran on Gittin 13b, beginning "Veikka."

<sup>20</sup>Mishnat Rebbe Aharon, op. cit., chapter 25.14 implies that Ran's formulation is equivalent to Ramban's. The clearest medieval formulation I am aware of was given by Meiri (Gitten 25a, beginning "Vehilkach"), who states that the distinction between bererah and tenai turns on whether what needs to be retrospectively clarified is intrinsic to the transaction (הנכס הנכס) or extrinsic. (In Gittin 25b, Tosafot beginning "Rebbe Yehuda" introduces the requirement for a valid transaction that "the thing [that needs to be retrospectively clarified] definitely will be clarified [הנכס הנכס]; although this is not obvious, I think the effect of Tosafot's formulation is not much different from that of Ramban and the other commentators.)

A valid tenai, in short, must be extrinsic to the essential transaction; the condition must not create uncertainty as to what the intrinsic elements of the transaction are. This is, of course, a point of Halacha, not a priori philosophy, but the distinction thereby drawn between bererah and tenai seems highly coherent and intuitively satisfying.

Questions about the distinction remain, however, and continue to be grist for Talmudic discussion. I will briefly mention a few illustrations. First of all, a question may arise as to what the intrinsic elements of a transaction are, in the relevant sense. In many cases this seems intuitively obvious. If an object is sold, the seller, the buyer, and the object certainly seem to be intrinsic elements of the transaction that is taking place. But suppose that the sale of an object is enacted at one time with the stipulation that the sale take effect at a certain later time. In specifying the later time are we specifying an intrinsic element of the transaction, so that a specification of the time in terms of a future choice might constitute bererah? That has been a matter of controversy.<sup>21</sup>

Another interesting question is the following. Suppose in our original example Reuven and the owner attempted to enact two separate transactions, with two separate payments (or two separate contracts of sale), one for house A and one for house B,

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<sup>21</sup>See Ran in Nedurim 45b, beginning "Veika demakshu", and the discussion of Ran in Mishnat Rebbe Aharon, op. cit., chapter 25.1. The issue might be related to philosophical questions about the essential properties of an event.

each transaction on the condition that this is the house that will be chosen. Will these be two valid transactions, each with a tenai, or would we still say that it is a case of bererah on the grounds that the intention is evidently that only one transaction will go into effect? It seems possible to argue this in both directions.<sup>22</sup>

I will mention one other, especially memorable illustration. There is the famous story in Samuel 2, chapter 17, verse 25 in which King Saul has committed himself to enrich any Israeli who will slay Goliath. It was David, of course, who won these laurels. The Gemara in Sanhedrin 19b explains, in fact, that Saul's monetary debt to David for slaying the Philistine played a complicated role in David's effort to marry one of Saul's daughters. Into this tale of courage and romance the commentators injected a worry about bererah. There is a Halachic principle that one cannot transfer possession of an object that does not yet exist (for instance, one cannot purchase the future fruit that will grow from someone's tree).<sup>23</sup> Some commentators, including Rashba, take this to imply that someone cannot be legally empowered to stipulate that a transaction take effect at a later time unless he is empowered to stipulate that it take effect immediately.<sup>24</sup> Now, Saul obligated himself to the future

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<sup>22</sup>See Rabbi Akiya Eger on Gittin 25a, beginning "Bedivrei haRan," in Kovetz HaMachshava on Gittin.

<sup>23</sup> פ"י י"ד ק"ז הל' ת"ת ד"פ"ח פ"ק י"א

See, e.g., Kidushin 63a and Gittin 13b and 42b.

<sup>24</sup>Rashba is cited in Ketzot Hachoshen, op. cit., which provides a general overview of a number of issues related to Saul's commitment. However, a conflicting interpretation of Rashba's position is advanced in Ma'asechet Ha-Be'erav, section 13.

no interpreted

slayer of Goliath, the obligation presumably to take effect after the slaying. <sup>the position attributed to</sup> Given Rashba's position, <sup>Saul's ability to have the obligation take effect later</sup> this implies that Saul was <sup>also</sup> empowered to stipulate that the obligation take effect immediately. But if Saul had declared, "I hereby obligate myself immediately to the person who will slay Goliath", why is that not invalidated as a case of bererah? Various characteristically subtle and ingenious answers have been suggested by the commentators.

