



ניצחון

NITZACHON

Adas Torah Journal of Torah Ideas

לעילוי נשמת חנה סעריל בת משה ע"ה

Nitzachon

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ROSH V'RISHON

RABBI DOVID REVAH: <i>The Atonement of Hoshana Rabba</i>	p. 11
RABBI YISROEL CASEN: <i>The Airbnb Sukka Debacle</i>	p. 15

TISHREI

RABBI EITAN LIPSTEIN: <i>The Mitzva to Eat on Erev Yom Kippur: More Essential to Teshuva than Fasting on Yom Kippur Itself?</i>	p. 23
RABBI ARYEH MARKMAN: <i>How do we do Teshuva?</i>	p. 37
ROBERT MILLMAN: <i>Escape From Auschwitz</i>	p. 41
DAVID WINTER: <i>A Compilation of Segulos Recorded in the Name of Rav Chaim Kanievsky zt"l</i>	p. 49
ELI SNYDER: <i>A Time to Gather</i>	p. 57

HALACHA AND MACHSHAVA

RABBI PINCHAS GELB: <i>Tamim Tihiyeh Im Hashem Elokecha</i>	p. 65
RABBI YAAKOV SIEGEL: <i>The Mystery of the Knife, the Helmet, and the Stone</i>	p. 77
RABBI EVAN SILVER: <i>Is it Cooking Without a Fire?</i>	p. 83
DR. JONATHAN NISSANOFF: <i>Are You Sure that's Not Kosher?</i>	p. 89
DAVID WINTER: <i>The Overlooked Pattern of "Ata" in the First Eight Brachos of Shemone Esrei</i>	p. 97
MENACHEM GREEN: <i>Teaching of the Lighted: A Comprehensive Overview of Blindness in Halacha</i>	p. 109

MICHAEL MALK: <i>The Mitzva to Lend Money</i>	p. 119
ADIV PACTER: <i>The Praise of Aharon HaKohen; Lessons In Avodas Hashem</i>	p. 127
EITAN GELB: <i>Tzedek Tzedek Tirdof</i>	p. 135
JOSHUA GLETTNER: <i>Fascinating Nezikin Shailos in Lomdus and Halacha</i>	
<i>The Pirates and the Seforim</i>	p. 139
<i>A Tussle in Neustadt</i>	p. 147
<i>The Raid</i>	p. 155
DR. IRA HOFER: <i>End of Life in Halacha</i>	p. 161
JOSH ROTHENBERG: <i>Interpreting the Mabbul</i>	p. 167

This volume of *Nitzachon* has been dedicated

לעילוי נשמת חנה סעריל בת משה ע"ה

טוב ללכת אל בית אבל מלכת אל בית משתה באשר הוא סוף כל האדם והחי יתן אל לבו.

It is better to go to the house of mourning than a house of feasting, for that is the end of every person, and the living should take it to heart. (Koheles 7:2)

The Metzudas Dovid and others explain that a person who goes to the house of a mourner is reminded that the opportunity to do *teshuva* exists only while he is still living; he is thereby reminded to maximize the way he lives his life as an *eved Hashem*. The mitzva to give a *hesped* for the deceased further supports this concept. The *Shulchan Aruch* (YD 344:1) explains that the mitzva to eulogize is defined as “rais[ing] one’s voice to say things about [the deceased] that break the heart to increase crying and to mention his praises....” In an article about *hespedim*, Yitzchak Kasdan quotes Rav Nisson Alpert, who says that “the purpose of a *hesped* is [so to speak] to ‘bring the dead to life,’ to recount his praises and good deeds, so that people will learn from him.” (*Sefer Limudei Nissan, Chayai Sara*, 23: 2) Our *mesora* places singular importance on learning from the lives of those who preceded us. The *middos* that they display in their lifetimes, and those that are highlighted after their *petira*, are models for us to emulate.

Chana Serel bas Moshe, who was *nifteres* twenty years ago, leaves behind a powerful legacy of *chesed* for us to learn from.

שמעון הצדיק ... היה אומר, על שלשה דברים העולם עומד: על התורה על העבודה ועל גמילות חסדים.

Shimon Hatzadik would say, The world stands on three things (omed), on the Torah, on the avoda (korbanos), and on acts of chessed. (Pirkei Avos 1:2)

Many *meforshim* try to explain this unusual word “*Omed*.” The Bartenura explains that the world was only created with the understanding that we would participate in these three categories of activities. The *Derech Chaim* goes further, suggesting that the continuity of the world comes through these three activities. When we act with *chesed*, it “allows” Hashem to treat us with *chesed* as well. Rabbeinu Yona shares that *chesed* is uniquely all-encompassing because it can be done with the poor and the rich, with money or with one’s body. He says that someone who gives a poor person

a coin is blessed with six *brachos*, but someone who is “*mefayo b'dvarim*,” who can strengthen another with words, is blessed with eleven *brachos*. Rabbeinu Yona seems to suggest that the nature of *gemilus chessed* is holistic. It is not simply an action that satisfies a need, but an action that takes into account the needs of the entire person.

We see a stunning example of this in Tanach. Although undoubtedly, all of the *Imahos* were pillars of *chesed*, the one we know most about in this regard is Rivka. When Eliezer was looking for a wife for Yitzchak, he devised a plan through which he would identify the correct woman. Eliezer says,

והיה הנער אשר אמר אליה הטי נא כדך ואשתה ואמרה שתה וגם גמלך אשקה אתה
הכחת לעבדך ליצחק.

*The girl who offers water for Eliezer to drink and who also draws water for
his camels would be Yitzchak's wife. (Bereishis 24:14)*

Rashi seems to suggest that Eliezer's criteria was not random, rather, an indication that the girl had integrated into the fiber of her being the value of *gemilus chasadim*, and would therefore be an appropriate partner for Yitzchak. There are many things that can be learned from this example of *chesed*, although I would like to suggest one. When Eliezer had asked for a drink, Rivka recognized that he had traveled from afar. If that was the case, Eliezer's camels would also need to drink. Similarly, when Eliezer asked for a place to stay overnight, Rivka immediately offered that her home also had food for Eliezer's camels. Rivka's responses showed that she was both quick to help assuage the needs of others, and that she could anticipate needs that were not even disclosed.

Chana Serel bas Moshe was someone who was quick to offer help to others, and to anticipate their unspoken needs. When she went to the grocery store, she frequently called others to find out if they needed anything as well. When she knew of people who could use financial support, she would patronize their establishments in the most discreet way. She began a project for *hachnassas kalla* that involved making a cookbook; she was concerned for those who were completely new to the kitchen, who would need help as they began their new home. Chana Serel bas Moshe was someone who looked beyond the obvious needs. She saw the whole person, and sought to help in the most sensitive and dignified way.

May we all have the *zechus* to learn from the life of Chana Serel bas Moshe, and to find opportunities for *chesed*, to help and *mechazek* one another in a genuine and complete way.

יהי זכרה ברוך.

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May their memories be blessed



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Rosh V'rishon



Rabbi Dovid Revah
Rabbi Yisroel Casen

The Atonement of Hoshana Rabba

RABBI DOVID REVAH



Chazal teach us, in the *gemara* in *Pesachim* 9a, that we should begin learning the *halachos* of an upcoming Yom Tov thirty days before the Yom Tov. The Maharsha (*Chiddushei Agados Megilla* 32a) explains that this *halacha* does not apply to Rosh Hashana and Yom Kippur, because the primary obligation of those days is *teshuva*, and the mitzva of *teshuva* applies year-round. Ideally, any time we violate a mitzva, we should immediately do *teshuva*. Since we are involved in *teshuva* all year, there is no need to refresh ourselves in the weeks before Rosh Hashana and Yom Kippur.

However, on a communal level, the focus on *teshuva* centers around the *Yamim Noraim*. After Yom Kippur, we put away our *machzor*, fold our *kittel*, and shift gears to the *mitzvos* of Sukkos and *Zman Simchaseinu*. But suddenly, on Hoshana Rabba, we revert to Yom Kippur themes. The *chazan* wears a *kittel* and *davens* with the tunes of the *Yamim Noraim*. Although the judgement is sealed on Yom Kippur, we find sources in *Chazal* that until Hoshana Raba it is possible to change the sealed *din*. This leads to three questions:

1. Why should Hoshana Rabba, which is part of the Yom Tov of Sukkos, become a day associated with *din* and *kappara*?
2. If, in fact, it is the last chance to affect the judgment, why do we not focus on doing *teshuva* on Hoshana Rabba?
3. If *teshuva* is not appropriate for Hoshana Rabba, what is the correct *avoda* that relates to this being a day of atonement?

Before we answer our questions, it is necessary to discuss another difficulty. There is no mention of Hoshana Rabba being a day of *din* in the Torah, *gemara* or *mishna*. It is only mentioned in the *Zohar*. Why would such a fundamental idea be hidden until the *Zohar* was revealed? Rav Yaakov Kamenetzky (*Emes L'Yaakov, Parshas Emor*) explained that although it is true that Hoshana Rabba is a day of judgement and atonement, it was not necessary for people to be aware of it. The way

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has led our *Kehilla* since 2005.

to merit a good judgement on Hoshana Rabba is not by asking for forgiveness, but by fulfilling the *mitzvos* of the day. In earlier times, when the *mitzvos* of Sukkos were done properly, people did not need to know what was taking place behind the scenes. However, the later generations needed additional motivation to perform the *mitzvos* of the day properly. Therefore, *hashgacha* revealed to us the significance of Hoshana Rabba, which should now inspire us to put more effort into the day.

From Rav Yaakov's approach, we at least have an answer to our third question. There is no additional *avoda* on Hoshana Rabba. We are only expected to continue to carry out the *mitzvos* of Sukkos. But that just further perplexes us. If, on Hoshana Rabba, we can do *teshuva* on something that we overlooked on Yom Kippur, how does fulfilling the *mitzvos* of Sukkos enable us to do so?

To answer our questions, it would be logical to examine if there is anything unique about the *mitzvos* performed on Hoshana Rabba. On all of the other days of Sukkos, we take the four *minim*: the *lulav*, *esrog*, *hadasim* and *aravos*. On Hoshana Rabba we do the same, but after performing the *mitzvos* with the four *minim*, we set three of them aside and shake and bang the *aravos*. If on Hoshana Rabba we focus on the *aravos*, perhaps an understanding of what the *aravos* represent will give us more insight into the day.

The *midrash* tells us that the four *minim* represent Jews who have different levels of Torah knowledge and *mitzvos*. The *esrog*, which has both a taste and a smell, represents the ideal Jew who has both Torah and *mitzvos*. The *lulav*, which has a taste (the dates) but no smell, represents the Jew who has Torah knowledge but is deficient in his performance of *mitzvos*. The *hadasim*, which have a smell but no taste, represent the Jew who may do many *mitzvos* but is lacking in learning, and the *aravos*, which have no taste and no smell, represent the Jew who neither learns Torah nor performs *mitzvos*.

If the focus of Hoshana Rabba is the *aravos*, the atonement of the day must be directed to the *arava* Jew, who does not learn nor keep the *mitzvos*. But this seems difficult to comprehend. While *arava* Jews may attend Shul on Rosh Hashana and Yom Kippur, they are almost certainly not in Shul on Hoshana Rabba or even aware of its existence. How could Hashana Rabba affect them in any way?

I heard an explanation that the four *minim* are not necessarily representing four different people, but four aspects of one individual. Each one of us has four different levels of *avodas Hashem*. There are some *mitzvos* which we perform on an optimal level. We have learned the *halachos* and deeper meaning behind the mitzva, and our practice matches our knowledge. In that, we are like an *esrog*. There are some *mitzvos*

about which we have spent time learning and we are aware of our obligations, but we do not live up to what we know. There are yet other *mitzvos* for which we do the necessary action, but with a very shallow understanding and we perform them by rote. In those areas, we are like a *lulav* and a *hadas*. Then there are *mitzvos* which not only we do not keep, but we are not even aware of the requirement to keep them. In these areas, we are compared to an *arava*, which has no taste and no smell.

We can rightfully celebrate the *mitzvos* which we perform with both understanding and practice. We use the *Yamim Noraim* to inspire ourselves to raise the level of our performance of the *mitzvos* in which we are either lacking in understanding or practice. But for the *mitzvos* of which we are not even aware, the *Yamim Noraim* fall short. How can we commit to change if we do not even know what we are doing wrong? For those *arava mitzvos*, we need Sukkos and Hoshana Rabba.

How do Sukkos and Hoshana Rabba help? When I was around twenty, a friend came over to me after *Shacharis* and told me that I was putting on my *tefillin shel yad* incorrectly. Had he not told me, it may have taken many years until I realized it myself. If we create a community which is unified in a desire to grow in *avodas Hashem*, we can rectify even the *mitzvos* of which we have no knowledge. Because what for me may be an *arava mitzva*, for my friend may be an *esrog* type of mitzva. As the medrash says:

יקשרו כולם אגודה אחת והם מכפרים אלו על אלו.

Bind them all together and they will atone for each other.

If we are united, each person can inspire the *kahal* in an area in which he or she is strongest. This is what Sukkos and Hoshana Rabba can add beyond Yom Kippur. With the communal celebration and *simcha* of Sukkos, we seek to create that unity where each one of us is growing and inspired by our fellow Jews.

The Airbnb Sukka Debacle

RABBI YISROEL CASEN



Michoel and Baila Reinman had dreamed of spending Sukkos in *Eretz Yisrael* for years. When their dream finally came true, they made plans to spend the first days in Yerushalayim and Chol Hamoed and the last days in Tzfas. They booked an Airbnb that advertised that it came with a *sukka* and a balcony on which to build it. Michoel presumed he would assemble it once they arrived.

After spending an uplifting Yom Tov in Yerushalayim, the Reinmans arrived in Tzfas and made their way to the apartment. They were greeted by the owner, Gad, who was an irreligious but traditional Jew. He showed them around and guided them to the balcony where he proudly announced that as a favor, he had built the *sukka* for them. “The first day of the *chag* I didn’t have to go to work, so I took the time to put up the *sukka* for you!” he exclaimed. After thanking Gad profusely and seeing him to the door, Michoel called his Rav, concerned that he may not be able to use the *sukka*, seeing that it had been built on Yom Tov.

Essentially, Michoel’s *halachic* question is two-fold:

- Is there an issue with deriving benefit from a *sukka* built on Yom Tov?
- Would this be considered a *mitzva haba’a ba’aveira*, a mitzva that is disqualified because it comes about by way of an *aveira* being committed?

The first question is based on the principle of *maaseh Shabbos*, deriving benefit from a prohibited act committed on Shabbos or Yom Tov. *Shulchan Aruch* (O”C 318:1) rules that irrespective of whether the act is done *b’shogeg* (mistakenly), or *b’meyd* (purposely), we may derive benefit from it once Shabbos is over. Since the Reinmans would only be using the *sukka* after Yom Tov was over, this would not pose an issue. (This question touches on a deeper issue of whether mitzva-usage is indeed considered benefit at all, which is beyond the scope of this article.)

The second, and more complex question, is that of *mitzva haba’a ba’aveira*, a mitzva that comes about by way of an *aveira* being performed, which invalidates the

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performance of the mitzva. What does this mean and when does it apply?

The *mishnayos* in the third *perek* of *Sukka* teach that one cannot perform the mitzva of taking the *arba minim*, the four species, with stolen items. The *gemara* (*Sukka* 29b) explains that a stolen *lulav* cannot be used on the first day of the *chag* since it belongs to its owner and not the user, and ownership of the *lulav* is an integral requirement of fulfilling the mitzva. However, this requirement is limited to the first day, when the mitzva is *deoraisa*, as the Torah states (*Vayikra* 23:40):

ולקחתם לכם ביום הראשון...

And you shall take for yourself on the first day...

This indicates that the four species should belong to you on the first day. Yet, the *mishna* teaches that a stolen *lulav* is invalid the entire holiday, with no dispensation made for the subsequent days. What invalidates a stolen *lulav* on the subsequent days, when ownership of the *lulav* is no longer required?

The *gemara* explains that the issue with a stolen *lulav* is *mitzva haba'a ba'aveira*, a mitzva whose performance came about through an *aveira*. When the mitzva of *lulav* is performed by initially stealing it from someone else, this invalidates the mitzva. What is the source for this concept? The *navi* (*Malachi* 1:13) states:

...והבאתם גזול ואת הפסח ואת החולה והבאתם את המנחה הארצה אותה מידכם
אמר ה'.

... and you bring the stolen, the lame, and the sick; and you offer such as an offering. Will I accept it from you? said Hashem.

The *navi* equates a stolen animal to a lame animal in that they are both unfit to be used as an offering in the Temple. The *gemara* deduces from here that an animal acquired through illegitimate means is unfit to be used as a *korban*. This disqualification is termed *mitzva haba'a ba'aveira*.

Is a *sukka* built on Shabbos or Yom Tov, which likely violates the prohibition of *boneh* (building), disqualified because it is a *mitzva haba'a ba'aveira*? To address this question, we need to properly understand *mitzva haba'a ba'aveira*.

Tosafos (*Sukka* 30a d"h *mishum*) posits that the disqualification of *mitzva haba'a ba'aveira* is limited to scenarios where the *aveira* directly creates the opportunity for performance of the mitzva. The case of the stolen *lulav* is a prime example, as the *aveira* of stealing puts the *lulav* in the hands of the perpetrator and thus directly affords him the ability to perform the mitzva. *Tosafos* contrasts this with the case of a *lulav* taken from an *asheira* tree (a tree designated for *avoda zara*). In that case, the sin

of serving the tree in no way adds to the utility of its fronds for the mitzva of *lulav* and is thus not considered *mitzva haba'a ba'aveira*.

How would *Tosafos* characterize our scenario? Is the sin of building a *sukka* on Yom Tov directly causing the mitzva to be performed? Clearly the *sukka* must be built for one to sit in it, but is the timing of its construction directly related to its use? Had the Reinmans wished to sit in it on the first day of Yom Tov one could make the argument that the timing of its construction that day is significant, but in our case where they wish to use it on Chol Hamoed, the *sukka* could well have been built after Yom Tov. Hence, there is no direct causation by the *aveira* and this should not be considered *mitzva haba'a ba'aveira*.

If we accept *Tosafos* as the definitive description of *mitzva haba'a ba'aveira*, seemingly the Reinmans have nothing to worry about. The *aveira* of building on Yom Tov doesn't directly afford them the opportunity to do the mitzva and thus they can use the *sukka* without concern. However, other *rishonim*¹ disagree with *Tosafos*'s assertion and maintain that even an *asheira* tree is subject to the rule of *mitzva haba'a ba'aveira*. Indeed, the *baalei hatosafos* themselves were apparently unsatisfied with this definition, for in the very same piece, they ask why *matza* made from *tevel* wheat (grain that has not been properly tithed and is forbidden to eat) is not *mitzva haba'a ba'aveira*. Although the *aveira* of eating untithed grain occurs simultaneously with the mitzva of eating *matza*, the sin does not directly create the opportunity to do the mitzva. Yet *Tosafos* suggests this may be considered *mitzva haba'a ba'aveira*. Evidently, the definition of this concept requires further analysis.

Why do the above *rishonim* consider a *lulav* from an *asheira* a *mitzva haba'a ba'aveira*? In what way does the previous sin of serving the tree as *avoda zara* affect its eligibility for subsequent mitzva performance? Rav Reuven Grozovsky (*Sukka Siman* 3) explains that since the *aveira* of *avoda zara* has a lasting effect on the item, it is disqualified from any mitzva performance. An *asheira* is not simply a tree that was once used as *avoda zara*; rather it is currently still considered an actual *avoda zara* due to its past use. This is like a stolen *lulav* which is not simply a *lulav* with a checkered past, but rather an item that is currently considered stolen property that must be returned to its rightful owner. Since the past *aveira* very much defines the current status of the object, we see the *aveira* reflected in the object and thus it renders it unfit for mitzva use. However, in a scenario where the past *aveira* does not currently alter the item's status in any way, it would not be disqualified. Ritva (*Sukka* 30b) writes that

¹ Rambam in his *Peirush Hamishnayos*, *Magid Mishne Hilchos Lulav* 8:1, Rabbeinu Chananel *Sukka* 35a

if a *sukka* is stolen, such that the thief drives the owner out of the *sukka* and takes up residence there, it would not be considered *mitzva haba'a ba'aveira*. Since “*karka aina nigzeles*,” real estate is not considered stolen in that it cannot transfer to the domain of the thief, the *sukka* is not considered to be a stolen item. The perpetrator clearly has committed a disgraceful act of thievery, but the *sukka* itself does not retain the moniker of a stolen item. Hence, it is not subject to the disqualification of *mitzva haba'a ba'aveira*.

If this is indeed the definition of *mitzva haba'a ba'aveira*, would the Reinman's *sukka* be disqualified? Does the *aveira* of *chilul Yom Tov* committed by its building remain as a defining feature of the *sukka* like an *asheira*, or is it more like a stolen *sukka*, having an ignominious past but one that has no current bearing?

A related *halacha* sheds light on this question. Some sub-species of *hadassim* (myrtle) grow berries which can disqualify them from being used as one of the four species. The *mishna* (*Sukka* 32b) teaches that if the berries are removed the myrtle can be used. The *gemara* (ibid 33b) says that even if one were to remove the berries on *Yom Tov* itself, which is *chilul Yom Tov* as it violates the concept of “*mesakein*,” fixing, the myrtle would still be rendered usable. Evidently, there is no concern of *mitzva haba'a ba'aveira*, and thus we can deduce that previous *chilul Yom Tov* has no current reality in the item itself. Similarly, the Reinman's *sukka* should not retain any problematic status, as the *chilul Yom Tov* involved in its construction does not currently affect it in any way. Hence, according to this definition, there would be no issue of *mitzva haba'a ba'aveira*.

However, this definition doesn't truly represent the position of *Tosafos*. As stated earlier, *Tosafos* wonders why *matza* made from *tevel* is not disqualified as a *mitzva haba'a ba'aveira*. Although *tevel* is prohibited for us to eat, no actual *aveira* has been committed with this *matza*; it is simply missing the removal of the tithes. Although eating the *matza* in its current state would certainly involve a simultaneous sin and *mitzva*, is this also considered a form of *mitzva haba'a ba'aveira*?

While the Reinmans were still attempting to determine the *kashrus* of their *sukka*, there was a knock on the door. Gad, the owner, had returned and bashfully enquired whether he might be able to join them for a meal in the *sukka*, saying that it had been many years since he had last eaten in one. This further complicates the question, as even if the *sukka* itself harbors no remnants of the *chilul Yom Tov* involved in its construction, is the person who did the *aveira* disqualified from using that very item for a *mitzva*? If such a *halacha* exists, how far does it go? Would Gad's eating in the *sukka* simply be a lack of a positive *mitzva*, or do we say the entire *sukka*

is disqualified for him, and hence it would be considered as if he ate outside a *sukka*? If so, by inviting him in, the Reinmans would be assisting Gad in committing the sin of eating outside a *sukka*!

As mentioned earlier, *Tosafos* suggests that eating *matza* of *tevel* should be *mitzva haba'a ba'aveira*. Although there has been no *aveira* done with this *matza*, it would appear that eating *tevel* which is an *aveira* would disqualify the concurrent mitzva. *Tosafos* suggests that an individual cannot do an *aveira* with an item and use that same item for a mitzva. Although there is no inherent disqualification of the item, the very act of performing a mitzva with the same item that one uses for an *aveira* is abhorrent. Seemingly, this might mean that although the Reinmans could use the *sukka*, Gad would not be able to do so, as he committed an *aveira* with this *sukka*.

However, in actuality, Gad's eating in the *sukka* is distinctly different from eating *matza* made from *tevel*. When eating the *matza*, both a mitzva and an *aveira* are committed simultaneously, which understandably is inappropriate. However, as stated earlier, Gad's transgression of Yom Tov is a thing of the past, and therefore it's very possible that this would no longer affect his ability to use the *sukka* currently.²

However, there is another reason the Reinmans may yet indeed afford their guest the opportunity to fulfill the mitzva of *sukka*. They might consider the fascinating opinion of the *Meiri* (*Sukka* 29b) who posits that the entire concept of *mitzva haba'a ba'aveira* does not apply to *sukka* at all. *Mitzva haba'a ba'aveira* is limited to cases where the item itself is used integrally for the act of the mitzva. If one steals a *lulav*, he may not shake it, as the *aveira* item cannot be used for the act of the mitzva. But

2 If we would make the argument that Gad may not use this *sukka* for a mitzva, can the Reinmans invite him to join them for a meal or are they unwittingly assisting him in committing the *aveira* of eating outside a *sukka*? (On the first night of Sukkos there is an absolute requirement to eat in the *sukka*, but the rest of the *chag* does not have the same rule. There is no requirement to eat in the *sukka*, but if one does eat a proper meal, it must be in the *sukka*. However, at any time during the holiday, eating a meal outside the *sukka* is considered an *aveira*.) If Gad is unable to use this *sukka* for the mitzva, yet eats in it anyway, do we say he is not fulfilling a mitzva but is still eating within the physical confines of a *sukka* and therefore is not committing a sin? Or do we say that vis-à-vis Gad this *sukka* does not exist as a structure compliant with *halacha*, and is as inconsequential as a *sukka* with incomplete walls or *schach*? If this were to be true, Gad is eating outside a *sukka* and the Reinmans are accomplices to that act!

Minchas Chinuch (#325) writes that even if we are to assume that *mitzva haba'a ba'aveira* disqualifies the fulfillment of *mitzvas yeshivas sukka*, the physical reality of the kosher *sukka* still exists (although he does differentiate between the first night and the rest of the *chag*). While no mitzva is accrued by eating there, we cannot ignore the fact that a kosher *sukka* structure exists. If so, there could be no concern of Gad eating 'outside' of the *sukka*, and at worst he would simply not fulfill any mitzva. By inviting him to join them for a meal, the Reinmans would not be accomplices to an *aveira* act, but rather their guest would just not accomplish any mitzva.

in the case of *sukka*, although the mitzva is to eat in the *sukka*, one does not use the *sukka* itself for the act of eating. He is simply required to eat within the confines of a *sukka*, with the actual structure of the *sukka* a necessary condition to ensure he is not outside a *sukka*. Since the *sukka* is not physically utilized as part of the mitzva act, it cannot be disqualified through *mitzva haba'a ba'aveira*.³ Accordingly, Gad's eating in the *sukka* would be considered the fulfilment of the mitzva of *sukka*.

To conclude, there are various factors that would allow for this *sukka* to be used despite its unfortunate history. According to the opinion of *Tosafos* that *mitzva haba'a ba'aveira* only exists when the *aveira* directly causes the mitzva to be performed, this is not the case here. If we use the “*asheira* model” that *mitzva haba'a ba'aveira* is limited to an item that currently has the *aveira*'s imprint on it, this also would not apply, as the *chilul* Yom Tov involved is no longer imprinted on the *sukka*. Even if we believe that once a sin has been committed with an item it is subsequently unfit for mitzva use, we can rely on the *Meiri* that this does not apply to the mitzva of sitting in a *sukka*. Michoel concludes his phone conversation with his Rav, warmly invites Gad to join them, and together they enjoy a convivial meal in their *sukka*.

Irrespective of the exact definition of *mitzva haba'a ba'aveira*, why is this concept true? Why would the *aveira* disqualify the item from subsequent mitzva usage? Ran (*Sukka* *ibid*) explains that this is an issue of “*ein kateigor na'ase saneigor*,” the prosecutor cannot become the defender. When performing *mitzvos* we aim to connect to Hashem in a meaningful way. If the conduit for the mitzva is a past or present *aveira*, we defeat this purpose, as we are invoking that very misdeed that served to distance us from Hashem. The concept of *teshuva* teaches us to disassociate ourselves from past errors; using them to our advantage to perform *mitzvos* is inappropriate and destructive. Were we to utilize the *aveira* item in the *teshuva* process itself, this would be ideal (such as fulfilling the mitzva of returning stolen items, which is performed with said stolen item), as this act serves to rectify the previous error. But if we are not engaged in the *teshuva* process per se, but are rather using the *aveira* item for a non-related mitzva, this would be self-defeating.⁴

May we always merit to use our items for *mitzvos*!

3 Similarly, the *Yerushalmi* writes that although a stolen *lulav* may not be used, a stolen *shofar* may be used. The actual mitzva of *shofar* is to hear its blast, with the *shofar* acting as no more than a necessary prop, and thus the stolen *shofar* does not disqualify the mitzva.

4 *Gur Aryeh Bamidbar* 19:28

Tishrei



Rabbi Eitan Lipstein

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Robert Millman

David Winter

Eli Snyder

The Mitzva to Eat on *Erev* Yom Kippur: More Essential to *Teshuva* than Fasting on Yom Kippur Itself?

RABBI EITAN LIPSTEIN



As a people, we are forever in awe of the holiest day of our year: Yom Kippur. As the final day of *Aseres Yemei Teshuva*, a day where each of our fates are signed, sealed and delivered, we are grateful for the opportunity to repent, and are stricken with anxiety on what the future may or may not hold for us individually and collectively. It therefore stands to reason that the moment leading up to this supreme day of holiness is rather important in being able to properly prepare for the ultimate day of judgment. Many *minhagim* and *halachos* occupy our day on *erev* Yom Kippur. Some have the custom of visiting the *kever* of a loved one, others participate in *kaparos*, and some even have the custom of receiving *malkus*. In addition, the *gemara* teaches that there is a significant mitzva to eat on *erev* Yom Kippur. The *Tur* quotes a *midrash* from *Bereishis Rabba* that details a fascinating story that highlights the lengths one must go to in order to eat before entering *Yom HaKippurim*:

מעשה בשוטר העיר שאמר לעבדו קנה לי דגים ולא מצא אלא דג אחד ונתן בו זהוב והיה שם יהודי חייט והוסיף עליו עד שהעלוהו לחמשה ונשאר לחייט בא העבד אל אדוניו וספר לו כל המאורע שלח השוטר אחר החייט ואמר לו מה מלאכתך אמר לו חייט אמר לו ולמה קנית דג שזה זהוב בה' זהובים ולא עוד אלא שלקחתו מיד עבדי ששלחתיו לקנותו לי השיב לו והיאך לא אקננו אפילו בי' כדי לאוכלו ביום כזה שצונו הקב"ה לאכול ולשתות ושאלנו בטוחים שהקב"ה יכפר לנו עונותינו אמר לו א"כ יפה עשית ופטרו והלך לשלום.

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It once happened (in Rome, on erev Yom Kippur) that a Jewish tailor went to the market to buy fish. There was only one fish available, but there were two buyers: the tailor and the servant of the Roman governor. Each offered a progressively larger sum until the price reached five gold coins, which the tailor paid. During the governor's meal, his servant explained what happened at the market: I went to buy fish, but there was only one available. A Jew and I haggled over it, each of us offering more than the other, until the price reached five gold coins. The governor sent for the tailor and he was brought before him. After confirming his profession, the governor asked the tailor: "Why did you, a Jewish tailor, see fit to eat a fish that cost five gold coins, and deprive my servant of purchasing this fish on my behalf?" The tailor replied: "How can I not? Even if it would have cost me ten gold coins! We have but one day during which all the sins that we commit throughout the year are atoned for. Shall we not honor that day when it comes?" The governor replied: "Since you have explained your behavior, you may go." (Tur, OC 604)

Source and Significance of Eating on Erev Yom Kippur

The *gemara* (Yoma 81b, Rosh HaShana 9a, Pesachim 68b, Berachos 8b) teaches:

דתני חייא בר רב מדיפתי ועניתם את נפשותיכם בתשעה וכי בתשעה מתענין והלא בעשור מתענין אלא לומר לך כל האוכל ושותה בתשיעי מעלה עליו הכתוב כאילו התענה תשיעי ועשירי.

Chiya bar Rav of Difti taught: It says, "And you shall afflict yourselves on the ninth". Now on the ninth do we fast? Do we not fast on the tenth? Rather, this is to tell you that anyone who eats and drinks on the ninth, the Torah considers it as if he fasted on the ninth and the tenth.

Clearly, there is a proven relevance and importance to eat on *erev* Yom Kippur, and to do so with intention. The *gemara* derives from the *pasuk* that eating on *erev* Yom Kippur is equivalent to fasting on Yom Kippur itself! The *gemara* in *Pesachim* (68b) even prefaces Chiya bar Rav's teaching by stating that "Mar the son of Ravina would fast at all times except for the days of Shavuot, Purim, and *erev* Yom Kippur". There is an evident non-negotiable element towards the requirement of eating on *erev* Yom Kippur.

The *Perisha* points out that if one were to choose to fast, thereby fasting on both Yom Kippur and *erev* Yom Kippur, then *Yom HaKippurim* would not be as

recognizable, and thus one must specifically be sure to eat on *erev Yom Kippur*.

ואפשר לומר טעם אחר שהציווי כדי שיהא ניכר וגלוי ציווי הש"י שציוונו להתענות ביום ה' ואם התענה ג' בט' א"כ לא יהא ניכר הציווי אלא יאמרו כל אחד מתענה אימת שירצה ולא ידעו בקדושת יום כפורים.

And it's possible to say another reason for the commandment to eat (on erev Yom Kippur), is for it to be clearly recognizable and revealed that the commandment of Hashem, blessed be He, is to fast on the tenth. And if we were to fast on the ninth (of Tishrei) as well, it would not be recognizable. Rather it would be assumed that people are fasting when they please and not due to the holiness of Yom Hakippurim. (Perisha, OC 604, no. 2)

The *Perisha* is pointing out that only when the fast disrupts proper eating is it evident that we are fasting because of a mitzva *deoraisa* that forces us to stop eating. Rashi (*Teshuvos Rashi*, 131) expresses a similar concern as the *Perisha* when it comes to *kiyum hamitzvos* in general. Rashi explains that any time a person performs a mitzva, and his/her performance can be conflated with circumstance, coincidence, or incidental fulfillment, it is best to distance oneself from such confusion and clarify the intent of the mitzva wholeheartedly. While fulfilling *hachnasas orchim* for a fellow Jew, should one decide to graciously invite a gentile who is passing by, he seemingly loses the initial mitzva. While gracious in his intent, his invitation to the gentile calls into question the *kavana* behind his initial invitation to his Jewish *orchim*. Similarly, when distributing *matanos l'evyonim* on Purim, and kindly doing so to gentiles on the very same day, it can appear as though the initial mitzva was not done so with specific intent to fulfill the mitzva in its purest form.¹

The insistence on eating during *erev Yom Kippur* is such that the Rama (OC, 288:4) writes that the day is not eligible for a *ta'anis chalom*. The Magen Avraham (OC, 624:7) even *paskins* that one who fasts on this day has to fast again after *Yom HaKippurim* to atone for fasting on *erev Yom Kippur*. Throughout *shas* and *poskim*, there seems to be no wiggle room in avoiding the opportunity and necessity to eat on *erev Yom Kippur*. How are we to understand the *gemara's* equation between eating on the ninth of Tishrei and fasting on Yom Kippur? Does this mitzva somehow reflect the true nature of Yom Kippur?

¹ A similar concern was shared by the Vilna Gaon regarding *achilas matza*, as he would carefully stop any eating of *matza* once Pesach ended, so as to distance himself from appearing as though *achilas matza* was not performed specifically for the mitzva over Pesach.

Reasoning behind why we must eat on Erev Yom Kippur

Some view the *chiyuv* as a form of preparation for the fast. Rashi explains:

והכי משמע קרא וענייתם בתשעה כלומר התקן עצמך בתשעה שתוכל להתענות בעשרה ומדאפיקה קרא בלשון עינוי לומר לך הרי הוא כאלו מתענה בתשעה.
And this is what's implied by the pasuk, 'And you shall afflict yourselves on the ninth,' meaning to say, prepare and fix yourself on the ninth in order to fast on the tenth. And from the exclusion of the pasuk of the language of 'affliction', it comes to teach you that preparing oneself on the ninth is equivalent to fasting on the ninth. (Rashi on Yoma, 81b)

Rashi understands that one eats on *erev* Yom Kippur in order to prepare for Yom Kippur itself. For this extra preparation, it is as if one fasted on both days. Rabbeinu Asher agrees with this analysis but he adds that it demonstrates God's affection for the Jewish people and His desire that *Am Yisrael* should not suffer:

כלומר הכינו עצמכם בתשעה לחדש להתחזק באכילה ובשתיה כדי שתוכלו להתענות למחר להראות חיבתו של המקום ב"ה לישראל. כאדם שיש לו ילד שעשועים וגור עליו להתענות יום אחד וצוה להאכילו ולהשקותו ערב יום התענית כדי שיוכל לסבול כך הקב"ה מכל ימות השנה לא צוה לישראל להתענות אלא יום אחד לטובתו לכפר על עונותם

In other words, "prepare yourselves on the ninth, rejuvenate and strengthen yourselves through eating and drinking, in order that you will be able to fast tomorrow." This is in order to demonstrate God's affection for Israel, similar to a person who has a beloved child who must fast for a day; he will give him food and drink the day before the fast in order that he will tolerate [the fast]. Similarly, God does not normally command the Jewish people to fast, except for one day, for their own good, to atone for their sins. (Rosh, Yoma, 8:22)

The Rosh clearly states that we prepare ourselves on the ninth, and strengthen ourselves through eating and drinking, in order that we will be able to fast on Yom Kippur. He writes that we do so in order to demonstrate *Hakadosh Baruch Hu's* love for *Klal Yisrael*, similar to a person who has a child who must fast for a day. In such a scenario, the person would give the child food and drink the day before the fast in order that the child will successfully complete the fast. Similarly, Hashem does not normally command *Bnei Yisrael* to fast, except for one day, for our own good, to atone for our *aveiros*.

