

# Open Source in Judaism from the Sources: a sourcesheet (version 0.2)

by Aharon Varady, founding director, the [Open Siddur Project](#)



Free culture advocate and animator, Nina Paley, describes copying as "an act of love."<sup>1</sup> Please share this sourcesheet, improve upon it, and continue to share it. As with the wikipedia page, this sourcesheet and its translations are shared under the Creative Commons [Attribution/ShareAlike 4.0 International](#) license.

This sourcesheet is derived from the collection of sources gathered on the Wikipedia page, "[Open Source Judaism](#)," where I initially presented them.

## Definitions

### Modern Terms

**Commons** – see <https://en.wikipedia.org/wiki/Commons> – cultural and natural resources accessible to all members of a society

**Creative Commons** – see <http://creativecommons.org> – a non-profit organization devoted to expanding the range of **creative** works available for others to build upon legally and to share. The organization authored and maintains a number of licenses that permit freedoms for copyrighted works that would otherwise be restricted. The three “open content” and “free-culture” licenses they maintain are the CC-BY-SA (Attribution/ShareAlike license, a/k/a copyleft), CC-BY (Attribution), and CC0 (a Public Domain dedication).

**Free-cultural work** – see <http://freedomdefined.org/definition> “any kind of functional work, artwork, or creative content which has no significant **legal restriction** on people's freedom:

- to use the content and benefit from using it,
- to study the content and apply what is learned,
- to make and distribute copies of the content,
- to change and improve the content and distribute these derivative works.

**gift economy** – see [https://en.wikipedia.org/wiki/Gift\\_economy](https://en.wikipedia.org/wiki/Gift_economy) – “a mode of exchange where **valuables** are not sold, but rather given without an explicit agreement for immediate or future rewards.”

**open content** – see <http://opendefinition.org/> – refers specifically to copyrighted work that is licensed in a way providing the following four permissions:

- Reuse – the right to reuse the content in its unaltered / verbatim form (e.g., make a backup copy of the content)
- Revise – the right to adapt, adjust, modify, or alter the content itself (e.g., translate the content into another language)

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1 Paley, Nina. "♥ Copying is an act of love. Please copy and share.". *copyheart.org*. Retrieved 9 December 2013.

- **Remix** – the right to combine the original or revised content with other content to create something new (e.g., incorporate the content into a mashup)
- **Redistribute** – the right to share copies of the original content, your revisions, or your remixes with others (e.g., give a copy of the content to a friend)

**open-source** – see <http://www.opensource.org/docs/osd> – refers specifically to source code for software

1. Free Redistribution
2. Includes Source Code
3. Allows modifications and derived works
4. Ensures Integrity of The Author's Source Code
5. No Discrimination Against Persons or Groups
6. No Discrimination Against Fields of Endeavor
7. Distribution of License
8. License Must Not Be Specific to a Product
9. License Must Not Restrict Other Software
10. License Must Be Technology-Neutral

**Public Domain** (creative works) – the domain in which all creative works reside after any legal term for private ownership expires.

## Rabbinic Terms

**דימוס פּרְהָסְיָא** (**dimus**) – openly, from **דימוסְיָא** (**dimosia**) δημόσια, translated in Latin *coram publica* – in the public eye, i.e. open to the public<sup>2</sup>) and (gk. παρρησία, **parrhesia**) – boldness or freedom in speech

**הפקר** (**hefker**) – ownerless

**מתנה** (**matanah**) – gift

**עבודה** (**avodah**) – sacred work, as in, the work of the *Mishkan* (Tabernacle), *Beit Hamikdash* (Temple), private prayer, and communal worship.

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2 Many thanks to Dr. Daniel Sperber for his explanation of this in correspondence. He writes, “in Mechilta to Exod. 19:2, ed. Horowitz-Rabin p.205 lines 17-18, [דימוס] is short for דימוסְיָא found frequently in rabbinic literature. It is the Greek word δημόσια translated *coram publica*, in the public eye, i.e. open to the public, a meaning found in Sylloge Inscriptionum Graecum, 2nd edition, ed. Diltnerberger 1888-1901, no.807, an inscription from after 138 C. E. פּרְהָסְיָא is merely a gloss to דימוס to explain the word and its meaning, as noted by the editor of the Mechilta.”