To summarize: It is a matter of Halacha (not philosophy) that there is a principle of tenai that applies to certain kinds of cases in which the validity of a transaction depends upon the occurrence of a future event, and it is a matter of Halacha that in such cases the validity of the transaction does not depend upon there being facts about the future. Furthermore, it is a matter of Halacha that the principle of tenai does not apply to certain other cases, and that in these cases the validity of a transaction does depend upon there being facts about the future. The latter cases are called bererah. It can, however, be a matter of philosophy whether cases of bererah are valid, for it can be a matter of philosophy whether there are facts about the future.<sup>25</sup>

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<sup>25</sup>Cases of tenai necessarily involve the intention (אִתְּךָ) of the agents to attach a condition to a transaction. Almost all cases of bererah involve the intention of the agents to specify some element of a transaction in terms of a future event. I know of only one Talmudic example of bererah that has apparently nothing to do with intentionality, and that is the example of inheritance discussed in Gittin 25a. From an exegetical standpoint it is unfortunate that some of Rashi's clearest formulations of

## IV

We are now ready to consider Rashi's version of en bererah. I will first try to lay out Rashi's position as I understand it, with minimal defense. I will afterwards say something more in the way of defending the position. On Rashi's version of en bererah even after house A has been chosen it remains a legal question, a safek (שׂוֹפָק), whether house A had been purchased. Now I think the first point we have to grasp in understanding Rashi is that the safek he is talking about is not the typical one in which we happen to be ignorant of some fact. Once house A has been chosen there is surely no straightforward contingent ignorance that we are still suffering from. It appears indeed that we know everything relevant to the case that we could possibly know, but there is still a safek. Rashi must mean that this is a safek that stems, not from our ignorance, but from a kind of indeterminateness or indefiniteness in the nature of the case. We have seen that house A was purchased only if it was true at the time of the enactment that A was going to be chosen, i.e., only if it was destined (in the sense defined earlier) for A to be chosen. Rashi's fundamental thesis, in behalf of the en bererist, is this: Even after A has been chosen it remains in some objective or metaphysical sense indefinite whether it was destined for A to be chosen.<sup>26</sup>

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his position occur in the context of this somewhat anomalous example.

<sup>26</sup>Rashi's position seems also to imply that there remains a safek with respect to the purchase of the other house B. With respect to B, however, there is a special difficulty deriving from an acute question raised in a related context by Rabbi Akiva Eger (Maaracha ?, beginning "Venira debayn";

What is the nature of this indefiniteness that Rashi is talking about? We can begin by comparing Rashi's position to Aristotle's. Aristotle held that future choices are indefinite in the sense that there is no fact one way or the other what the choice will be. Before A is chosen the statement "A will be chosen" is neither true nor false. In saying this Aristotle explicitly rejected the principle of bivalence, that is, the principle that any statement is either true or false. But he wanted to hold onto the law of excluded middle. Hence he would have said, "Either A will be chosen or A will not be chosen, but neither the statement 'A will be chosen' nor the statement 'A will not be chosen' is true." It is easy to show that the combination of holding onto the law of excluded middle and rejecting the principle of bivalence requires Aristotle also to reject the disquotation principle ("p if and only if 'p' is true").<sup>27</sup> Aristotle would have said, "Even if A will be chosen the statement 'A will be chosen' is not true."

Rashi's position can be viewed as deriving from two ideas: first, the future is indefinite, as Aristotle implied; second,

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 cf. Mishnat Rebbe Aharon, op. cit., chapter 25.6). The difficulty -- just to state it, without explaining it further -- is that, although our example is a case of bererah and not simply a case of tenai (for the reasons explained earlier), the principle of tenai still ought to imply that house B was definitely not purchased, leaving it a safek whether house A was purchased. Since this difficulty does not challenge Rashi's fundamental thesis, I will not go into it, and I will confine my attention to the safek with respect to house A.

<sup>27</sup> See Timothy Williamson, Vagueness (Routledge, N.Y., 1994), p. 162.



one cannot coherently reject the principle of bivalence or the disquotational principle (nor, certainly, the law of excluded middle). Prior to the choice of A it is indefinite whether A will be chosen. But we do not therefore say, as Aristotle thought, that there is no fact whether A will be chosen. Rather we say that there is no definite fact whether A will be chosen. We do not say that the statement "A will be chosen" is definitely not true, as Aristotle said. Rather we say that the statement is not definitely true. The same holds for the statement "A will not be chosen"; it too is not definitely true. For Rashi metaphysical indefiniteness does not mean the absence of facts; it means that the facts themselves are indefinite.