One must be Careful not to Overindulge in this Mitzva

While it is clear from the *mekoros* cited above that one must eat on the ninth of Tishrei, *Shibbolei HaLeket* (307) suggests that one who eats “well” on the day before Yom Kippur will experience more discomfort on Yom Kippur itself. Rav Moshe Feinstein, *zt”l*, is said to have distributed sucking candies to neighborhood children on *erev* Yom Kippur, to not only impress upon the children how important this mitzva is, but also due to their long-lasting nature. This afforded the children the opportunity to fulfill this mitzva each moment that the candy remained in their mouths. While such a custom is certainly praiseworthy, overeating can be detrimental to a person. The Shelah beautifully writes:

ועל דא, מאן דאכיל ושתה בתשיעי ומענג נפשיה במיכליא ובמשתיא, אשתכח בעשיראה עינויא דנפשא בתרין חולקין, ואשתכח כאלו אתעני תשיעאה ועשיראה. את נפשותיכם, לאכללא כולא גופא ונפשא, ולאתכנעא בההוא יומא לאתכפרא על חוביהון, עד כאן. פירוש, נפשותיכם רומז לב' נפשות דהיינו גוף ונפש, ועינוי הגוף הוא התענית, ועינוי הנפש היא האכילה, ובתשיעי מענין הנפש דהיינו האכילה, וביום כפור מענין הגוף, ובזה הם שניהם מעונין.

One who eats and drinks on the ninth, and delights his soul in food and drink, will find the tenth to be an inui of his soul in two parts, and it will be as if he fasted on both the ninth and tenth. 'Your souls', comes to include your entire body and soul and is a hint to the two 'souls' of a person (the body and the soul). The affliction of one's body is the fast, and the affliction of the soul is the eating. On the ninth, we afflict the soul through eating, and on Yom Kippur we afflict the body. (Yoma, Torah Ohr §136)

The Shelah explains that excessive eating is an *inui* from the perspective of human *ruchnius*, as it lends a focus on the body and less so on one's soul. The point of the mitzva to eat on *erev* Yom Kippur is to purify and improve one's body as well as the soul, as the synergy of serving Hashem with both elements together is the ultimate expression of our *Avodas Hashem*. A person should not assume that *kedusha* is revealed only when the *neshama* is alienated from the body and the physical world. Yet, overindulging can certainly derail the objective of the motivation and purpose behind the mitzva: to highlight the *kedusha* of physical enjoyment on *erev* Yom Kippur to better help us achieve *teshuva* on Yom Kippur.

Rav Baruch HaLevi Epstein explains a different line of reasoning behind the issue of eating too much on *erev* Yom Kippur:

וי"ל ע"פ מ"ד בתענית כ"ז ב' דאנשי משמר שבמקדש לא היו מתענין באחד בשבת,

ואמרו על זה בגמרא הרבה טעמים, ואחד מהם הוא כדי שלא יצאו ממנוחה ועונג לצער ותענית, וכתבו המפרשים בבאור טעם זה, מפני שתענית הבא לאחר יום רבוי אכילה ושתייה קשה התענית יותר מכפי תענית אחר יום בסדר רגיל, ולכן מכיון שבשבת מרבים לאכול ולשתות והוי התענית שביום הראשון קשה יותר לכן לא היו מתענין אז, ולפי"ז מבואר שכל האוכל ושותה בתשיעי מעלה עליו הכתוב כאלו מתענה תשיעי ועשירי, והוא מפני שתענית יום עשירי קשה לו ע"י רבוי אכילה בתשיעי, ונמצא שאכילה בתשיעי הוי הכנה לקושי התענית, ולכן עולה לו התענית של יום העשירי בערך תענית של שני ימים.

Based upon what appears in Taanis 27b, that the anshei mishmar [the kohanim on duty] in the Beis Hamikdash would not fast on Sunday... and according to one [reason] in order that they should not go from rest and enjoyment [on Shabbos] to discomfort and fasting. And the commentators explain that a fast which comes after a day of excessive eating and drinking is more difficult and therefore they would not fast then. Similarly, it is now understood that one who eats and drinks on the ninth, it is as if he fasted for the ninth and the tenth, because the fast on the tenth is harder for him... and therefore the fast on the tenth counts for him for two fasts. (Torah Temima, Vayikra 23:32, 97)

The *Torah Temima* explains that the *anshei mishmar* in the *Beis Hamikdash* would not fast on Sunday, and according to some it was in order that they should not go from rest and enjoyment on Shabbos to discomfort and fasting on Sunday. The *mefarshim* explain that a fast which comes after a day of excessive eating and drinking is more difficult, and therefore they would not fast then. Similarly, the Torah is telling us that one who eats and drinks on the ninth is as if he fasted for the ninth and the tenth, because the fast on the tenth is now harder for him. He writes that as a result, the fast on the tenth (Yom Kippur) counts for two fasts.

Eating on Erev Yom Kippur, According to Rabbeinu Yona

After citing the views of Rashi and the Rosh, Rabbeinu Yona presents an alternate perspective of this mitzva. He writes that there are three reasons for the mitzva of eating on *erev Yom Kippur*:

ועל כן אמרו רבותינו זכרונם לברכה כל הקובע סעודה בערב יו"כ כאלו נצטוו להתענות תשיעי ועשירי והתענה בהם. כי הראה שמחתו בהגיע זמן כפרתו. ותהיה לו לעדה. על דאגתו. לאשמתו. ויגונותיו. לעונותיו. והשנית - כי בשאר ימים טובים אנחנו קובעים סעודה לשמחת המצוה. כי יגדל וישגא מאוד שכר השמחה על

המצות. כמו שנאמר (ד"ה א כט) ועתה עמך הנמצאו פה ראיתי בשמחה להתנדב לך. ונאמר (דברים כ"ח) תחת אשר לא עבדת את ה' אלהיך בשמחה ובטוב לבב. ומפני שהצום ביום הכיפורים, נתחייבו לקבוע הסעודה על שמחת המצוה בערב יוה"כ: והשלישית - למען נחזק להרבות בתפלה ותחנונים ביום הכפורים. ולשית עצות בנפשנו על התשובה ועיקריה.

And therefore, our Rabbis of blessed memory teach us that one who sits for a permanent meal on erev Yom Kippur is equivalent to have fasted on both the ninth and tenth, since his happiness will be apparent on the day of his atonement. And this will be a testimony for his concern for his guilt and his anguish for his sins.... Second, on other festive days, we eat a meal for the joy of the mitzva... and since the fast is on Yom Kippur, we were commanded to designate a meal for the joy of the mitzva on the day before Yom Kippur... Third, in order to strengthen and increase our prayer and supplication on Yom Kippur, we need to eat properly in our preparation. (Shaarei Teshuva, Sha'ar Daled, 8-10)

The first reason to eat is to show that we are *b'simcha* that the day in which our *aveiros* are forgiven has finally arrived. His second *p'shat* is that the *seuda* is an expression of the *simcha* we have for the opportunity to fulfill the *mitzvos* of Yom Kippur. The third reason offered by the *Shaarei Teshuva* is that eating on *erev* Yom Kippur provides us with strength to fast. Hashem wants us to have the strength to be able to fast and *daven* well on Yom Kippur. Rav Avigdor Nebenzahl, *shlita*, points out (*Tit'haru*, p. 208) that Rabbeinu Yona also mentions that we require the strength to enable us to 'think about ways of doing *teshuva*.' True *teshuva* requires hard work and thinking about what we can do to avoid *aveiros* in the future, and how to better serve Hashem.

Rav Nebenzahl adds several other reasons to the three provided by Rabbeinu Yona (*Sichos L'Yom Kippur*, 189-196). The first of these reasons is based on the *machlokes* regarding the day on which *Akeidas Yitzchak* took place. Although most opinions claim that it took place on Rosh Hashana, there are those who claim that it happened on Yom Kippur. The *Kli Yakar* cites this view in the name of *Chazal*:

בזאת יבא אהרן אל הקודש בפר בן בקר וגו'. ויש בכולם רמז ליו"כ כי מ"ש ואש הבקר רץ אברהם סובר מדרש זה שהיה ביו"כ כי גם רז"ל דרשו (בפרקי דר"א כט) בעצם היום נימול אברהם שנימול ביו"כ, וסובר שכל המעשה מן וירא ה' אל אברם באלוני ממרא הכל היה ביום אחד ואע"פ שעשה סעודה ביום ההוא מ"מ אחר שלא נתנה התורה עדיין היה מחמיר על עצמו ולא על אחרים. ואיל של יצחק יש במדרש

שהיה המעשה ההוא ביום כיפורים (עיין ילקוט ראובני פר' וירא כב יד) וראייתו מן פסוק אשר יאמר היום בהר ה' יראה. שבכל שנה ביום זה ה' יראה כי בענן יראה שמה ה'.

And in all of this there is a hint to Yom HaKippurim, because of what's written, 'and to the herd ran Avraham'- the midrash explains that this took place on Yom Kippur. It is also explained that 'in the selfsame day was Avraham circumcised' took place on Yom Kippur. And it is explained that every story and instance from (parshas) 'Vayeira Hashem el Avraham be'elonei mamreh' all took place in one day. And even though a meal was made on that day, nevertheless, since the Torah was not yet given, he was stringent upon himself but not others. And the ram of Yitzchak, is explained in the midrash that, this took place on Yom HaKippurim. And the proof from the pasuk is, as it is said to this day: 'In the mount where Hashem is seen', that each and every year on this day (Yom Kippur), Hashem will appear and be seen, because in a cloud will the name of Hashem appear. (Kli Yakar, Vayikra, 16:3)

Avraham Avinu was trying to carefully adhere to all of the *halachos* of the *korbanos* when offering Yitzchak as a *korban*. In an effort to be *mekayem* the *hiddur* mitzva to fatten up the *korban* (*Menachos* 64a and Rambam, *Hilchos Shgagos* 2:15), Avraham Avinu was feeding Yitzchak on *erev* Yom Kippur (according to the view that the *akeida* took place on Yom Kippur), to make him into a more beautiful and *mehudar* sacrifice to *Hakadosh Baruch Hu*.² Rav Nebenzahl explains that we are given the mitzva to eat on *erev* Yom Kippur to commemorate this effort. Just as the eating then was completely *l'shem Shamayim*, when we sit down to our *seuda hamafsekes*, we should have in mind that all our eating should be *l'shem Shamayim*.

Rav Nebenzahl develops an additional reason for this mitzva, which he writes that the Chasam Sofer similarly develops as well. He explains that part of the *teshuva* and growth process is to try to dedicate our physical acts to *Avodas Hashem*. Not merely during learning and *davening*, but even when we are performing mundane physical acts. After a month of Elul, *selichos*, Rosh Hashana, *Aseres Yemei Teshuva*, and *Tzom Gedalya*, we *daven* to have reached a high level. As such, we use this time

2 The *gemara* in *Menachos*, 64a, teaches us that this *hiddur* to fatten the *korban* even takes precedence over Shabbos. If a lean animal was brought on behalf of the community on Shabbos, and a fatter *korban* was available, the fatter animal must now be brought on Shabbos even though the lean *korban* was already brought and the mitzva was seemingly fulfilled.

to train ourselves to channel our physical activities to be *l'shem Shamayim*, by making sure to eat on *erev* Yom Kippur and to have in mind that it is a mitzva. The mitzva of eating on *erev* Yom Kippur is there to train us that all of our *gashymius* activities can and should be part of our *avodas Hashem*.

A final point Rav Nebenzahl writes is that the mitzva of eating on *erev* Yom Kippur teaches and reminds us of the great love that Hashem has for *Am Yisrael*. Hashem wants us to be successful in our *din*, exhausting our options and possibilities to emerge with a positive judgment. After all, we would be eating on this day even if there were no mitzva to do so. *Hakadosh Baruch Hu*, in His infinite kindness, is taking an activity we all would have done anyway, the act of eating, and transforming it into a mitzva. All we have to do is have *kavana* that we are eating for the sake of the mitzva. If we take a small step forward to do *teshuva*, Hashem will assist us in completing the process. As *Chazal* teach in *Shir HaShirim Rabba* (5:2), *Pischu Li pesach k'chudo shel machat, v'eftach lachem pesach shel ulam*: Give Me a small opening, and I will extend it wide open.

Are Women Obligated in this Mitzva?

The importance of this mitzva has taken shape. However, are we all obligated in it? Rabbi Akiva Eiger (*Shu"t*, 15) addresses whether women are obligated to fulfill the mitzva of eating on *erev* Yom Kippur. Since the mitzva is limited to the ninth of Tishrei, it might be defined as a "*zman grama*" (time-bound) mitzva from which women are *patur*. However, if the mitzva is part of the mitzva of fasting on the tenth and meant as a preparation for Yom Kippur, we might obligate women to eat on the ninth (*erev* Yom Kippur), in the exact same way they are *chayav* to fast on the tenth (Yom Kippur).

Though the *gemara* itself does not mention this issue, an interesting *gemara* in *Sukka* might inform this question.

מנא הני מילי? דתנו רבנן: "אזרח" — זה אזרח, "האזרח" — להוציא את הנשים, כלל — לרבות את הקטנים. אמר מר: "האזרח" — להוציא את הנשים. למימרא ד"אזרח", בין נשים בין גברי משמע? והתניא: "האזרח" — לרבות את הנשים האזרחיות, שחייבות בעינינו. אלמא "אזרח" — גברי משמע! אמר רבה: הלכתא נינהו ואסמכינהו רבנן אקראי.

From where are these matters derived? It is as the Sages taught in a beraisa that it is stated: "All the homeborn in Israel shall reside in sukkos". Had the verse stated only: Homeborn, it would have been derived that any homeborn member of the Jewish people is obligated to observe this mitzva.

However, “The homeborn,” indicates that only certain homeborn members are obligated, i.e., men, to the exclusion of the women. The word “all” in the phrase: “All the homeborn,” comes to include the minors capable of performing this mitzva. The Master said: “The homeborn” is to the exclusion of women. Is that to say that the term homeborn indicates both men and women? Isn’t it taught in a beraisa: “the homeborn” to include homeborn women, who are obligated in the mitzva of affliction on Yom Kippur. Therefore, the term homeborn, indicates only men. Rabba said: They are each a halacha transmitted to Moshe from Sinai, and the Sages supported them with pesukim. (Sukka 28a)

The *gemara* interprets the extra word “*ha’eizrach*” as coming to include women in the obligation of *tosefes* Yom Kippur, the few minutes we add to the actual fast. The *gemara* does not address the question of women being obligated to eat on the ninth. Is this because they’re obligated even without an extra derivation, or because they are excused due it being a time-bound mitzva, and this *p’tur* is indicated by the absence of a special *pasuk* to include them?

The *Yerushalmi* teaches that on the following days we are forbidden to fast: Shabbos, Yom Tov, Rosh Chodesh, Chanuka and Purim. *Erev* Yom Kippur is not mentioned on this list, so it would appear that women are not formally *chayav* to eat on *erev* Yom Kippur.

אין גוזרין תענית על הצבור בראשי חדשים בחנוכה ובפורים. ואם התחילו, אין מפסיקין, דברי רבן גמליאל. אמר רבי מאיר, אף על פי שאמר רבן גמליאל אין מפסיקין, מודה היה שאין משלימין. וכן תשעה באב שחל להיות בערב שבת.
One does not decree a fast day on a Rosh Chodesh, on Chanuka, or Purim. If they started, they do not interrupt. These are the words of Rabban Gamliel. Rabbi Meir said, even though Rabban Gamliel said that one does not interrupt, he agreed that one does not complete. The same on a Ninth of Av which falls on a Friday. (Ta’anis, 2:14)

In the introduction to his *Halichos Beisa*, the *mechaber* brings an explanation of the *Torah Temima* which sheds light on the issue. He explains that there are so few *mitzvos aseh she’hazman grama* which women are actually obligated in. As a result, women cherish the opportunity to do these *mitzvos*. An example of this type of mitzva that the *Halichos Beisa* quotes is eating on *erev* Yom Kippur. In their enthusiasm to perform this mitzva to its fullest, women continued to eat right up until the last moment before Yom Kippur as a way of beautifying the fulfillment of

this mitzva. As such, *Chazal* exempted women from the *inyan* of *tosefes* Yom Kippur, adding a few minutes to the fast. *Chazal* felt it better to give women this opportunity, than minimize their enthusiasm for the sake of *tosefes ha'tzom*.

A Reminder of what we're Capable of and a Key Piece of Teshuva Sheleima

Rav Avraham Yitzchak HaKohen Kook analyzes the mitzva to eat on *erev* Yom Kippur in *Ein Aya* (38). Rav Kook identifies this mitzva as a key component to the *teshuva* process. He explains that there are two elements of *teshuva* that the Torah points to in *Parshas Nitzavim*:

והיה כִּי־יבאוֹ עֲלֶיךָ כָּל־הַדְּבָרִים הָאֵלֶּה הַבְּרָכָה וְהַקְּלָלָה אֲשֶׁר נָתַתִּי לִפְנֵיךָ וְהִשְׁבַּת אֶל־
לִבְּךָ בְּכָל־הַגּוֹיִם אֲשֶׁר הִדִּיחָךָ ה' אֱלֹהֶיךָ שָׁמָּה. וּשְׁבַת עֵדָה אֱלֹהֶיךָ וּשְׁמַעַת בְּקוֹל כָּל
אֲשֶׁר־אֲנִי מֵצוּר הַיּוֹם אֶתָּה וּבִנְיָן בְּכָל־לִבְּךָ וּבְכָל־נַפְשְׁךָ. וּמֹל ה' אֱלֹקֶיךָ אֶת־לִבְּךָ
וְאֶת־לִבְּךָ זֶרַעַךְ לֵאמֹר אֶתָּה אֱלֹקֶיךָ בְּכָל־לִבְּךָ וּבְכָל־נַפְשְׁךָ לְמַעַן חַיִּיךָ.

And it shall come to pass when all these things come upon you, the blessing and the curse that I have set before you, and you will take it to your heart among all the nations where the Lord your God has driven you. And you will return unto the Lord your God and hearken to His voice, according to all that I command you this day, you and your children, with all your heart and with all your soul.... And the Lord your God will circumcise your heart and the heart of your children to love the Lord your God with all your heart and with all your soul, so that you may live. (Devarim. 30:1–2, 6)

If one “returns” to God, then why must God “circumcise his heart” in order to bring about “the love of the Lord your God”, *ahavas Hashem*? Rav Kook explains that committing an *aveira* impacts a person in two separate ways: Firstly, the person has violated *ratzon Hashem*, the will of God. Secondly, the person has distanced himself from Hashem, diminishing both the *ahava* and *yirah* of Hashem in his own heart. The *teshuva* process has to repair the *aveira*, as well as replenish the *ahavas* and *yiras* Hashem in one’s heart, which he has lost due to committing this *aveira*.

These two goals of *teshuva* are not achieved simultaneously, or uniformly. The *teshuva* of restoring one’s personal relationship with *Hakadosh Baruch Hu* can best be achieved without the distractions of the physical world. However, being *mesakein* an *aveira* cannot be fully achieved while detached from the physical world. The *avaryan* (violation) must be immersed in this world and repeat the scenario upon which he stumbled initially. Rav Kook explains that a person must be *oseik* in his/her daily tasks and schedule to perform *teshuva* properly. As such, the *inyim* of Yom Kippur,

the method through which we restore our personal relationship with *Hakadosh Baruch Hu*, does not actually achieve a *teshuva sheleima*. It is for that reason that we are careful to eat and drink on the day before Yom Kippur, and attempt to be careful to not stumble with regard to any *aveira*, including potential sins through eating and drinking, as we attempt to engage in active *teshuva*. This idea explains why the *gemara* equates the ninth and tenth days of Tishrei, as their duality comprises the complete *teshuva* process of *Yom Ha'din*, Yom Kippur.

The Sefas Emes, however, offers another perspective in his *Derashos L'yom Hakippurim* (5662):

ונראה דעיקר שזכו ללוחות אחרונות מכח התשובה שעשו בערב יו"כ פ' כי בלוחות הראשונות החטיאם השטן כדי שלא יזכו אל הלוחות ביום האחרון שה' מוכן משה רע"ה לירד מן ההר למחרת. ובודאי גם באחרונות עמד השטן בכל כחו לעכב אותן ולהחטיאם

And it appears that the main reason for meriting the second set of luchos was due to the strength of teshuva that was performed on erev Yom Kippur. Because for the first set of luchos, the satan caused us to sin in order to not merit the luchos on the last day, as Moshe was ready to descend the mountain on the following day. And certainly by the second set of luchos, the satan got up in all his strength to cause us to sin.

Sfas Emes explains that during the first attempt to receive the *luchos*, *Bnei Yisrael* eagerly anticipated Moshe's return for 39 days. With each day's increased anticipation for the return of Moshe Rabbeinu, came a corresponding increase in the effort of the *yetzer hara* to throw a wrench into their plans. It was in the final moments before Moshe's long-awaited return that the *yetzer hara* unfortunately broke through, and was successful in sparking the tragedy of the *eigel hazahav*. This strategy of the *yetzer hara*, to swoop in at the last minute when our guard begins to go down and overwhelming us with all sorts of obstacles and challenges, often causes us to question and abandon all the hard work put in until that point.

Yom Kippur, the commemoration of the giving of the *luchos shniyos* (second *luchos*), immediately follows the conclusion of *erev Yom Kippur*. The *yetzer hara* tries again every year to undermine all that we have accomplished from Rosh Chodesh Elul until this moment, because he knows that all it takes is a slip on this final day before the holiest day of our year. If the *yetzer hara* can somehow bring about another *eigel* on that final day, all the effort put in from Elul onwards will wilt in strength. *Erev Yom Kippur* is a day of celebration, independently of *simchas Yom HaKippurim*,

because it reminds us of our core *teshuva* ability. When given the opportunity to receive the *luchos* a second time, we corrected our mistakes and we beat the *yetzer hara*. We remind ourselves amidst the anxiety that can creep into our psyche that if we beat the *yetzer hara* then, we can do it this year as well.

How do we do *Teshuva*?

RABBI ARYEH MARKMAN



Part One: Just One Thing.

One idea that is very important is brought down by the *Michtav M'Eliyahu*, quoting Rabbi Yisrael Salanter. We all possess a certain character trait of goodness and if we focus on this trait, it can lift us up to incredible spiritual heights. But we also have a weakness, that if we let it run loose, it will bring us down to be an evil person beyond our imagination.

Our task is to identify and use that good character trait to lift us, and to avoid our bad character trait completely.

With this in mind, how do we know what *teshuva* to do? Look at the things that we have stumbled in the most, the transgressions that are constantly part of us. That is the area that we need to work on. The Vilna Gaon says our overcoming this area of weakness and transgression is the reason why a person was brought into this world. That, and using our God-given strengths to overcome it.

Rav Yisroel Salanter adds that if a person should only take one idea, one *inyan* to focus on in Elul, it should be to focus on one weakness that needs to change. Do it with *mesiras nefesh*, with everything you have and put your whole being into it. And even if you can improve in just a part of the *aveira*/transgression, then you will be considered a *tzadik*.

Just imagine if every Yom Kippur we had worked on just one thing and fixed that one little thing completely and the next year only one thing more until we are here today; how great we would be! But we want to get rich quick and work on everything at once.

Rashi brings from *Chazal* that just a little improvement could change our

Based on a lecture from Rabbi Ephraim Wachsman

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entire year of judgment, because since we would be different; we would then be unrecognizable from who we were before.

Rabbi Yechezkel Levenstein writes there are no two people since Adam HaRishon who ever looked exactly alike; there is always some slight difference. Not only is it like that in the physical world, but it is also like that in the spiritual world. There are so many levels we can inhabit. All we are talking about are two eyes, two ears, a nose and a mouth, and yet there are so many different aspects to a face that the combinations are endless. That is a hint to understand what it takes to change.

Imagine an artist drawing a portrait of someone and he makes one tiny change in a line around the mouth. It doesn't appear to be the same person anymore. So too, the tiniest change in a person's actions and outlook makes a person unrecognizable from whom he was before. It involves tremendous effort, your life blood, to make that change in who you are up until now.

There is a story of a person who took it upon himself to not speak during *davening*. Up until that point he was gregariously *schmoozing* away throughout *davening*. After a year of this *kabbala*, he gave a *kiddush* because he had become a new person entirely. You could not identify him in shul anymore!

In the area of *kedushas Shabbos*, how much time do we waste talking absolute nonsense on Shabbos? There are so many areas we can improve upon. Make a decision not to speak *lashon hara*. But you must learn the *halachos* to have any effect. A person who can be abusive in conversation can make a decision to only speak with words of encouragement. One decision, adhered to consistently, can change our entire Yom Kippur.

But it takes work. Imagine weightlifting. We can't lift light weights and expect to get muscles right away. We need to keep adding on weights every time we plateau at a new level. Add a little more every day. Take on something that takes effort and by doing so you will become a different person.

In one second a *baal teshuva* can become greater than a complete *tzadik*. How is that possible? The Shem MiShmuel writes there are two ways a person can become close to Hashem. He can work at it, slowly, level by level. Or if there is a terrible *tuma* that he is immersed in, he can choose to overcome it.

The spiritual elevation he attains is equal to the level of *tuma* that he spurned and is constantly combating. All in one moment. (How fortunate then are we to have billboards. So much opportunity!)

And that is why our *teshuva* today is worth more than in previous generations, because the *tuma* we face is like nothing like they ever experienced!

Rabbi Ephraim Wachsman gives an example of television and all the programs that are available 24/7. Imagine all the effort and millions of hours and brain power that went into creating those programs that glue us to the screen. Suddenly a person has an awakening and rips the flatscreen off the wall and obliterates it with a sledgehammer. Then all that tsunami of *shmutz* and *tuma* are banished from his life. In direct proportion to the amount of negative influence he has eliminated, he has merited the equivalent in terms of spiritual benefits. With one decision, in one moment.

Now is the time! Do something fantastic about some area in your life ... now!

The Chofetz Chaim says of course we want to erase all the mistakes we have made and be sorry. But we feel that we have done so much bad that there is no way we can overcome it. Here we are, yet again doing *teshuva* on the same thing that we have done *teshuva* on for the last twenty years. Don't be despondent!

Teshuva means I am thinking only about this moment. The past is gone. What was, was, and from now on it is going to be different! *Teshuva* is stronger than all the *tuma* in the world. It reaches all the way to the *Kisei Hakavod*. Only *teshuva* can reach that far.

Whatever a person thinks he is, *teshuva* is stronger than that. You are in the box and *teshuva* is your better version out of that box.

Part Two: The Goal of Neila

Yom Kippur is a day of pure and perfect *emes*. The Avnei Nezer teaches that from Rosh Hashanah through Yom Kippur there is a judgment on how much *emes* will be in the world. Will *emes* be revealed or suppressed? There is so much *sheker* in the world today that we think we are living in a dream. People say and believe things that defy rational thought. People think *sheker* is *emes*, and *emes* is *sheker*. Will there be a revelation of *emes* this year?

The Yismach Moshe writes that when we go into Yom Kippur, we are accompanied by all the *neshamos* of all the previous generations as well as the portion of themselves that had wasted time in their lifetimes. They are waiting for their *tikkun* through us, for us to eliminate all the falsehood in their and our lives.

Please understand what all the *vidui* and self-introspection is accomplishing. It is allowing us to completely expose ourselves to Hashem. As we take off layer after layer throughout Yom Kippur, we are bringing ourselves closer to the *Ribono Shel Olam*. Consider, how much are we a friend to someone? It is how much we are prepared to reveal who we really are. If we are hiding ourselves, then we are creating distance

between us. When we open ourselves up, we become closer. As we further reveal ourselves with hours of *vidui* and the like to Hashem, we should not think about how bad we appear. Rather, realize how honest and truthful you are to your Creator through your own personal revelation. We are showing Him our inner-most self.

The more we uncover, the more Hashem will reveal to us. Things that we felt were bad aspects of our lives, we will realize were actually holiness emanating from Hashem. Life becomes clearer; it was for the good. Only on Yom Kippur does a light come out from the highest of the ten *Sefiros* and cleanse everything.

Throughout the year we do *teshuva* and are forgiven but to get cleansed we need the light of the highest level. As we get closer to *neila*, Hashem locks Himself up with *Klal Yisroel* and throws out all the nations of the world; for there must be no separation between us and Hashem.

And do you know what separation is? Anger towards others, grudges, hatred, or any narcissistic element. Financially there can't be even a penny in my possession that is not mine.

In our *tefillin* it says the *shema*. In Hashem's it says, "Who is like you Israel? One nation on earth."

And in that one moment in *neila* (at one moment = atonement) when the world is completely hushed, and we have no bodily strength left because we are weak with fasting, and we have no resentment as we have forgiven everyone (and ourselves). We are beyond fatigued from all the *tefilos* and *teshuva* that we have endured. And then the Jewish people, from all the corners of the world, rise up and scream the *shema*, and in that earth shattering, *Sefiros* piercing, transcendent moment, as the angels are stilled, Hashem joins us and says "Who is like you Israel? One nation on earth."

In that nano-second we fuse with Hashem. Then comes the final *tekia* of the *shofar*. There is a tradition to blow ten times every day in Elul excluding Shabbos, and with the two hundred on Rosh Hashanah and the one on Yom Kippur we arrive at 441 blasts. That is the gematria of *emes*. *Emes* permeates the world, and we don't need to do anything else at that instant for all is complete and whole again.

May we accomplish all that we need to and bring *emes* back into our world and for the entirety of mankind to perceive a new level of truth which it so badly needs and depends on us to create. *G'mar Tov!*

Escape From Auschwitz

ROBERT MILLMAN



From Rosh Hashana, until Yom Kippur, we repeat two familiar refrains:
זכרנו לחיים מלך חפץ בחיים וכתבנו בספר החיים למענך אלוקים חיים.
Remember us for life, O King Who desires life, and inscribe us in the Book of Life, for Your sake, O Living God.

מי כמוך אב הרחמים זוכר יצוריו לחיים ברחמים.
Who is like You, Merciful Father, Who recalls His creatures mercifully for life.

What is it that causes our *tefilos* on these ten holy days to focus so much on life? It is not as simple as asking God to continue our existence in this world. That would, of course, be pedestrian and without meaning.

The request to be included in the Book of Life refers not primarily to physical life. It is a focus on *olam hazeh* and *olam habah*. In its fullest sense, we ask for a worthwhile life, one of meaning, one filled with *mitzvos*; a life free from suffering, a life of blessing, peace, and prosperity, and, most importantly, a life dedicated to the service of God and all that entails. Thus, we pray that our deeds and repentance make us worthy of inclusion in the Book of the Living. To live a life accordingly, we pray this will allow us everlasting life in *olam habah*, as well.

The story¹ that follows is not simply “another Holocaust story.” It is the story of two men who braved their lives, and wound up saving thousands of Jewish souls, who now generations later, have produced untold millions of people dedicated to *Hakadosh Baruch Hu* and a meaningful life.

¹ This story was adapted from the original which is found at: <https://www.theguardian.com/global/2022/jun/04/escape-from-auschwitz-most-extraordinary-holocaust-story-youve-never-heard>

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Escape was lunacy, escape was death. To attempt it was suicide. That much had been taught to Walter Rosenberg early, within a week of his arrival in Auschwitz, aged just 17, at the start of July 1942. One afternoon, he and thousands of others had been forced to stand in silence and watch a public hanging, performed with full ceremony.

The stars of the show were announced as two prisoners who had tried and failed to escape. Walter and the others had to watch as the men were brought out. A kapo tied their ankles and thighs with rope, then placed a noose around each of their necks. Afterwards, the inmates were kept there a full hour, forbidden even to look away. The corpses had notices pinned to their chests, written as if the words were spoken by the dead themselves: "Because we tried to escape..."

Walter understood that the Nazis wanted him and every other prisoner to conclude that escape was futile, but Walter drew a very different lesson. The danger came not from trying to escape, but trying and failing. He was determined to succeed.

He made himself a student of "escapology," taking lessons from some of Auschwitz's most battle-hardened inmates – chief among them a grizzled captain in the Red Army. He also forged ties with the camp's secret underground resistance, acquiring the knowhow to attempt what no Jew had succeeded before. He had come to understand something essential about the death factory that was Auschwitz: that the crime unfolding before him rested on devastating deception.

Most Jews were sent on arrival at Auschwitz to the gas chambers, but some, like Walter, were held instead as slave workers. For nearly two years, he remained a prisoner – and in that time, he saw almost every aspect of the Auschwitz slaughterhouse. He was never one of the Jews compelled to do the most gruesome work of all – retrieving corpses from the gas chambers – but he witnessed every other stage of the process of industrialized murder.

For ten months, he worked on the railway platform where incoming trains pulled in, delivering hundreds of Jews in cattle cars from all across Europe. His job was unloading each transport, and he detected a pattern. The Nazis lied to their victims at every step of their journey towards destruction. The people falling out of the cattle cars believed they were being taken to new lives in a new place: "resettlement in the east." The Jews on those trains had packed up their belongings and held on tight to them, because they thought they were building new homes. They believed that because that was what the Nazis had told them.

The lying continued when the SS men unlocked the wagons. If there was time, if the weather was good, the SS men might put on a show. They would pretend that the dreadful journey the new arrivals had endured had been some kind of aberration, a mistake. “Good God,” they might say, “In what state did those horrible Slovaks transport you? This is inhuman.” Those transported from Paris or Amsterdam people, raised with the best of the civilized Germans, were primed to believe that at long last, food and drink would be available.

If time permitted, the pretense would continue as the new arrivals climbed onto the trucks that would take them to the killing sites. For those heading to the death chambers on foot, there was more reassurance in the form of inquiries about the Jews’ professional qualifications or trades back home. If anyone asked where they were being taken, the answer came back: “For disinfection.” Given how squalid the journey had been, that made sense. More reassurance came on that trek past the Birkenau section of the camp from the sight of an ambulance – a green military van, bright with a red cross – driving slowly behind their ragtag column, occasionally picking up those who could not keep walking by themselves. The vehicle did carry a doctor. But his purpose was not healing the sick or saving lives. The medic inside was the SS doctor who would supervise the gassing, and the cargo on board consisted of cans of Zyklon B: poison gas. Walter knew all about that: one of his occasional jobs was to load the deadly canisters onto the vans.

The scene of the crime itself was disguised. The doomed believed they had been brought to a secluded, bucolic spot, a farmhouse alongside two wooden huts for undressing. By crematoria IV and V, there were flower beds. Once there, the deception continued. These were the Jews’ final minutes, but the Nazis encouraged them to believe in a future they did not have. “What is your trade? A shoemaker?” the officer would ask again. “We need them urgently, report to me immediately after!”

The SS would tell them that they were about to bath, that they should stay calm and that afterwards they would be given “coffee and something to eat.” When the Jews were finally pushed inside the gas chamber, the trickery did not end. The sign on the doors read, “To the baths.” In Crematorium II, the ceiling was dotted with fake showerheads.

Walter soon understood that all this was not some cruel and elaborate joke. He and his fellow slaves of the “clearing command” were under the strictest orders not to breathe a word to anybody getting off the trains. There was to be no contact whatsoever.

One night, there came a transport from Thersienstadt. One of those disembarking was a well-dressed Czech mother, holding the hands of her two small children, and she was clearly relieved to have arrived at last. She said as much to a German officer: "Thank God, we're here." She was one of those deportees who believed that the nation of Goethe and Kant would at last bring a measure of sanity to proceedings. One of Walter's young comrades, as he ran past her, hissed words meant both to scold and warn: "You'll soon be dead."

She approached a German officer as if she were the aggrieved patron of a Prague department store, demanding to see the manager. "Officer, one of the gangsters has told me that I and my children are to be killed," she complained, in perfect German. The SS man, gloved, his uniform creased in all the right places, gave her his most benign and trustworthy smile and said: "My dear lady, we are civilized people. Which gangster said this to you? If you would be so kind as to point him out." She did as she was asked. Afterwards, when everything was finished and all the people had gone, the officer sought out that prisoner and had him taken behind the wagons and shot. Walter was among those who carried his corpse back to the camp. At around the same time, the woman who had complained was gassed, along with her two young children.

It was essential that the Jews coming off those trains did not know what fate awaited them. If the Jews knew what was coming, what sand might they be able to throw in the machine that was poised to devour them? They might not stop it, but they could slow it down. The difference between truth and lies was the difference between life and death. The factory of murder that the Nazis had constructed in this accursed place depended on one cardinal principle: that the people who came to Auschwitz did not know where they were going, or for what purpose. Walter had seen enough of those in the countryside of his native Slovakia to know that it is much easier to slaughter lambs than it is to hunt deer. If you have to catch animals individually, hunting them down one by one, it is slow, awkward work. It is never as fast or efficient as driving thousands at a time, herded and neatly organized, toward their deaths.