## What is given with love is *sustained* through love.

The dissemination of Torah through copying and remixing is endangered when its sources are commodified and controlled by private interests.

כָּל אֲהָבָה שֶׁהִיא תְלוּיָה בְדָבָר, בְּטֵל  
דָּבָר, בְּטֵלָה אֲהָבָה. וְשֵׁאִינָה תְלוּיָה  
בְדָבָר, אִינָה בְטֵלָה לְעוֹלָם. אִיזוֹ הִיא  
אֲהָבָה הַתְלוּיָה בְדָבָר, זֶה אֲהָבַת אֲמִנוֹן  
וְתָמָר. וְשֵׁאִינָה תְלוּיָה בְדָבָר, זֶה אֲהָבַת  
דָּוִד וַיהוֹנָתָן:

Whenever love depends upon something and it passes, then the love passes away too. But if love does not depend upon some ulterior interest then the love will never pass away. What is an example of the love which depended upon some material advantage? That of Amnon for Tamar. And what is an example of the love which did not depend upon some ulterior interest? That of David and Jonathan. (Mishna Avot 5:17)

The transmission of Torah requires open uninterrupted channels for dissemination. MaHaRaL. Netivot Olam, Netiv Hatorah 7:3.

אם לומד התורה שתהיה אצלו, בדבר  
זה יש גבול לתורה כאשר תהיה  
נמצאת אצלו בלבד, ואין ראוי שתקרא  
תורת חסד שהחסד מתפשט בלי גבול.  
וכאשר למוד התורה מתפשט לאחרים  
אז היא תורת חסד

If one studies Torah only for oneself, then they set a limit upon what they might uncover, alone. And this is a shame, since the attribute of lovingkindness (ḥesed) in Torah is without limit. Therefore, study torah in order to teach others in order for the study to attach itself to ḥesed.

Rabbi Yitzhak Hutner, Paḥad Yitzhak, Rosh HaShanah Maamar, 2, On Lovingkindness (Ḥesed).

### מאמר ב - קונטרס החסד

א. פִּיָּה פְּתִיחָה בְּחִקְמָה וְתוֹרַת חֶסֶד עַל לְשׁוֹנָה: (משלי ל"א כ"ו). וכי יש תורה של חסד ותורה שאינה של חסד אלא תורה ללמדה זו היא תורה של חסד שלא ללמדה זו היא תורה שאינה של חסד (חז"ל). חידוש גדול חננו מוצאים בכאן דהשפעת תורה לתלמידים אין ענינה פעולה הכוללת תורה וחסד כשהן מחוברין, אלא שעצם הדברי תורה המושפעים מקבלים את גוון החסד; שהרי מושג החסד ימשמש בכאן בתור שם התואר לגוף החפצא דתורה. ובודאי שרבותא גדולה היא, דהרי דבר פשוט הוא דאדם המשמיע ד"ת מתוך הספר לאדם סומא. אין כאן אלא פונדק אחד שנודמנו לתוכו שתי מצוות של תורה וחסד בבת אחת, וברי שאין שום אחת מהן נעשית שם תואר לחבירתה; ואילו תורה הנלמדת לתלמידים לא קרינן בה תורה וחסד אלא שתורה זו תכונתה משתנית ושם לוי יש לה ותורת-חסד היא קרויה.

If Torah and Tefillah are both expressions of lovingkindness, then certainly both should flow unimpeded.

## Torah and Avodah are sustained through a Gift Economy

Proper intention sustains virtuous cycles of giving per open source models. The collective project of building the *mishkan* (tabernacle) required contributions from a community of individually inspired artisans. Their collective giving was remixed into a communal good.