At this point, having distinguished Rashi's position from Aristotle's, we may be left wondering what the distinction is between Rashi's position and Ockham's. The Ockhamists also accept the principle of bivalence. They would say that, prior to A's choice, either "A will be chosen" is true or "A will not be chosen" is true, but neither statement is a settled or unalterable truth. If we substitute "definite" for "settled" or "unalterable" we get Rashi's position. What is the difference?

The clear difference comes out, not in what we say about the future, but in what we say retrospectively about "past futures", to adapt Russell's famous expression. After house A has been chosen the Ockhamist would say that everything is now settled; there is now nothing relevant that remains alterable. Last week it was not settled whether the future-tense statement "House A

will be chosen" was true, but now it is surely settled that the statement was true last week. But Rashi holds that it remains indefinite whether the statement was true last week. This difference between the Ockhamist's position and Rashi's is, of course, precisely the issue of bererah. The Ockhamist must be a yesh bererist, as I explained earlier, whereas Rashi's position is a version of en bererah.

It might be objected, however, that this explanation merely highlights the unintelligibility of Rashi's position. Rashi, it appears, is trying to mark out a space between Aristotle's position (which yields Tosafat's version of en bererah) and Ockham's (which yields yesh bererah), but what can that space be? What can it mean to say that even after A has been chosen it remains indefinite whether it had been true that A was going to be chosen?

But I think we can understand Rashi's position, and that once we understand it we find it to be deeply motivated. One impediment towards understanding the position parallels a difficulty for Aristotle's position. Suppose that, A having now been chosen, we ask whether we now know that A was going to be chosen. It seems that one cannot deny that this is in some sense known to us. But does this not imply that we now know that it was true that A was going to be chosen? Aristotelians must deny this. They would say that a prediction made last week that A was going to be chosen has now become true, but the prediction was not true last week when it was made.<sup>28</sup> The sense in which it is

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<sup>28</sup>Cf. note 9, above.

now true that A was going to be chosen is that the prediction has now come true. But we cannot say "A was going to be chosen" in a sense that implies that it was already true last week that A was going to be chosen.

Essentially the same distinctions operate within Rashi's position. Now that A has been chosen it is definite that in a sense A was going to be chosen. But this does not imply that it is definite that it was already true last week that A was going to be chosen.

The notion of "indefiniteness" or "indeterminateness" occurs in two other familiar contexts. One is the area of semantic vagueness, and the other is in quantum physics. With respect to the former Russell made the plausible point that vagueness is merely a matter of our own muddle-headedness, not something in the world.<sup>29</sup> A standard view of quantum physics, however, is that there is somehow an objective muddle in the world. Rashi's view of the indefiniteness of the future must be understood along the lines of there being in the present some form of objective muddle as to what the truth is about the future.<sup>30</sup> In a sense this muddle is irresolvable. However definite the truth is today about the choice of A, it remains permanently muddled what the truth was last week about the choice of A. With respect to the

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<sup>29</sup>See Williamson, *op. cit.*, p. 53.

<sup>30</sup>It was Mark Steiner who first told me that there may be important connections between the topic of bererah and conceptual issues in quantum physics. I do not know whether he was thinking specifically of Rashi's position.

choice of A, the present may be unmuddled, but the past future remains muddled, i.e., it remains muddled what the past truth was about the present. This is, for Rashi, the central idea of en bererah, and I have come to think that it may be a quite plausible idea. That is to say, supposing that I can really make sense of the notion of an objective muddle in the world, I cannot see how what happens today can unmuddle the future-tense facts of last week. Consider an analogy to quantum physics. Suppose that there was no definite truth last week whether a certain electron was spin-up. Then it would make no sense to suggest that it has become definite today that it was true last week that the electron was spin-up. In the same way, Rashi's position says that if there was no definite truth last week whether A was going to be chosen, it makes no sense to say that it has become definite today that it was true last week that A was going to be chosen.