On 7 April 1944, after days of delay, weeks of obsessive preparation, months of watching the failed attempts of others, and two years of seeing the depths to which human beings could sink, the moment had finally come. It was time to escape.

The two other prisoners were already there, at the designated spot. Wordlessly, they gave the nod: do it now. Walter and fellow inmate Fred Wetzler did not hesitate.

They climbed on top of a woodpile, covering a hole that had been prepared by other would-be escapees, found the opening and dropped inside. A second later, their comrades moved the planks into place above their heads. One of them whispered: "Bon voyage." Then, all was dark and silent.

Without delay, Walter set to work. He pulled out the *machorka*, the cheap, Soviet tobacco the Red Army captain had told him about, soaked in petrol and dried, exactly as instructed. He began to wedge it into the cracks between the wooden boards, hoping that the scent would be a repellent to dogs. If the captain was correct, Walter and Fred should be able to crouch in this bunker beneath the woodpile, silent and undisturbed, for exactly as long as they needed: three days and three nights.

At 6:00pm that Friday night came the shriek of the siren. Every inmate welcomed it: it meant that at least one of their number had been found missing from the evening roll call, possibly escaped. That was their cue. Fred and Walter moved out of the main space under the woodpile, which had been built to hold four, and wriggled into a kind of passageway that could accommodate only two. It was intended to be a hiding place within a hiding place.

They knew what the siren would bring. The pounding of close to 2,000 pairs of jackboots, tramping across the ground, their dogs slaving as they rooted out any sign of frail, quivering human life. The search would not let up for three days. Fred and Walter could be precise about that, because the Nazis had a security protocol. This outer part of the camp was guarded only during the daylight hours. No need to watch over it at night, when every last prisoner was herded back inside the inner camp.

There was one exception to that rule. If an inmate was missing, the SS kept up the outer ring of armed sentry posts for 72 hours as they searched. After that, they would conclude that the escapee, or escapees, had got away: from then on, it would be the responsibility of the Gestapo to scour the wider region and find them. If a prisoner could somehow hide in the outer area, during those three days and nights after the alarm had been sounded, then he would emerge on the fourth night into an outer camp that was guarded and escape.

The hours dragged by. The SS kept up the search. Fred and Walter froze as they heard two men, Germans, just yards away. It was in the early afternoon, and they could pick up every word. "They can't have got away," said one. "They must be still in the camp." The Germans began speculating about Fred and Walter's likely hiding places. "How about that pile of wood?"

Walter and Fred did not move. The two Germans climbed on top of the woodpile, which they proceeded to dismantle, board by board. Walter grabbed his knife. Fred did the same. And then, their lives were saved by the Hand of God. Far off there was a sudden commotion. Fred and Walter could hear the men just above them pause. A second passed. Then another. Finally, one of the pair said: "They've got them! C'mon...Hurry." Down below, Fred and Walter heard their would-be discoverers scramble away.

Sunday night passed into Monday. The morning shift returned, bringing with it the same din, the same barking, both human and animal, for another 10 hours, each minute passing at the same agonizing pace. At 6:30pm, Walter and Fred finally heard the sound they had longed for. Announced loudly, it rang out: *Postenkette abziehen!* It was the order to take down the *grosse Postenkette*, the outer chain of sentry posts, shouted from one watchtower to the next and then the next, circling the entire perimeter. To Fred and Walter, those words sounded like sweet music. It was recognition that the Nazis had failed to recapture the two prisoners.

They took a deep breath and pressed their palms against the roof, but it would not move. Had they accidentally sealed themselves into their own tomb? They had assumed that, if you could pile a plank on, you could take it off. But lifting boards is easy from above. Not so from below. Shoving in tandem, grunting with pain, they managed to lift one of the bottom planks no more than an inch. But it was just enough to shove it sideways. Fred turned to Walter with a smile. "Thank God for those Germans who nearly found us," he whispered. "If they hadn't moved those planks, we'd have been trapped." They summoned their strength again, shifting the boards until they could haul themselves up and out. At last, they were out of the hole in the ground. Exhausted from three days' confinement, the two men paused to take in the night sky. It was clear; the moon was shining.

They needed to get going, but first, they put the boards back in their original position. Part of it was a determination to be thorough, to leave no clue for those who would be there the next morning, and part of it was the hope that it might serve as an escape hatch for someone else. Fred and Walter were on their way to becoming the first Jews to engineer their own escape from Auschwitz.

Then, they headed west on their stomachs. They did not get up until they had reached the forest. The perimeter fence was not like the ones they had known from the inner camp. It did not have lights attached to each post; the wire was not electrified. They made an opening big enough for them to crawl through. Now, they

were on the other side of the fence. Before long, they passed the inner camp, the lights that marked its perimeter warm and glowing. The pair took a last look, as clear as they had ever been that they never wanted to see this place again.

They kept on, walking as stealthily as they could. At about 2:00am, crossing open moorland, they reached a signpost with a warning to those coming in the opposite direction: "Attention! This is Auschwitz Concentration Camp. Anyone found on these lands will be shot without warning!" They had at last reached the end of the vast "zone of interest" that enveloped the camp. On 10 April 1944, they had each achieved what no Jew had done before: they had broken out of Auschwitz. And now they would embark on their true mission: to warn the world of the horrors within.

After escaping the camp, Walter and Fred went on the run, trekking across the mountains, marshlands and rivers of Nazi-occupied Poland, without a map or compass, to reach their native Slovakia. There, they wrote a 32-page report, the first detailed account of the mass slaughter under way in Auschwitz-Birkenau. It would eventually reach Winston Churchill, Franklin Roosevelt and the pope, and by a series of extraordinary moves, save 200,000 Jewish lives. While in hiding, Walter adopted an alias – Rudolf Vrba – a name he would keep until his death in Vancouver in 2006, aged 81. His postwar life would take a series of unexpected turns – and include several more escapes – but he never stopped testifying to what he had seen, determined that the world should know the truth of Auschwitz.

I will end with a story about the Klausenberger Rebbe, who lost his wife and eleven children during the war. When leading the service of the first Yom Kippur after the war, a chassid asked the Rebbe, "Why are we klopping our hands on our chests? What conceivable *aveiros* did we commit in the past months and years when we were subjected to cruelty, deaths and confinement?" The Rebbe answered brilliantly: "We *klop*, because so many of you prayed each night that you would not wake up in the morning. You wanted to die and end your suffering. Yet, here we all are, survivors of one of the ugliest chapters in Jewish history. We survive and live so that generations of Jewish life will continue."

May we all be *zoche* to life in 5783, with lives focused on a serious dedication to *mitzvos* and *Hakadosh Baruch Hu*, until the coming of *Moshiach Tzidkeinu*.

כן יהי רצון!

A Compilation of *Segulos* Recorded in the Name of Rav Chaim Kanievsky zt”l

DAVID WINTER



The world lost its greatest asset this past Shushan Purim and there is no real consolation for that loss. In the ongoing tragedy that is *galus*, the passing of Rav Chaim zt”l from this world has a more evident impact than the absence of the *Beis HaMikdash* since we have yet to experience a world with the *Beis HaMikdash*. Anyone who heard the stories or had personal experience in requesting advice or a *bracha*¹ understands the challenge of an avenue of connection to Hashem, an accessible source of guidance and insight, that has been taken away. He was not simply an inspiration, but a resource to all of *Bnei Yisrael* and a protection for the world at large. The world has already become more threatening and uncertain since Shushan Purim and that has been apparent on various levels. For his part, it's reasonable to guess that Rav Chaim's response would be “if we *daven* and learn Torah as we should, [nothing else matters.]”²

For many, that isn't quite enough. Inertia is a real challenge and it would be nice to once again feel a connection to the wisdom he shared with the public with some regularity. While Rav Chaim is inaccessible, there have been many publications that

1 Rav Chaim notes that there is an opinion in the *Sifrei* (*Eikev* 6:38) that the *bracha* of a *tzaddik* continues to be effective even after his passing. (*Rav Chaim Kanievsky on Chumash, Parshas Pinchas* p.295)

2 See *Rav Chaim Kanievsky on the Yamim Nora'im* p.52, *Eicha Rabba* 2

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record various pieces of advice and *segulos*³ for particular common issues.⁴ Having felt the impact and seen the stories, I've compiled some *segulos* mentioned by Rav Chaim as recorded in some of the *sefarim*, specifically including a collection of those found in his *Orchos Yosher*, *Rav Chaim Kanievsky on the Yamim Nora'im*, compiled by Rabbi Avraham Yeshayahu Shteinman (his grandson), and *Rav Chaim Kanievsky on Chumash*, compiled by Rabbi Shai Graucher. There is some overlap with the various stories recorded in each, but they are helpful insofar as they provide additional detail about certain practices. Perhaps the most relevant advice in consideration of the time of year is to reiterate Rav Chaim's comment that the most important character trait to strengthen in preparation for Rosh Hashana is *vitur* (giving in), about which the *gemara* in *Rosh Hashana* 17a records that "one who forgoes his due measure (i.e., he does not insist on demanding what is due to him) is forgiven for his sins."⁵

General Segulos

- Rav Ahron Yehuda Leib Shteinman and Rav Chaim take the position that Torah study is the most potent *segula* (*Rav Chaim Kanievsky on the Yamim Nora'im* p.143 and p.75)
- Rav Chaim seems to have taken the position that *tefila* is the most potent *segula* in certain instances (*Rav Chaim Kanievsky on the Yamim Nora'im* p.142)
 - » Rav Chaim discusses many components of optimal *tefila* at length in *Orchos Yosher*; being early to *daven* with a *minyan* and saying every word with *kavana* (focused intent) are the two primary keys to success in *tefila*; doing so in the context of reaching *shemone esrei* at the time of *neitz hachama* is a source of *bracha* that *tannaim* in the *mishna* describe in glowing terms (see *Rav Chaim Kanievsky on the Yamim Nora'im* p.91 and *Orchos Yosher* p.458)
 - » Rav Chaim quotes Rabbeinu Yehonasan's *peirush* on *Eicha* that if *Bnei Yisrael* had *davened neitz* on the day of the *churban Beis HaMikdash*) that the *Beis HaMikdash* would not have been destroyed (*Orchos Yosher* p.436)
 - » *Sefer Chassidim* (§131) writes that if a person requests something that is

3 A *segulah* is probably best defined as a practice treasured by Hashem that has an association with a particular positive outcome.

4 Rav Avraham Yeshayahu Kanievsky, Rav Chaim's oldest son, notes that his father often said that people are prepared to die rather than change themselves – they seek blessings and *segulos*, but when it comes to changing themselves and their way of life, they're not prepared to do it (see *Rav Chaim Kanievsky on Chumash Parshas Devarim* p.29)

5 See *Rav Chaim Kanievsky on the Yamim Nora'im* p.39

a praise for his Creator, such as for the study of Torah or another matter involving activities for Heaven, and spills their soul out in prayer over this matter, Hashem will accept the prayer even if this person has no good deeds (*Rav Chaim Kanievsky on the Yamim Nora'im* p.122)

- *Metzudas David* explains Chana's *bracha* from Eli haKohen was not simply a *bracha* from a *tzaddik*, but a *bracha* that Eli was **obligated** to provide as a result of suspecting and accusing her falsely; such a *bracha* is more powerful than a voluntary *bracha* (*Rav Chaim Kanievsky on the Yamim Nora'im* p.146)
 - » This also explains why Yitzchak asked Eisav to prepare a meal for him – Yitzchak would then have an obligation of *hakaras hatov* (appreciation) (*Rav Chaim Kanievsky on the Yamim Nora'im* pp.146-47)
- On the spectrum of *vitur* cited above, if someone is shamed and doesn't respond, in addition to being given great Heavenly reward, such a person has the ability to give an effective *bracha* to another (*Rav Chaim Kanievsky on the Yamim Nora'im* pp.156-57)
- Get involved in the community or various communities so that you are indispensable to each (see *Rav Chaim Kanievsky on the Yamim Nora'im* pp.160, 172, 140); the mitzvah of *bikur cholim* is also very important (see *Rav Chaim Kanievsky on the Yamim Nora'im* pp.216 and *Ahavas Chesed* 3:3).⁶
 - » A person can obtain a favorable judgment by being devoted to others, acting toward them with kindness, and helping them perform *mitzvos*, especially meeting them on their own terms.
 - » A person who is connected to a community such that it would feel pain at the person's suffering⁷ may be more protected than others.
- *Daven* in a place where it's known someone *davened* and it was accepted, especially for the same request (*Orchos Yosher* p.459)
 - » The example given is Shunam, where Elisha *davened* for a child for the Shunamis woman; it's especially useful to say *perek* 102 and 103 of *Tehillim* according to *sefer Shimush Tehillim*
- *Kohanim* should make a point of going to shul to participate in *birkas kohanim*, and non-*kohanim* should make a point to be blessed during *birkas kohanim* (see *Rav Chaim Kanievsky on Chumash Parshas Naso* pp.79-80)

⁶ Rav Chaim cites the Chazon Ish on a related matter and says that it's surely acceptable to simply say "all the names on the list" when *davening* for a list of names (see *Rav Chaim Kanievsky on Chumash Parshas Re'eh* p.148)

⁷ This is implied, but not specifically stated (see *Rav Chaim Kanievsky on the Yamim Nora'im* pp.160 and 172)

- Rav Yehuda Segal of Manchester wrote that “I have never seen a person who studied every day two laws from the *sefer Chofetz Chaim* who did not see some sort of salvation, whether with regard to his children, *shidduchim*, health, or livelihood. I guarantee that if a person studies two laws a day from *Chofetz Chaim*, I will act as his advocate to plead his case in Heaven.” (see *Rav Chaim Kanievsky on the Yamim Nora'im* p.206)
- Writing a will is a *segula* for long life. (*Rav Chaim Kanievsky on Chumash Parshas Pinchas* p.304, *Chofetz Chaim in Ahavas Chesed* 3:3-4)

Refua Sheleima

A majority of the items below are from a single entry in *Rav Chaim Kanievsky on Chumash Parshas Chukas* pp.242-43. Rav Chaim offered these suggestions to people who asked what they could do to merit a *refua sheleima* for themselves or others. Rav Chaim often gave different advice to questions about the same illness so it's likely that not all of these work for any given individual.

- Accept to recite *Nishmas Kol Chai* once the danger is past.⁸ The booklet distributed by Rebbetzin Kolodetsky *l'ilui nishmas* her mother includes a citation of the *Kaf HaChaim* 281 on *Hilchos Shabbos* that this should be recited in the presence of a *minyan*.
- Grow a beard.
- Study *mishnayos seder Zeraim* with the Rambam's commentary for half an hour each day
- Study *seder Kodshim* for an hour each night.
- Study with diligence. (When the petitioner said that his power of concentration was affected by his illness and he therefore wasn't able to learn with *hasmada*, Rav Chaim said that Hashem would help him if he truly wanted to do it.)
- Study the laws of *tereifos*, which deal with illnesses and blemishes.
- Study *maseches Negaim*.
- For someone with an illness in their throat, study *shemiras halashon*, which relates to the voice.
- For someone with eye problems, study *maseches Horayos*, which deals with the *Sanhedrin*, “the eyes of the congregation.”
- For someone with a head issue, study the laws of *tefillin*.

⁸ This was the practice of Rav Chaim and his rebbetzin before the birth of each of their children, as well as any time one of their children was ill, based on the instructions of the Steipler Gaon.

- For someone with hand issues, study either *maseches Yadayim* or the laws of *netilas yadayim*. (This is the last item from the entry on *Parshas Chukas*.)
- Rav Chaim would often advise people suffering from problems in a specific area of their bodies to study sections of Torah related to those body parts. (*Rav Chaim Kanievsky on Chumash Parshas Balak* p.272, *Rav Chaim Kanievsky on the Yamim Nora'im* p.75)
 - » For someone with leg pain, he recommended studying *Keitzad HaRegel* (second *perek* of *maseches Bava Kama*) or not working on *chol hamoed*.
 - » For a child with a tumor growing in his brain, Rav Chaim advised the father to study the commentary of the *Rosh* on each *gemara* that he learned. (*Rav Chaim Kanievsky on Chumash* pp.279-80)

Parnassa

- While the Torah promises wealth to one who is careful to tithe and even allows us to “test” Hashem with this, Rav Chaim pointed out that (1) the wealth may take time to arrive, (2) Hashem may do the favor of blocking wealth if it would result in a negative impact, whether diminishing spiritual standing or some other way, (3) there are forms of wealth other than financial success, and (4) if a person was fated to have something negative happen, Hashem may allow the *midas hadin* to instead remove wealth destined to be gained.
- Rav Chaim cited *Midrash Tanchuma Ki Sisa* 29 that one who throws himself into Torah becomes successful and wealthy and advised the petitioner to study the entire *shas* until he knew it well enough to come back and be tested. (see *Rav Chaim Kanievsky on Chumash Parshas Balak* pp.280-81)

Shidduchim and Children

- Rav Chaim cites the *gemara* in *Shevuos* 18b that making *havdalah* on wine (not grape juice) is a *segula* for having sons (*Rav Chaim Kanievsky on the Yamim Nora'im* p.142)
 - » Note that this *segula* also works to help find a *shidduch* because that is a prerequisite to having sons; it's also a *segula* for sons to grow into *talmidei chachamim*.
- Another authoritative *segula* cited by Rav Chaim is stated in *Devarim Rabba* 6:6, to perform the mitzva of *shiluach haken* (*Rav Chaim Kanievsky on the Yamim Nora'im* p.142)
- Rav Chaim also suggests trying to write novel Torah thoughts as they are called “fruit of the womb,” and thus producing new Torah ideas is a *segula* to merit

actual “fruits of the womb” (i.e., children) as well. (*Rav Chaim Kanievsky on the Yamim Nora'im* p.142)

- Rav Chaim emphasizes that the most powerful and effective *segula* to merit children is heartfelt *tefila*, which worked for the *imahos*, Sarah, Rivka, and Rachel as well as Chana (*Rav Chaim Kanievsky on the Yamim Nora'im* p.142)
 - » See above regarding *davening* in Shunam.
 - » When Rav Chaim's grandson went to Amuka to *daven* for *shidduchim*, Rav Chaim advised reciting *Tehillim* 130 because *zivugim* come “from the depths.” (*Orchos Yosher* p.463)
- Rav Chaim often encouraged people who don't live in Israel to move to Israel for this issue. (*Rav Chaim Kanievsky on the Yamim Nora'im* p.142)
 - » He once noted that one of the reasons that the Chazon Ish moved to Israel was in the hope that he and his wife would have children. The Chazon Ish unfortunately did not merit to have children (*Rav Chaim Kanievsky on the Yamim Nora'im* p.143)
- In the name of her father, Rav Elyashiv, Rebbetzin Batsheva Kanievsky cites the *Leshem* (Rav Elyashiv's maternal grandfather) who said that after taking three steps back at the end of *shemone esrei*, one should say *perek* 121 of *Tehillim*. (*Rav Chaim Kanievsky on the Yamim Nora'im* p.96 and *Orchos Yosher* p.463)
 - » She said in particular, girls should at the very least *daven shacharis* every day (no “off” days).
 - » *Sefer Asarah Ma'amaros* by R' Menachem Azarya MiPano (4:17) writes: “As it states, ‘If a person says the *mizmor Shir HaMaalos esa einai el heharim* at the end of his *tefila*, before walking forward, his proper *bas zug* is brought to him.”
- Rav Chaim says that studying *maseches Kalla* is a *segula* for *shidduchim*. (*Rav Chaim Kanievsky on Chumash Parshas Chukas* p.231)

It's very important to point out that with all *segulos*, whether they appear to work or not, it's critical to never regret doing a good thing (see *Rav Chaim Kanievsky on the Yamim Nora'im* p.158). We see this for example in *Kidushin* 40b where regret causes a person to lose the prior benefit of those *mitzvos*. We can also learn from the example of Yoshiyahu, who confirmed that he did not regret anything as he was dying in front of Yirmiyahu.⁹

⁹ Yoshiyahu thought he had the national and personal merits to refuse Pharaoh Necho's request to pass peacefully through Jewish land on his way to war with another country; Yoshiyahu died as a result, but he didn't

Rav Chaim notes that his father (the Steipler Gaon) said that one doesn't know in what merit a person is alive. Therefore, people must try to earn merits in any way they can. (*Rav Chaim Kanievsky on the Yamim Nora'im* p.46). It seems worth pointing out that there are *mitzvos* that promise reward in *olam hazeh*, so this begs the question – where is all that merit and reward? Rav Chaim states that the reason we often don't seem to see these rewards is because the *mitzvos* that promise reward are not performed with the proper intent such as *simcha* or with the sense that the mitzva is the greatest gift one can receive, which is the essence of the mitzva (*Rav Chaim Kanievsky on the Yamim Nora'im* p.62 and *Orchos Yosher* pp.368-69).

To close with something relevant to the *yamim noraim*, we know that *teshuva*, *tefila*, and *tzedaka* are *segulos*. Rav Shteinman stated (*Rav Chaim Kanievsky on the Yamim Nora'im* pp.85-86) that the essence of *tefila* is submitting oneself completely before Hashem, nullifying oneself and one's own desires before Hashem as we realize that everything comes from Hashem. This means that questioning and otherwise challenging Hashem about what one deserves during *tefila* is not a correct practice and should ideally be entirely eliminated. Also, (*Rav Chaim Kanievsky on the Yamim Nora'im* p.132) it is a good idea to preface every prayer with “*chatasi*” (generally translated as I sinned) in order to prevent Heavenly prosecutors from blocking one's prayers. While it's not the ideal repentance and unification with Hashem, it puts a person in proper perspective and can hold off Heavenly judgment temporarily as a complete *teshuva* can be worked on. Wishing everyone a *k'siva v'chasima tova*.

regret any of the good that he did and did not question Hashem.

A Time to Gather

ELI SNYDER



Among the Jewish holidays, Sukkos is unique regarding its association and interplay with its colleagues. Along with Pesach and Shavuot, it is one of the *Shalosh Regalim*, the three holidays that the Jews in the Temple times were commanded to make a pilgrimage to Jerusalem. In addition, the placement of Sukkos in Tishrei ties it to the process that takes place through the *Yomim Noraim*, creating another trio of Rosh Hashana, Yom Kippur and Sukkos. There are ostensibly thematic elements of Sukkos that work in both realms and an exploration of the unifying themes can serve to enhance the entirety of our holiday experience.

The ties between the *Shalosh Regalim* are both historical and agricultural. Regarding the former, the three holidays highlight different elements of the Jewish people's development into a nation. Pesach highlights our birth, emerging from *Mitzraim*. Shavuot focuses on receiving the Torah, and Sukkos revolves around the miracles that took place in our journeys through the desert. There is a discussion regarding the chronological progression of the holidays, namely why Sukkos is not between Pesach and Shavuot, considering the miracles such as the protective clouds, *Ananei haKavod*, and the *be'er Miriam*, the travelling water source, were already present prior to *Matan Torah*. Upon finding a satisfactory answer to why Sukkos must follow Shavuot,¹ the question remains why it is celebrated in Tishrei and not closer to the other two *Regalim*. Here the agricultural element of these holidays begins to take shape.

In *Mishpatim* 23:15-16, the Torah lists off Pesach, Shavuot and Sukkos by different monikers,

את חג המצות תשמר שבעת ימים תאכל מצות כאשר צויתך למועד חדש האביב כי

¹ See *Nitzachon* 3:2, "Dairy, to the Contrary"

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בו יצאת ממצרים ולא יראו פני ריקם: וחג הקציר בכורי מעשיך אשר תזרע בשדה
 וחג האסף בצאת השנה באספך את מעשיך מן השדה:

You shall observe the Festival of matzos, for seven days you shall eat matzos, as I Commanded you, at the set time of the month in the Spring, since that is when you left Egypt. Do not appear before Me empty-handed. And the Festival of the Harvest of the first fruits of your efforts that you sowed in the field and the Festival of the Ingathering at the end of the year, when you gather your work in from the field.

Here, Pesach is referred to as the Festival of *Matzos*, but there is a specific emphasis that it fall out in the Spring, when plants first begin to bloom after a difficult winter. In fact, the forced alignment between the lunar and solar years by the addition of a leap month into the lunar calendar is specifically dictated by the need for Pesach to be *Chag HaAviv*. Shavuot is *Chag HaKatzir*, the Festival of the Harvest/Reaping when the first crops are separated from the ground, and Sukkos closes out the agricultural year as *Chag HaAsif*, when the crops that had been drying in the fields over the Summer (Rashi) are gathered in and accounted for in preparation for the winter. Sukkos needs to take place in the Fall since that marks the finale to the growing season; however, its juxtaposition to Rosh Hashanah and Yom Kippur cannot be a coincidence.

While the *Shalosh Regalim* focus on the development of the Jewish nation, the *Yomim Noraim* follow the growth of the individual. Rosh Hashanah is when we recognize the *Malchus* of Hashem and that we are His subjects. On Yom Kippur we take responsibility for our failures to connect to our anointed God and resolve to improve on our shortcomings. Just a few days later is Sukkos. How does it fit into the coronation and *teshuva* process? On the surface, a key element of celebrating Sukkos is *simcha*. The unique *korbanos* every day, *simchas beis hashoeva*, the recommendation to enjoy wine and meat and the tie to Simchas Torah all contribute to the mitzva of *simcha*. Following the awe-inspiring and transformative process from Elul, Rosh Hashana, *Aseres Yimei Teshuva* and Yom Kippur, Sukkos helps us celebrate our newfound relationship with Hashem, having worked so hard to rebuild ourselves for a closer and more sincere connection. Also, Sukkos has a deep connection to rain,² as represented by the commemoration of the *ananei haKavod*, the *nisuch hamayim* service in the *Beis Hamikdash* and the very fact we begin mentioning rain in *shemone*

² See *Nitzachon* 2:1, "When the Rain Comes: The Ambiguous Nature of Rain on Sukkos"

esrei. It directly follows Yom Kippur, when we have achieved fantastic spiritual heights and the power of *tefila* is most potent, and so the request for rain makes a lot of sense. However, while *simcha* and *geshem* are both elements of Sukkos, they do penetrate to the core of the holiday, which the Torah emphasizes as *Chag haAsif*.

The definitive qualifier and identifying element of a kosher *sukka* is the *s'chach*, primarily that it is unprocessed and detached from the ground. The other main mitzva of Sukkos, the *daled minim*, also involves the bundling of fresh cut flora to shake and parade.³ Central to the *mitzvos* of Sukkos is gathering foliage, which of course relates to the holiday's agricultural significance. When a farmer gathers all the crops from the field that have been generated over the course of the planting season, he is taking an accounting of his successes and failures, and now has perspective on his economic state for the upcoming year. So too, on Sukkos we take an accounting of our success and failures in our attempt over the previous weeks to refine our character, do *teshuva* and overall make ourselves into perfect *ovdei Hashem*. It is certainly possible, and even likely, that despite our valiant efforts, perfection was not fully achieved and digging a little deeper⁴ into the essence of Sukkos, we might be able to find allusion to that as well.

In *Mo'adei HaRe'iya*, Rav Kook notes an interesting use of language in the Shabbos Maariv prayers. Just prior to *V'Shamru*, the verse in *Hashkiveinu* states, "*ufros aleinu sukkas shlomecha*," "May You spread over us a *sukka* of Peace." Why equate the vital concept of peace to a *sukka*, a temporary shack which barely requires three walls and definitively cannot have a permanent, water-tight roof? To Rav Kook, the phrase is specifically illustrating the vitality and preciousness of peace. Even if we are unable to achieve a perfect peace between ourselves and others, an incomplete peace is still worthwhile to pursue. Even if the outcome is not *l'chatchila*, the *sukka* illustrates that the pursuit of *shalom* in Rav Kook's example, and the pursuit of *teshuva* and Divine connection in ours, is undeniably valuable.

In 1968, Rav Shlomo Carlebach gave a *drasha* in the *sukka* at the "House of Love and Prayer" in San Francisco⁵ that originated from an idea by the Ba'al Shem Tov. The BeSh'T makes an intriguing assertion that while we typically consider Yom Kippur

³ There is a discussion whether the *daled minim* need to be detached from the ground when used for the mitzva. The *Pri Megadim* makes the first mention regarding an *esrog* or *hadasim* growing in a flower pot (which is *halachically* considering growing from the ground) and is ultimately *mesupak* on whether it is permissible.

⁴ Pun intended

⁵ Adapted from "Holy Beggars" by Aryae Coopersmith, pgs. 189-191, with some omissions for brevity.

the pinnacle of holiness, when Hashem washes us clean of *aveira*, Sukkos is in fact even holier. Following the destruction of the *Beis Hamikdash*, God no longer has a “home” in the world, as there is no designated place for His holiness to be revealed. What follows, says the BeSh”T, is for each of us to make a holy place ourselves. How is this accomplished? The *Zohar* says there are two kinds of spiritual light, the *Or Penimi* and the *Or Mesavev*. The *Or Penimi*, the Inner Light, is contained in a vessel. It is the internal holiness found in an object or more crucially, in a holy person. A person with the Inner Light is readily apparent; they genuinely and non-superficially care about others. But beyond the *Or Penimi*, as beautiful as it is, is the *Or Mesavev*, the Surrounding Light. This is a light from before Creation, a light that cannot be contained in an ordinary vessel and is not predicated on our actions. The Ba’al Shem Tov says an amazing thing, the only vessel big enough to contain the Surrounding Light must be broken. A broken heart. A broken structure. What makes a *sukka* kosher is not beautiful walls nor elegant decorations, it is the *s’chach*. And the *s’chach* cannot be growing from the ground, it must be fallen leaves. What do Jews do when they build a palace for Hashem in this broken world? We take branches and leaves that yesterday were tread upon and we elevate them above our heads. To quote Rav Shlomo,

“Mammash, we’re gathering up all the fallen leaves, and all the broken hearts of the world, and we’re sitting underneath them. Why? Because, by Ba’al Shem Tov, this is the Holy Temple for us when we’re in exile. This is the Holy Temple for everyone whose heart is broken. This is where the Surrounding Light is shining. This is where God is sitting.”

Rav Shlomo and Rav Kook appear to be echoing a similar sentiment. There is a value in *b’dieved*. Rav Shlomo/ the Ba’al Shem Tov are ostensibly going even further. In a broken world, the *b’dieved*, the incomplete, is in fact the ideal. Perhaps that is the true *simcha* that Sukkos generates. The realization and acceptance that even though we are still incomplete, we must not be dejected and depressed by our shortcomings. “Perfect is the enemy of good” – Voltaire.⁶ This is a hard-fought lesson that we all struggle to internalize.

In the act of *ketzira* on Shavuot, there is an element of tragedy. By severing the plant from the ground, its life force has been disconnected. A tomato that was thriving and growing on the vine, even in blistering heat, begins to wither the moment it is

⁶ He cited the quote as an old Italian proverb in 1770 – “il meglio è nemico del bene” – “best is the enemy of good.” Shakespeare in *King Lear* (1606) similarly wrote, “striving to better, oft we mar what’s well.”

detached from its life force. But this is a necessary process for a fruit or vegetable to reach its full potential.⁷ In parallel, receiving the Torah on Shavuot detached it from its original source and left it open for interpretation and *machlokes*.⁸ As Rabbi Yehoshua declares in this context in *Bava Metzia* 59b, “*Lo BaShamayim Hee*,” “It is not in Heaven (*Devarim* 30:12).” Unfortunately, this is the only way the Torah could have been received. It is *b’dieved* but in a sense, *l’chatchila* as well since it is the only way it can work. Sukkos is when the Torah process reaches its full potential as well. When we bundle together the *daled minim* and sit the *sukka*, we are bundling the process of national and agricultural growth from the *Shalosh Regalim* and the process of personal growth from the *Yomim Noraim* which is ultimately as perfect as possible.

⁷ Similarly with childbirth, obviously there is a great *simcha* to introducing a new child into the world. Why then does the mother immediately become *tamei*? The degree of *tumaah* of a person or item correlates to the degree of associated death. In a sense, while pregnant the mother was two lives and by giving birth, she loses one and in a way has partially died. Carrying this further, giving birth to a girl necessitates a longer period of *tumaah* than to a boy. Since the female of a species is able to gestate a human and give birth, she is *more life* than the male, and thus the “loss of life” from her birth relative to the mother is even greater.

⁸ See *Nitzachon* 7:2, “How Do You Jew?”

Halacha and Machshava



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Tamim Tihiyeh Im Hashem Elokecha

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Some verses in the Torah go to the heart of the Jewish people. One of these is “*tamim tihiyeh im Hashem Elokecha*,” “be whole with Hashem your God” (Devarim 18:13). Indeed, the Ramban and the Rambam debate whether “*tamim tihiyeh im Hashem Elokecha*” should be counted as a distinct mitzva among the 613 (per the Ramban) or, instead, as a generalized statement addressing the complete system of *mitzvos* as a whole (per the Rambam). Rashi’s interpretation of “*tamim tihiyeh im Hashem Elokecha*,” that individuals and the nation should walk simply with Hashem throughout life, places him in agreement with the Rambam that this verse is an all-encompassing precept rather than a separable mitzva.

Yet, in contrast with both the Rambam and the Ramban who interpret this verse conceptually, Rashi approaches his explanation from a literary analytical framework, focusing most centrally on the verse’s words in a way that highlights underlying subtleties. Rather than reaching his conclusion primarily by conceptual thought or philosophic reflection, Rashi arrives at his interpretation of this verse through strong focus on the Torah’s language.

In addition, apparently emulating what he perceives as the Torah’s style of careful expression, Rashi uses great precision in his *own* language. Through words packed with meaning, Rashi’s compact, precise, nuanced language in his comment to this verse – like DNA encoding a tremendous amount of creative information – conveys layers of implication for the development of the individual and the composition of the nation. Thus, Rashi’s explanation of “*tamim tihiyeh im Hashem Elokecha*,” especially when seen alongside the interpretations of the Rambam and the Ramban, gives a glimpse into his unique blend of accessible simplicity and well-woven complexity.

The Interpretations of the Rambam, the Ramban and Rashi

The Rambam, the Ramban and Rashi present three different interpretations of “*tamim tihiyeh im Hashem Elokecha*.”

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The verses beforehand and afterward discuss the prohibitions against consulting any of a variety of soothsayers. Given this context, the Rambam understands “*tamim tihyeh im Hashem Elokecha*” to prohibit belief in occult pseudo-science. According to the Rambam, this prohibition has sweeping conceptual application, as it requires a person at all times to seek truth and avoid superstition or any other type of foolish belief system (*Hil. Avoda Zara* 11:16).

Indeed, the Ramban comments that the reason the Rambam omitted “*tamim tihyeh im Hashem Elokecha*” from the *Sefer HaMitzvos* potentially is that the Rambam believes it encapsulates the entire Torah, and the Rambam declines to count all-encompassing *mitzvos* among his count of the 613 (*Sefer HaMitzvos, Shores* 4). As the Ramban states when discussing the eighth mitzva that he says the Rambam should have included:

ואולי חשב הרב שהיא צוואה כוללת המצות כולן ללכת בדרכי התורה כענין ש' (תהל' קיט) אשרי תמימי דרך ההולכים בתורת ה' ולכן לא הביאה בחשבון.
And perhaps the master [i.e., the Rambam] thought it is a commandment that encompasses all of the commandments, to walk in the way of the Torah, as it says (Psalms 119) 'glad are the wholehearted [temimei darech] who go in the Torah of Hashem,' and accordingly he did not include it in his count.

The Ramban, himself, counts “*tamim tihyeh im Hashem Elokecha*” as a separate mitzva within the *taryag* (Ramban, *Mitzvos Shachach Osan HaRav* 8). He speaks of instances when soothsaying and similar practices appear to have been efficacious and concludes that, nevertheless, the verse “*tamim tihyeh im Hashem Elokecha*” specifically prohibits reliance on these ways of anticipating the future because they corrode reliance on Hashem as the real power deciding outcomes (Ramban on *Bereishis* 17:1 and *Devarim* 18:9-13). Thus, the Ramban enumerates a separate mitzva among the 613, based on “*tamim tihyeh im Hashem Elokecha*,” to internalize and – by relying on the Torah’s prescribed methods to address paths forward – to act upon the fact that Hashem ultimately determines the course of human experience.

Rashi presents a third understanding of the verse “*tamim tihyeh im Hashem Elokecha*,” explaining that it tells us to desist from putting too much thought into future events altogether. He states (*Devarim* 18:13):

תמים תהיה עם ה' אלקיך. התהלך עמו בתמימות ותצפה לו ולא תחקור אחר העתידות אלא כל מה שיבא עליך קבל בתמימות ואז תהיה עמו ולחלקו (ספרי קעג).
Be whole with Hashem your God. Walk with Him wholeheartedly and

look toward Him – and do not investigate into future events; instead, accept everything that comes upon you wholeheartedly. And then you will be with Him and within His portion (Sifrei 173).