וְכָל-זֶכֶם-לֵב בָּכֶם יָבֹאוּ וַיַּעֲשׂוּ אֶת  
כָּל-אֲשֶׁר צִוָּה ה':

And let every wise-hearted person among you come, and make all that haShem has commanded. (Exodus 35:10)

וַיָּבֹאוּ כָּל-אִישׁ אֲשֶׁר-נִשְׁאָו לִבּוֹ וְכָל  
אֲשֶׁר נָדְבָה רוּחוֹ אֹתוֹ הֵבִיאוּ  
אֶת-תְּרוּמַת ה' לַמִּלָּאכֶת אֵהָל  
מוֹעֵד וְלְכָל-עֲבֹדָתוֹ וְלַבְגָּדֵי  
הַקֹּדֶשׁ:

And they came, every one whose heart stirred him up, and every one whom his spirit made willing, and brought haShem's offering, for the work of the tent of meeting, and for all the service thereof, and for the holy garments. (Exodus 35:21)

Rabbi Yehudah Aryeh Leib Alter (1847-1905) on Parshat Terumah describes the sustainable exchange of goods in an economy of learning where there is no loss and only gain.

במדרש תנחומא לקח טוב משל שני סוחרים לזה מטכסא ולזה פלפלין כו' החליפו מה שביד זה אינו ביד זה. ובתלמידי חכמים זה שונה סדר זרעים וזה סדר מועד השנו זה לזה ביד כל אחד ב' סדרים כו'. הענין הוא כי יש לכל איש ישראל חלק מיוחד בתורה והתורה מחברת נפשות בני ישראל. כמו שנאמר תמימה משיבת נפש. ונעשין אחדות א' בכח התורה כמן שנאמר מורשה קהלת יעקב. ומקבלין זה מזה הדעת המיוחד לכל א'... וכמו כן בנדבת המשכן שהיה נעשה על יד נדבת כל איש ונתחברו על יד המשכן להיות אחד. ואז זכו להשראת השכינה.

The Midrash Tanhuma quotes:<sup>3</sup> 'I have given you good *lekaḥ* (teaching)' (Proverbs 4:2). [*Lekaḥ* can also refer to something acquired by purchase.] It then offers a parable of two merchants, one who has silk and the other peppers. Once they exchange their goods, each is again deprived of that which the other has. But if there are two scholars, one who has mastered the [Mishnaic] order of *Zeraim* (Seeds) and the other who knows the [Mishnaic] order of *Moed* (Calendar of Festivals). Once they teach each other, each has both orders [of the Mishna]. The point is that each one of Israel has a particular portion within Torah, yet it is also Torah that joins all our souls together. That is why Torah is called "perfect, restoring the soul" (Psalms 19:8). We become one through the power of Torah; it is "an inheritance of the assembly of Yaakov" (Deuteronomy 33:4). We receive from one another the distinctive viewpoint that belongs to each of us. The same was true in the building of the tabernacle. Each one gave his own offering, but they were all joined together by the tabernacle, until they became one. Only then did they merit Shekhinah's presence. (*Sefas Emes, Parshat Terumah*, Arthur Green, trans.)

<sup>3</sup> See Midrash Tanhuma on Parshat Terumah, Exodus 25:1ff., Part 1 (the very beginning of the chapter.) Compare this teaching with Midrash Tanhuma on Parshat Ha'azinu, Deuteronomy 32:1ff, Part III, concerning the ascent of Moshe and the struggle with the Angels to receive the Torah.

## Midbar as the Psychogeographic Representation of Dimus Parrhesia

The Commons of wilderness and Torah are associated with gifts as in a [gift economy](#). A virtuous student is likened unto a gift when they cultivate a humble and giving nature.

אמר רב מתנה: מאי דכתיב [באר  
זפרוה שרים כרוה נדיבי העם  
במזקק במשענתם] ומדבר מתנה  
(במדבר כא יח)? - אם משים אדם עצמו  
כמדבר זה, שהכל דשין בו - תלמודו  
מתקיים בידו, ואם לאו - אין תלמודו  
מתקיים בידו.

Rav Mattenah expounded: What is the purport of the Scriptural text: "And from the wilderness to Mattanah" (Numbers 21:18)? If a man allows himself to be treated as a wilderness on which everybody treads, his study will be retained by him, otherwise it will not. (*Talmud Bavli Eruvin* 54a)

"וַיְדַבֵּר ה' אֶל מֹשֶׁה בְּמִדְבַּר סִינַי" -  
אלא כל מי שְׁאִינוּ עושה עצמו  
כמדבר הפקר אינו יכול לקנות את  
החכמה והתורה לכך נאמר "בְּמִדְבַּר  
סִינַי".