I will come back to this point. But let us assume for a moment that it is acceptable. I now want to show how Rashi's claims about a "change of destiny" follow. Consider this argument:

1. It is definite that A has now been chosen.
2. It is not definite whether it was true last week that A was not going to be chosen.
3. Therefore it is not definite whether: A has now been chosen and it was true last week that A was not going to be chosen.
4. Therefore it is not definite whether: A has now been chosen

and it was destined last week that A was not going to be chosen.

5. Therefore it is not definite whether there has been a "change of destiny."

1 merely reports the fact of A's choice. 2 is an application of the basic en bererist point that I just finished explaining. Note that, since Rashi accepts the principle of bivalence, there is no difference between saying "It is not definite whether it was true last week that A was going to be chosen" and saying "It is not definite whether it was true last week that A was not going to be chosen." 3 follows from 1 and 2 by way of the (I think) obviously correct inference rule: "It is definite that p. It is not definite whether q. Therefore, it is not definite whether p and q." 4 merely restates 3 in terms of the earlier definition of "destiny". And 5 applies the notion of a "change of destiny" to 4 in a completely obvious way.

One has to think about it for a moment to realize that, on this argument, it could not possibly be a definite fact that there has been a "change of destiny". Rashi's point, however, is that the indefiniteness of destiny implies that it is also not a definite fact that there <sup>has been</sup> ~~is~~ no "change of destiny". The legal safek in cases of bererah derives from this indefiniteness.<sup>31</sup>

<sup>31</sup>In Gittin 25a, beginning "Lekuchot hen", Rashi says that "we need to be concerned that the portion acquired by this one had been destined (nikht) for his brothers, and they exchanged". This should be compared to a quantum physicist who, in the course of calculating the possibilities with respect to some set of particles, says, "We need to be concerned that this electron is spin-up", meaning that it is indefinite whether the electron is spin-up.

## V

In this final section I want to say a bit more in defense of Rashi's position, not to show that the position is demonstrably correct -- which it surely is not -- but that it may be one important way of reacting to an age-old mystery about the openness of the future. Let me mention that prior to working on Rashi's position I had never given any serious thought to this philosophical problem. It really never occurred to me that the puzzle addressed by Aristotle in De Interpretatione, chapter 9 had to be worried about. In this I think I am not atypical of analytic philosophers of roughly my generation. I now think that the first indispensable step in appreciating Rashi's position (or Aristotle's) is to allow oneself to be mystified by one of the oldest and deepest philosophical questions.

I want to formulate the problem (perhaps a bit differently from the way Aristotle did) by considering the following illustration. Suppose that the way it works in the world is that every so often an electron randomly pops into existence somewhere. (I think this is actually a theory held by some people.) I am imagining that this random popping event is causally independent of any prior event, so that we cannot even say that had a certain prior event occurred the popping event would not have occurred. I think most people would agree that this is at least an intelligible description. (The description may approximate to how some people think about free will, but I am deliberately avoiding the special baggage that goes with that

concept.) Now suppose that one such popping event occurred last Tuesday. Then it seems clear that the following is true: "As of last Monday it was still possible for the event not to occur, but by last Wednesday it was no longer possible for the event not to occur." What can this mean? I think reflecting on this question is a good initiation into the mystery of the openness of the future.

It seems immediately wrong to suggest that what we mean can be explained in terms of our knowledge and ignorance. Maybe it is a situation in which we cannot possibly find out whether any such popping event occurred on Tuesday. Still it seems clear that if such an event did occur on Tuesday then by Wednesday it was no longer possible for the event not to occur. What does this mean?

Ockhamists seem to offer no explanation. Obviously it is vacuous to be told that the event was "over and done with" by Wednesday but not by Monday; that merely repeats the fact that the event occurred before Wednesday and after Monday. Might Ockhamist's appeal to the idea that the event was alterable (preventable) on Monday but not on Wednesday? But I am imagining that nothing that could have happened on Monday would have prevented the event from occurring. In any case it seems to me that to say that, as of Monday, it was still possible for the event not to occur is not to say anything at all about preventing the event. The idea of prevention seems to introduce something quite new into the story, something beyond the simple idea we are

trying to explain. We are looking for an explanation of the simple idea that, as of Monday, the event still did not have to happen. Whether something could have been responsible for preventing it is a different question.

I think Ockhamists take it as a given, as something not to be explained any further, that in a sense in which there are many possible futures there is only one possible past. This may not be unreasonable; everything in philosophy turns on where one is willing to say "Here my spade is turned" (Wittgenstein). But I think many people will feel impelled to dig further, to try to formulate some kind of metaphysical explanation for this difference between the past and the future.