The Rambam and the Ramban focus on the permissible and impermissible ways of examining the future, while Rashi raises the more fundamental question whether the future should be critically examined *at all*.¹ Rather than interpreting “*tamim tihiyeh im Hashem Elokecha*” as a mandate to seek truth and avoid foolish belief systems generally, like the Rambam does, or as a specific requirement to internalize the conviction that Hashem is the final arbiter of human events and there is no other inevitability, like the Ramban does, Rashi explains this verse as saying that our primary response to an uncertain future is to stay focused on the present, walking simply with Hashem and not becoming overly concerned with future events.

It is difficult to understand what exactly Rashi means when he says not to investigate into future events, given the need to intelligently think ahead. But his approach comes into sharp focus through close analysis of the language that he uses to comment on this verse.

His’halech Imo BeSemimus

First, it is noteworthy just how original Rashi’s formulation is. Although he bases his interpretation on *Sifrei* 173, that statement in the *midrash* simply says:

תמים תהיה עם ה' אלקיך. כשאתה תם חלקך עם ה' אלקיך וכן דוד אומר (תהלים כו:יא) ואני בתומי אלך פדני וחנני (תהילים מא:יג) ואני בתומי תמכת בי ותציבני לפניך לעולם.

Be whole with Hashem your God. When you are whole, your portion will be with Hashem your God. And thus did David say (Tehillim 26:11): “And I in My wholeness will go; redeem me and be gracious unto me,” and (Tehillim 41:13): “And I in my wholeness You supported me and You placed me before You forever.”

¹ It is possible to understand Rashi as saying the same thing as the Ramban and to explain Rashi’s statement “*lo sachkor achar ha-asidos*,” “do not investigate into future events,” to mean to avoid using the occult methods that are listed in the prior verses, and, instead, to use methods to which the Torah attests, such as the *nevi'im* and the *urim ve-tumim*, as the ways of anticipating the future (see, for example, Rashi’s comments on Bamidbar 23:23 and Devarim 18:14). However, my father-in-law, Rabbi Levi Meier zt”l, told me that he heard from HaRav Yitzchak Twersky zt”l that Rashi’s statement “*lo sachkor achar ha-asidos*” is a third interpretation of this verse, separate and apart from those of the Rambam and the Ramban, and it means – as it states on its face – to refrain from overthinking the future.

Rashi changes the *Sifrei*'s statement to his longer and completely original statement. Indeed, Rashi's opening phrase "*his'halech imo be-semimus*," "walk with Him wholeheartedly," is the closest to the *Sifrei*'s language but, even in this phrase, he amends the *Sifrei* (1) to use the full form "*tamim*" instead of the abbreviated form "*tam*" and (2) to add the word "*his'halech*," "walk."

The reason Rashi opts for the word "*tamim*" rather than "*tam*" is because "*tamim*" is the word that the verse uses and Rashi hews closely to the verse's language. And the reason Rashi adds the word "*his'halech*" – and why he uses the *hispa'el* (reflexive) verb form "*his'halech*," "walk," rather than the simple verb form "*leich*," "go," which the *Sifrei* uses in its quotation of *Tehillim* 26:11 – likely is because, while the word "*tamim*" generally means "whole" or "unblemished" (see, for example, Rashi's comments to *Vayikra* 1:3 and 23:15), the previous verses in the Torah that use the word "*tamim*" to describe a person's relationship with Hashem always connect it with the word "*his'halech*."

Thus, *Bereishis* 6:9 states:

אלא תולדות נח איש צדיק תמים היה בדרתיו את האלקים התהלך נח.

These are the descendants of Noah – Noah was a righteous man; he was whole in his generations; Noah walked with God.

Likewise, *Bereishis* 17:1 states:

ויהי אברם בן תשעים שנה ותשע שנים וירא ה' אל אברם ויאמר אליו אני קל שקי התהלך לפני והיה תמים.

And when Avram was 99 years old, Hashem appeared to Avram and said to him, "I am Keil Shakkai – walk before Me and be whole."

Given the Torah's correlation between the words "*tamim*" (whole) and "*his'halech*" (walk) when describing a person's relationship with Hashem, and considering the *Sifrei*'s quotation of *Tehillim* 26:11 about "going" with "wholeness," Rashi formulates the opening part of his explanation of this verse as "*his'halech imo be-semimus*," "walk with Him wholeheartedly."²

With this basis for adding the word "*his'halech*," a pivotal emphasis comes into high relief that this walking with Hashem occurs in the here-and-now. At the beginning of Parshas Noach, Rashi contrasts the Torah's use of the word "*his'halech*" about Noach and Avraham as follows (*Bereishis* 6:9):

² By adding the word "*his'halech*," Rashi also alludes to the fact that the system of *halacha* is the central orienting point for this relationship with Hashem, given that the word "*his'halech*" derives from the same root as the word "*halacha*."

את האלקים התהלך נח. ובאברהם הוא אומר אשר התהלכתי לפניו (ברא' כד:מ) נח היה צריך סעד לתמכו אבל אברהם היה מתחזק ומהלך בצדקו מאליו.

התהלך. לשון עבר וזהו שמושו של ל' בלשון כבוד משמשת להבא ולשעבר בלשון אחד. קום התהלך (ברא' יג:יז) להבא, התהלך נח לשעבר. התפלל בעד עבדיך (שמואל א' יב:יט) להבא. ובא והתפלל אל הבית הזה (מ"א ח:מב) לשון עבר, אלא שהיו"ו שבראשו הפכו להבא.

Noah walked with God. In the case of Avraham it says "[Hashem] before Whom I walked" (Bereishis 24:40); Noah needed support to uphold him, but Avraham would strengthen himself and walk with righteousness by his own effort.

Walked. This is in the past tense. And the following is the usage of the "lamed" [i.e., the second letter of the root which gets a dagesh] in the "heavy" conjugation: it serves both as the future tense [i.e., the imperative] and as the past tense in the same form. "Arise walk" (Bereishis 13:17) is future; "Noah walked" is past. "Pray for your servants" (Shmuel I 12:19) is future; and "When he shall come and shall pray toward this house" (Melachim I 8:42) is past, only that the "vav" at the beginning of the word changes it into the future.

As opposed to Noah who, even when he walked with Hashem, used it merely as a crutch for support without any capacity to stand on his own feet, and whose walking with Hashem ultimately was a thing of the past – and in contrast to Avraham whose spiritual strength grew like a wellspring in unprecedented manner from the depths of his own prodigious soul, and whose walking with Hashem was future oriented – the prescription "*tamim tihyeh im Hashem Elokecha*," in Rashi's estimation, is to walk alongside Hashem presently. This verse's distinguishing word is "*im*," to be with Him. As a result, Rashi explains the verse to mean "*his'halech imo*," walk with Him, and, thereby, actively engage in a relationship with Hashem in the here-and-now (see also *Midrash Tehillim* 119).

u-Setzapeh Lo

Yet, Rashi introduces a paradox with his next phrase "*u-setzapeh lo*." The word "*tetzapeh*" means "watch" but with the specific connotation to mean "watch from a distance." So, while Rashi's first phrase "*his'halech imo be-semimus*" establishes awareness of walking with Hashem presently, his second phrase "*u-setzapeh lo*" simultaneously communicates its exact opposite: this relationship with Hashem is

always aspirational, forever further ahead – it is something we have to seek with eager anticipation and to strive toward, but only asymptotically, without ever fully reaching it.³

The following are some examples of Rashi using the word “*tetzapeh*” to have an expectant, distant, future oriented quality, rather than an already actualized one. Commenting on the verse in *Parshas Vayigash* about Yaakov’s reaction to Yosef’s second dream, Rashi uses the word “*metzapeh*,” based on the same root as *tetzapeh* (tz-p-h), to mean looking forward with anticipation (*Bereishis* 37:11):

שמר את הדבר. היה ממתין ומצפה מתי יבא וכן שמר אמנים (ישעיהו כו:ב) וכן לא תשמר על חטאתי (איוב יד:טז) לא תמתין.

He watched the matter. He was awaiting and looking forward to when this would come to pass. In the same sense we have (Isaiah 26:2) “that watch for faithfulness” [i.e., for the performance of a promise] and (Job 14:16) “do not watch for my sin” which means “do not wait [for my sin].”

In his interpretation of the verse’s phrase “*leil shimurim*” to describe the night of the Exodus, Rashi again uses the word “*metzapeh*” to mean looking forward with excited expectation (*Shemos* 12:42):

ליל שמורים. שהיה הקב"ה שומר ומצפה לו לקיים הבטחתו להוציאם מארץ מצרים.
It was a night of watching. The Holy One Blessed Be He was watching and looking forward to [this night], to fulfill His promise to take them out of the land of Egypt.

Likewise, in his explanation to *Yeshayahu* 33:6, Rashi paraphrases the *gemara* in *Shabbos* 31a that correlates the words “*chosen yeshuos*” with being “*metzapeh le-yeshua*,”

3 This is similar to what the Ba'al Shem Tov says about the inexhaustible “*temimus*” of talmud Torah: “A man once found an enormous treasure, way beyond his ability to carry. Even if he returned countless times to the site, he’d never be able to carry more than the tiniest fraction of it home. He was overjoyed at the wealth he was able to take back but he also realized that he had to leave behind thousands of times more. When a tzaddik studies Torah for the sake of heaven, he’s filled with joy, but he also realizes that he hasn’t learned anything compared to what remains, and the more he learns, the more he realizes how little he knows. And when a tzaddik serves God sincerely, and enjoys even the least glimpse of His awesome glory, he realizes that he hasn’t even begun to serve Him according to His greatness. ... The psalm verse says ‘God’s Torah is perfect, restoring the soul.’ I tell you the Torah is still perfect; no one has yet touched even the tip of its smallest letter. As of this hour it’s still quite perfect. ... This verse can also be translated and understood another way: ‘When God’s Torah is studied with perfect simplicity’—that is, when a person studies Torah with pious innocence, believing that he’s not even begun to comprehend its depths, that he hasn’t yet plumbed the meaning of even one letter, then ‘it restores the soul.’” Yitzchak Buxbaum, *The Light and Fire of the Baal Shem Tov* (New York, 2005) p. 257.

and uses the word “*tzipisa*,” as meaning to maintain a sense of eager expectancy. Rashi says:

.... דבר אחר אמונת עתך. את שהאמנת בהקב"ה בעתים שעברו עליך וצפית לישועה
תהיה לך לחוסן

... Another explanation is [as follows]: Faith of your times. That you believed in the Holy One Blessed Be He in times that passed over you and you looked forward to salvation shall become your strength.

Moreover, in his comments on the following verses, Rashi consistently uses words with the root *tz-p-h* to mean anticipation of something in the future: *Devarim* 28:65; *I Shmuel* 1:12; *Yeshayahu* 21:6; *Yermiyahu* 5:22; *Yechezkel* 36:17; *Hoshea* 4:8; *Micha* 7:4 & 11; *Tehillim* 62:2, 73:7, 93:5; *Mishlei* 25:14; *Iyov* 11:20; and *Koheles* 11:4.

Thus, in Rashi's comment on “*tamim tihyeh im Hashem Elokecha*,” the word “*tetzapeh*” means to be a seeker looking toward Hashem. And the dialectic accordingly emerges that (1) Rashi's first statement tells us to walk with Hashem presently while (2) his second statement, at the same time, emphasizes Hashem's distance.

One resolution of this dialectical tension between our proximity to and distance from Hashem is its ability to foster an energetic sense of aspiration and reach. Indeed, the word “*tetzapeh*,” which Rashi uses, conveys eager anticipation and a capacity to direct inner vision toward something or someone else that is not casual, disinterested or passive. The term “*tetzapeh*” does not reflect a wait-and-see posture. Rather, it is filled with directed emotion, brimming with expectancy. This inner, cognitive, emotional aspect is significant because the course of events of life lived with awareness of the presence of Hashem and aspiration toward an ongoing relationship with Him, notwithstanding that the goal will not be entirely actualized, is completely different than life lived without this consciousness.

VeLo Sachkor Achar HaAsidos Ela Kol Ma SheYavo Alecha Kabbel BeSemimus

These implications of Rashi's first two statements provide context, and thereby interpretation, for his next phrase: “*ve-lo sachkor achar ha-asidos ela kol ma she-yavo alecha kabbel be-semimus*,” “and do not investigate into future events; instead, accept everything that comes upon you wholeheartedly.”⁴ In making this third statement, Rashi addresses the verses before and after “*tamim tihyeh im Hashem Elokecha*” and says that the problem with going to soothsayers is not simply their particular

⁴ There is a poetic, almost lyrical quality to this statement, especially considering that the words “*ha-asidos*” and “*be-semimus*” have the same number of Hebrew letters and rhyme.

approach of how to consider the future but, rather, becoming too preoccupied with future events at all. Yet, the question arises how far Rashi's statement goes, given that, at least to some extent, we need to think about the future so that we rationally plan ahead. What does Rashi mean when he explains the verse as stating that we are not supposed to examine future events?

When read in conjunction with Rashi's first two statements in his comment, the following words in Rashi's third statement indicate what he is emphasizing: (1) "*tachkor*," in his phrase "*lo sachkor*," and (2) his repetition of the word "*be-semimus*."

"*Chakira*" means critical examination, as in the *mishna's* phrase "*drisha ve-chakira*" about cross-examining witnesses (*Sanhedrin* 32a). And "*asidos*" means the occurrence of future events generally, such as in *Devarim* 32:35: "*ve-chash asidos lamo*," "and future events rush upon them." When stating "*lo sachkor achar ha-asidos*," Rashi is saying that we should not treat the future as a puzzle to be analyzed or a riddle to be solved but – instead, more centrally – to take in the mystery of things as they unfold, anchored in our present relationship with Hashem and aspiration toward a future one. The point here is not to avoid practical considerations of the future altogether. It is, rather, that we should refrain from allowing these considerations to become our *main* preoccupation, which should be reserved for Torah, and, more precisely in the context of Rashi's comment on this verse, for our relationship with Hashem.

This is also reflected by Rashi's repetition of the word "*temimus*" (which, indeed, reiterates the verse's term). Rashi's initial use of the word *temimus* in his comment is an adverb modifying how we should walk with Hashem, *i.e.*, wholeheartedly. But the second time Rashi uses this word in his comment to this verse, in addition to being an adverb indicating how we should accept the course of events as they come, it can also function as a noun. Rashi's first sentence says that we should walk with Hashem in a manner of "*temimus*" and his next sentence says that we should accept things and view them from within the prism of this previously referenced "*temimus*," *i.e.*, the perspective that we maintain from within our relationship with Hashem.

Hence, a deeply connected kind of dialogue emerges in which one engages actively in a relationship with Hashem and then interprets each of life's experiences through the lens of this relationship. In this sense, the "*beis*" of the second use of the word "*be-semimus*" means, not only to approach life's vicissitudes with wholeheartedness, but also within – *i.e.*, inside of – our state of mind when wholeheartedly walking with the *Ribbono Shel Olam*. Rashi's repetition of the word "*be-semimus*" refers back to his prior use of this word to mean, as used its second time, to approach the uncertainties of life by constant recourse and reference to this integrated, integrating relationship.

The impact of this cultivated awareness of the presence of Hashem throughout the course of one's life is expressed by HaRav Yosef Dov Soloveitchik zt"l in many places, including the following description of one of the great lessons from his mother:

*"Most of all I learned that Judaism expresses itself not only in formal compliance with the law but also in a living experience. She taught me that there is a flavor, a scent and warmth to mitzvot. I learned from her the most important thing in life—to feel the presence of the Almighty and the gentle pressure of His hand resting upon my frail shoulders. Without her teachings, which quite often were transmitted to me in silence, I would have grown up a soulless being, dry and insensitive."*⁵

The privilege of engaging a person of high stature leaves a great, potentially indelible, impression on us. All the more so an experience with the *Ribbono Shel Olam*. Our awareness of this relationship transforms our quality of mind and consciousness (see, for example, the Rama's opening comment on the Shulchan Aruch). By maintaining this relationship as our primary focus, rather than preoccupying ourselves with fear based on uncertainties about the future, we recalibrate our spiritual orienting point and, thereby, move a seemingly inevitable set of present circumstances toward a different future trajectory. So, the tendency to become overly preoccupied with anticipated outcomes, "*lachkor achar ha-asidos*," is in fact erroneous because the lived experience of our relationship with the *Ribbono Shel Olam* on a consistent basis powerfully recalibrates the course of future events. This apparently is what Rashi means when, in the context of the rest of his comment on this verse, he explains "*tamim tihiyeh im Hashem Elokecha*" as saying not to overthink the future.⁶

VeAz Tihiyeh Imo U-LeChelko

The concluding sentence of Rashi's comment is "*ve-az tihiyeh imo u-le-chelko*," "and then you will be with Him and of His portion," which raises the following two questions.

- First, given that Rashi's opening phrase tells us to walk with Hashem (*imo*), what does he add by saying that "then" (*az*) you will be with Him (*imo*) – if you "walk with Hashem," isn't it self-evident that "then you will be with Him"?

⁵ HaRav Yosef Dov Soloveitchik, *A Tribute to the Rebbetzen of Talne*, Tradition 17:2, Spring 1978, p. 77.

⁶ In a comment strikingly similar to the one here, Rashi also expresses this connection between one's relationship with Hashem and trust about the future in his explanation of the *gemara* at the top of *Shabbos* 88b.

- Second, what does Rashi mean by adding the word “*u-le-chelko*,” “and of His portion,” after the word “*imo*,” “with him”? Indeed, the word “*imo*” mirrors the language of the verse, but why does Rashi, interpreting the verse, add the word “*u-le-chelko*” after “*imo*”?

The Maharal addresses the first question in *Gur Aryeh*. He states that the verse’s phrase “*im Hashem Elokecha*” is somewhat redundant because, just as the description of Yaakov as “*ish tam*” is self-explanatory, the words “*tamim tehiyeh*” would have been sufficient in and of themselves. The added phrase “*im Hashem Elokecha*” conveys something additional. According to the Maharal’s understanding of Rashi, this additional point is that the phrase “*im Hashem Elokecha*” relates both to the verse’s initial charge as well as to its resulting effect. So, when Rashi concludes his comment with the statement “*ve-az tihiyeh imo u-le-chelko*,” “and then you will be with Him and of His portion,” he means that the verse should be read as follows: “Be whole with Hashem your God and, as a consequence, you will be with Hashem your God.”⁷ The Maharal explains:

ואז תהיה עמו ולחלקו. דבר זה הוציא מדכתיב “עם ה’ אלקיך” דלא הוה למכתב רק “תמים תהיה”, כדכתיב (בראשית כה:כז) “ויעקב איש תם”, ומאי “תמים תהיה עם ה’ אלקיך”, אלא פירושו שאז תהיה עם הקדוש ברוך הוא ולחלקו. ואף על גב ד“עם ה’ אלקיך” פירושו ‘התהלך עמו בתמימות’, מכל מקום כיון דלא הוה צריך למכתב רק “תמים תהיה”, הוה כאילו נכתב “עם ה’ אלקיך” שני פעמים ... אבל השתא פירושו “תמים [תהיה] עם ה’ אלקיך” ואז “תהיה עם ה’ אלקיך”.

And then you will be with Him and of His portion. This statement [of Rashi] comes from [the part of] the verse “with Hashem your God;” otherwise, it would have simply written “Be whole,” as it writes (Bereishis 25:27) “and Yaakov was a whole man.” And what [is implied by] “Be whole with Hashem your God”? The explanation is that then you will be with the Holy One Blessed Be He and of His portion. And even though the interpretation of “with Hashem your God” is “walk with Him wholeheartedly,” nevertheless, since it only had to write: “Be whole,” it is as if it had written “with Hashem your God” twice ... [and] now its interpretation is “Be whole with Hashem your God” and then “you will be with Hashem your God.”

In this manner, Rashi interprets the phrase “*im Hashem Elokecha*” to mean that

⁷ It is noteworthy that the *dibbur ha-maschil* for Rashi’s comment is literally the entire verse, which might be the only time that Rashi cites the whole verse as the phrase he is interpreting.

being with Hashem is both the initial catalyst and the resulting endpoint of the verse's instruction "*tamim tihiyeh*."

Incidentally – but significantly – Rashi's approach provides basis for the position later centralized by the Chasidic movement that genuine connectedness with Hashem is not only "a difficult ideal reached ... at the end of a journey" but also "the starting point."⁸ This position diverged from the predominant approaches of the previous kabbalistic and philosophic movements which overwhelmingly had maintained that actual close connection with Hashem is reserved for the elite few. In contrast, Chasidic thought advocated the idea that the force of a religiously sincere act, directed by *halacha* and focused on relationship with Hashem, could result in genuine connection with Hashem, even for those who did not yet have the chance to follow a course of intensive and prolonged development of the mind and soul. The spiritual and intellectual underpinnings of this later Chasidic development are present in Rashi's formulation about this verse that our relationship with Hashem is both the initial cause and the resulting consequence – the starting step as well as the ultimate, even if ultimately elusive, goal – of sustained religious connection and aspiration.

This broad understanding of this verse also addresses the question why Rashi adds the word "*u-le-chelko*" at the end of his comment. This word is present in the *Sifrei* which states "*ke-she'ata tam chelkecha im Hashem Elokecha*," "when you are whole, your portion is with Hashem your God." But Rashi changes the *Sifrei*'s word "*chelkecha*," "your portion," to "*chelko*," "His portion," and also doubles the description to say that you will be both (1) "*imo*," "with Him," and (2) "*le-chelko*," "of His portion." By adding the word "*u-le-chelko*," Rashi likely is making reference to the verse in *Parshas Ha'azinu* which defines the "portion of Hashem" as "His nation" (*Devarim* 32:9):

כי חלק ה' עמו יעקב חבל נחלתו.

For the portion of Hashem is His nation; Jacob, the lot of His inheritance.

Thus, Rashi's pairing the words "*imo*" and "*le-chelko*" alludes to his interpretation of this verse as speaking, not only to select individuals, but also to the nation as a whole. In this sense, Rashi reads the verse as obliquely stating both "*tamim tihiyeh im Hashem Elokecha*," "be [individually] whole with Hashem your God," and "*tamim*

⁸ Alex Sztuden, "Everyone Asks Where He Is": Mystical-Hasidic Elements in U-Vikkashtem mi-Sham, The Orthodox Forum: Contemporary Uses and Forms of Hasidut (Rabbi Shlomo Zuckier ed., New York, 2022), at p. 161.

tihyeh am Hashem Elokecha,” “be whole as the nation of Hashem your God.” By transposing the Sifrei’s language from “*chelkecha im Hashem*” to the phrase “*tihyeh imo u-le-chelko*,” Rashi conveys his understanding of this verse – applying the definition of the “portion of Hashem” in *Parshas Ha’azinu* and incorporating the insight of the Maharal discussed above – to be as follows:

תמים תהיה עם ה' אלקיך ואז תהיה עם ועם ה' אלקיך.

Be whole with Hashem your God and then you will be with, and the nation of, Hashem your God.

This is what Rashi apparently means by doubling the statement at the end of his comment to say “*imo u-le-chelko*,” “with Him and of His portion.”

Of course, all of these thoughts and concepts that Rashi explains, elucidates and alludes to are most concisely encapsulated and carried around on a consistent basis by the language of the verse itself: “*Tamim tihyeh im Hashem Elokecha*,” walk simply with the *Ribbono Shel Olam* in all places at all times, both individually and as a nation, throughout all of life.

The Mystery of the Knife, the Helmet, and the Stone

RABBI YAAKOV SIEGEL



If you've ever watched the *mohel* at a *Bris*, you might have noticed that the knife he uses to perform the *mila* is made of steel. The *mohel* is doing exactly what it says in the Rambam (*Hilchos Mila* 2:1), and the *Tur* and *Shulchan Aruch* (YD 264:2 who quote the Rambam verbatim):

בכל מלין ואפילו בצור ובזכוכית ובכל דבר הכורת חוץ מבקרומית של קנה לפי
שקסמים נתזים ממנה ויבא לידי כרות שפכה. ומצוה מן המובחר למול בברזל.
*Anything can be used to perform the mila, including stone, glass, or
anything that cuts – except for a reed which can splinter and injure the
baby. But the ideal way to do it (mitzva min hamuvchar) is to use iron [or
steel, which is strengthened iron¹].*

Why is it ideal – *mitzva min hamuvchar* – to use iron? The Rambam gives no source or reason – he just says iron is *mitzva min hamuvchar*. Mysteriously, the *Kesef Mishna*, whose main purpose is to explain the Rambam's sources, writes "that which the Rambam writes that it's *mitzva min hamuvchar* to use iron, etc." and ends right there without finishing his sentence. So why is it ideal for the *mohel* to use iron?

Furthermore, while *mila* is mentioned many times in *Tanach*, only twice are we told what was used to perform the *mila*. The first is when Tzipora performs *mila* on her son at the inn:

¹ Steel is iron that is processed to add approximately one half percent carbon. By the time of the *rishonim*, steel and cast iron (which has more than two percent carbon) were the most commonly used forms of iron in Europe and the Middle East. When the *rishonim* and *achronim* use the word *barzel*, they probably mean either steel or cast iron, but for simplicity I will translate it as "iron".

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ותקח צפרה צר ותכרת את־ערלת בנה.

*Tzipora took a [sharp] **stone**² and cut off her son's foreskin. (Shemos 4:25)*

The second time is when Yehoshua is commanded to give the Jewish men *bris milas* upon their entry to Eretz Yisrael:

בעת ההיא אמר ה' אליהושע עשה לך חֲרֻבוֹת צָרִים ושוב מל את־בְּנֵי־יִשְׂרָאֵל שֵׁנִית.
*At that time, Hashem said to Yehoshua, make for yourselves **knives of stone** and circumcise the Jewish people once again. (Yehoshua 5:2)³*

So if our ancestors used sharp stones to perform *bris mila*⁴, why then is it *mitzva min hamuvchar* for us to use iron?⁵

The Helmet and the Stone

The *Prisha* asks this question, and says the source comes from a *midrash* that he heard, but did not see:

שמעתי טעם על פי המדרש שכך הובטח לברזל ביום שנבקע הכובע של ברזל שהיה בראשו של גלית לפני דוד.

I heard the reason is based on a midrash, that iron was promised [to be used for mila] on the day that the iron helmet on the head of Golias cracked in front of Dovid. (Prisha 264:7)

2 Targum Onkelos and Targum Yonason translate צר as טָנָא. This is the same word Targum Onkelos and Targum Yonason use to translate (Shemos 33:21) וַנִּצַּב עַל הַצּוּר, stand yourself on a rock.

3 Translating חֲרֻבוֹת צָרִים as knives of stone follows Malbim (ad loc.) and Bereishis Rabba (31:8). That seems to be the most natural translation, considering Rashi in Devarim (32:31) says, "kol tzur shebimikra lashon sela," every time it says צוּר in Tanach it means "stone". Interestingly, Rashi in Yehoshua translates צָרִים as "sharp knives" which is the same as the translation used by Targum Yonasan, Ralbag, and Metzudas Tzion. It's possible that Rashi could understand חֲרֻבוֹת צָרִים to mean "stone-sharpened knives."

4 In footnote 8 below, Tzena Urena (Shemos 4:25) quotes a *midrash* that says explicitly that it was not just Tzipora and Yehoshua that used stone, but all *bris milas* were performed using stone up until the time of Dovid and Golias.

5 The answer is not that metal knives were uncommon in the times of Tanach. Metal tools were commonplace starting during the Bronze Age (which started around the time of Noach), and the Iron Age which had already started when the Jews were slaves in Egypt. The Gr"a (YD 264:17) points to the Mishna on Shabbos 130a that says (according to Rabbi Eliezer) one may cut wood to make coals to make an iron tool for mila on Shabbos. While this shows from Chazal that using iron was a valued method of mila, it does not show it is ideal, and certainly does not explain why iron would be mitzva min hamuvchar. The Levush (264:2) suggests that perhaps iron is the sharpest tool, and could cut the skin with the least amount of pain to the child.

What is this *midrash* talking about? “Iron” was promised something related to the battle of Dovid and Golias? What does that mean? Does such a *midrash* even exist?

The great master of *midrashim*, Rav Menachem Kasher, fills in some of the missing pieces. In *Torah Shleima* (Vol. 3 p. 201 note 153), Rav Kasher cites a *teshuva* of an unnamed 14th century Spanish *rishon* that quotes a section of *Yerushalmi* not found in any printed editions:⁶

כשחלק המלך דוד חמשה חלוקי אבנים מן הנחל להלחם עם הפלישתי והיה כובע ברזל על ראשו של גולית הפלשתי, והכה דוד המלך לגולית הפלשתי, ואמרה האבן לכובע "תן לי מקום ואכנס בראש הפלשתי", וענה הכובע "לא אתן לך מקום בעבור ישראל, שאין משלימין עם ברזל שום מצוה, אם אתם אוכלין מסירין אותו מעל השלחן בשעת ברכת המזון, ואם עושין מזבח לא תניח עליהן ברזל." אמרה לו האבן "כל זה שאתה אומר מאריכין ימיו של אדם ואתה מקצרן, אבל תן לי מקום, ומכאן ואילך תהי זוהי לשתי מצות טובות, שמוהלין ושוחטין עמך." באותו שעה נתרצה הכובע ונתן לה מקום, ומאותה שעה ואילך אנו שוחטין בברזל.

*When Dovid Hamelech designated five smooth stones from the creek to fight with the Philistine, there was a helmet of iron on the head of Golias. When Dovid hit Golias's [helmet] with the stone, the stone said to the helmet, "give me some room so I can enter the head of the Philistine". The helmet responded, "I will not make way for you for Israel's sake, because they do not do any mitzvos with iron. When you eat, you remove me from the table before you bentch. When you make a mizbeach, you don't touch it with iron."*⁷ The stone said to the helmet, "those that you mentioned [birchas

⁶ The only known copy of this *teshuva* is in the library of the Jewish Theological Seminary, and was published by Dr. Michael Higger in *Halachos Va'agados* p.51. The title page is missing from the manuscript in which this *teshuva* is found, so the author is unknown. In a 1910 article in *Revue des Études Juives* (vol. 59 p.221) Alexander Marx (the long-time librarian of the JTS library) noted that the manuscript ends with a Judeo-Arabic inscription dating the *sefer* as written in 1346. He suggests that the author was a Spanish *rishon* based on the fact that Judeo-Arabic was common among Spanish Jews at that time, and that the author was a *rishon* of stature, because the manuscript has many quotations from Rav Zerachya Halevi (the *Ba'al Hamaor*) which are not found elsewhere. (Thank you to Morgane Kuzmin for help with the French translation.)

⁷ This quote from the *Yerushalmi* says that Golias's helmet was made of iron, yet the *pasuk* itself (*Shmuel* 1:17:5) is explicit that the helmet was made of bronze. One possible resolution is that Rashi to *Shmuel* 1:17:6 says that Golias's helmet was bronze, but had an *iron* extension that went down between his eyes and over his nose. It is possible that this is the iron piece that made way for the stone to enter. Another possibility is that the *Yerushalmi* simply uses *barzel* to mean metal, in which case the *minhag* should be to use a metal knife for *mila*, not necessarily an iron or steel knife. This is less likely, because *nechoshes* (bronze), was in fact used for the

hamazon and the mizbeach], lengthen a person's life, but you shorten life. But if you give me a place [to enter], from now on you will merit two great mitzvos: they will use you for circumcision and shechita." At that moment, the helmet agreed to give the stone a place, and from then on, we slaughter and circumcise using iron.

This story is quoted in two other sources with slight variations. The *Shach al Hatorah* (Shemos 4:25) quotes this story from a *Yalkut Shimoni* (Remez 52 – not found in any of our printed versions), but has Hashem (rather than the stone) asking the helmet to bend. The *Tzena Urena* (Shemos 4:25) has a version of this story in which it is the "angel of stone" that asks the "angel of iron" to bend Golias's helmet for Dovid's stone.⁸

Regardless of whether the helmet was asked to bend by the stone, Hashem, or the stone's angel, this is an absolutely fantastic *midrash*. But what is its meaning? While the Dovid and Golias story is one of the most dramatic in all of *Tanach*, what in the world does it have to do with *bris mila*? What are the lessons to be learned from this incredible discussion, with the helmet ultimately bending to make way for Dovid's stone?

Nature or Destiny

The story of the stone and the helmet is reminiscent of a *gemara* in *Shabbos* (156a). The *gemara* reports that a notebook of Rav Yehoshua ben Levi was found, and in it was written how the astrology of a person's birth – the planet or star that is "ruling" during the time of his birth – will influence his life and destiny. The most well-known line is:

mizbeach.

8 Among the three versions of the story, none are found in any primary *midrashic* texts; all we have are second-hand quotations from much later sources. The second version comes from the *Shach al Hatorah* - Rav Mordechai Hakohen of Tzfas (1523-1598), a *mikubal* and contemporary of the Arizal and Beis Yosef. In the version of the story he quotes, Hashem asks the metal to "soften yourself, and I will give you a portion in *kedusha* – which is the scalpel for *mila* and the knife for *shechita*." The third version is found in *Tzena Urena*, a compilation of *midrashim* published by Rav Yaakov Janowa in 1590. In the *Tzeva Urena*'s version (on Shemos 4:25), the "angel of stone" approached the "angel of iron" with an offer: "listen and do me a favor. When Dovid throws the stone, let the stone go through the helmet and enter the brain of the Philistene. In exchange for this, I will give you a gift. Until now, people would perform *bris mila* using a stone, but because of this [favor], I will give up on this and I will give you a gift that from now on people will perform *bris mila* using a knife of iron." The earliest mention of the helmet and stone story that exists today is found in a *piyyut* titled *Os Bris* written by the Ra'avan (Rav Eliezer ben Nasan of Mainz 1090-1170).

כתיב אפינקסיה דרבי יהושע בן לוי... האי מאן דבמאדים יהי גבר אשיד דמא. אמר
רב אשי: אי אומנא, אי גנבא, אי טבחא, אי מהולא.

It is written in the notebook of Rav Yehoshua ben Levi... one who is born under [the influence of] Mars will be a spiller of blood. Rav Ashi said, he could be a blood letter or robber, or he could be a shochet or mohel.

The helmet and stone might have had the very same debate that Rav Yehoshua ben Levi and Rav Ashi were having. Rav Yehoshua ben Levi seems to be saying that one born under Mars is destined for trouble. He will spend his life hurting, harming, and spilling blood. Rav Ashi says while this is his nature, it is not his destiny. His nature might be blood-loving, and it might be natural for him to become a blood letter or robber, but with effort, he could bend his nature and use it for good; to become a *shochet* or *mohel*.⁹

The iron of the helmet takes Rav Yehoshua ben Levi's position. It says, "my nature is to shorten life – to hurt and to kill, I cannot be used for any *mitzvos*, I am destined for nothing but trouble." But the stone takes Rav Ashi's position and convinces the iron otherwise. "*Terakech atzmecha* – soften yourself, *v'eten licha chelek bikdusha* – and I will give you a portion in holiness.¹⁰ You can work on yourself and find ways to use your nature to serve Hashem's will." Ultimately, the iron is convinced. It bends its nature and spends the rest of eternity performing the *mitzvos* of *mila* and *shechita*.

Seeing Red

This is also the story of Dovid Hamelech. When Shmuel Hanavi first came to the home of Yishai to find the next king, Yishai showed him seven of his sons, but did not even consider his youngest Dovid, because Dovid was "*admoni*," reddish in appearance (*Shmuel* 1:16:12). The *Malbim* and *Ba'al Haturim* explain that Dovid's family never thought he could achieve greatness, because he appeared reddish like Esav, so his nature was to become a murderer. While they were correct in identifying Dovid's nature, they missed that Dovid had the capacity to bend his nature and use his violent tendencies to fight *milchamos Hashem*, the wars of God. And this is precisely what Dovid does in the very next chapter when he walks down to the creek – armed with nothing but a few stones – to face Golias, covered head to toe in iron and bronze armor.

⁹ While *mohel* is obviously good, and *ganav* is obviously bad, the *achronim* (Maharal, *Malbim*, et.al.) have various approaches as to whether the *uman* and *tabach* are good, bad, or somewhere in the middle. Rav Ashi's message is the same regardless of how you classify these four professions.

¹⁰ This is the phrase used in the *Shach's* quote of the *Yalkut Shimoni*.

The iron thought itself to be a lost cause; it could do no good, only evil. But then it saw Dovid the “*admoni*” – also considered a lost cause – bending his violent nature to do the will of Hashem. So the iron realized that it too could soften itself, bending its own nature to do the will of Hashem. And from then until eternity, it is *mitzva min hamuvchar* (ideal) to use iron to perform every *bris mila*.

The First Cut is the Deepest

But of all *mitzvos*, why give iron the *bris mila*? One answer is that the whole idea of the *mila* is to remind us to bend our nature to do the will of Hashem. The natural desire to use the *makom hamila* for immorality and promiscuity can be so overwhelming, it can make a person feel like quoting the helmet, “I have no portion in *kedusha*.” But we purposefully take the very iron that bent its nature to welcome in the stone of Dovid Hamelech, and cut the *makom hamila* with it. This lets every Jewish boy and man know, that no matter how daunting or unnatural it may seem, he can use that desire exclusively for *kedusha* – to build a home and a family that is infused with love and *Shalom Bayis*.