*haShem spoke to Moshe in the Sinai wilderness* (Numbers 1:1) - This teaches us that anyone that is not making themselves into an ownerless wilderness (*midbar hefker*) cannot acquire Wisdom and Torah, and so it is called "in the Sinai wilderness." (*Bamidbar Rabbah* 1:7)

The Greek intellectual concept of [parrhesia](#) (openness) appears in Midrashic literature as an essential element of Torah and a virtue of scholars of Torah. The concept of *hefker*, an ownerless good, is applied to the Torah itself in describing it as a [Commons](#).

וַיִּסְעוּ מִרֶפְחִידִים וַיָּבֹאוּ מִדְבַּר סִינַי  
וַיִּחַנּוּ בְּמִדְבַּר וַיִּזְזוּ שָׁם יִשְׂרָאֵל נֶגְדַת  
הָהָר.

And when they departed from Rephidim and came to the wilderness of Sinai, they encamped in the wilderness; and there Israel encamped before the mount.

וַיִּחַנּוּ בְּמִדְבַּר - נתנה תורה דימוס  
פרהסיא במקום הפקר, שאלו נתנה  
בארץ ישראל היו אומרים לאומות  
העולם: אין להם חלק בה, לפיכך נתנה  
דימוס פרהסיא, במקום הפקר,  
וכל הרוצה לקבל יבא ויקבל.

*And they encamped in the wilderness* - Torah was given over *dimus parrhesia* in a *makom hefker*. For had it been given in the Land of Israel, they would have had cause to say to the [other] nations, 'you have no share in it.' Thus was it given *dimus parrhesia*, in a *makom hefker*: 'Let all who wish receive it, come and receive it!' (*Mekhilta de Rabbi Ishmael* Tractate *Bahodesh*, Chapter 1, on Shemot 19:2)

מפני מה לא ניתנה תורה בארץ ישראל? שלא ליתן פתחון פה לאומות העולם, לומר לפי שנתנה בארצו לפיכך לא קבלנו עלינו. דבר אחר: שלא להטיל מחלוקת בין השבטים, שלא יהא זה אומר בארצי נתנה תורה וזה אומר בארצי נתנה תורה, לפיכך נתנה במדבר, **דימוס פרהסיא** במקום הפקר.

בשלושה דברים נמשלה תורה במדבר ובאש ובמים לומר לך מה אלו חנם לכל באי העולם אף דברי תורה חנם לכל באי העולם.

Why was the Torah not given in the land of Israel? In order that the peoples of the world should not have the excuse for saying: `Because it was given in Israel's land, therefore we have not accepted it. Another reason: To avoid causing dissension among the tribes [of Israel]. Else one might have said: In my land the Torah was given. And the other might have said: In my land the Torah was given. Therefore, the Torah was given in the *Midbar* (wilderness), *dimus parrhesia* (freely and openly), in a place belonging to no one.

To three things the Torah is likened: to the *Midbar* (wilderness), to fire, and to water. This is to tell you that just as these three things are free to all who come into the world, so also are the words of the Torah free to all who come into the world. (*Mekhilta de Rabbi Ishmael*, Tractate *Bahodesh*, Chapter 5, on Shemot 20:2; c.f. *Bamidbar Rabbah* 1:7)

## Need for Correct Attribution

The value of Parrhesia is balanced with the importance of correct **attribution**, a signature feature of open source and free-culture licensing is also highlighted. According to Rabbi **Yehoshua ben Levi**, the 48th of 48 virtues enumerated for excellent students is to correctly and attribute your learning:

אָמַר רַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי...גְּדוּלַת תּוֹרָה  
יֹתֵר מִן הַכְּהוּנָה וּמִן הַמְּלָכוּת,  
שֶׁהַמְּלָכוּת נִקְנִית בְּשָׁלֹשִׁים מַעֲלוֹת,  
וְהַכְּהוּנָה בְּעֶשְׂרִים וָאַרְבַּע, וְהַתּוֹרָה  
נִקְנִית בְּאַרְבָּעִים וּשְׁמוֹנֶה דְּבָרִים, וְאֵלּוּ  
הֵן...וְהָאוֹמֵר דְּבַר בְּשֵׁם אוֹמְרוֹ, הָא  
לְמַדְתָּ כָּל הָאוֹמֵר דְּבַר בְּשֵׁם אוֹמְרוֹ  
מְבִיא גְּאֻלָּה לְעוֹלָם, שְׁנֵאמַר וְתֵאמַר  
אֶסְתֵּר לְמַלְכָּךְ בְּשֵׁם מַרְדֳּכָי:

Said Rabbi Yehoshua ben Levi...Torah is greater than the priesthood or sovereignty, for sovereignty is acquired with thirty virtues, the priesthood with twenty-four, and Torah is acquired with forty-eight qualities. These are...repeating a statement in the name of the one who said it. For we have learned that anyone who says a statement in the name of the one who said it brings redemption to the world, as it says, 'And Esther said to the King in the name of Mordekhai.' (*Esther* 2:22)" (Mishna Avot 6:6, c.f., Midrash Tanḥuma on Bamidbar 4:17)

One who does not correctly attribute is akin to a thief.

אמר רבי חזקיה אמר רבי ירמיה בר  
אבא בשם רבי יוחנן, כל שאינו אומר  
דבר בשם אומרו, עליו הכתוב אומר,  
**אל תגזול דל כי דל הוא**. וצריך  
אדם כשהוא שומע דבר, לומר אותו  
בשם אומרו, אפילו משלישי, הלכה.

Rebbi Hizkiyah said in the name of Rebbi Yirmiyah bar Abba [who] said in the name of Rebbi Yoḥanan: Anyone who does not attribute a teaching in the name of its originator, about him scripture says: *Do not rob the impoverished, because they are poor* (Proverbs 22:22). So when a person hears a teaching [and repeats it], he is required to attribute it, even if he heard it third-hand. (Midrash Tanḥuma on Bamidbar 4:17 ff, Part I (alt. Tanḥuma Bamidbar 22))

Free-culture and open source licensing does not do away with proprietary ownership of others. Rather, it declares the intention of an owner to share. Rabbinic teaching might describe this as a righteous act. The righteous are described as giving without demanding of others, while the wicked are proprietary, per the following formulation:

אַרְבַּע מִדּוֹת בְּאָדָם.

There are four types among people:

הָאוֹמֵר שְׁלִי שְׁלִי וְשְׁלָךְ שְׁלָךְ, זוֹ מִדָּה  
בִּינוֹנִית. וַיֵּשׁ אוֹמְרִים, זוֹ מִדַּת סְדוֹם.

One who says, "What is mine is mine and what is yours is yours": this is the common type, though some say that this is the type of Sodom.

שְׁלִי שְׁלָךְ וְשְׁלָךְ שְׁלִי, עִם הָאָרֶץ.

One who says, "What is mine is yours and what is yours is mine": this is an ignorant person.

שְׁלִי שְׁלָךְ וְשְׁלָךְ שְׁלָךְ, חֶסֶד.

One who says, "What is mine is yours and what is yours is thine own": this is a righteous person.

שְׁלִי שְׁלִי וְשֶׁלְךָ שְׁלִי, רָשָׁע:

And one who says, "What is yours is mine, and what is mine is mine": this is a wicked person. (Mishna Avot 5:10, Pirkei Avot 5:13)

An example of a wicked act might be that of [copyfraud](#), declaring Public Domain resources as copyright, or imposing [end-user license agreements](#) to control use of Public Domain material may be likened to moving boundary markers and thereby encroaching the Commons of Torah.

לֹא תִסֵּיג גְּבוּל רֵעֶה אֲשֶׁר גָּבְלוּ  
רֵאשִׁימִים בְּנִזְוֹלְתָהּ אֲשֶׁר תִּנְזַל  
בְּאֶרֶץ אֲשֶׁר ה' אֱלֹהֶיךָ נָתַן לְךָ  
לְרִשְׁתָּהּ:

Do not move the boundary marker of your neighbors that your predecessors placed [in the land that] you inherit, that haShem your God gives you as an inheritance. (Deuteronomy 19:14)

Among other descriptions of the transgressions of Sodom, the Talmud explains by way of midrash on [Job 24:2](#)

גְּבֻלוֹת יִשְׁגּוּ עֵדֶר גְּזָלוּ וַיִּרְעוּ:

They remove the landmarks; they violently take away flocks, and feed on them. (Talmud Bavli Sanhedrin 109b)



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