Aristotle's explanation is that there are facts about past events but no facts about future (contingent) events; hence there are possibilities for the future in a sense in which there cannot be possibilities for the past. I think this does feel like an explanation of some sort. The exorbitant price, however, is the denial of the principle of bivalence (and disquotation).

Rashi's position offers another explanation: The future is open to possibilities because there are no definite facts about future (contingent) events; the past is closed because there are definite facts about past events. This too feels like an explanation, I think. It has the virtue of allowing us to retain the principle of bivalence. Its immediate drawback is that it requires us to understand what is meant by "metaphysical indefiniteness." I doubt that one can say much to define this



notion. One can try to give examples, but probably the best example is the very one we are talking about. An analogy can be drawn to a similar -- and similarly difficult -- notion used in quantum physics. Perhaps one can try to say that our own muddle-headedness is somehow reflected in the way the world is. Beyond that I think Rashi's position invites us simply to accept this notion as the best we can do in framing the kind of explanation we seek.

It must be acknowledged that, while having the advantage of accepting the principle of bivalence, there is one respect in which Rashi's position is intuitively more problematical than Aristotle's. Suppose that house A has been chosen. The statement "It was not true last week that A was going to be chosen, and A has now been chosen" is regarded as true by Aristotle. This is intuitively surprising. Perhaps equally surprising is Rashi's judgment that the statement has no definite truth-value (because the first conjunct has no definite truth-value and the second conjunct is definitely true). But now consider the conjunction, "It was true last week that A was not going to be chosen, and A has now been chosen". Whereas Aristotle can regard this statement as trivially false, Rashi must regard it as having no definite truth-value, for the same reasons as before. This was the source of the earlier argument for the indefiniteness of a "change of destiny." There is no question that this is an intuitively astonishing result, but one may be able to tolerate it as being merely a surprising corollary

of the fundamental idea that there are no definite facts about future choices.<sup>32</sup> In my own thinking about this I have found that if I start out by focusing on the conjunctive statement as a whole it seems clear that the statement must be false, and hence the first conjunct must be false, but if I start out by focusing on the first conjunct it strikes me that this may indeed have no definite truth-value, so that the conjunction as a whole has no definite truth-value. (I have in fact vacillated wildly in my assessment of Rashi's position, sometimes feeling that it is utterly absurd and at other times regarding it as a major achievement.)

The issue between Rashi's position and Aristotle's has an interesting formal parallel in the area of semantic vagueness. (As I will explain in a moment the parallel is only formal, not substantive.) Supervaluationists accept a logic of vagueness that formally parallels Aristotle's logic of predictions: The law of excluded middle is accepted but the principle of bivalence is rejected. If it is semantically undecided whether the word "bald" applies to Jones then it is indefinite (indeterminate) whether Jones is bald, indefinite whether Jones is not bald, but definite that Jones is either bald or not bald (the law of

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<sup>32</sup>The intuitive problem for Rashi can be to some extent explained away if we adopt the inference rule: "p. Therefore, definitely p"; cf. Williamson, *Vagueness*, pp. 147-51. Even Rashi could then agree that "It was true last week that A was not going to be chosen" entails "It is false that A has now been chosen". The intuitive problem may be ameliorated in a more general way by emphasizing our tendency to conflate "p" with "Definitely p."

excluded middle is accepted); however neither the statement "Jones is bald" nor "Jones is not bald" is true (the principle of bivalence is rejected). Williamson, in the course of criticizing supervaluationism, formulates an alternative view in which, if it is not definite whether Jones is bald, then it is also not definite whether the statement "Jones is bald" is true.<sup>33</sup> This view is the formal counterpart of Rashi's position.

Some philosophers have dealt with vagueness by developing various "non-standard logics" in which not only the principle of bivalence is denied, but also the law of excluded middle.<sup>34</sup> Non-standard logics might also be applied to statements about the future. My assumption here, however, is that no such departure from plain logic figured in the Talmudic issue of bererah; Rashi, I assume, did not question the law of excluded middle.<sup>35</sup>

I said that there is only a formal analogy between the issue of vagueness and that of the open future. This is because I am

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<sup>33</sup>Williamson, Vagueness, pp. 163-64. Williamson does not accept this view, though he notes that it is formally very close to the "epistemic" position he champions. The view seems to me highly interesting.