Another, perhaps deeper, reason to give iron the *mitzva of mila* is that we have to recognize that every single child is born as a little *ashed dama* and a little *admoni*. Every person is born with tendencies and innate character traits that will seem to make his *avodas Hashem* (service of God) more difficult. So right at the very beginning of a baby boy’s lifelong effort to serve Hashem, his parents take the very iron that bent its nature, and use it to perform the child’s first *mitzva*. This is a reminder to the parents – and then ultimately to the child himself – that *kol mida umida she’hu moded licha* – every character trait Hashem breathed into this child at birth, is a gift that can be used to serve Hashem.

Channeling our God-given, yet unseemly desires and traits to be used exclusively for *avodas Hashem* is a lifelong challenge. It’s a challenge so daunting that at times we can feel like we’re the unarmed Dovid facing down the ironclad Goliath. But that’s the point – we *are* Dovid, and we too are walking down to the creek to fight *milchamos Hashem*. So precisely at the beginning of every boy’s life, we take a piece of Goliath’s armor and use it on the part of the baby’s body which so strongly symbolizes overwhelming desire, and whisper to the baby the words of Dovid’s stone: “*Terakech atzmecha* – bend your nature, *v’eten licha chelek bikdusha* – and I will give you a portion in holiness.”

Is it Cooking Without a Fire?

RABBI EVAN SILVER



With new inventions come new *halachic* challenges, requiring us to apply old discussions in new ways. In an effort to reduce carbon emissions, cities, including Los Angeles, are either enacting or planning to enact various bans on new gas appliances.¹ Switching over to the electric alternatives of appliances like water heaters, ovens and stoves create numerous *halachic* difficulties which one should research before purchasing. The new energy efficient stoves, for example, use a technology called induction, where there is no actual heat coming from the stove. This raises two major questions for *Bishul Akum*.² Would the common practice of a Jewish person simply turning on a fire be necessary or serve a purpose when there is no fire?

In resolving the issue of how the laws of *Bishul Akum* apply to induction stoves, there are two primary questions that need to be addressed. The first issue is whether cooking without a fire is considered a type of cooking that is prohibited under *Bishul Akum*. (A similar discussion ensued when microwaves gained popularity.) Secondly, if it is determined to be subject to the prohibition of *Bishul Akum*, how would a Jewish person need to participate in the cooking process in order to reach the level that is required for it to be considered 'cooked by a Jew'.

An induction stove operates by creating a magnetic field. The stove itself does

1 www.latimes.com/business/story/2022-05-27/get-ready-for-electric-stoves-los-angeles-bans-natural-gas-in-most-new-homes

2 Literally, food cooked by a non-Jew, which is forbidden by rabbinic decree. To permit the food, a Jewish person must participate in the cooking, often through turning on the flame. More details to be discussed later.

Thank you to Rabbi Casen for learning this sugya together to help me better understand.

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not create any heat nor get hot; rather, the magnetic field will cause certain types of pots to get hot and, in turn, heat the food. When the pot is removed from the stove, it effectively turns off, and heat will only be generated when an induction pot is returned to the stove.³ The heat is only created in the pot itself, allowing the pot to heat up faster and safer, which makes things like boiling water occur much more quickly. While some restaurants owners and chefs argue that it is not fully equivalent to cooking on conventional gas, for most uses it seems to cook comparably to gas and certainly to the traditional electric burner.⁴

Is it Cooking?

For something to be subject to *Bishul Akum*, it needs to fulfill a few criteria. The food needs to be considered to be cooked, fit for a king's table, and not generally eaten raw. Fire was considered the primary method of cooking for most of history, but even before induction stoves and microwaves, there were other methods of cooking, as well. The *Shulchan Aruch* (YD 113:13) rules that smoking and salting foods is not subject to the decree of *Bishul Akum*, and the Rama includes pickling, as well, in this exemption.⁵ The *Chelkas Binyamin* (113:14) addresses the issue of microwaves as it relates to this decree and concludes that microwaves would not be considered cooking and therefore, food prepared within would not be subject to the prohibition of *Bishul Akum*. This ruling regarding microwaves is not a universally accepted ruling and even if following those who are lenient with a microwave, the rationale behind allowing a microwave needs to be better understood to see how it could apply to an induction stove.

The *Chelkas Binyamin* and the sources he quotes extrapolate from the *gemara*, which says that cooking in the sun is not prohibited on Shabbos. They apply this *gemara* to the issue of *Bishul Akum*.⁶ First, the *Eglei Tal* explains that usually when it comes to Shabbos, doing something with a *shinui* (a change from normal method) would not normally make a forbidden Shabbos action become permitted. However,

3 <https://www.consumerreports.org/electric-induction-ranges/pros-and-cons-of-induction-cooktops-and-ranges-a5854942923>

4 <https://www.latimes.com/food/story/2022-06-02/gas-stove-ban-chinese-korean-bbq-electric-new-buildings-restaurants-future>

5 This would be cold smoking like lox. Hot smoking which is more like a BBQ is a *machlokes*.

6 Even if one rules that a microwave is not cooking on Shabbos, it is still forbidden for other reasons such as the inability to use electricity on Shabbos. The practical ramifications of its permissibility are beyond the scope of this article.

in this case of cooking, using the sun as a heat source is so far removed from cooking on fire that it is no longer simply considered just a change, mainly because the end result is also different.⁷ A steak cooked on a BBQ and one cooked on a rock, even in Palm Springs, are not going to taste the same. Applying this concept to that of a microwave, most would assume that a microwave would not cook equivalently to a regular oven. While it is a great invention to heat things quickly, most people would not want their meal cooked that way from scratch. Rav Shlomo Zalman Auerbach rules that a microwave is equivalent to using a derivative of sun, which is forbidden by rabbinic decree on Shabbos but does not biblically fit into the category of cooking.⁸ The *gemara* rules, when it comes to Shabbos, cooking via the sun is permitted, but a derivative of the sun is prohibited because it can be confused with a derivative of fire. Rashi gives the example that cooking with a garment heated by the sun would be forbidden, as it's indistinguishable to a garment heated by fire.⁹ However, even though we are strict to prohibit this with regards to Shabbos, it is not considered cooking as far as *Bishul Akum* is concerned. Therefore, according to Rav Shlomo Zalman Auerbach, the microwave would not be under the category of *Bishul Akum*. Rav Moshe Feinstein ruled in the early days of the microwave, when people thought it was so good that it would eventually replace a regular oven, that lack of fire was irrelevant and it would fall under the biblical definition of cooking because one day it will be the standard way to cook.¹⁰ While this turned out to not be the case for a microwave, which would seem to mean Rav Moshe's opinion would no longer apply to a microwave, it does so far appear to hold true for induction stoves.

The *Shevet Halevi* (185) rules against the *Chelkas Binyamin* and says the reason Chazal made a decree to prohibit *Bishul Akum* was either to prevent intermarriage or to prevent one from relying on the kashrus of a non-Jew. Both of these concerns would apply to a microwave and the majority of *kashrus* agencies are strict to follow this opinion. The concern behind this decree is driven by familiarity. Perhaps if someone was comfortable in their non-Jewish neighbor's house, they would grow closer and marry into the family. So too, it was feared that if you began trusting a non-Jew to cook food for you, you may end up eating non-kosher food cooked by them as well. Unfortunately, there is an uptick in both of these situations so perhaps there is

⁷ *Eglei Tal Maachalei Akum* Sk 44

⁸ *Shemira Shabbos Kehilchasa* Chapter 1, footnote 12

⁹ *Shabbos* 39:1 as explained by Rashi

¹⁰ *Igros Moshe* OC 3:52

good reason to be stricter in the laws of *Bishul Akum*.

Even if one were to follow the minority opinion that cooking in a microwave would not be considered cooking, this is only because it does not cook as well as more traditional methods of cooking. *Bishul Akum* only applies to food that is fit for a king's table, but even though a microwave would generally not be used to cook for the king, the fact that food happened to be cooked in a microwave in a specific instance would not remove an item usually subject to the *Bishul Akum* from the prohibition.¹¹ In regards to canned tuna fish, the inferior method of cooking in the factory does allow a leniency since it is cooked with steam, a method even further from traditional cooking than a microwave and the actual raw Tuna is of lesser quality.¹² When it comes to the induction stove, outside of some select dishes, the end product would be identical, the lack of fire alone would not remove it from the category of cooking according to most opinions, making it fully subject to the prohibition of *Bishul Akum*.

What is a Contribution to the Cooking?

Once it has been established that *Bishul Akum* is a concern relevant to induction stoves, the question is raised as to how much of a role a Jew must play in the cooking process for an item to be considered cooked by a Jew. The most common solution is for a Jew to simply light the fire but there is no fire to light with an induction stove. A standard electric stove or oven is considered *Bishul Akum* because a red-hot coil is considered fire, so a Jew turning on the red hot coil is considered the same as if the Jew were to light a fire. Turning on an induction stove is turning something on without any heat which could be similar to the case of a Jew placing food on coals that are not hot enough to cook it to the point of *maachal Ben Drusoi* (half or one third cooked). If a non-Jew comes along and adds enough heat to cook, the food would be forbidden to eat.¹³ A practical application to this gemara would be if a Jew puts food in the oven while it is off and then asks the housekeeper to turn on the oven. At the time that the Jew put the food in the oven, it lacked the heat necessary to cook so the food would become forbidden if a non-Jew turns on the oven.

There is a dispute between the *Mechaber* and Rama regarding how much of a role a Jew needs to play in the cooking process. According to the Sephardim,

¹¹ When giving a *chabura* on this topic at Adas Torah

¹² <https://oukosher.org/blog/consumer-kosher/fish/>

¹³ *Shulchan Aruch* YD 113:10

following the *Mechaber*, lighting a fire is only sufficient for bread to not be considered *Pas Akum* (baked by non-Jew), but, for cooking, the Jew needs to actually put the pot on the stove. The Rama, for Ashkenazim, is more lenient and allows a Jew to just light the fire.¹⁴ This difference of opinion creates a problem for Sephardim who eat in restaurants that follow the more lenient opinion of the Rama. The *Chochmas Adam* extends this leniency to allow a pilot light, which was very helpful when that was common in stoves and oven.¹⁵ While the *Aruch Hashulchan* agrees that even throwing in a wood chip would work, he holds that it is a big leniency and should only be relied upon in certain circumstances and not in a commercial setting.¹⁶ It seems in the case of the stove, where turning it on creates no heat at all, it would not help even according to the more lenient opinion as there isn't even the equivalent of a pilot light or wood chip. The way the stove works is that it is essentially off until a pot is placed on it, meaning the act of turning on the stove without a pot is insignificant, it is only the act of putting a pot on that creates the heating process. Initially putting the pot on a heated empty pot or putting a pot on for one cooking would not help any subsequent cooking because each time the pot is removed and returned it is essentially tuning the stove on and off. This is also relevant on Yom Tov because it prevents the ability to take anything on or off an induction stove. The *Shulchan Aruch* rules that anytime the food is taken off before being cooked to the point of *maachal Ben Drusoi* and returned by a non-Jew, it is forbidden. The Shach is lenient when a non-Jew removes and replaces the pot because the initial cooking is at least as good as the permitted situation where the Jew only added a wood chip to the fire. This leniency is often not necessary because if the Jew lit the fire, this would not even be a question according to the Rema, but in a situation where the Jew did not light the fire, this leniency is generally not accepted.¹⁷

Another possible leniency to return the same pot to the fire is based on a ruling for bread, where if the oven is still warm from when the Jew lit the fire, it would permit subsequent cooking.¹⁸ The challenge with applying this idea to a pot that retained heat is that the old baking oven retains heat far better than a pot. This potential leniency is only according to the Rema who allows the leniencies of baking bread to be extended

¹⁴ *Ibid.* 113:7

¹⁵ 66:8

¹⁶ YD 113:44

¹⁷ *Shulchan Aruch* YD. 113:8 See *Shach* and *Chelkas Binyanim*

¹⁸ YD 112:10

to cooking as well. Rav Mordechai Willig said that since there is already a doubt if the prohibition of *Bishul Akum* applies when there is no fire, one can be lenient to return the same food when the pot is still hot by combining the additional leniencies of the *Shach* and the pot still being hot.¹⁹

For a single item the Jew can turn on the fire with the pot on the stove and leave it for a non-Jew to cook, which might work for a home. In a restaurant, where the Jew needs to allow consecutive cooking, the Jew would have to put something on the stove that stays hot even when the pots are changed. One solution is there are induction disks that can stay on a stove creating a circuit and heat. The disk gets hot and heats the pot, in many ways more similar to a typical electric stove. These are primarily sold so one can use cookware that is incompatible with induction stoves, but the efficacy of induction is essentially lost. In a restaurant the *mashgiach* could turn the stove on with the disk and then anyone would be free to cook using a pot on top of the disk. This solution is the OU's current recommendation.

While technology creates new challenges, perhaps it creates new opportunities. The induction stove prevents the common practice of a *mashgiach* or homeowner turning on a stove once in the morning to allow cooking by others all day. With the rise in assimilation, maybe this is an opportunity to rely on fewer leniencies in an area that was decreed specifically to prevent the dangers of assimilation and intermarriage. Jews will have to participate in cooking beyond simply lighting the flame which would also permit Sephardim to eat in more restaurants. As new inventions come into existence it is important to research the topic fully to understand the halachic ramifications, solutions, and how it will allow us to better serve Hashem.

¹⁹ Based on a personal conversation, Rav Willig is lenient that there is no *Bishul Akum* with a microwave or induction stove because there is no fire, but said since even according to those who are strict it is at very least a doubt, he would allow being lenient when combining all three.

Are You Sure that's Not Kosher?

DR. JONATHAN NISSANOFF



Growing up religious in Los Angeles in the 1970's was very different from what it is today. We had one kosher restaurant, a pizza place called Two Worlds. Today, we have over thirty kosher restaurants, and you can choose which variety of ethnic cuisine pleases your appetite du jour. Door Dash, Uber Eats, and the like have made kosher options so accessible that from your mobile phone you can expect delivery of certified kosher food to your door within the hour.

Those who were around as long as I was will remember that there was only one printed *hashgacha* (the OU) on packaged foods. Most products in the store were not readily determined to be automatically kosher, as we lacked the current 400 *kashrus* symbols. Nor was there even the internet to ask about the status of a certain product. As a matter of fact, I cannot recall even one product that was considered kosher based on a *kashrus* symbol displayed on its packaging. A perfect example was the Hershey's Chocolate Bar. Everyone "knew" it was kosher but there was no OU symbol to be seen on its wrapper.

There were many candies that were considered pure *treif*, such as M&M's with the red coloring that was derived from the beetle, and the Mars bars and marshmallows that all contained gelatin. We had learned in school how to read a wrapper to determine if something had a non-kosher ingredient in it. Today, no one looks at the much-more-complex set of ingredients in our ever-growing industry of processed food items, as there is really no need to. If a product displays the *halachically* acceptable kosher symbol, there is no good reason to try to understand whether a particular ingredient with a name that could barely be pronounced is kosher or not. The *mashgichim* took all the hard work out of this guessing game and made life so much simpler for us. In fact, today, we have become so reliant on the requirement of these symbols on all our food products, that if one is not found on a food product in a grocery store, we just put the product back on the shelf and start looking for the many available alternative products that do carry a reliable symbol without batting an eye.

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Although one may think that today one just needs to look for a kosher symbol on a product, I have learned that this is no longer enough. We may have to go back to the basics and start reading labels again and understand what those unpronounceable ingredients actually mean, even if the product has a reliable *hashgacha*. The reason for this is that not all reliable rabbis agree on whether certain ingredients are actually kosher or not. Therefore, relying on *hashgachas* does not suffice if there is an ingredient that one does not hold is kosher. One such ingredient that many rabbis believe can be kosher, if properly prepared, is gelatin from a pig. I know this may seem like blasphemy to most, as I myself have never heard of any rabbi even coming close to saying that any part of a pig could be kosher, but trust me, there are many reliable rabbis that say that gelatin can be kosher, including the former chief rabbi of Israel Harav Ovadia Yosef *zt"l*!

I recently became interested in learning more about this gelatin product that all my life I was told was pure *treif* when I was visiting in Arizona and had a conversation with a Sephardic rabbi from Brooklyn. The topic of marshmallows came up as there were kids on the hotel grounds making smores. I thought he was joking when he told me that there was a *teshuva* from Rav Ovadia that effectively allowed for consumption of marshmallows made with gelatin that came from a pig. The former Chief Rabbi of Israel had *paskened* that gelatin was kosher. When the Brooklyn rabbi realized that I didn't believe him, he emailed me the *teshuva* which was the first time that I realized that he was not joking about the fact that gelatin can be kosher.

Considering that I had never had any gelatin product in my life because I was taught that it was pure *treif*, I decided to go on a journey and find out the sources on my own, and share them with you so that the next time there is a product with the words "*ma'achal* gelatin," (which, again, I never knew existed) you will be able to decide whether this is a product that is fit for your own consumption regardless of whether a reliable kosher symbol exists on the packaging or not.

Lets begin by defining what gelatin actually is and then discuss how *halacha* determines its *kashrus* status.

Gelatin is a colorless, flavorless food ingredient derived from collagen. Collagen is the protein substance found in fish and animal skins and bones and is used to provide gelling properties in many food items such as yogurts, bars, soft candies, gummies, marshmallows, icing, mousses and many other food products. Additionally, it is used as a clarifying agent for juices and wines. It is also used in the pharmaceutical industry to make capsules and many other non-food items.

Dried bones or skins from animals, as well as skins or scales from fish, can be

used as the main raw materials for gelatin. The material is cut or broken into small pieces and then soaked with water and chemicals for about two days. Following the two days of soaking, the material goes through the hydrolysis process, which includes breaking down the materials through a reaction from the hot water and chemicals. Next, the material is cooled, put through series of filtration and clarification steps, evaporated to concentrate the product, and then it is sterilized. After sterilization, the material is cooled a second time through a process that converts the liquid into a gel, which is then dried in oven, ground to uniform size, screened and packaged. 90% of American gelatin is derived from pig skins and bones.

Although according to the above definition gelatin can be made from ligaments, bones, skin, etc., of animals, the discussions of *halachic* authorities appear to be exclusively regarding the bones. If the gelatin comes from a kosher animal that has been slaughtered properly, it is kosher and *pareve* according to most, as gelatin would not be considered a food item. To avoid most of the issues of milk and meat, today, a major source of kosher gelatin is the bones of kosher fish.

How does *halacha* apply? Here are how the most important *poskim* from the last hundred years ruled, after which we will discuss some of the background sources upon which their *psak* is based. The *gemara* says that one who cooks animal bones with milk is exempt from punishment because the bones do not have the status of meat *de'oraisa*, which is codified in *Shulchan Aruch*. The *gemara* further states that if non-kosher meat and bones fall into an otherwise kosher mixture, the bones count as part of the kosher meat to nullify the non-kosher meat, or at the very least do not count towards the forbidden part. Although in general the bones are still prohibited *d'rabbanan*, in the case of gelatin there may be even more room for leniency because the bones are completely unfit for human consumption. Bones were never included in the prohibition of eating a non-kosher animal in the first place. The Shach holds that the same applies to any innards of an animal. Based on the above, Rav Chaim Ozer Grodzinski permits the use of gelatin from a non-kosher animal. An additional consideration of his is that the processing of the gelatin makes the bones inedible for even the consumption by a dog. Therefore, the bones, even when reconstituted in the form of gelatin, are considered “changed” (*nishtanu*) in the process and unconnected to the original non-kosher product. He also noted that gelatin is almost always used in a way that it is *batel b'shishim* in the finished product. This is also the position of Rav Ovadia Yosef (*Yabia Omer* YD 8:11) (*Torah She-Ba'al Peh* 5753 pp. 23-25) and can be inferred from the *teshuvos* of Rav David Tzvi Hoffman. Rav Yechezkel Abramsky also proposed this approach but cautioned against leniency, out of fear that permitting

something which had previously been assumed to be prohibited will lead to people being lax about the *halachic* process in general.

However, Rav Aharon Kotler argues that the reason that bones are not included in the prohibition of eating non-kosher animals is simply because they are unfit for human consumption (*Mishnas Rabbi Aharon*). However, if they are reconstituted into gelatin, and they are now fit for human consumption, then the prohibition remains. He holds that when the prohibited item itself is reconstituted to an edible item, the bones themselves become like the meat and are considered *treif*. If so, at the very least there is a problem of *achshevei* (showing that this item has importance), which renders the item prohibited *mid'rabbanan*. This is also the position of Rav Moshe Feinstein. Rav Yitzchok Yaakov Weiss likewise writes that gelatin from bones of non-kosher animals has been determined to be forbidden by most *halachic* authorities (*al pi da'as rov minyan u'binyan shel gedolei ha'torah*). Rav Yosef Eliyahu Henkin, while admitting that there is room to be lenient if the bones are completely dry, questions whether gelatin is actually made from completely dry bones. He then says that one should be more *machmir* today, since kosher gelatin is available from kosher fish bones, and we should try to support those making gelatin with more stringent standards. Rav Tzvi Pesach Frank takes an interesting middle approach: he argues that the case of bones that are only rendered unfit for human consumption, but are still fit for a dog's consumption, is a matter of debate. If the bones are rendered unfit even for the consumption by a dog, they should be permitted by all. He concludes that one should be *machmir*, but not tell those who are lenient that they are eating *treif*.

Aside from the obvious marshmallows and jelly type candy products, where do we see the use of gelatin that is not so obvious that might, in fact, cause a potential *halachic* problem for some?

Pills

Some people have difficulty swallowing pills, and, in recent years, pharmaceutical companies have come up with creative methods of solving this problem. These include coating the outside of the pill with a thin layer of gelatin, putting a powdered medicine into a gelatin capsule, or putting a liquid medicine into a soft gel-cap. What these methods all have in common is that the gelatin acts as a buffer between the medicine and the person's throat, and helps the medicine slide down relatively easily. Non-chewable tablets or pills are not considered food items, as they are not "eaten," and therefore are allowed to be consumed if medically required, regardless of their ingredients. Non-kosher food which has become inedible to the extent that a human

would not consume it – *nifsal may'achila* – loses its non-kosher status.¹

Throat Lozenges

Gelatin can be added to candies and throat lozenges to make them last longer, since gelatin does not break down as quickly as sugar. It is routinely added to marshmallows to help them hold their shape when aerated.

Vitamins

Most vitamins are water-soluble and can easily be put into pill-form or into foods. However, vitamins A, D, E, K and beta-carotene are generally mixed with oil, and if they were put into a pill as-is, the oil would leak into the pill and ruin it. To deal with this issue, vitamin companies have developed a method of encapsulating tiny beads of these vitamins in gelatin. The gelatin serves two roles – it protects the oil from the outside elements and protects the pill from having oil leak into it. Gelatin is sometimes also used as a protein supplement in diets.

Immobilized Enzymes

Enzymes are chemicals which are crucial in effecting changes in foods. For example, the rennin enzyme causes milk to separate, thereby creating cheese. Generally, the enzyme has to be put into the food for it to have an effect, but occasionally a process uses an “immobilized” enzyme. This enzyme stays in one place, and the food passes over it, and that is enough to change the food. One example of this is the glucose isomerase enzyme which changes mildly-sweet glucose (such as corn syrup) into very-sweet, fructose (such as high fructose corn syrup). In order to make sure that the enzymes remain “immobilized” and don’t get washed away into the corn syrup, the enzymes are often encapsulated in gelatin.

Filtering

Most people prefer to buy apple and grape juice which has the naturally occurring haze or cloudiness removed. One common method of doing this is to pass the juice (while hot) through a gelatin filter, where the gelatin attracts the haze particles thereby facilitating their removal, acting as a flocculate. A similar process was traditionally used for beer where small amounts of isinglass – a gelatin product made from the swim bladder of non-kosher sturgeon fish – were put into the beer to attract the haze and cause it to drop to the bottom where it can be filtered out.

¹ See *Chavos Da'as* YD 103:1

A number of *halachic* questions arise from the use of gelatin in food products, including:

- Is gelatin from non-kosher animals in fact permitted?
- Is gelatin from kosher animals considered *fleishigs*?
- May fish gelatin be combined with meat products?

Lets now look at the *halachic* sources to better understand how reliable rabbis have made the determination that gelatin can be a kosher product.

The starting position is a statement by *Chazal* that any product derived from a non-kosher animal will also be non-kosher.

שהיוצא מן הטמא, טמא, והיוציא מן הטהור, טהור. (בכורות ה:)

The product of a non-kosher animal is non-kosher, and the product of a kosher animal is kosher.

The Torah prohibits eating from the flesh, *basar*, of a *neveila*.

מבשרם לא תאכלו ובגבלתם לא תגעו טמאים הם לכם. (ויקרא יא:ח)

You shall not eat of their flesh or touch their carcasses; they are impure for you.

Rashi there quotes from the *Sifra* 4:8 that the Torah prohibition of eating from a *neveila* does not include the non-edible parts of the animal (bones, hooves, etc).

The Rambam in *Hilchos Maachalos Asuros* 4:18 rules this as *halacha*, excluding skins, bones, sinews, horns and hooves from the prohibition of *neveila*. He rules that this also applies to non-kosher species, since these parts of the the animal are not edible. However, he rules that these parts of the animal are still prohibited to eat, presumably on a rabbinic level.

Tosafos in *Avoda Zara* 69a (*d"h hahu*) raise the issue of bee parts which remain stuck in the honey and cannot be filtered out. How can we eat pieces of the insect!?! *Tosafos* is prepared to be lenient on the legs, since these are merely 'bones' which are effectively inedible. This appears to be more lenient than the Rambam's position, which is that the bones would be rabbinically prohibited.

Similarly, the Rosh in *Avoda Zara* (*perek 5*) rules that, far from being the bee's knees (!), the bits of insect are in fact considered to be 'mere dust'.

On the other hand, *Chazal* explicitly rule that domesticated pig skins are considered like the flesh for the purposes of *neveila*.

אלו שעורותיהן כבשרן עור האדם ועור חזיר של ישוב ר' יהודה אומר אף עור חזיר הבר. (חולין קכב.)

These are the entities whose skin has the same status as their flesh: The skin of a dead person, and the skin of a domesticated pig. Rabbi Yehuda says: Even the skin of a wild boar.

Much gelatin made today is from soft pig skins. As such, gelatin from such sources would be likely prohibited on a Torah level. But isn't the proportion of gelatin much less than 1 in 60? Why is there no bitul?

The *Shulchan Aruch* YD 87:11 rules that a *treif* ingredient which acts a *ma'amid* (a gelling or thickening agent whose presence remains felt in the final state of the product) will always remain prohibited, even if it nullified 1 in 1000!

Inedible Foods Which Become Edible Again

The Aruch Hashulchan permits rehydrated dried (and inedible) *treif* products.

עוד כתב בסעיף י': "דעור הקיבה לפעמים מולחים אותו ומיבשים אותו ונעשה כעץ, וממלאים אותו חלב - מותר, דמאחר שנתייבש הוא כעץ בעלמא, ואין בו לחלוות בשר" עכ"ל. והוא הדין שאר בני מעיים כשמיבשים אותם עד שנעשים כעץ, אבל בשר יבש כעץ - אוסר. ויש מתירים גם בבשר יבש כעץ, ואף אם אחר כך מבשלין אותו, או שורין במים מעת לעת - מותר [שם]. ואצלינו עושים הגבינות על ידי עור הקיבה שנתייבש עד אשר דק לעפר עם עוד דברים, כידוע.

[The Shulchan Aruch] writes in se'if 10 that if the keiba skin was salted and dried to be like wood, and was filled up with milk it would be permitted, as the skin is just like wood without any resemblance to meat. This would be true by other internal organs as well, but not dried meat. There are those who even permit dried out meat, even if it was then cooked or soaked. In our are cheeses are produced with dried keiba skins which are thin are dust, and mixed with other things.

The Chasam Sofer (YD 2:81) considers it obvious that once *treif* food powder is rehydrated, it becomes prohibited like the original meat.

Achshevei

Chazal rule a concept of '*achshevei*.' If a person chooses to eat something which is otherwise inedible, they demonstrate by that choice that they give the item importance and effectively elevated to the status of 'food'.

אמר רב מרי אף אנן נמי תנינא קונם אשתי נהנית לי אם אכלתי היום ואכל נבילות וטריפות שקצים ורמשים הרי אשתו אסורה לו... כיון דמעיקרא אכל והדר אשתבע ליה חשובי אחשביה. (שבועות כד.)

Rav Mari said, one who declares his wife to be prohibited to him if he eats that day, and eats neveilos, treifos, shratzim or remasim, his wife will be prohibited to him, ... since he ate and then took the shevuah, he elevated the status of those items.

This concept is found in *hilchos Pesach*. If totally inedible (even for an animal) *chametz* accidentally falls into food on Pesach, it is permitted. However, to intentionally eat such inedible *chametz* is prohibited rabbinically due to *achshevei*.

Conclusion

At the end of the day, it is difficult to change one's beliefs from how one was raised. I will, myself, not be eating gelatin anytime soon regardless of whether a product has a reliable *hashgacha*.² In addition, I think Rav Abramsky said it best when it comes to changing basic tenets in *halacha*. He ruled (in 1951) that even if there were grounds to be lenient on gelatin from a non-kosher source, one must still rule that it should be prohibited. He writes that the lack of education and negative attitude of the average Jew of his day, who felt that rabbis simply made things up anyway, would affect the rabbis' credibility to the non-educated Jew. To reverse the *halachic* position on gelatin (which everyone understood to be clearly *treif* when they grew up) and permit it now would simply provide fuel to the ignorant (and arrogant) position that 'where there is a rabbinic will, there is a *halachic* way.

Be that as it may, many rabbis have taken different positions on whether gelatin can be eaten by the kosher consumer. If this ingredient in a product will change your mind on eating this product regardless of the *hashgacha* that is printed on the label, then it is time to start reading the ingredient labels again on any product that holds a reliable supervision.

² Which, by the way, I have now only seen in Israel.

The Overlooked Pattern of “*Ata*” in the First Eight *Brachos* of *Shemone Esrei*

DAVID WINTER



Abstract and Conclusion

To many readers, especially those from a yeshiva background, the following question may be **much** more appealing than the answer I’ve invented because the answer is without basis in classic *meforshim* (commentaries) and is somewhat outlandish—it’s guaranteed to receive strict scrutiny. To readers who enjoy meditation¹ and aren’t concerned with strict proof, at least some of this article will likely strongly resonate. In my opinion, each group is correct. Frankly, if this article causes even one person to momentarily pause and think or feel more connected than usual during *davening*, even just once, that will be enough of a reason for it to be written.

What is the meaning behind the following pattern of the word *אתה* (*ata*, you) that appears in the first eight *brachos* of the weekday *shemone esrei* (silent standing prayer composed of 19 blessings):

(1) *מגן אברהם* (*Magen Avraham*)

(2-4) then 3x *brachos* **beginning** with *אתה* (see beginning of the following three *brachos*: *אתה גבור, אתה קדוש, אתה חונן*) (*ata gibor, ata kadosh, ata chonein*)

(5) **followed** by *השיבנו* (*hashiveinu*)

(6-8) then 3x *brachos* **ending** with *אתה* (see end of the following three *brachos*:

¹ Rabbi Aryeh Kaplan defines meditation as “thinking in a controlled manner; it is deciding exactly how one wishes to direct the mind for a period of time, and then doing it.” See *Jewish Meditation* p.3.

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(סלח...כי מוחל וסולח אתה, ראה...כי גואל חזק אתה, רפאנו...כי קל מלך רופא נאמן ורחמן אתה)

As a follow-up and related question (based on the answer offered below), why do we truncate this pattern for Shabbos and Yom Tov? The first three *brachos* are the same and the fourth *bracha* (nearly always) begins with *Ata*, although the exact language of the fourth *bracha* is different than the language we say for the weekday *shemone esrei*. Why is the pattern modified for Shabbos and Yom Tov?

Spoiler alert and summary of the answer developed below: From our perspective as limited beings, we see only partial facets to Torah and *tefilla* because they are infinite and we are incapable of seeing infinitely; at best, we see slices of the infinite. Our most commonly-used tool, logic, lacks the ability to unify Torah and *tefilla*² because logic is itself a limited tool, albeit powerful. As such, as one slice of the infinite, I think that a potential explanation for the cited structural pattern is that *shemone esrei* is a prophetically complex meditative system designed to connect us to Hashem. And – this is the part that may face immediate rejection or at least strict scrutiny – that meditative system appears to share certain components with other cultures and can therefore be analyzed with information readily available and used in other cultures as part of their meditative practices. While *Chazal* were certainly aware of all of this, whether this information has application to practices instituted by *Chazal* will be up for debate by the end.

Introduction

I asked a rabbi about the pattern described above and he joked “I’m usually spaced out by the time I get to the second *bracha*, I have no idea what you’re talking about.” Joking aside, the point is well taken. It’s no secret that the vast majority of people struggle to maintain their focus on the *tefillos* that they say during *davening*. It’s well understood that the most rewarding and valuable activities require the most diligent effort.³ We know how valuable *tefilla* is from at least one primary source - specifically, as part of our morning *brachos*, we recite the *gemara* in *Shabbos* 127a, which tells us that those people who do “*iyun*” *tefilla* shall eat the *peiros* (generally translated as “profit”) in this world and the *keren* (generally translated as “principal”) shall remain preserved for *olam haba*. But what exactly is *iyun*? It appears that all of the *meforshim* define *iyun* as *kavanas halev* (literally, direction of the heart) so we know it

2 See *Shabbos* 10a - the time for prayer is separate and the time for learning is separate.

3 See *Brachos* 32b - four things require *chizuk* (strengthening or bolstering, constant effort to improve), and they are: **Torah**, good deeds, **prayer**, and *derech erez* (Rashi appears to define this as “occupation”).

has something to do with feelings and emotions, because the heart represents those terms; however, most people colloquially refer to *kavanas halev* simply as *kavana* and define it as concentration, absorption, focus, or intent.⁴

But what exactly is *kavana*? The Rambam lists *kavana* as one of the five critical components of *tefilla* by referencing a *pasuk*; that *pasuk* alludes to an explanation of *kavana*, but the Rambam doesn't actually define it. Rav Chaim Brisker builds on and explains this Rambam by defining two aspects of *kavana*; (1) recognizing that you're standing directly before Hashem, Master of Existence, and (2) *peirush hamilim* (generally translated as the explanation or meaning of the words).⁵ I think "meaning of the words" includes – but is not limited to – many components of the text, such as their structure, order, syntax, references, patterns, homophones, and *gematriyos* **in addition** to the translations. It would seem that *peirush hamilim* is essentially like analyzing *Tanach* in the manner of the *mishna*, *gemara*, etc., via *pardes* (*pshat*, *remez*, *derash*, *sod* - simple explanation, hinting, expounding, or secret) because there are tremendous secrets built into every letter, word, and combination of letters and words.⁶ *Iyun* therefore means examination and deep fundamental analysis, and it stands in contrast to *bekius*, which is more of a basic surface review (and which appears to be the more common approach to *tefilla*). While complex analytical thinking is necessary to fully develop our relationship with Hashem at the highest levels, it is not sufficient. Each of these components of *kavana* should have a significant impact on feelings and emotions – who can stand before their Father and King, Who has infinite love for each of us with more warmth and depth than we imagine or comprehend, without mirroring that feeling? Real *kavana* brings with it the recognition that Hashem is the Infinite Source and Power with all of the answers and the desire to give us everything. *Kavana* is the key to integrate our thoughts with our feelings in order to achieve our infinite potential.⁷

4 It's interesting to point out that the *Baal HaTurim* notes that the word *lev* (heart) in all its variations appears in the Torah 113 times and this is also the number of letters found in the final sentence of each of the *brachos* of *shemone esrei* (see Day 50 of *Praying with Fire*). *Nefesh Shimshon* says that "a person should literally feel transported to his personal audience with Hashem." (see Day 31 of *Praying with Fire*)

5 See Day 27 of *Praying with Fire*

6 See *Biur Halacha* 101:4 "Yachol l'hisparallel"

7 Those who do merit such high levels of integration barely suffer upon their death (see Moed Katan 28a) as compared to the more typical personality that has not integrated their spiritual and physical existence (see Moed Katan 29a; see Artscroll notes quoting Maharsha and Rav Dessler). See also the name of Hashem "Havaya," connecting YK with VK and combining their representation of spiritual and physical.

For myself, I don't know how many thousands of times I recited *shemone esrei* before I noticed that there appears to be a pattern built into them and that there may be something significant in that pattern. Fortunately, someone had just given me a book that offered some insight into this pattern – it seems to be a happy coincidence that I noticed it at the same time that I came across a potential explanation.⁸

Gemaras on Shmone Esrei

In order to tap into *davening* and find our *kavana* (and find meaning in the pattern described above), it may be helpful to consider the *gemaras* that discuss *shemone esrei*, and especially the order of the *brachos* therein. There are at least two general locations in the *Bavli*, in *Megilla* 17b-18a and *Brachos* 28b, that discuss the order and format of *shemone esrei*. There are other *gemaras* as well that discuss specific elements of *shemone esrei*, such as *masechta Rosh Hashana* and *masechta Taanis*, but they focus primarily on special days of *tefilla*.

The *gemara* in *Megilla* 17b-18a discusses the origin of *shemone esrei* and how the order of the *brachos* was decided. This ordering and the recorded basis of the progression is noteworthy and requires careful review. For example, each of the first three *brachos* (*Avos*, *Gevuros*, and *Kedusha*) is derived from the first two *pesukim* of *Tehillim* 29⁹ (1) via a word associated with the *Avos* of “*kelim*”, followed by (2) a synonym for *gevura* in *kavod va'oz*, and then (3) a reference to *kedusha* (generally translated as holiness or separate¹⁰). The fourth *bracha* of *Bina* (insight or understanding) is locked into place because there are two *pesukim* juxtaposed in *sefer Yeshaya*, the first of which references “*kedosh Yaakov*” and followed by “*v'yadu to'ei ruach bina*” (and those who erred in spirit shall know insight).¹¹ The fifth *bracha* of *Teshuva* (repentance) is based on the *pasuk* in *Yeshaya* that includes the phrase “*u'levavo yavin va'shav*” (and his heart shall understand and he will repent), linking together *Bina* and *Teshuva* in that order. The sixth *bracha* of *Selicha* (forgiveness) is based on “*ve'yashov el Hashem vi'rachameihu v'el Kelokeinu ki yarbe li'sloach*” (and

8 See *Moed Katan* 16b and 17a for narratives where coincidences are seen as messages from Hashem. See also a story about the Chazon Ish who took a coincidence as a message (*Rav Chaim Kanievsky on Chumash Parashas Devarim* p33, *Parashas Shelach* pp.142-143).

9 It's very interesting to note that these *pesukim* are almost exactly the same as *Tehillim* 96:7-9 and *Divrei Hayamim* 16:28-29.

10 The simplistic, albeit non-standard, definition for *kadosh* would seem to be “outside of, and unconstrained by, time,” which expands on the more standard definition of “separate.”

11 Which means that the *bracha* of *Kedusha* should be followed by *Bina*.

let him return to Hashem and He will have mercy on him and to our God for He will abundantly forgive), connecting *Teshuva* with *Selicha* in that order. The seventh bracha of *Geula* (redemption) and eighth bracha of *Refua* (healing) are derived from a *pasuk* that juxtaposes healing and redemption with forgiveness from *Tehillim* 103:3-4, “**ha’soleiach** l’chol avoneichi **ha’rofei** l’chol tachluaichi **ha’goel** mi’shachas chayaychi” (Who forgives all your sins, Who heals all your diseases, Who redeems your life from the pit”); although the *pasuk* indicates healing is prior to redemption, the *gemara* explains that the seventh bracha was placed earlier because there is an association with the arrival of *Mashiach* at the end of the seventh year (see the *gemara* in *Sanhedrin* 97a) even though this *bracha* is focused on the more minor redemption of resolving day-to-day challenges (rather than the ultimate redemption) whereas the eighth bracha of healing was intentionally placed because of the mitzva of *bris mila*, which is an event designated for the eighth day.

The *gemara* in *Brachos* 28b provides additional context to the discussion in *Megilla* 17b-18a, such as sources for choosing to institute specifically eighteen *brachos* – one of which points to *Tehillim* 29, which includes eighteen appearances of Hashem’s name – and this *gemara* also explains the establishment of the nineteenth *bracha*. The *gemara* also uses *Tehillim* 29 to explain that the reason for seven *brachos* on a typical Shabbos or Yom Tov is because the word “*kol*” (voice or sound) appears seven times in that *perek* of *Tehillim*. Further, the *gemara* in *Brachos* 34a (and partially 32a) informs us that the primary view with respect to how the sections of *shemone esrei* are to be visualized is that the *first* and *last* three *brachos* are each a unit, of praise and thanksgiving, respectively, and the rest of the *brachos* are the *middle brachos* related to requests for necessities. However, in addition to all of this rich detail and the various explanations surrounding the primary structure, the actual words we say in each *bracha* as established by the *Anshei Knesses Hagedola* may lend themselves to an additional subtext in *davening*.¹² As the *Biur Halacha* indicated, there are many fundamental secrets to every aspect of the combination of letters. What if one of the secrets is that the first eight *brachos* of *shemone esrei* were designed to be structurally significant and a sub-unit of the classical primary view promulgated by the *gemara*?

¹² See a modern analogy and further description from Day 26 of *Praying with Fire*, “One hundred and twenty of the greatest computer scientists in the world are brought together and given unlimited access to the most advanced technology available. They are joined by visionaries able to discern every possible requirement of future generations of computer users. Their mission is to write a program for a supercomputer designed to remain state-of-the-art for all time.

Analysis with Assistance from Outside of Jewish Enclosures

The following discussion could benefit from a disclaimer since there are potential *halachic* issues in the upcoming sections: While there may be truths and helpful practices in Indian and other meditation, there are certainly problematic ideas and practices as well. One should consult a Rav who is competent in this area before studying and practicing foreign meditation.

In other cultures, there is discussion of “energy centers” (they are called “*chakras*” in Indian culture, which appears to be the most well-known reference to energy centers); there are eight energy centers and each of them is anchored to a specific area of the body. Each of the energy centers is described as having certain properties. In the structure of *shemone esrei*, the first eight *brachos* seem to be describable by analogizing to the energy centers as described in those other cultures. In fact, many of the *pesukim* used in the ordering established by the *gemara* in *Megilla* may contain clues to these *chakras* and their locations on the body.

According to the other cultures’ description of these structures, the eight energy centers are anchored in the body, with the highest one located approximately sixteen inches above the head and the lowest one located in the reproductive organ. The ones in between can be described as approximately located in the following areas: (1) in the area of the *tefillin shel rosh*, (2) in the brain opposite the eye/forehead, (3) in the throat/mouth, (4) in the heart, (5) in the solar plexus, and (6) behind the bellybutton. This can also be organized by grouping three energy centers on the face, three on the body, with the energy center in the heart dividing them and one energy center above the head.

In these other cultures, there is a meditation that can be described as “blessing the energy centers,” in which the energy center of each respective area of the body is focused upon to bless it in order for it to function as it was intended. If there is legitimacy to the idea that one of the ways that *shemone esrei*’s first eight *brachos* can be viewed is as a highly advanced prophetically designed analog of the “blessing of the energy centers” meditation, it makes sense to associate each *bracha* with the corresponding energy center and examine the *pesukim* that helped identify the order of the *brachos*.

A Brief Look at Interactions with Non-Jewish Scholars

There are a number of discussions in various *gemaras* that use non-Jewish material to explain something in *halacha*. The classic use of this method is with respect to definitions – the *gemara* in *Sanhedrin* 4b explained that “*l’totafos*” is composed of two

words from other languages and that is used to support the textual hint that *tefillin shel rosh* should be composed of four compartments. Less reliably, the conversations between R' Yehuda HaNasi and Antoninus would give some credence to the perspectives of non-Jews (see *Sanhedrin* 91b).

Rabbi Aryeh Kaplan, in his *Introduction to Jewish Meditation*, indicates that there is “considerable evidence” that Jewish mystical masters had dialogue with the Sufi masters and were also aware of the schools in India (pg. vii). He points out that there are numerous dangers for Jews to attempt to adapt the practices of other cultures and religions, whether adapting Eastern practices to Jewish audiences or Judaizing teachings from the Eastern world or simply trying to engage in Transcendental Meditation (pg. ix-x). He asserts that Jewish transmission of meditation was passed down relatively secretly rather than publicly because of the danger associated with giving such instruction publicly, and that meditative expertise was largely lost from Jewish life in the past few hundred years because of minimal private transmission and upheavals in the Jewish community.

Significantly, he points to a major difference between Jewish prayer and Eastern meditation and that is the direction of energy – in Jewish prayer and meditation, we bring energy from the mind to the rest of the body, bowing multiple times and focusing on our relationship with Hashem; in Eastern meditation, the energy is brought from the base of the spine to the head in order to elevate those energies from within (*Jewish Meditation* p120-121).

Brief Overview of Each Energy Center and the Connection to the Brachos

To avoid an exhaustive comparison and because this is still a work in progress, not all of the *brachos* are considered in depth. Again, if there is legitimacy to the idea that one of the ways that *shemone esrei's* first eight *brachos* can be viewed is as an analog of the “blessing of the energy centers” meditation, it makes sense to associate the **first bracha** of Magen Avraham with the energy center above the head. The *bracha* of Magen Avraham is the most important *bracha* of *shemone esrei* and if said without *kavana*, *shemone esrei* technically needs to be repeated.¹³ The first *bracha* is also described as our recognition of Hashem and Hashem's *hashgacha pratis* (individualized attention and guidance) over us. The energy center above the head is described as the connection to the divine. The *pasuk* we use to derive that this *bracha* should be first in *shemone esrei* uses the word “*kelim*” which is a reference to powerful people, specifically the

¹³ We no longer do this because there's no guarantee of *kavana* on repetition either.

Avos, but usually the word is singular and a reference to the divine.

The next energy center is generally associated with the highest level of consciousness and the pituitary gland, which is the gland that is essentially the master controller of the body's functions. The second *bracha* of *Ata Gibor* includes references to the power of Hashem as vested in us, for example, in our awakening from death-like sleep each morning. The Chofetz Chaim points out in *Ahavas Chesed* (Part II, Chapter IV footnotes) that at least two of the three keys that are referenced in the *gemara* (see *Taanis* 2a-2b) over which Hashem maintains sole oversight¹⁴ are included in the second *bracha*, the key for childbirth and the key for revival of the dead.¹⁵ Our continued existence as a *tzelem Elokim* (image of Hashem) depends on each of the phrases throughout the *bracha* including *someich noflim* (supporting the fallen), which may include getting up in the morning, *rofei cholim* (healing the sick), which may include the body's self-healing abilities, and *matir asurim* (releasing the bound), which may include breaking free of the mind's limiting beliefs and bad habits or the ability to learn new things. Given its focus on reawakening each morning, it's worth noting that the *neshama* is attached to the brain,¹⁶ which is the primary vehicle we use to connect to Hashem, and the *tefillin shel rosh* is also a node of connection to Hashem. The *pasuk* we use to derive that this *bracha* should be second uses the words "*kavod va'oz*" - it's interesting to note that *kavod* is often used as a reference to the *neshama* (see *Tehillim* 30:13) and "*oz*" is self-explanatory as a source of power. With respect to consciousness and power, the *bracha* and energy center have overlap and seem to fit together.

The middle energy center of the face that may be the analog to *Ata Kadosh* is generally associated with the pineal gland and includes association with time and its rhythms as well as visions and out-of-body experiences; this energy center is often called "holy" by other cultures, which provides at least one tie-in to the *bracha*. The third *bracha* of *Ata Kadosh* is the last of the first unit of *brachos* of praise in *shemone esrei's* primary framework and it seemingly completes the connection to the first *bracha* where "*hakel hagadol hagibor v'hanora*" seems to be missing the word

14 However, there are times Hashem will allow someone use of one key while Hashem holds the other two (see *Sanhedrin* 113a)

15 I'm uncertain why the Chofetz Chaim didn't cite *mashiv ha'ruach* (during the winter months) and *morid hatal* (during the summer months) as a reference to the key for sustenance and rain.

16 See the statement of intent prior to putting on *tefillin*; see also *Tanya* Chapter 9.

“*hakadosh*,” as *nora* and *kadosh* often go together.¹⁷ In fact, earlier in the *brachos* before *shema*¹⁸ of *shacharis*, in the leadup to *kadosh kadosh kadosh*, we say the paragraph “*Es Shem*,” which includes all of these descriptors.¹⁹ And in that context, it references the *malachim* (angels) in their praising of Hashem, which is deadly for humans to hear or behold,²⁰ which praises we also reference in the text of **this bracha**. The *pasuk* to set this *bracha* as third in the *shemone esrei* order references bowing to Hashem “*b’hadras kodesh*,” which means a type of beauty, and then Yaakov is mentioned (see above) - it’s possible that this is a reference to the concept that Yaakov’s face is on Hashem’s *kisei ha’kavod* (see *Chullin* 91b) or that he never died (see *Taanis* 5b) and is unconstrained by time.²¹ The experience of angels, prophecy, and timelessness suggest a connection at this energy center location.

The fourth *bracha* of *Ata Chonein* would seem to align well with the expected energy center description of being in the mouth or throat. Rashi on *Breishis* 2:7 connects reasoning and speech as the essence of mankind’s *neshama* (see Day 18 of *Praying with Fire*), and the *Chazon Ish* in *Emunah U’Bitachon* (1:4) also takes that position, albeit via a discussion regarding the incredible creation that is humanity; both highlight the distinction of humanity as compared to animals. This fits well with an opinion cited in *Brachos* 33a, as to why *havdalah* is added to this *bracha*, because knowledge of differentiation is intelligence.²² Additionally, the *Emek Davar* explains the *gemara* in *Bava Basra* 16b that there was a precious stone that hung around Avraham’s neck, which immediately healed any sick person who looked at it, is referring to Avraham’s blessings and *tefillos* which came forth from Avraham’s neck, which may also further the position that the precious stone was actually an energy

17 As mentioned in an earlier footnote, it would seem that a simplistic definition of *kadosh* is unbound by time. The simplistic definition of *nora* would therefore seem to be outside of, and unconstrained by, space.

18 An interesting side point is that the *pesukim* of *shema* tell us that *tefillin* should be worn “between the eyes,” but the *gemara* explains that it’s **not** actually on the forehead **between** the eyes; perhaps this caveat was even more pointed if the intent was to clearly identify the correct energy center associated with *tefillin* (i.e., the highest one on the head).

19 Also see *Devarim* 10:17-18

20 See *Sanhedrin* 95b for one of the opinions as to how Sancheiriv’s army was destroyed.

21 This would provide another perspective and reason as to why Yaakov was not punished with additional years of separation from Yosef when he learned Torah for 14 years at the *yeshiva* of Shem and Ever as he was timeless during that period. In addition, if this *bracha* is tied to Yaakov as it seems, then it would make sense to suggest that the second *bracha* is strongly associated with Yitzchak.

22 The other opinion says that *havdala* is “*chol*,” which contrasts with *kedusha*.

center. It's interesting to note that the term "*to'ei ruach*" (those with spirit erred) appears in the *pasuk* that designates *bina* as the fourth *bracha* given that the description of Hashem's animation of humanity is similar, by giving us the breath of life.²³

The fifth *bracha* of *Hashiveinu* would seem to align well with the expected energy center in the heart. The heart controls emotions and this is the first *bracha* where we refer to Hashem as *Avinu* (our Father).²⁴ The image of a healthy relationship between a father and a child is very impactful and evokes feelings of warmth and safety and a desire to connect and provides endless power for ambitious undertakings.²⁵ It would seem that the *bracha* recognizes our dual nature as humans because *hashiveinu avinu l'torasecha* implies a complete returning to our Father and the infinite Torah, which is only possible for our *neshamos* and spiritual essence, whereas the second phrase of *v'karveinu malkeinu la'avodasecha* suggests that we can only get close²⁶ to our King with our service, which would describe our physical existence²⁷ and elevation via the *mitzvos*, but acknowledges that our human bodies cannot become spiritual themselves. The *pasuk* establishing *Teshuva* as the fifth *bracha* provides "*u'levavo yavin va'shav*," which is a direct reference to the heart.²⁸ The energy center and *bracha* connection seems pretty strong at this location.

The first energy center below the heart is in the pit of the stomach and includes association with competitive action, aggression, and dominance. It's easy to see that it would connect to the sixth *bracha* of *Selach*, which is about forgiveness, in any instance wherein such action or behavior hurts another.

The following energy center is just below the navel and includes association with social networks and structures, family, relationships, and support systems. The seventh *bracha* of *Geula* is a plea for release from daily challenges directed to Hashem, the ultimate support system, relationship, family, and social network.

The lowest of the eight energy centers is in the reproductive organ.²⁹ The *gemara*

23 See *Zera Shimshon* on *Parshas Kedoshim*, *Derush* 1 for a discussion of *nefesh*, *ruach*, and *neshama*

24 During the *Aseres Yemei Teshuva*, we refer to Hashem as "*Av harachaman*" in the insert for the second *bracha* of *Ata Gibor*, but it's impersonal and only for ten days of the year.

25 See *Derashos HaRan*, *derush* 5a.

26 Visually, this would be similar to an asymptote on a graph.

27 A funny coincidence is that "goofy" means "my body."

28 The heart is the symbol of our humanity and our primary mission is to perfect and elevate it; it is the subject of many statements of *Chazal*, it's constantly referenced in *Tehillim*, and the *mishna* in *Avos* (2:13) tells us that a "good heart" is the best of all attributes. Furthermore, great intelligence is described as a characteristic of the heart.

29 It's interesting to note that the *gemara* often uses the "clean" expression of "lower face" to refer to this part of the body for both men and women (see *Shabbos* 41a, *Moed Katan* 9b); given the energy center framework, this "clean" expression

records that the eighth *bracha* of *Refaeinu* was specifically placed in its position because of its association with *bris mila* and the need for healing. The *Siddur Hashlah* records that the hidden secret purpose of this *bracha* is the ultimate cure – the snake implanted a *zuham*a (contamination) in Chava (see *Shabbos* 146a), which is the source of the destruction of the *Beis Hamikdash* and the exile, and we seek to undo the snake's action by praying for this cure and for all the other diseases that are symptoms of that initial damage. Based on the above, it would appear there is a strong relationship between the energy center and *bracha*.

Application to Shabbos and Yom Tov and Rosh Hashana and Yom Kippur

Assuming this basic premise is correct, the *davening* on Shabbos and Yom Tov becomes highlighted with the following contrast. The texts generally maintain the pattern of the first three *Ata*'s,³⁰ but the remaining *brachos* associated with energy centers from the heart and below seem to disappear. It may be that this is the application of the *neschama yeseira* (the extra spiritual element) that we are given on Shabbos and Yom Tov. We don't focus on the lower aspects of existence; rather, we focus on the elevated portions, as we experience one-sixtieth of *Olam Haba* and a spiritual plane inaccessible during regular weekdays.³¹

It seems significant to note that the fourth *bracha* in each non-weekday *shemone esrei* is related to an even higher level of intelligence and *havdala*, separation (see above discussion of the fourth weekday *bracha*). On Friday night, with *Ata Kidashta*, we are elevated with a double *kedusha*, with *kedusha* following *kedusha*. On Yom Tov, with *Ata B'chartanu*, we are chosen and made unique. On Shabbos day, we reference our primary teacher who receives credit for all that we learn³² and who acted as Hashem's agent to distinguish us as the people of Torah. On Shabbos *mussaf*, we say (*Ata*) *Tikanta* or *Ata Yazarta*, each of which includes reference to an elevated state of being. At Shabbos *mincha*, we say *Ata Echad* and there is no greater elevation than this that we can fathom. And in **all** of the above-referenced *brachos*, we **always** include "*v'taher libeinu l'avdecha b'emes*" (and purify our hearts to serve You with sincerity), seemingly because the fifth energy center of the heart is no longer pulled down to

may have more meaning than a simple euphemism.

30 There are a couple of exceptions, such as Shabbos *shacharis* and *mussaf*. An "invisible" and unstated *Ata* may appear in Shabbos *mussaf* (i.e., *Ata tikanta*). The one for Shabbos *shacharis* is a bigger question.

31 See *Brachos* 57b

32 See *Orchos Yosher*, p.203

material pursuits by the lower three energy centers and can be elevated to the level of spirituality, and share space joining with the fourth energy center of speech.³³

I don't really have any ideas with respect to interpreting the *Ata Zocher* (You Recall³⁴) and *Ata Niglaya* (You were Revealed) that appear in *mussaf* of Rosh Hashana after what would ostensibly be the fifth energy center. It doesn't seem appropriate to associate the lower energy centers with such a day, but perhaps indicating that even these two are elevated on this day and excluding the lowest energy center is intentional. Similarly, I don't have any ideas for the "Ata"s that appear in *Neila* of Yom Kippur, where we say *Ata Nosein Yad* (You extend a Hand) and *Ata Hivdalta* (You Distinguish) **after** the *bracha* of *Shalom*. I would love to hear other people's ideas.

Conclusion

B'ezras Hashem, im yirtzeh Hashem, we will begin saying "*haMelech*" *haKadosh* soon and experience the majesty of the complete restoration and unification of Hashem's name, in full appreciation of the absolute good that we have been given, united internally and externally with all of *Bnei Yisrael*.

33 We also know of the tremendous power given to speech from "*bris krusa l'sfasayim*" (a covenant is executed with the lips) for both positive and other events (see *Moed Katan* 18a); the joint effort of synchronous feeling and speech demands an impact

34 For some reason, I think "You Recall the reverberations through time of our forefathers' actions"

Teaching of the Lighted: A Comprehensive Overview of Blindness in *Halacha*

MENACHEM GREEN



The lot of the blind in *halacha* and the Jewish community has generally been one of inclusion into mainstream communal life. Some of the leading Torah sages throughout the generations were blind, and the Torah goes out of its way to afford the blind proper respect. Even the Talmudic term for the blind ensures that they will not take offense; they are referred to as *Sagi Nahor*, someone who has 'too much light.'

In this article, we will discuss the *halachic* status of blind people in different areas of Torah law. Are the blind fully obligated to fulfill *mitzvos*? Can a blind person serve as a *dayan* on a *beis din*? Can he be given an *aliya* to the Torah? Can he recite *havdala* for himself and others? Can a blind person be accompanied by a guide dog in Shul? These questions, among others, are discussed below.

Mitzva Performance for a Blind Person

The question of a blind person's obligation to perform *mitzvos* is a matter of dispute among the *tana'im*. The *gemara* in *Kiddushin* 31a cites the opinion of Rav Yehuda whereby a blind person is exempt from all *mitzvos*. However, this opinion was not unanimous.

The *gemara* relates that Rav Yosef, who himself was blind, offered to host a festive meal if he would be informed that the *halacha* follows the opinion of Rav Yehuda.

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He understood that fulfilling the *mitzvos* even though he was not obligated to do so would express a greater commitment to Hashem. However, Rav Yosef later reversed his position, and stated that he would host the meal if he were told that the *halacha* is not in accordance with Rav Yehuda, and thus a blind person would be obligated in all *mitzvos* after all. As the *gemara* relates, fulfillment of *mitzvos* out of obligation is better than performance that is voluntary in nature.

The *Pri Megadim*¹ maintains that, even according to Rav Yehuda, a blind person is exempt only from positive *mitzvos*, but he is obligated in the observance of all negative *mitzvos*; in other words, he must refrain from violating prohibitions. For example, according to this opinion, a blind person may not eat non-kosher food or steal.

However, the *Noda BiYehuda*² questions this, citing *Tosafos* in *Bava Kama* 87a who maintain that according to Rav Yehuda a blind person must perform Torah laws by rabbinic obligation.³ *Tosafos* explain that *Chazal* obligated the blind to observe *mitzvos* so that they would not espouse the appearance of being non-Jews.

This seems to demonstrate that the blind would, in theory, be exempt even from negative *mitzvos* but for the concern of these Jews appearing to be non-Jews by eating non-kosher food, violating Shabbos, and so on. The *Minchas Chinuch* adds that a blind person will certainly not be exempt from more than a non-Jew, and he is thus obligated to at least observe the seven Noahide laws.

According to many *rishonim*,⁴ the *halacha* follows the opinion of the Sages disputing Rabbi Yehuda, meaning that a blind person is obligated in all *mitzvos*; although not all agree,⁵ this seems to be the majority opinion.⁶ Contemporary authorities follow this majority opinion.⁷ As such, blind people are obligated in the *mitzvos HaTorah*.

A Blind Person as *Shaliach Tzibbur*

The *mishna* in *Megilla* 24a states: “The blind can be *Poreis al Shema* (act as *shaliach*

1 Introduction to *Shulchan Aruch* OC Part 3.

2 OC 112.

3 See Rashba, who disputes this.

4 Ran, *Kiddushin* 31

5 Rabbeinu Yerucham, *Sefer Adam* 5:4

6 *Beis Yosef* OC 473; *Radvaz* Vol. 1 no. 39

7 *Mishna Berura* 53:41

tzibbur for *Shema* and its *brachos*) and can translate [the Torah into Aramaic as part of the reading]. Rabbi Yehuda says, whoever has never seen the celestial lights cannot be *Poreis al Shema*.”

The rationale behind Rabbi Yehuda’s opinion is that somebody who has never seen the light of celestial bodies cannot recite the blessing over their creation, which is part of the *bracha* preceding the recitation of the *Shema*.

The *halacha* follows the opinion of the Sages, so a blind person may be the *shaliach tzibbur*, even for the blessing of the luminaries. The Rosh explains: “Thus even one who never in his life saw the lights can be *Poreis al Shema* and pray for the congregation, but he specifically must not read Torah for Krias *HaTorah* from memory.”

The reason he cannot read from the Torah is found in a ruling of Rav Natronai Gaon: “One who is blind may not recite the Torah portion because the people cannot fulfill their obligation by hearing the Torah [recited] from memory. We need to hear from one reading the text, and not from memory. Thus, even if a blind person has memorized the portion, it is forbidden to hear him in synagogue, and the obligation [to hear the Torah portion] is not fulfilled, for they have not heard [the Torah] from the text.”⁸

We therefore learn that a blind person can serve as *shaliach tzibbur* but cannot read from the Torah.

Receiving an *Aliya*

Can a blind person be given an *aliya* to the Torah?

Rav Yaakov Emden writes that the blind may not read from the Torah at all, even via hearing from another who dictates to him quietly so that he can repeat out loud thereafter, for only a person with sight in such circumstances can follow the custom of the *gemara* as cited in the *Beis Yosef*.⁹ In this regard, Rav Yaakov Emden follows the ruling of the *Beis Yosef* in OC 141 and in *Shulchan Aruch* 139:3.

The Rema, however, writes that nowadays, we follow the opinion of the Maharil that it is customary to be lenient and to call the blind up for an *aliyah* to the Torah. The Taz 141:3 strengthens this ruling, citing the Levush that a blind man was once called up to the Torah in the presence of great Sages; he continues that this applies even if the blind person is not a Torah scholar.

⁸ Shaarei Teshuva 245

⁹ She'elas Yaakov Vol. 1 no. 75

The *Mishna Berura* 139:12-13 explains that for now, the blind are called up. The reason is that we have a reader who reads from the written text, and we are no longer strict about the *oleh* literally reading from the text, for hearing is like answering. In practice, the *achronim* have already written to act leniently in accordanc with the opinion of the Maharil.

The *Mishna Berura* adds that it is proper to refrain from calling up a blind person for *Parshas Para* and *Parshas Zachor*, since some consider these Torah-mandated obligations.

A Blind Person as *Dayan*

Can a blind person serve as a *dayan*?

The *gemara* in *Yevamos* 101a writes that it is forbidden for a blind person to serve as a *dayan*. This ruling is derived from the verse “before the eyes of the elders.”¹⁰ Moreover, one who is blind in one eye is disqualified from serving as a *dayan* on the *Sanhedrin*; the *dayanim*, like *kohanim* serving in the Temple, must be unblemished.

Concerning regular civil law, authorities dispute the status of a blind person (in both eyes; somebody blind in one eye can certainly serve as a *dayan*). According to some authorities,¹¹ he is disqualified, and there is a further dispute concerning his rulings post factum. However, the general custom is to permit a blind *dayan* to preside over civil cases, as many authorities have asserted.¹²

A Blind Person Reciting *Havdala*

The flame of the *havdala* candle should ideally be from a multiple wicked candle as such a candle gives off a stronger and more intense light. If such a candle is unavailable and two candles cannot be brought together, then one may make the *bracha* on a single-wicked candle.¹³ When making the *bracha* over the candle, one must be in close proximity to the flame so as to be able to make use and derive benefit from its light. Since the proper use of the light is to the extent one can distinguish between different coins, it is customary to look at one’s hands and fingers so as to distinguish between the nails and skin.

A blind person should not recite the *bracha* of *Borei Meorei HaAish* over the candle on *Motzei Shabbos*, because even when a person sees a candle, he may not

¹⁰ *Shemos* 17:6

¹¹ *Tosafos Nidda* 50a; *Mordechai Sanhedrin* 714

¹² See *Pachad Yitzchak Erech Suma*; *Shu’t Lev Sameach CM*, no. 2; see also *Ketzos HaChoshen* 7:2.

¹³ *Shulchan Aruch OC* 298:2 and *Mishna Berura* 7.

recite the blessing unless he is able to derive benefit from its light to the extent that he can differentiate between one coin and another.¹⁴ Instead, the blind person should recite *havdala* without reciting the *bracha* of *Borei Meorei HaAish*.¹⁵ If the blind person is reciting *havdala* for others, one of those who can see should recite the *bracha* on the candle.

Bringing Guide Dogs into Shul

Can a blind person bring his guide dog into a synagogue? Rabbinic opinion is divided concerning the permissibility of a blind individual's bringing a guide dog into a synagogue.

The Lenient Opinion – Rav Moshe Feinstein

In *Igros Moshe*,¹⁶ Rav Moshe permits a guide dog to enter the synagogue to accompany a blind person. He states this ruling is more easily applied in the Diaspora rather than in Israel, since the sacred and elevated status of synagogues in the Diaspora is considered temporary and conditional as opposed to those in Israel. Rav Moshe demonstrates that bringing a dog into the synagogue is no worse than eating in Shul, so that in synagogues where the custom is to eat and drink, allowing a guide dog to enter would be no worse.

Rav Moshe is clearly extremely attentive to the needs of the blind person who loses his independence without a guide dog. For instance, he indicates that there is no better example of a situation of urgent need than this case, for if we do not allow this, the person will forever be excluded from communal prayer and from the public reading of the Torah and *Megillas Esther*; this person would effectively feel expelled from the community as a result. Additionally, Rav Moshe points out that there are also days in which the blind person's sorrow would be very great, such as the *Yamim Noraim* and similar days, when the community at large gathers together. So, we should allow a blind person whose guide dog must accompany him at all times

14 *Leket Tziyunim VeHaaros* notes that a blind person may recite the blessing over Shabbos candles (263:12) and the blessing *Yotzer HaMeoros*, praising God as the "Creator of the luminaries" (69:9), because "he benefits from the luminaries which [others] see, and which enable them to see him and show him the way to proceed." In this instance, however, the blessing is recited, not over the possibility of receiving benefit in general, but over the specific benefit received from seeing the specific candle's light.

15 See *Pri Megadim* (*Eshel Avraham* 298:17), who questions whether a blind person can fulfill the obligations of others by reciting *havdala* and, in particular, whether he can do so with regard to the blessing recited over the candle.

16 *Igros Moshe* OC 1:45

to enter the synagogue to pray with the *kehilla*, to listen to the Torah reading, and to generally participate along with the community.

Moreover, according to Rav Moshe, there is no problem with bringing the guide dog into the synagogue because the dog is not being admitted as a statement of disrespect or expression of thoughtlessness, but rather to serve the needs of a worshiper and ensure he will be able to partake in the services. He clarifies, however, that once in the synagogue, the blind person should sit near the doorway, in order to be less of a distraction to those around him.

Additionally, Rav Mordechai Eliyahu rules that one may bring a guide dog into a synagogue in the instance when leaving it outside is not an option, comparing the guide dog to a walking stick for the elderly, which may be brought into the sanctuary.¹⁷ He writes: “It is a mitzva to help unfortunate people so that they will be able to come and pray, even though at times this may cause some unpleasantness.”

The Stringent Opinion – Rav Menachem Mendel Kasher and Rav Yaakov Breisch

Some authorities rule that a blind person is forbidden to bring a guide dog into the synagogue. Rav Menachem Mendel Kasher¹⁸ points out that the Torah in *Devarim* 23:19 forbids one to offer a sacrifice that was purchased with money acquired from the sale of a dog. Says Rav Kasher, since it is forbidden to use the money obtained from the sale of a dog to purchase a Temple sacrifice, it must be forbidden to allow the dog itself into the Temple. Accordingly, since many authorities consider the sanctity of the synagogue to be of similar sanctity of the Holy Temple, then just as one is forbidden to bring a dog into the Temple courtyard, so too one should be forbidden to bring a dog into the synagogue. Therefore, one cannot bring a guide dog into a synagogue.

However, just because an activity is forbidden in the *Beis HaMikdash* does not necessarily imply that it is likewise forbidden in the synagogue. The laws regarding the sanctity of the Temple differ from those regarding the sanctity of the synagogue.¹⁹ There are activities that are forbidden in the Temple that are permissible

¹⁷ Responsa of the Chief Rabbi, page 111

¹⁸ *Torah Shleima* Vol. 15, p. 157

¹⁹ While it is true that the sanctity of the synagogue is comparable to that of the Temple, the comparison is not necessarily of equivalent degree. The Rambam in *Hilchos Tefila* 11:5 rules that a synagogue should be treated with respect as opposed to the Temple which should be treated with a sense of awe.

in the synagogue, such as wearing shoes.²⁰ As such, this does not necessarily demonstrate that one is forbidden to bring a guide dog into the synagogue.

Furthermore, in correspondence with Rav Kasher, Rav Menachem Mendel Schneerson, the Lubavitcher Rebbe, disagreed with Rav Kasher's ruling and referenced a principle expressed by the Rema regarding whether women should be allowed into a synagogue in a state of impurity. The Rema, in his gloss to *Shulchan Aruch*, OC 88, ruled that they should be admitted because not to do so would cause them great pain since they would need to remain outside the synagogue while others are participating in the services. Similarly, the Rebbe wrote, to disallow guide dogs from accompanying the blind in Shul would cause them great pain since they too would need to remain outside while others are praying inside.²¹

Moreover, in response to Rav Moshe's ruling, Rav Yaakov Breisch²² writes there is no room for leniency for a guide dog to accompany the blind into synagogue.

Referencing a *Yerushalmi* cited by Rav Moshe concerning the admission of a donkey into a synagogue, Rav Breisch challenges Rav Moshe by asking who is to guarantee that the donkey will not defecate in the middle of *tefilla*? Children will play with it, and the dog will inevitably begin barking and cause a disturbance to the service; and, aside from the dishonor and disrespect that will result, there is also the concern that a woman could miscarry out of fear of what ultimately transpires.

Rav Breisch viewed Rav Moshe's ruling as setting a dangerous precedent and added that due to the weakening of generations over time which has led to a substantive decline of Torah observance, especially in the Diaspora, if we allow for an opening even the size of the eye of a needle, it will result in an opening as wide as the entrance to the Temple. He continues, some unauthorized rabbi will be found who will permit this and will claim he is relying on a great scholar that will say it has already been permitted to allow a guide dog into the synagogue in cases of urgent need, and he, as the rabbi will determine on his own what qualifies to be deemed an urgent matter. This, according to Rav Breisch, will result in great *Chilul Hashem*, since the Christians forbid the entrance of dogs into their places of worship, in contrast to the synagogue, where it would be permitted.²³

²⁰ See *Brachos* 62b.

²¹ *Shaarei Halacha V'Minhag* 1 p. 204, as quoted by Rav Hershel Schachter, *MiPinei HaRav*, p. 51.

²² *Chelkas Yaakov* 3:87

²³ Rav Breisch cites the Chasam Sofer's assertion (OC 31) that if non-Jews forbid a particular activity in their place of worship, then if Jews were to permit that activity, it will constitute a great *Chilul Hashem*. Therefore,

As such, rather than using guide dogs, Rav Breisch recommends that one who exclusively depends on a guide dog should rely on his peers to escort him when entering the synagogue. If there is in fact no one to accompany the blind person and there is no other solution, he would be deemed to be under duress, and *halacha* would exempt him from the obligation of attending communal services in the synagogue. Therefore, Rav Breisch concludes there is no reason to permit bringing a guide dog into the synagogue.

Interestingly, Rav Hershel Schachter relays that a blind man once purchased a seat in a Boston synagogue for the Yamim Noraim. When he came to the synagogue on Rosh Hashana, he was being accompanied into the Shul by a guide dog that had always accompanied him wherever he went. The congregants warned him not to enter the synagogue with the guide dog, but he insisted and brought it in with him. To prevent the blind man from entering with the dog, they pushed him, and he was injured as a result. He filed a lawsuit against the congregants of the synagogue in secular court, suing them for damages. The judge presiding over the matter determined that the issue of damages had to be decided in accordance with Jewish law; if Jewish law would permit the man to bring his dog inside, the congregants are liable for damages, but if Jewish law prohibits the entry of the guide dog into the synagogue, the congregants would be exempt. To ascertain what the Jewish law was in this matter, the judge called Rav Yosef Dov Soloveitchik, asking for his viewpoint according to Jewish law with regard to a guide dog accompanying a blind individual into the synagogue. Rav Soloveitchik responded that, in his opinion, it was forbidden to allow the dog into the synagogue.^{24 25}

since non-Jews do not permit animals in their houses of worship, it would be inappropriate to permit a guide dog in the synagogue.