<sup>34</sup>See Williamson, Vagueness, chapter 4.

<sup>35</sup>Part of my reason for thinking this is that any such extreme departure should probably have occasioned some statement to the effect from Rashi or one of his successors. More direct evidence is the following: In Eruvin 37b, Tosafot beginning "Ella m'atta" presents the view of Mahari who endorses Rashi's position that there is a safek in cases of bererah (cf. Mishnat Rebbe Aharon, op. cit., chapter 25.5). In that context Mahari advances a memah nefshach (מהמא נפשח) argument that clearly presupposes the law of excluded middle in cases of bererah; there is no reason to suppose that Rashi disagreed with Mahari on this point. (Mishnat Rebbe Aharon suggests that Rashi would disagree with Mahari on some other point, but takes it for granted that Rashi would admit memah nefshach reasoning in the context of bererah.)

inclined to take it for granted, with Russell, that vagueness is purely a matter of our own muddle-headedness; there is surely no objective muddle in the world answering to the indefiniteness of Jones's baldness. If we accept the formal analogue of Rashi's position for vagueness we say: "It is indefinite whether Jones is bald, and indefinite whether the statement 'Jones is bald' is true; and all of this is due to our semantic indecision, to our muddle-headedness."<sup>36</sup>

It is in quantum physics that one finds the prospects for both a formal and substantive analogy to Rashi's position. In this area too one might try to explain the notion of indefiniteness, on the analogue of Aristotle's view, by denying the principle of bivalence. Without knowing too much about this, my conjecture is that most practicing physicists tacitly hold the analogue of Rashi's position, which implies that if it is indefinite what the state of a particle is then it is also indefinite what the truth is about that state. Suppose a physicist tells me that it is indefinite (indeterminate) whether a certain electron is spin-up. I ask him, "So if I say that the electron is spin-up, that's definitely not true?" I anticipate

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<sup>36</sup>There is a remarkable discussion in Kedushin 51a that I think is about vagueness. A man approaches two women who are willing to marry him, gives each of them a ring (or some other token), and says, "I hereby marry one of you," but does not specify which one. The Halacha is that he is in a safek marriage to each of them (cf. Mishnat Rebbe Aharon, op. cit., chapter 25.9). I cannot spell this out here, but I think the implication is that the Gemara is assuming a Rashi-like treatment of semantic indefiniteness.

the answer, "I just told you it's indefinite whether that's true" rather than the answer "Right, that's definitely not true." The first answer comes out of the analogue of Rashi's position.

In quantum physics there is the notion of a "superposition of contrary states." This is a technical and quantitative notion, but it is also intended to express the idea that there is somehow an objective muddle in the world. It can be helpful to express Rashi's position in these terms. At any moment there is a superposition of contrary future-tense facts. Suppose that house A has now been chosen. Looking back on last week we see a superposition of the fact that A was going to be chosen and the fact that A was not going to be chosen. This gives us a vivid picture, I think, of why the safek about what was destined last week can never be resolved.<sup>37</sup>

Evidently much more needs to be said about these issues. I hope I have said enough to indicate that Rashi's position may present us with a new and important way of trying to think about the open future.<sup>38</sup> [note added on p. 35a]

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<sup>37</sup>Metaphysical indefiniteness (the objective muddle, superpositions) is not primarily a matter of our knowledge and ignorance, but I am not sure that it does not somehow have an epistemic layer to it (cf. the "measurement problem" in discussions of quantum physics). Mishnat Rebbe Aharon, op. cit., chapter 25.4 states that an act of prophetic revelation (יְהוָה יִרְאֶה) can resolve the safek in a case of bererah. I have not yet been able to make good sense out of this. (In quantum physics could a prophetic revelation cause the collapse of a wave function?)

Although I have claimed that an Aristotelian ought to accept  
Touffet's version of en beraah, now that Rashi's position has been  
presented I think it is plausible to suppose that Touffet (and  
indeed all the major medieval commentators) shared Rashi's  
anti-Aristotelian view of the open future. The discussion in  
Mishnah Petik Chanan, op. cit., ch. 25 suggests that Touffet's version of  
en beraah derives from a kolachic principle roughly to the effect  
that if it is not determinate that a valid action was executed  
then it is determinate that no valid transaction occurred.

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