24 *MiPninei HaRav* p. 51; Rav Schachter indicated that Rav Soloveitchik relayed his opinion when learning about the sanctity of the Holy Temple in the first chapter of *Maseches Yevamos*.

25 Others quote in the name of Rav Aharon Lichtenstein quoting his father-in-law Rav Soloveitchik that it is permissible to allow the guide dog inside the synagogue based on the *gemara* in *Brachos* 63a. The *gemara* determines that just as one would not permit the use of his house as a shortcut, so too one would be forbidden to use the synagogue in such a manner. However, just as one would allow a guest to enter his home and not require him to remove his shoes, so too one would not be required to remove his shoes upon entering the Shul. Similarly, argued Rav Soloveitchik (according to Rav Lichtenstein), just as one would certainly allow a blind person to enter his home with his guide dog, so too a blind person would be permitted to enter the synagogue with his guide dog as well. It may be possible to surmise that Rav Soloveitchik changed his mind over time with regard to this matter. See Rabbi Chaim Jachter, *Halachic Perspectives on Pets - Part V Guide Dogs in the Synagogue*.

It is worth noting that Rav Herschel Schachter cites Rav Soloveitchik's opinion that one is forbidden to wear

The Obligation of the Community

There is an obligation on the entire community to address the needs of those with disabilities. In the 1800's, the Chasam Sofer ruled that the support and medical care of a young woman with developmental disabilities was not the sole responsibility of her loved ones but was incumbent upon the community as a whole.²⁶

To this end, all reasonable accommodations for individuals should be met by the community, whether it be access ramps at synagogues, Braille and large-type *siddurim*, or even lifts in the *mikva*, if community resources allow. Children with special needs, be they physical access, learning disabilities, or otherwise, should be provided with appropriate educational facilities as per the Torah mandate to educate all children in a manner appropriate to their circumstances.²⁷

We recognize our obligation when it comes to members of our community whose financial resources are insufficient to meet all their needs. In such a case, the highest level of *tzedaka* is to provide an individual with the means to support himself with dignity. Similarly, when providing accommodations for individuals with physical, mental, or emotional needs, the goal should be integrating all members of the community into the full gamut of Jewish communal life, not as a favor or act of *chesed*, but as a fundamental right as a vital member of *Klal Yisrael*.

galoshes or winter boots inside the sanctuary of the synagogue, since one removes these articles before entering one's home. For this reason, Rav Soloveitchik would be critical of those while in synagogue who pace back and forth, since one would not pace in such a manner if he were a guest in someone's home. See *Eretz HaTzvi*, p. 89.

²⁶ Chasam Sofer YD 76

²⁷ Mishlei 22:6

The Mitzva to Lend Money

MICHAEL MALK



Imagine that you make a one-time payment of \$500 from your *maaser* money. The money is then used to help a family pay its rent for one month. Six months later, that same \$500 helps pay for groceries and bills for someone who just lost a job, and a year later that same money helps a family pay a medical bill which isn't covered by insurance. Although it sounds like this *maaser* money is bionic, this is the reality of giving money to a loan *gemach* – as long as the *gemach* is run well and the money is repaid, your same money continues to be used by different people.

In this brief article, I will review some of the general laws relating to free loan funds, including the obligations to lend money, to establish loan funds, and to repay loans. This is not intended to be a thorough discussion on free loans, but rather an introduction to the topic. Unless otherwise noted, I used *Ahavas Chesed* by the Chofetz Chaim as the primary source for this article, and the English translation comes from the translation by Leonard Oschry in the Feldheim edition.

The Obligation to Lend Money

The *pasuk* states:

אם כסף תלווה את עמי את העני עמך...

If you lend money to My people, to the poor that is with you... (Shemos 22:24)

The *Mechita* notes that all “if” statements in the Torah are optional with the exception three, including this *pasuk*. The Chofetz Chaim proves the imperative of the *pasuk* by noting that the *pasuk* states:

כי־פתח תפתח את־ידך לוֹ והעבט תעביטנו די מחסרו אשר יחסר לוֹ.

Rather, you must open your hand and lend whatever is sufficient to meet the need. (Devarim 15:8)

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He notes that, “this mitzva [of lending to a fellow Jew] is superior to charity since here also his hand is strengthened;¹ he is supported and protected from financial ruin.”² One should not be pained when he gives, as the *pasuk* states:

נתון תתן לו ולא ירע לבבך בתתך לו כי בגלל הדבר הזה יברכך ה' אלקיך בכל מעשך
ובכל משלך ידך.

You shall surely give him, and your heart shall not be grieved when you give to him; for because of this thing the Lord, your God, will bless you in all your work and in all your endeavors. (Devarim 15:8)

The Chofetz Chaim notes that the obligation to lend money applies both to lending on collateral and without collateral.³ Where one lends without collateral, he notes that, “the lender should nevertheless hand over the money in the presence of witnesses or take a note from the borrower, or at least obtain his signature,” as the borrower may forget and later deny having taken a loan. Not surprisingly, he states that, in the case of someone who is known to have bad traits and to be careless with the money of others, it is better to loan with collateral.

If one set aside \$10,000 for a loan fund, and one applicant requests the full \$10,000, and five other applicants request \$2,000 each, the Chofetz Chaim rules that it is preferable to make the smaller loans, as each loan is a separate mitzva, and the

1 Rabbi Asher Meir explains beautifully how a loan, as opposed to a handout, can strengthen a person: One reason we can identify why a loan is even more beneficial than a handout is that it indicates that the lender has faith in the borrower. In this way it provides not only material but also moral support.

This faith has two aspects. On the most basic level, giving a loan shows faith that the borrower is an honest person who won't disappear after receiving the money. But a loan also shows the lender's faith that the borrower is a successful person – one who, though he has fallen on hard times, is sure to recoup his losses and find himself earning a respectable income. Often the monetary difficulties caused by financial setbacks are the least of one's problems. A few bad seasons in business or losing a job can cause a person to become discouraged about the future and lose hope. The encouragement provided by the lender's faith in the borrower may be even more important to the needy person than the money itself. All further quotes from Rav Meir are from:

<https://www.etzion.org.il/en/halakhah/studies-halakhah/philosophy-halakhah/loans-and-debt-halakhah>

2 *Ahavas Chesed* 2:8

3 Collateral and/or guaranteeing co-signers can be crucial to the loan process and to keep the *gemach* functioning, as a *gemach* only stays healthy when loans are repaid. One Rav told me an unfortunate story which underscores this point. Several people in his shul made large loans to young families so that they could make down payments on their homes, and the homes themselves were used as collateral. The families failed to repay the loans, and this Rav begged the lenders to seize the homes so that the lenders would be repaid and they would continue to make loans in the future. The lenders felt bad about taking the homes, the loans went unpaid, and the lenders stopped lending.

mishna in *Avos* (3:15) stresses the importance of the number of actions one does.⁴

The obligation to lend money does not distinguish between friend or foe, except in one case: if someone receives two loan requests, one from a friend and from someone against whom he harbors unjustified hatred – and he is unable to help them both – the Chofetz Chaim states that “he is duty-bound to help the one he hates so as to overcome his prejudice.”⁵ Holding resentment against other Jews, God forbid, obviously creates a minefield of potential transgressions aside from the transgression of bearing the hate itself. In the realm of loans, someone weighed down by the poisonous baggage of resentment also risks transgressing the prohibition on taking revenge and bearing grudges, even if he did not verbalize his feelings. The Chofetz Chaim aptly states that, “one is required to erase such feelings from his heart.”⁶

Rationalizations and Refutations to Shirk the Obligation

The Chofetz Chaim addresses different justifications that the *yetzer hara* employs to convince people that they should not make loans.⁷ These include:

- Fear of not being repaid: Some people will worry about repayment. The Chofetz Chaim notes that, if the loan amount is small, the lender would be obligated to give the money outright as *tzedaka* anyway, so there is no reason to withhold a loan. Even where the amount is not small, if the borrower provides adequate collateral, one should make the loan.⁸
- Fear of missing out on a deal: Other people have F.O.M.O. (fear of missing out), i.e., perhaps an investment opportunity will arise and the lender could use that money for the investment. The Chofetz Chaim states that this argument has some validity, especially where an investment opportunity is immediately available, or the request is for a long-term loan (since investment opportunities are more likely to arise over time). However, he holds that it’s not a valid excuse to resist making a short-term loan and leave his money idle for the possibility that an investment opportunity might suddenly arise.
- Ignorance: Many people view giving loans as commendable behavior, but not

⁴ If however, the applicant for the large loan might face financial ruin, God forbid, then he may take precedence, as another mitzva applies as well (*Vayikra* 25:35).

⁵ *Perek* 4

⁶ *Ibid.*

⁷ This addresses situations where someone has money to lend. A person’s own needs and the needs of his family take precedence. (2:8)

⁸ *Ibid.*

a Torah requirement like the *mitzvos* of *tefillin*, *sukka*, and *lulav*. The Chofetz Chaim laments:

*How much effort does every Jew exert in building a sukka, in purchasing a lulav and the like! He is anxious to fulfill all the requirements of the law. He does not afterwards regret, God forbid, his exertions in carrying out Hashem's command. On the contrary, he rejoices that Hashem gave him the opportunity to exert himself to perform these mitzvos, and that he was able to fulfill them... On the other hand, how grudgingly do we look down on gemilus chesed. Even a small inconvenience is sufficient for us to avoid its performance. And when we do act, it is with reluctance and sadness, without a trace of pleasure.*⁹

- The illusion that one is exempt. Sometimes we may think that we're exempt from making a loan because we reason that someone else will make the loan. Of course, we have no idea whether anyone else will help. We may also reason that we previously made a loan and the person didn't repay it, so we don't want to make another loan. The Chofetz Chaim says that this isn't a logical argument: "if some person has proved himself wicked, a borrower who fails to repay his debts, have all the Jewish people been proved bad risks? No! As long as one recognizes a person as a safe risk, he is not absolved from his duty to lend him the money since he possesses the means – especially where the borrower is willing to furnish security for the loan."¹⁰
- Stinginess. The Chofetz Chaim dedicates a chapter to address those who withhold *chesed* and *tzedaka* because of the evil trait of being miserly. He concludes that the person who gives in to stinginess "should always realize that the money given to him by Hashem *Yisborach* was not given to him for his own use alone, but to dispense charity and to engage in *gemilus chesed*... Then it will be well with him in this world and the next."^{11, 12}

⁹ *Ahavas Chesed* 2:10

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² While discussing *tzedaka* and loans recently with my dear friend Craig Ackermann, he pointed out that the world in general looks at "charity" as an act of generosity, i.e., one thinks "I have this money, and I will graciously bestow it to a certain cause." He remarked that this stands in stark contrast to the Jewish view, where the word "*tzedaka*" means righteousness, and Hashem gives a person money to do righteousness and carry out His will, including donating to certain causes and making loans, which is not so much an act of generosity, but more so the basic requirement of being a trustee for the God-given funds which he is privileged to possess.

The Obligation to Establish and Contribute to a Free Loan Fund

The Chofetz Chaim recommends setting aside one-third of one's *maaser* for free loans,¹³ and he discusses each household setting-up its own free loan fund. When this isn't possible, he writes that "the best advice is to band together to form a free loan society to lend money to others in their hour of need," and that "no one with any intelligence will rest until he sees a free loan society existing in his city to lend money to the needy."¹⁴ He writes that:

Even though each individual contributes a very small amount to each loan, since many are participating, nevertheless HaKadosh Baruch Hu apparently considers each participant as if he had personally advanced the entire sum, since without his contribution, the poor man would not have obtained the required full amount. (Ibid.)

How wonderous is this mitzva – by donating \$18¹⁵ to a free loan fund to help a family pay rent of \$4,000, that donor of \$18 (as well as each donor) is considered by Hashem to have funded the full rent.¹⁶

Not Just for the Poor

Rabbi Asher Meir notes that, the one who makes a loan "is aware that the next time around he may be the one needing a loan," as the *midrash* says, "for it is a revolving wheel in the world; the one who is rich today may not be rich tomorrow, and the one who is poor today may not be poor tomorrow."¹⁷ The Chofetz Chaim writes that when a loan is extended to someone whose financial condition has deteriorated and – with the loan – the financial situation stabilizes and prevents a total financial collapse, then "this support is greater than the ordinary type of *gemilus chesed*" as one

13 See *Ahavas Chesed* 2:18 who recommends using two-thirds of one's *maaser* money for immediate *tzedaka* needs and to keep another third to do acts of *chesed*.

14 *Ahavas Chesed* 2:16

15 I'm purposely using a small number as an example, as some people cannot afford to donate more than \$18. However, no one should be miserly when donating to a free loan fund. The Chofetz Chaim notes at the end of *Ahavas Chesed*, "two people may perform exactly the same act. The one is praiseworthy and receives reward. The other is condemned to lose his money. The reason is that, for the latter, the gift was trivial in comparison with the blessing Hashem Yisborach had bestowed upon him."

16 Rabbi Shmuel Bloom told me that Rav Ruderman once remarked to someone who expressed hesitation about two people sponsoring a day of learning at the Ner Yisroel Kollel, "I know your problem. You think of two people holding a *talis* and if it's one's then it's not the other's. *Ruchniyus* is different. They each have the whole reward."

17 *Shemos Rabba*, quoted by Rabbi Asher Meir.

also fulfills a mitzva *d'oraisa* of:

וְכִי־יִמּוֹךְ אָחִיךָ וּמָטָה יָדוֹ עִמָּךְ וְהִחְזִיקְתָּ בּוֹ גֵר וְתוֹשֵׁב וְחֵי עִמָּךְ.

When your brother becomes destitute and his hand falters beside you, you shall strengthen him [whether] a convert or a resident so he can live with you. (Vayikra 25:35)

The Chofetz Chaim states that one must exert himself as much as possible to save the next person from financial collapse, and that “all acts of this type are a great mitzva. Long life is granted in recompense.”¹⁸

How to Conduct Oneself When Lending Money

As obvious as this may sound, someone who is giving a loan should do so graciously and cheerfully, and never with any rude or inconsiderate words to the borrower. “One should beware not to subject the borrower to any indignity, God forbid, but lend to him cheerfully.”¹⁹ The Chofetz Chaim explains that the lender must look at himself as if he were the borrower, and think how much he would wish that the lender would treat him graciously. Then he must emulate that behavior.²⁰ If one is not able to make a loan, he should speak gently and explain that he’s unable to provide a loan, and he should never raise his voice or rebuke the person seeking a loan.

The Obligation to Repay Loans

The Chofetz Chaim writes that one cannot avoid the obligation to repay a loan any more than he can avoid the obligation of *sukka*, shofar, and *tefillin*.²¹ Chazal have designated four types of people as wicked, and one is the borrower who does not repay,²² as found in *Tehillim* (37:21). The Chofetz Chaim warns that “one should also be aware that money retained illegally will not yield any gain in the long run... His misdeed will also cause the loss of whatever he had from before.”²³

As a practical matter, failing to repay loans can discourage the lender from making any further loans. Although, as noted above, the Chofetz Chaim says that this is not a valid reason to stop giving loans, failing to repay loans can nevertheless have

¹⁸ *Ahavas Chesed* 2:21

¹⁹ *Ahavas Chesed* 2:23

²⁰ *Ibid.*

²¹ *Ahavas Chesed* 2:24

²² *Ibid.*

²³ *Ibid.*

an unfortunate chilling effect on people's willingness to make loans. Further, when it comes to failing to repay a free loan fund, the failure to repay the loan also results in permanently taking money out of the fund's circulation so that fewer loans can be made to worthy recipients.

In Closing

The Chofetz Chaim writes at length throughout *Ahavas Chesed* regarding the rewards of *chesed* in general, and of making loans in particular. I will mention here just one *nekuda* that he brings regarding the reward for making loans: in addition to the *mitzvos* which a person merits by making loans, the Chofetz Chaim brings a proof that the lender also earns reward related to what the loan accomplished.²⁴ If, for example, someone extend a loan to a sick person whose health was restored through the loan – perhaps by being able to afford the appropriate treatment – then “in the assessment of the kind man's reward, not only are the few silver coins he spent taken into account, but he is considered actually to have restored the sufferer's life to him.”²⁵ He explicitly states that, “all the benefits accruing to others as a result of his deed will be credited to him.”²⁶

As noted above, the Chofetz Chaim strongly encouraged individuals to establish their own loan funds to lend to those in need. However, he also recognized that this is not feasible for everyone, and encouraged communities to pool the money they set aside for loans into a community loan fund. There are Jewish free loan funds throughout the world and, *b'chasdei Hashem*, Adas Torah has its own fund. Anyone who wants to learn more about the *halachos* of loans is encouraged to learn *Ahavas Chesed*, which is available in Hebrew online for free, in an English-Hebrew translation in *seforim* shops, and also in a unique volume by Rabbi Asher Wasserman entitled *The Concise Ahavas Chesed a Page a Day*.

²⁴ *Ahavas Chesed* 2:6

²⁵ *Ibid.*

²⁶ *Ibid.*

The Praise of Aharon HaKohen; Lessons In *Avodas Hashem*

ADIV PACHTER



Parshas Behaalosecha begins by saying that Hashem spoke to Moshe saying: Speak to Aharon and say to him: When you kindle the lamps, toward the face of the *Menora* shall the seven lamps cast light. The next *pasuk* famously states: Aharon did so, toward the face of the *Menora* he kindled its lamps, as Hashem had commanded Moshe.

Rashi, quoting the *Sifri*, explains that the Torah specifically notes that Aharon did so in order to give praise to Aharon “*shelo shina*.” The simple *pshat* of Rashi on this *pasuk* is that the Torah is coming to praise Aharon for not deviating from what Hashem instructed him.

Many *meforshim* comment on this *pasuk* and on this Rashi. Below is a collection of several explanations from which we can glean important life lessons.

HaRav Dov HaKohen Kook *shlita* / Gilyon of Sifsei Kohen / Gadlus in Humility

Rav Kook quotes this Rashi and notes that many have asked: What is the big *mayla* that Aharon did not deviate from the *tzivui* of *Hakadosh Baruch Hu*?! It should be expected that Aharon would listen to Hashem.

He explains as follows: We *daven* on Shabbos in *shemone esrei* “*Sim Chelkeynu BeTorasecha*.” We specifically say *Chelkeynu* which comes to teach us that each and every one of us has their own *chelek* in Torah. We know that Hillel and Shamai engaged in *machlokes l'shem shamayim*. The *gemara* teaches that both were *Divrei Elokim Chayim*! We know that Aharon HaKohen was on a very high level, essentially as close to Moshe Rabbeinu's level as one could possibly attain. *Chazal* say *Moshe V'Aaron*

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B'Kohanav...” shows that they were on par with each other. One could imagine that it would be hard for Aharon to be *mevatel* his own *hasaga* in Torah to that of Moshe Rabbeinu, considering he was on such a high level as well. He could have easily said that he understands the *tzivui* from *Hakadosh Baruch Hu* differently than Moshe Rabbeinu interpreted it. He would have had grounds to support a different reading of the the commandment. Yet, despite this, we see that Aharon did not deviate at all from the way that Moshe interpreted the commandment from Hashem. Many times we find ourselves needing to be right! We want to show off our own intellectual prowess and prove someone else incorrect. And we probably do not have the same justification in doing so, yet we do it anyway. We can learn this great lesson in humility from Aharon HaKohen that we can all strive for.

HaRav Chaim Kanievsky zt”l / Al HaTorah as it appears in the Artscroll Series compiled by Rabbi Shai Graucher / Being Deliberate in Mitzvos & Limud HaTorah

The following story is recorded about HaRav Chaim zt”l;

Rav Chaim quoted this Rashi, adding: I heard that the *chassidim* ask what the meaning of this Rashi is; do we really suspect Aharon HaKohen, the progenitor of the entire priestly tribe, of not following the instructions that his brother, Moshe, received directly from Hashem? They explain that Aharon is commended for not exercising undue haste in his excitement to carry out this great mitzva, and inadvertently causing the oil to spill because of his hurry! Rather Aharon performed the mitzva at an exact, deliberate pace so that no mishaps should occur!

Tangentially, I once heard Rav Baruch Simon quote the *pasuk* that we say in *Hallel*; “*ani amarti b’chafzi, kol ha’adam kozev.*” The simple *pshat* is that Dovid HaMelech is saying “I said in my haste that all of mankind is deceitful.” However, he quoted another *pshat* that says that it means that when one learns in haste, he will inevitably come to the realm of *kozev*; i.e. when you rush in learning, you will come to make a mistake in the true *pshat* of the *limud*.

HaRav Chaim Kanievsky zt”l Quoting the Chasam Sofer / Al HaTorah as it appears in the Artscroll Series compiled by Rabbi Shai Graucher / Yiras Shamayim and Humility

The Chasam Sofer also addressed the difficulty with Rashi’s comment. In addition he pointed out two other unusual choice of words in the *pesukim*. Why does Hashem preface His command with *Behaalosecha*; when you kindle the lamps? It would have made more sense to say kindle. Furthermore, why does the Torah change its wording

from *yairu shivas haneiros*; the seven lamps shall cast light, to *he'ala neuroseha*; he kindled its lamps.

The Chasam Sofer explains that the six branches of the *Menora* symbolize the six *sidrei mishna*. The seventh branch represents *yiras shamayim*. Without *yiras shamayim*, the Torah that we learn has no value. Therefore, when the *kohen* kindling the *Menora* excelled in *yiras shamayim*, the lamps would automatically turn to cast their light on the central branch. However, when the *kohen* did not possess a high level of *yiras shamayim* he would have to turn the lamps toward the middle.

Aharon has amazing *yiras shamayim*. For him, there was no need to take action to turn the six lamps, representing his Torah study toward the central branch. So, it makes sense why the *pasuk* says “When you kindle the lamps, be aware that the seven lamps will cast light toward the central one on their own. However, Aharon had such a great level of *anivus* that he did not want to appear different than any other *kohanim* who may have been on a lower level than him. He therefore took action; he kindled its lamps, actively turning them toward the central branch rather than relying on the fact that they would do it on their own because of his greatness. For this *mayla* in humility, the Torah praises Aharon because “he did not change”, meaning, he acted just like any other *kohen*, even the ones on a lower level, even though he himself was on a higher level and did not need to take such action.

HaRav Yoel Rackovsky *shlita* / Having *Hislahavus* & Excitement in *Mitzvos*

Rav Yoel quotes this Rashi and asked the following questions. An entire *pasuk* is dedicated to telling us that Aharon did what Hashem commanded. Was there even a thought that Aharon would not do it? Of course he would! Every *tzadik* listens to *Hakadosh Baruch Hu*. So why would Aharon be any different? Rashi from the *Sifri* says that it is coming to give *shevach* to Aharon that he did not deviate from what *Hakadosh Baruch Hu* told him. Again, what was the *hava amina* that Aharon *Hakohen* would deviate from the instructions of Hashem?

The *pshat* is that Aharon did not deviate, which means that Aharon always did it like he did it the first time. He always did it with the same *hislahavus*, with the same *shalheves ha'ola me'aleha*, which is not just a reference to the *aish*... Rather the person himself was *shalheves ha'ola me'aleha*! Aharon *Hakohen* himself became a *shalheves* when he was lighting the *Menora*. He *mamesh* became an *aish kodesh* that was *ola me'aleha*! And that *avoda* he did every single time that he lit the *neiros*. Every time that he was *madlik* the *neiros* he had the same *aliya*. The *teva* of a person normally is that once a person does something he gets used to it. I *davened* for the first time in

my life yesterday. Today, day two, I *daven* a little bit less. Tomorrow it will be even less. The next day it is even less. Until I am not even *davening* anymore. Actually, it gets to the point that what I am doing is not even considered *davening* anymore. It is just words coming out of my mouth... blah blah blah... But Aharon Hakohen was not like that. He was the *ohr* of the *nun*, the *ha'ara* of *nun*. Aharon was the *licht* of the *nun*, he was the *licht* of the *neiros*. And when he is lighting he is showing us how to do *mitzvos*. These *pesukim* are teaching us how to do a mitzva. You don't just do it. You have to do it with *hislahavus*! You have to do it with a *ratzon* and *simcha*! You have to do it like you have never heard of it before. You just got it from *Har Sinai*, from *Hashem Yisbarach*. You just heard about it. And when you do a mitzva like that, starting with *hadlakas haneiros* which is *meir* the *einayim*, when I see it *mul einay* how I am supposed to do a mitzva, then I start to do every mitzva like that. And that is what Rashi is teaching us. *Shelo shina*. He did not change from the way he did it the very first time. It was always new by him! There was always a *chiddush*. This is a very big *limud* for us all. When we do *mitzvos*, we need to grab them like it never happened to us before. Like I just got it. *Hamechadesh betuvo bechol yom samid maaseh bereishis* – it is *mamesh* brand new. I never saw this mitzva before, I do not know about it. I am putting *tefillin* on for the first time today. It's a big thing. We put on *tefillin* every day and it becomes rote. We walk into shul half sleeping. Aharon Hakohen is teaching us how to do a mitzva. This is the *ha'ara* of *Torah shebe'al peh*. What is it all about? The *ha'ara* of *Torah shebe'al peh* is coming from the *Menora*. We have to realize that *Torah shebe'al peh* is not just a *mesora* about how to do it. *Torah shebe'al peh* is coming from us. The *chiddush* of *Torah shebe'al peh* comes when a person is fully there! Only then can a person add on to *Torah shebe'al peh* because there is no *sof* to *Torah shebe'al peh*. It is not like *Torah shebe'ksav* which has an end. This is what Aharon Hakohen is teaching us. *Be'Ezras Hashem* we should be *zoche* to really do the *mitzvos* and light up our eyes in the *mitzvos*, we should *mamesh* see it and through the Torah we should be *zoche* to get the *licht* for our eyes. Not from the sun but from the Torah itself! *B'siyaata d'shmaya* we should be *zoche*!

Explanations from Ishbitz: Mei Shiloach

The Mei Shiloach explains that *shelo shina* could also be understood as not learning. Sometimes when we learn something and repeat it, it becomes habitual. However Aharon is being praised for not letting his actions that he learned deteriorate into habit. Aharon performed the mitzva with excitement and a newness nonetheless!

When I shared this idea, Rabbi David Block pointed out the following insight of the Chochmas Adam, which ties very nicely to this Rashi.

In *Parshas Acharei Mos*, it describes the *avoda* for Yom Kippur. The Chochmas Adam, at the very end of *Shaar HaSimcha*, points out several insights related to that *parsha*.

First, it is very clear that the *avoda* that is described is that of Yom Kippur; yet, the Torah does not say that or mention Yom Kippur at all until the end of the *perek*, until after the *avoda* is finished.

Furthermore, the second *pasuk* of the *perek* says that Hashem tells Moshe to tell Aharon not to come regularly into the *Kodesh HaKodashim*.

The question is: Of course he should not! He can only go inside once a year, on Yom Kippur itself. If that is so, why does the Torah need such a warning?

The Chochmas Adam is *mechadesh* that it is actually not true that Aharon can only enter the *Kodesh HaKodashim* once a year. While that may be true for other *kohanim*, it was not so for Aharon Hakohen. Technically, Aharon was able to enter whenever he wanted to. But when he did, he always has to do a certain *avoda* - the *avoda* described in *Acharei Mos*, which the Torah tells us afterwards, is also the *avoda* for Yom Kippur.

Primarily this *perek* is about what Aharon has to do should he want to enter the *Kodesh HaKodashim* at any time, not primarily about Yom Kippur. This answers the first question above: it doesn't mention Yom Kippur at the outset, since that is actually not the focus of the *perek*!

And with that, he explains the second question above: Since Aharon is allowed to enter whenever he wants (provided he does the proper *avoda*), the Torah has to tell him - "Still, don't come regularly." Why not? As Rashi says - since I constantly show Myself there with My pillar of cloud, and My *Shechina* is revealed there, he should ensure that he does become habituated to come there."

This is teaching us the following: Yes, Aharon can come whenever he chooses. But, it is of primary importance that he does not become "used to" Hashem's Presence such that it loses, in his eyes, its splendor.

Rabbi Block related this back to the Rashi in *Behaalosecha* where it praises Aharon for not deviating from Hashem's Word. Indeed, Aharon succeeded in never allowing his *avoda* and his time spent around the *Shechina* to become routine. Every act and visit was precisely as the first one was! This also relates to the *pshat* in the *pasuk* of *Shivti b'veis Hashem kol yemei chayai... u'levaker beheichalo*. We should always

have the excitement of a guest but be a resident in Hashem's House!

**Reb Shlomo Carlebach zt"l / The Secret of Truly Effective Chinuch & Kiruv /
Via Stuie Wax**

The following was published in the weekly bulletin for the Happy Minyan, the Reb Shlomo Carlebach-inspired *minyan* in the Pico Robertson community.

How do you know if someone gives you a message from God, or if someone gives you a message that is not so much from God? If someone comes and says 'listen, I want you to know, you have to change from top to bottom', do you know what kind of person this is? They have a knife in their hand and like a little butcher, they are cutting off this part of you and that part of you. 'Now you are ready to be a real good Jew'. How does it sound to you?

Now listen to this. God says to Moshe tell Aaron to kindle the light, which means to *mamesh* put fire into the hearts of every Jew. So Rashi says "*Vayaas keyn Aaron, melamed shelo shina*". And Aaron did so - he didn't change anything which God told him to do. But let me ask you friends, isn't it obvious that if he would have changed God's words, he would not have been the High Priest?

There are thousands of explanations for this, but let's see what the holy Alexanderer says.

Aaron Hakohen never changed a Jew; he just put fire into them.

Do you know how holy that is? If you have a real fire of God inside of you, you can utilize everything you have in the service of God just by the way you are.

Sometimes we tell our children change here, change there. Become better here, become better there. It's only because we don't know the secret of how to put a little fire into their hearts. *Nebech*, sometimes we butcher them around.

I want to bless you and me, we should be privileged to be able to put the Torah into somebody's heart where they completely receive it on the inside. Let it be clear to us, it can only come from the real fire of God which is deep inside.

HaRav Elimelech Biderman Shlita / Making our Avodas Hashem and Emunas Hashem New with Sparks of Freshness

The following was published in Torah Wellsprings on *Parshas Behaalosecha*.

Isn't it obvious that Aharon would do as he was commanded? Why does it need to be mentioned?

Some explain that Rashi means that Aharon should be praised for never repeating a deed, because one translation of *shina* is repeated. Every day Aharon lit the *Menora*, but he never repeated the deed. Each day, he lit the *Menora* with a new *hislahavus* and

with new *kavanos*, and every day was like the first time.

It is said about Rebbe Mendel of Vitepsk zt”l that he celebrated each Shabbos, thinking that this was his very first Shabbos and his very last Shabbos. With that thought in mind, he kept each Shabbos with renewed joy and energy. It was always new for him.

We should also try to make our *avodas Hashem* new. It should not be repeated, each day the same. For example, we should put on *tefillin* today with a feeling of newness, and not just a repeat of what we did yesterday and the day before that.

Emuna should also be new each day. When you want to tell someone something new you say: Listen to this, I have news to tell you...” Every day when we say the *shema*, we begin with *shema Yisrael*, Listen! We are telling ourselves “Listen well, because I have something new to tell you.” The news is *Hashem Elokeynu Hashem Echad*! We know that from yesterday, we know that since we were young children but today I understand it in a way that I never did before. Today I know that Hashem is our God, Hashem is One, in a way I never knew before.

The Skuliner Rebbe in his *sefer Noam Eliezer* / The *Tikun* of the *Ohr HaGanuz*

In his *Noam Eliezer*, the Skuliner Rebbe quotes this *pasuk* and quotes the Rashi which says that Aharon is praised for not having made any changes to the way Hashem commanded him. He quotes the Toras Chayim who notes that in *Parshas Bereishis*, when Hashem created the world, it says “*Vayehi kein*”, “And it was so”, after each item that was created, except for by the *Ohr*. Why is it that when Hashem created the Light, the Torah does not follow it with the words “*Vayehi kein*”, “And it was so”? He quotes that the *Ohr HaRishon* was created and then it was *nignaz l’tzadikim*; it was hidden/stored away for *tzadikim*. Since it was *nignaz*, the Torah omits the words “*Vayehi kein*”, “And it was so.” When Aharon was *madlik* the *neiros*, he was *mesaken* the *Ohr HaRishon* that was *nignaz*. *Vaya’as* connotes that he was *mesaken* the *Ohr*. And when you spell out the word *kein* with the full letters of *kaf* spelled out *kaf+pei* (20+80) and *nun* spelled out *nun+vav+nun* (50+6+50) that equals 206, and with the *kollel* (the word *kein*) it equals 207 which is the same gematria as *Ohr* (*alef+vav+reish*) which is 207. This was the *shevach* of Aharon; when he lit the *neiros*, there was no change for the original *Ohr HaRishon Kodem HaChet* before it was *nignaz* for *tzadikim*.

He goes on to quote the Degel Machneh Efraim who heard the following from the Baal Shem Tov. Hashem was *gonez*/ hid the light in the Torah and in each generation the *tzadikim* tap into this light through *limud HaTorah*. With this light they are able to see unparalleled things. Furthermore, the *sefarim* bring down that

anyone who learns *Torah Lishma* with love and fear and with *Deveikus Hashem* with pure eyes is *zoche* to this very same *Ohr*.

The *sefarim* bring down further that with the *avoda* of lighting the *Menora*, Aharon brought down the *Ohr* of Torah down into the world. This enabled anyone from *Bnei Yisrael* who learned Torah with the proper love and fear to tap into the depths and secrets of Torah. This is hinted to when it said “*V’Yaas kein Aharaon*”; *kayn* equals seventy; as we know there are seventy *panim* of Torah. *Sod* (*samech* 60 + *vav* 6 + *daled* 4) also has the numerical value of seventy to teach that through Aharon’s actions, that enabled others to tap into the *sodos* and light of the Torah.

Tzedek Tzedek Tirdof

EITAN GELB



It is rare that a legal code begins with its laws and only concludes with the reason behind those laws. Most codes begin with an overarching force of motivation which supports the principles that follow. For example, the U.S. Constitution begins with the “We the people” clause before going into the laws that it contains. But *parshas Shoftim* does the reverse. It begins with the establishment of courts, and only then concludes with the moral purpose behind this legal system. We are instructed to appoint judges and officers in all the gates of our cities who (a) do not take any bribe and (b) refuse to pervert judgment. Summing it all up, we are told “*tzedek tzedek tirdof*,” justice, justice you shall pursue.

At face value, this final verse seems to have no practical significance whatsoever. Yet, this standard maxim repeating the word “justice” introduces an emphasis on the high value of justice for each citizen, including the poor and dispossessed, that has helped us build our nation. It appears as if Hashem placed the motivation for these laws at the end instead of at the beginning. So, why does it come after the laws which it seems to contain?

Sanhedrin 32b

The *gemara* in *Sanhedrin* provides a series of explanations for the double language in this verse, but all of them are specific applications, notwithstanding the verse’s general tone.

The repetition of the word justice could mean to seek out a *beis din yafeh*, a high quality court, as it is imperative to find excellent judges for difficult disputes.

Another explanation in the *gemara* understands this verse to mean that, within a particular yeshiva, we must follow the decisions of the heads of that yeshiva, even if there are reasons to disagree. The *gemara* gives a list identifying which *talmidei chachamim* we should follow in specific locations.

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The *gemara* provides a third application as well. *Tzedek tzedek tirdof* means that we should make sure to examine testimony that looks suspect. We have an obligation to do our due diligence when rendering judgment.

A final explanation is that the repetition of the word “justice” conveys two separate ideas: The first time *tzedek* is said, the *pasuk* is instructing us to pursue the strict letter of the law, but the second time it says the word *tzedek*, we are instructed to pursue legal compromises.

Rashi, in his *peirush* on the *Chumash*, cites the *gemara*’s view that the double language in this verse means to pursue a *beis din yafeh*, a high quality court. Many others support Rashi’s perspective; Sforno, Rav Dovid Tzvi Hoffman, and Rav Yosef Bechor Shor. Indeed, the Bechor Shor attributes one explanation for each use of the word “*tzedek*,” the first time warning judges to be careful in their judgment, and the second time instructing litigants to pursue a *beis din yafeh*. The Ibn Ezra provides another explanation. He says that it means to provide a clear, straightforward verdict, no matter whether it will be well or poorly received by the people.

Regardless of which view we follow or which explanation resonates more, everyone agrees that our *pasuk* is not a general statement related to the mandate in the *parsha* to establish courts. Rather, this verse, including its double use of the word “*tzedek*,” is articulating a very acute statement with specific application, whose meaning is disputed by *amoraim* and *rishonim*.

Rav Hershel Schachter

Rav Hershel Schachter presents yet another specific application of this verse. Discussing the laws of theft, he places speeding in the category of *geneiva*, based on the *gemara*’s definition of *tzedek tzedek tirdof*. The *gemara* makes the distinction between legal issues (*din*) and compromises (*peshara*). Rav Schachter compares speeding to a case in the *gemara* where two boats meet at a crossroads in a river and only one can pass. The *gemara* applies the verse *tzedek tzedek tirdof* to tell us to pursue equity and compromise, rather than strict legal rights, in order to work it out. The alternative would be that the more aggressive driver will always go first, which contravenes the equitable aspects of *tzedek tzedek tirdof*. Rav Schachter concludes that, likewise, this verse would preclude speeding. This is yet another specific application of this verse rather than an overarching basis for the court systems. Thus, we have a multitude of specific applications of this *pasuk*.

Pe’ah Perek 8 Mishna 9

The *mishna* in *Pe’ah* applies the *pasuk* of *tzedek tzedek tirdof* in a different manner.

It brings the case of a person who pretends to be disabled in order to get certain benefits. That person, says the *mishna*, will not leave this world until he actually becomes disabled. The *mishna* attributes this to the verse *tzedek tzedek tirdof*.

Places Where It Should Apply

Until now, we have established the *pasuk* of *tzedek tzedek tirdof*, not as a motivational topic sentence that has been misplaced at the end of the legal code instead of at the beginning, but, rather, as a precise *halacha* that is embedded in the *parsha* of organizing a legal system. I will now attempt to explain why it cannot be considered a broad, general statement at all. There exist many *gemaras* in which this *pasuk* would fit perfectly as a broad statement of purpose, yet do not make any such applications.

For instance, the *gemara* in *Shabbos* 55a notably leaves this *pasuk* out in its discussion of the obligation to help the people around you avoid sin.¹ The *gemara* in *Bava Metzia* 49a also brings a different source in its discussion of deceitful speech, when it could easily have applied *tzedek tzedek tirdof*.² Even the *Sefer HaChinuch*, who brings broad explanations for each of the *mitzvos*, does not apply our *pasuk* universally – instead, he uses “*b’tzedek tishpot es amecha*” as the source for the *mitzva* to judge properly. Furthermore, the *gemara* in *Shavuos* (30b-31a) lists thirteen *halachos* about judgment that derive from the verse “*midvar sheker tirschak*,” but does not mention the broad applicability of *tzedek tzedek tirdof* with regard to any of these. We see that clearly *tzedek tzedek tirdof* is not a *sui generis* precept that subsumes the entire topic of the courts. Rather, it instructs specific *halachos* with pointed and distinct applicability.

Conclusion

If *tzedek tzedek tirdof* is not the topic sentence providing the aim of the court system in *halacha*, then is there another verse that provides this statement of purpose? Perhaps the introduction to our *parsha* is actually the series on holidays in *parshas Re’eh* that directly precedes this section in *parshas Shoftim*, and *tzedek tzedek tirdof* is another law that is merely written in a roundabout manner. The last seventeen verses of *Re’eh* give in-depth guidance on how to observe Pesach, Shavuos, and Sukkos. They discuss

1 Although that *gemara* does only use specific stories from *Navi*, which could be an alternative reason as to why it does not apply to our *pasuk*.

2 The other *pasuk* even includes the word “*tzedek*,” showing how similar it is to our *pasuk*! However, the other *pasuk* is more appropriate within the context of the *gemara*, which could be another reason why ours is not included as a proof.

subjects pertaining to the general culture surrounding those holidays. And while they can be viewed through a more narrow lens, as an entity separate from the *pesukim* that follow them in *parshas Shoftim*, it makes more sense to engage them together. We are first instructed on the reason to have an ordered society, and then we are told how to construct said society. The cultural scaffolding that *halacha* provides through the system of holidays provides a historical foundation for the nation devoted to *avodas Hashem*. We can in turn derive *chizuk* — motivation — for our court system, which, if effective, can sustain the unique dynamic that we are to live in.

The Pirates and the *Seforim*

JOSHUA GLETTNER



The merchant ship sailed quietly along the Spanish coast. The sailors scurried too and fro adjusting the sails with precision. They struck up a joyous beat with their shanties of the sea. Then a cry was raised from the sailor along the mast; pirates had been spotted. The fleet of nimble pirate ships emerged from all sides, while the sailors struggled to turn their ship away from disaster. At closer distance, the cruel faces of the pirates could be seen shouting horrendous Arabic cries. The vessel was soon seized and disarmed, its crew and passengers locked for sale to the slave markets of North Africa.

Upon arrival in Tunis, a crowd had gathered to view the latest booty of the mission. One of the Sultan's officers watched the cargo carefully, quietly tallying the tax bill to be paid. The dockworkers carried the stolen chests into a warehouse for resale in the thriving shouk. A Jewish merchant approached the victorious captain to congratulate him on success. The captain smiled and the Jewish merchant offered the captain a sum of several thousand dirham for the set of all the cargo. The captain agreed, and soon the workers of the Jewish merchant had set to work bringing the stolen cargo into their offices nearby. The workers hacked open the locked chests and organized the varied cargo. Metals to one side, clothing to another. One chest was filled to the brink with all sorts of Hebrew books, neatly inscribed with the names of their unfortunate owner. The worker called out to his Jewish employer, who rushed to see his prize. He was glad to have seized such a set. "We won't be selling that" the merchant commanded, "rather bring it down to my house for the library." The worker nodded, and the merchant grabbed one of the sets, a manuscript of the Ramban's commentary on Torah. Upon flipping to that week's *parsha*, he spied little scripted notes of the previous owner with a small drawing on the side. The merchant smiled

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with the manuscript in hand and returned to work.

Some years later, the merchant hosted a band of his compatriots visiting from Spain. He sighed to hear the travails of the long suffering community. One of them, an elderly financier, spied the open *sefer* on the table. The guest recognized his signature on the *sefer*. “Where did you find this?” The merchant responded with a smile, describing how he had secured the treasure at the cheapest rates. The financier called out, accustatorily demanding the return of his *sefer*. The merchant shook his head in exasperation. “I will return it, but only on the payment of all the sum I spent purchasing it. It wasn’t cheap.” The financier screamed out curses upon the recalcitrant merchant.

The shared friends of both parties separated the screaming men and advised them to ask a local *dayan* to adjudicate. The *dayan*’s ruling was rejected by his contemporaries, and the case made its way to one of the leading judges of North Africa, the eminent Tashbetz, Rav Shimon ben Duran. The Spanish merchants knew him well; he had fled Spain after the great pogroms of 1391, and he made a great name for himself, reestablishing himself as one of the supreme authorities on *halacha* in the wider Sefardic diaspora.

The Tashbetz heard all the testimonies with great patiences, listening to all the complaints of both parties. He established quickly that the question was not one solely of facts; rather it was a question on the effects of war and piracy as a natural outgrowth. Should the pirate’s seizure of the *seforim* be seen as legal transfer of title? This question is the center of the two responsa he composed, a question of modern significance, central in the modern claims of property in post-Holocaust Europe. Through the prism of the Tashbetz’s question we will attempt to analyze the various *halachic* debates over the nature of conquered property and how such debates are integral in the understanding of the Tashbetz.¹

The principal question faced is whether a right of conquest exists. Does conquest entail the conqueror to benefit?

This question appears first in *sefer Bamidbar*. The Torah notes that Hashem prohibited the Jews from invading the lands of Moav and Amon when the Jews were invading Israel. Nevertheless, the Jews were allowed to conquer the lands of Sichon, despite the fact that Sichon’s territories included former lands of Moav. Several

¹ *Shu”t Tashbetz* 2:136. Some details have been added. This article is purely theoretical and not for any *psak* purpose.

hundred years later, Amon claimed the return of lands held by the Jews that they had acquired because they were possessions of Sichon. The leader of the Jewish people at the time, the judge Yiftach, declared that Sichon's earlier conquest of Moav and Amon had represented the transfer of the lands to Sichon. This case is succinctly described in the *gemara* as "Moav and Amon were made permitted by Sichon."

"ואסף שללכם אסף החסיל," אמר להם נביא לישראל: אספו שללכם. אמרו לו: לבזוז או לחלוק? אמר להם: כאסף החסיל, מה אסף החסיל - כל אחד ואחד לעצמו, אף שללכם - כל אחד ואחד לעצמו. אמרו לו: והלא ממון עשרת השבטים מעורב בו! - אמר להם: "כמשק גבים שקק בו," מה גבים הללו מעלין את האדם מטומאה לטהרה - אף ממונם של ישראל, כיון שנפל ביד גוים מיד טיהר, (כדבר פפא. דאמר רב פפא:) עמון ומואב טהרו בסיחון.

It is written: "And your spoils shall be gathered like the gathering of the locusts;" (Yeshaya 33:4). The prophet said to the Jewish people: Gather your spoils from the army of Sennacherib. They said to him: Are we to pillage the spoils, each person for himself, or are we to divide the spoils with the monarchy? He said to them: Gather the spoils like the gathering by the locusts. Just as in the gathering by the locusts, each and every one of the locusts takes food for itself, so too, in gathering your spoils, each and every one of you shall take spoils for himself. They said to him: isn't the property of the ten tribes intermingled with it? He said to them: "As the advance of the locusts [gevīm] shall he advance" (Yeshaya 33:4). Just as these pools elevate a person up from a state of ritual impurity to a state of purity, so too the property of the Jewish people, once it falls into the hands of gentiles, it immediately purifies the property. This is in accordance with the statement of Rav Pappa, as Rav Pappa says: The property of Ammon and Moab was purified through the conquest of Sihon. (Sanhedrin 94b)

When King Chizkia defeated the invading Assyrians, the *navi* Yishayahu encourages the Jews to seize the spoils of war, saying "You should gather your spoils like the harvesting of locusts." The *gemara* asks why such encouragement should be required? Plundering hardly needs permission. The *gemara* answers that the Jewish forces were concerned that among the spoils of the Assyrian camp lay the property of the defeated ten northern tribes. Thus, the Jewish soldiers felt they had to return the property to the previous Jewish owners. The *gemara* quotes that Yishayahu's claim that the conquest of the ten northern tribes by Assyrian rendered asunder the claims of the ten tribes to their property.

How are we to understand this principle? How did Sichon obtain a right to the land of Moav and Amon? How can conquest create legitimate ownership?

Rashi understands the concept to operate via the mechanism of *yeush*. In *halacha*, property is defined as ownerless when the owner loses hope of return, known as *yeush*. Rashi argues that the conquest of the land triggers a reaction by the former owners that causes them to make the land ownerless. However, he seems to suggest that conquest in and of itself is solely a cause of despair but not an independent legal rule.

The Rashba (*Gittin* 37b) advances a startling thesis. He argues that war creates an acquisition unto itself; the despair of the owner is not the cause of the acquisition. Instead, war creates such a strong force that the item becomes ownerless. The Rashba argues that the mechanism of despair cannot be the mechanism, given that in nominal monetary rules, land cannot become ownerless via despair. Furthermore, the *gemara* parallels the mechanism of conquest to that of purchase with currency, thus implying that conquest is a form of acquisition proper. The strength of the acquisition overrides any compunctions of the owner.

The Tashbetz makes use of the Rashba's thesis to argue that any offensive act falls under the criteria of war, as long as the pirating is done with the permission of the sovereign. With this established, the Tashbetz argues that the new owner is under no obligation to return to the previous because the book was the spoil of the pirates.

Let us proceed to a different question posed to the Radbaz in the mid-16th century.² The Radbaz was asked regarding the monopoly to lend in an Italian city. The practice in much of Europe was that the ruler would grant a monopoly on lending to a single Jew in exchange for a payment. Unfortunately for the monopoly owner, the region of Italy was plunged into nearly seventy years of war beginning in 1494. Thus the town was conquered several times, and the monopoly was transferred to a new owner by the new ruler. The old owner later sued the new owner for the return of his property. The Radbaz insisted that the old owner had no claim on his former property. The Radbaz then argues that the right of conquest assigns all property within the conquered territory to the king, stemming from the king's authority to legislate (*dina demalchusa dina*). "The way of kings" the Radbaz writes, "is to conquer provinces from one another, and to fully acquire them, for were it not so, you would find no king who ruled legitimately, for every king seized power by defeating his predecessor in conflict." Because conquest is an extension of a ruler's authority, it is

² *Shu"t Tashbetz* 3:533

to be permitted. The Radbaz sees the power in conquest as a recognized norm, but not as a mere form of possession.

Rav Elyah Baruch, the late 19th century Mir Rosh Yeshiva, in his *Dvar Avraham* (1:11), argued that conquest was a legitimate means of acquisition solely when “that falls under normal international practice” and when a “legally recognized war takes place between two parties, such counts as conquest.” This may be seen as a conceptualization of the Radbaz’s position that conquest is permissible because it is the “way of kings.” Thus, that which is defined as legitimate conquest in “the way of kings” achieves *halachic* recognition.

The *Dvar Avraham* suggests an entirely different norm in his novellae. He argues that the right of conquest was not based on any norm but “might makes right.” He even goes so far as to claim that the legitimacy of a state is established solely by act of conquest. He proceeds further, suggesting that what defines an act of conquest in contrast to theft is the ability of the victim to sue in court for the return of his property. If society treats the behavior as illegal, then it is merely theft. In essence, this analysis rings closely to the modern critique of states as merely legitimized violence. To the *Dvar Avraham*, might makes right. This opinion is brought out even clearer by the *Har Tzvi* (OC 2:87) in the name of the *Yom Terua*, who declares that any individual is able to do an act of conquest through extreme violence. The creation of the acquisition is solely a derivative of the force used. Such violence has the power to reverse ownership, even at the hands of a private individual.

To summarize, there seems to be a fundamental dispute among the *rishonim* whether war counts as an independent means of acquisition. Within the side that views war as an acquisition, there is an evident split between those who view the power of war as an extension of the power of the state (the Radbaz) versus those who would suggest that the extreme power of war alone qualifies (*Dvar Avraham*).

What is a practical ramification of this distinction, whether “might makes right?” The Tzitz Eliezer, Rav Waldenburg, in his *sefer Hilchos Medina* (2:9), notes that a practical difference is whether pillaging from a non-state actor qualifies as a legitimate example of conquest.

This in turn returns us to our initial case of the pirates. Pirates by definition are armed non-state military groups that pillage the high seas. Perhaps we may understand Tashbetz’s ruling qualifying piracy as an assertion that “might makes right.” This is mentioned by Rav Asher Weiss in his *teshuva* on *dina demalchusa dina*. He notes succinctly that the Tashbetz “does not view [conquest] as stemming at all from the power of the king for even a band of robbers can acquire through conquest

as in the responsa of the Tashbetz regarding pirates stealing a ship” in reference to our case.

However, historical evidence seems to indicate the contrary. Piracy up until the early modern period was considered a state-run activity. The Tashbetz himself writes: “If the pirates come from a country at war with the kingdom of their victim” it is considered a legitimate acquisition. However, if the pirate targeted a non-enemy vessel, such an act could not be required as conquest. This fits with much that is known of pirating in the region. Pirating was licensed by the Muslim and Christian kings, and they were explicitly prohibited from attacking friendly ships.³ The revenue taken from pirating was heavily taxed by the government. Thus, it is natural to assume that the Tashbetz thus felt pirates could be included as extensions of the state, in contrast to the understanding of Rav Asher Weiss who seems to assume that the Tashbetz adopted the understanding of the Dvar Avraham.

Another important difference is not so much in whether the conquering party is a state, but also the nature of the conflict. The issue appears in early literature in the responsa of the Rambam, who permits the purchase of *seforim* confiscated in war if done “in the command of the Sultan.”

ובתשובת שאלה להרמב”ם כתוב וזה לשונו: שאלת מי שקנו מן השוללים ספרי קדש לקצת בתי כנסיות שבמדינות אם נאמר שקנה או אם נכפהו על לקיחתו ממנו ... תשובה אם ביזה זו היתה במצות המלך קנה... אמנם אם שללו בלי רשות המלך או נגנבו ישבע בנקיטת חפץ כמה הוציא ויטול ויחזור זה הספר למקומו כדין מי שנתברר לנו בו שנגנבו לו כליו וספריו.

When asked this question, the Rambam responded: You asked regarding one who bought plundered sifrei kodesh to supply synagogues in this country, is the purchase valid or shall we force him to return them? The answer is that if the plunder was done on the command of the sultan, the purchase is valid... However, if the plunder was not from the order of the king, it is considered stolen, and the one who purchased them should take an oath how much he spent on them and get that money back, and the seforim should be returned to their place, just as in any situation where one has been stolen from. (Shita Mekubetzes Bava Metzia 24b)

This seemingly implies that all such attacks of the government create a valid

³ Taxation and Privateering in the Medieval Mediterranean: The Conformation of Privateering Regulations and its Application on the Island of Mallorca M.D. López1,2,* and K. Alvaro1,3

acquisition.

This issue came to the forefront in modern times with the reparation of Jewish property seized by Nazi Germany. A certain Mr. Landsman, a Hungarian Holocaust survivor, recognized a crown of a *Sefer Torah* that had been owned by his father at an exhibition on Mount Zion. The crown had been collected by the Nazis, and later captured by the American Army, which had sent it to Israel. Mr. Landsman sued for possession, to which the defendant responded by claiming valid title had been acquired through the Nazi conquest of Hungary. The *Beis Din* of Yerushalyim argued that the Nazi conquest did not count as a legitimate means of conquest, as the Nazis had plundered their own people, which could not be considered an act of war, but rather just an act of theft.

אמנם נראה כי בנ"ד לא שייך כלל ענין כיבוש מלחמה, שהרי הנאצים האונגרים ימ"ש פשטו ידיהם הטמאות באותם היהודים אשר ישבו לבטח בארצם תחת ממשלתם, ושדדו מהם כל חפצי ערך שנמצאו אצלם, וא"כ אין זה שלל מלחמה כלל, אין זה אלא מעשה שוד גול וחמס. גם אחרי כן, כשנפל כל השלל בידי חיל כיבוש האמריקאי לא שייך [עמוד 271] לדון מדין קנין כיבוש מלחמה, כי הרי הם לא רצו ולא כוונו כלל לזכות בשלל והם אספו את השלל על מנת למוסרם לנציגי היהודים.

The rule of conquest of war is not applicable because the Nazis and the Hungarians, may God erase them, extended their filthy hands in those Jews who dwelt safely under their (Hungarian) rule, and they plundered all items of value they found with them, and if so, it is not spoils of war at all because it was merely an act of theft and sadism. Even afterwards, when it fell into the hands of the American soldiers, it still can't be considered an act of plunder in war, because the Americans had no intention of acquiring that property, and collected it with the intention of giving it to the Jewish representatives. (Piskei Din of the Rabbinic Courts of Israel, Part 1, p. 961)

In addition, the court quoted an intriguing statement of the Rosh. A much related parallel *sugya* is the discussion of *Sikarion*, forced land sales by Jews to Roman soldiers. The *gemara* implies that the only reason such sales are legitimate is because the Jew was paid. The Rosh quotes this *gemara* to imply that the power of the state cannot in itself compel a sale of land like that of the *Sikarion*.

The court understood that the framework of war spoils could not qualify because the Holocaust was an act of persecution directing against a civilian population. It was not a legitimate outgrowth of war. The court explained that the statement of the Rambam in his response permitting all purchase of *seforim* stolen

from the government, should be understood to be limited solely “in a time of war where the king attacked his enemies or seized the *seforim* through legal means.” The permissiveness of conquest must be related to an actual war need, not pure genocide.

A Tussle in Neustadt

JOSHUA GLETTNER



H*oshana!*" The army readied their leafy swords in wait, delighting as they twisted through the narrowing turns of the cramped shul. They eagerly repeated the joyful mantra. A shout echoed through the hall as one of the marchers stumbled forward. He leaned for a moment before collapsing on the rough ground. The *tzibur* buzzed around the offender, a Reb Gershom. He huffed out his innocence in a rush of nervousness and anguish. The members of the *tzibur* dragged the injured man beside his crushed *lulav* and laid him on his bed before his weeping family. A friend examined the wound, the red sore projected by a fracture of the spine. The doctor was called for. The town of Neustadt was bursting with tension.¹

And now the community had exploded in uproar at the riot of *Hoshanos*. Some felt it was a pure accident. Others testified to Reb Gershom's kindness in learning. Yet more hostile rumors proliferated of how Reb Gershom had been known for his deep enmity towards his victim. Whispers of crude threats struck the idyllic town.

Rav Yisroel Isserlein had tasked himself with resolving the growing *machlokes* among the idyllic community. He was the perfect man for the job. The orphaned Rav Isserlein had fled the murderous pogrom of the Jews of Vienna in 1420 that claimed the life of his mother and uncle. He moved to Neusdat sometime before 1445 to lead his uncle's yeshiva.

Rav Isserlein became one of the most prominent personalities of the time, bringing hundreds of students from all over Europe. The students loved him; they recorded his every act over the course of the years, later assembled in the *Leket Yosher*. Not only was he the delight of students, in fact he was considered one of the finest *poskim* in Europe, answering hundreds of questions that nearly all found some level of acceptance in the *Shulchan Aruch*. A telling story is indicative of his greatness;

¹ <http://www.juedische-gemeinde-wn.at/pages/Gemeinde/Geschichte.aspx#top>

This article is not intended for any purpose of psak. I apologize for any errors in my presentation. All real life questions must be directed to a Posek. I merely am speaking abstractly.

every Yom Kippur, the *chazan* asked the *tzibur* that if anyone felt Rav Isserlein had erred, they should privately approach the Rav and he would go over the matter. None ever came.

He informed both men that he intended to convene a *beis din* after Sukkos had finished.

Rav Yisroel had gone to visit the ailing Reb Eliezer, who profusely thanked the eminent Rav for visiting. Reb Eliezer angrily described how Reb Gershom had long troubled him. Was it even a question that such a devious character should harm him with only pure intentions? Was it a coincidence? The force of the injury was immense and the resulting pain, more so. Rav Yisroel warmly wished Reb Eliezer a *refua shleima* and proceeded to the nearby home of Reb Gershom.

Reb Gershom led Rav Yisroel cheerfully through his door before directing him to a fine wooden chair. Rav Yisroel nevertheless insisted on standing and Reb Gershom seated himself before the Rav. He shook his head, leaning forward, and spoke as if confiding to the Rav, “I have many *tzaros*. I go to shul and suddenly I have been turned into a *rasha*. It is true that Reb Eliezer and I were not friendly. I regret that, I really do. But I must insist that I did nothing wrong. It is entirely normal and accepted that a little pushing happens during *hoshanos*. If he was pushed by me, it happened by accident without any intention to harm.” Reb Gershom then began with the sad details of his long and fatal dispute.

Rav Yisroel sighed in sadness. It was necessary that no further conflagration be created.

The Rav had examined all eyewitness testimony but it was lacking in any concreteness. It was not even clear that the two men had stood beside one another.

Rav Isserlein was approached at his home later that day by a nervous witness who informed him of Reb Gershom’s cheerful boast the night before the incident of his intent to push, and Reb Gershom’s mirth on leaving the crime scene, with Reb Gershom calling out to the man “Why didn’t you help your boss when he was shoved.” This testimony was indeed telling. However, even this testimony would not suffice according to normal *beis din* procedure.

Nominally, one would be liable for an injury even without intent and all specific questions about intent would be irrelevant. However, this *hoshanos* event fell into another classification of an event of *simcha*. Rav Isserlein considered such an event to be totally exempt from any damages. This, however, would not be the case if the offender acted malignantly. Rav Isserlein felt that the testimony was not usable to gauge intent. The admission of Reb Gershom fell under the *halachic* classification of

boasting, which is not to be trusted. Furthermore, the confession took place outside of the *halachic* classification of testimony.

Rav Isserlein further rejected any suggestion of assuming that Reb Gershom had harmed Reb Eliezer. He described how the *gemara* in *Bava Basra* explains that if one finds a live animal besides a dead animal, one should not assume that the live animal killed the deceased, even if the live animal was known to have a prior propensity to gore. Rav Isserlein argued that to assume Reb Gershom had deliberately injured Reb Eliezer required even more of a leap of an assumption.

Despite these faults in the case, Rav Isserlein asserted that the court had an obligation to declare a punishment on Reb Gershom. The *gemara* in *Yevamos* states that a *beis din* may declare a punishment even if the Torah would not otherwise proscribe one due to the needs of the time. Rav Isserlein asserts that the case of Reb Gershom completely justified the court proclaiming a punishment. Firstly, he argues that not acting would prevent people from being comfortable in the synagogue lest they be attacked. Secondly, he notes the complete description of both the festival and the synagogue proper. In this context, despite the flaws in the whole case, Rav Isserlein demanded that Reb Gershom publicly repent and confess before the congregation and Reb Eliezer. Despite the fact that normal payments for damage require a separate fine for the injury, lost wages, cost of treatment, embarrassment, and pain, Rav Isserlein only fined Reb Gershom for the cost of treatment because that was the most direct expense that could be assessed. Reb Eliezer was to receive the fine, but then donate it to a synagogue since he was not in truth entitled to the fine except through extrajudicial means.

With the ruling written out by a scribe, Rav Isserlein informed Reb Gershom of his verdict, to which Reb Gershom sighed in frustration. The ruling was saved in his archive of cases, later to be among the earliest books printed in the Hebrew language under the name *Terumas Hadeshen*.

Let us explore the primary rationales of Rav Isserlein, primarily focusing on the exemption of injury due to festivity. This is chiefly important because of the vast significance of the ruling. Rav Isserlein's opinion was codified by the Rema and is accepted as the *halachic* ruling even in our day. The Rema records that chiefly speaking, the rationale of a festive event exempts from compensation but if the court feels the need to impose compensation, they may.

Nezek Machmas Simcha

The *mishna* in *Sukka* (45a) describes how on Hoshana Rabba, after the final parade

of the *lulavs* had concluded, they (Rashi claims “they” are the adults) would take the *lulavim* from the hand (*miyad*) of the kids and eat their *esrogim*. Rashi explained that such a taking was not theft because it was done due to *simcha* (*machmas simcha*).

Tosfos on the spot quotes Rashi’s justification to exempt those who would joust at weddings in cases where the clothing or mount was damaged among the participants. However, *Tosfos* goes on to note that the word *miyad* could be read to mean instead not that the older people would take from the hands of the children but that the kids themselves would play with the *lulavim* and eat their own *esrogim* “immediately”. *Miyad* can be translated as one word “immediately” or as two “from (*m-*) the hand (*yad*).” *Tosfos* notes that this second read of the word “*miyad*” would help to explain a question elsewhere in the *gemara* predicated on this *mishna*. It is unclear if *Tosfos* intended with its second interpretation to completely reject the exemption for liability in jousting.

However, in the Rosh’s comments on the *gemara*, the Rosh clearly rejects Rashi’s interpretation in favor of *Tosfos*’ second answer.

Can we infer from Rosh’s interpretation that he also disagreed with Rashi on a legal level? Did the Rosh disagree completely with Rashi’s ruling based on his different interpretation of the *mishna*? Most *poskim*, among them the Vilna Gaon, argue that he did, as evidenced by an unusual case in the Rosh’s responsa.

The Rosh (*Teshuvos* 101:5) was asked about a particular case where a group of well-wishers followed the *choson* on horseback at a wedding. One well-wisher rode into the *choson*’s mule, a luxurious mount rented from a non-Jew for the occasion. The Rosh does not note any exemption from liability despite the parallels of this case with that of *Tosfos*. Instead, the Rosh assumes that the tortfeasor is entirely liable. The Rosh seemingly contradicts his opinion in a separate responsa. He was asked about a wrestling match where one wrestler accidentally blinded his partner. The Rosh exempts the offender on the grounds that they had both taken on the risk of injury when they agreed to fight. How can we understand the Rosh’s views on the wrestler in context with the Rosh’s reaction to the wedding? We can suggest that the Rosh maintains that the victim can exempt the offender, but only by actively displaying consent, as in wrestling.² However, in the wedding case, the *chassan* never started an

2 The *Beis Yosef* raises a serious question on the *teshuva*, questioning how consent could remove liability for damage. He does suggest that perhaps if both parties consent, they can collectively forgive one another. However many have noted that the Rosh believes that an individual really can consent to injury as he suggests elsewhere. The *Sema* argues that perhaps the Rosh is not predicated on a notion of consent, but rather a doctrine known in civil law as “contributory negligence.” There is an opinion found in the *Tur* in the name of

activity but was merely present.

The Rosh's approach seems simple. How can engaging in a festive activity alone create an exemption for liability? It is one thing where both men are actively wrestling, another where they are merely dancing. How can we understand the unusual approach of *Tosfos* and the *Terumas Hadeshen*?

Three main approaches are found among the commentators. The first, and perhaps most convincing, is that based on Rav Elchanan Wasserman in his *Kovetz He'aros*. Rav Elchanan concerns himself by asking why the *gemara* seems to permit a father to beat his son, yet at the same time, the *gemara* says that for a *beis din* to carry out a punishment, it is fundamentally a tort violation. He resolves the problem by explaining that the Torah permits tort damage as long as it is for a constructive purchase. However, when a court punishes an offender, the primary intent is not one of assisting the offender but primarily condemning him for his act. Rav Elchanan draws out an intriguing comment from the Rambam to support his approach. The Rambam writes in his introduction to torts, "It is forbidden for a man to harm either himself or his fellow, not only in injury but in any case of hitting in the manner of an altercation (*nitzayon*) whether an upright person of Israel; whether young or old, man or woman is forbidden by the Torah." Rav Elchanan notes that this seems to imply that hitting in itself is not the problem, (chiefly the manner of altercation) but rather the manner in which it is done. He notes that we permit a doctor to work with a patient even if the doctor cuts open the patient, and derives that injury for a constructive purpose is permitted. So too, Rav Mordechai suggests that *nezek machmas simcha* is comprable to the permitted injury done by the doctor. Both practices are constructive, and thus permitted injury.

Rav Yosef Zvi Rimon, in his *sefer* on *Hilchos Purim*,³ suggests a variation from the explanation predicated on Rav Elchanan. He questions whether the Rabbis decreed that injury because of happiness was not to be subject to tort liability. In this explanation, we fundamentally regard the act to be one of damage, but on a Rabbinic level we characterize it as a non-malignant act and thus exempt the offender from any payment.

Rav Moshe bar Tzion and Rav Moshe Meir Aviner bring a startling proof case for such a conception. The *Terumas Hadeshen*, in a different case, quotes the

the *Yad Rama* that if two individuals run into one another and one is injured, the offender is exempt because the victim had contributory negligence that led to his injury.

³ <https://torah.etzion.org.il/en/purim-humor-halakha>

statement of the Riva, who permitted yeshiva students on Purim to steal food, even without consent. The Mahari Brin explains that the rationale behind such a ruling is the rabbinic power of *hefker beis din hefker*, that the court is given authority to make an object ownerless. Similarly, the court has the power to void any legal requirement to pay fines. Thus, while the act proper is one of damage, the rabbis exempted offenders to permit a celebratory atmosphere

An alternative suggestion is that the *Terumas Hadeshen* does not actually reject the Rosh. Rather, the *Terumas Hadeshen* speaks in a place where jousting was common practice and the Rosh was talking about where jousting was not common. This approach is found in the Bach. However, if we see the *Terumas Hadeshen* and the Rosh disagreeing, we may understand that they disagree about the level of consent required. The *Terumas Hadeshen* views being in the area alone exempts, while the Rosh seems to require that the victim actively place himself in a dangerous situation that we view him as consenting. For the Rosh, two individuals must be clearly aware of the possibility of injury, like the colliding wrestlers. Both wrestlers enter the ring with the intent to physically attack one another. In contrast, for the *Terumas Hadeshen*, it is merely enough that both individuals enter a festive environment, even if they do not actively interact with one another. Rather, the decision to enter the room of dancing, for example, entails a form of forgiveness even if both parties do not actually interact or articulate such a feeling.

An evident distinction in our understanding of the *Terumas Hadeshen* as being predicated on consent versus the act itself being defined as a permitted act falls in two specific cases. Firstly, if the injured was not involved, and was merely a passerby, it can be argued that they did not consent in contrast to the case where both men are actively parading together in shul. This is noted by Rav Rimmon. If the exemption is based on a structure of consent, an individual not within the festive space is not considered to have consented to the possibility of injury. In contrast, if the exemption rests within the fundamental nature of the act, the offender would still be exempt regardless of the actual behavior of the one who was injured.

A second question is found in a dispute between the Bach and the *Terumas Hadeshen*. The Bach argues that the exemption is dependent on the nature of the injury. The Bach was asked regarding an individual blinded at a party when an individual festively threw his glass cup. The Bach insisted that the offender would not be exempt except for minor damage. In contrast, the *Terumas Hadeshen's* case seems to assume that the serious injury of our case, the literal breaking of one's back, would nonetheless be exempted under the criterion of an injury of a festive event.

According to the consent model, only minor damage would be covered. In contrast, if the exemption is predicated on the nature of the act, the nature of the injury has nothing to do with the exemption.

It was my intent in this piece to attempt to discuss the role posed by Rav Isserlein in his attempt to break down the complex dispute which pierced his community. How can we run the narrow line between exceptional *simcha* and the injury which often results with it? How can a society function with the possibility of unsafety? We explored the notion of an exemption for *nezek machmas simcha* in its initial formulation by the *mishna* and the early commentaries of Rashi and *Tosfos*. We also noted the potential divergence of opinion between Rashi and *Tosfos* in contrast with the Rosh, who firmly rejects any reading of the *mishna* that could be understood as exempting *nezek machmas simcha*. Rather, we noted that the Rosh seems to reject the exemption, which is noted by his responsum on a similar topic, a case of wedding horseplay. In such a case, the Rosh raises no possibility of exemption. We suggested the possibility that the Rosh may require more explicit consent. We also examined the rationale behind an exemption of *nezek machmas simcha*. We noted a possibility along the lines of Rav Elchanan Wasserman, that the act is not a hostile act of the sort subject to torts. Alternatively, the act is fundamentally liable, but the Rabbis exempted one from damage lest one refrain from participating in such events due to a fear of litigation. In contrast, we also raised the notion that the exemption stems from a consent on the part of the victim, who entered the field of action and thus exposed himself to injury. We noted that these three approaches can be differentiated between a focus on the inherent nature of the act itself, versus an understanding of the consent of the victim. We noted two potential *halachic* distinctions. First, if the individual was not a participant, merely a passerby, would the offender be exempt? Secondly, what extent of injuries would be exempted by *nezek machmas simcha*? Perhaps individual consent is limited to non-outrageous cases of injury. The *Bach* describes a case where a drunken party goer threw a glass at his friend, shattering his eye. The *Bach* insisted that the offender would not be exempt except for minor damage, despite the concept of *nezek machmas simcha*. However the *Bach* notes that the *Terumas Hadeshen* in our case seems to assume that no matter how serious the damage is, he would be exempted. May we merit only *simchas*, but without *nezek*!

The Raid

JOSHUA GLETTNER



The dullness of the midmorning was shaken by the rapid swinging of the bell from the church steeple. One after another the bell rang, followed by fearful shouts. Confused men abruptly filled the empty street en masse. The merchants ran out to discover the commotion; Hungarian raiders in the vicinity. The raiders often crossed the low foothills that divided Hungary from Austria in search of loot. The self-appointed officers passed out aged pikes and dull swords to their legion. Some wore armor, others their normal garments. A few mercenary veterans of the Emperor's wars were draped in colorful stripes, rakishly leaning beside their new muskets.

Their commander stood atop his horse and commanded the villagers to advance down the hill, where flames were already apparent from the nearby farm houses. Dust filled the downward horizon, along with the nervous cries of animals being looted. The Jewish shopkeeper separated himself from the slow moving march to run back to get his armor and sword. Following right behind him was a friend, a poor Jewish craftsman. Nosson HaKohen begged his friend for armor and a sword so that he could assemble with the other townspeople. Moshe Chaim sighed, and reached out for a large chest. Pushing it open with a key, he handed his friend chainmail and an old sword, complemented with a large breast plate. Nosson HaKohen hardly threw down his cap and strapped on the armor. Running out, Nosson HaKohen mounted his horse and rode down to the growing commotion at the base of the hill. Bursts of gunpowder noise broke the steady yells. Nosson HaKohen rode towards a lone Hungarian, catching the man in surprise. But the Hungarian, quickly sensed his attacker, and waving his shield, he knocked Nosson off the scared horse. The craftsmen collapsed onto the hard ground, lying beside an ever growing company of the wounded and dead.

The head raider called out upon the weakened militia, offering clemency for surrender. The militia commander pronounced his agreement, and ordered his tired men to put down their weapons. "We want the armor too" the raider insisted, and

This article, based on the Terumas Hadeshen 328, is not intended for any purpose of psak. It is just a theoretical discussion.

the men promptly cast off their heavy breast plates and cast them, clanging with a furor as they piled. As they continued, the Hungarians grabbed the wounded and dead, grabbing from everyone their cracked spears and rusting swords. A group of slaves ran up to assist, loading the armor on the Hungarian wagons. Before long they had returned home, leaving the townspeople with ruined fields, stolen flocks, and chiefly, their damaged honor. The doctor was sent for, and he found Nosson at rest. The doctor shook the injured man, and Nosson arose tiredly. He spied his torn shirt and pants, feeling the absent armor, and he sighed bitterly. The doctor helped the man rise, shook his hand, and Nosson smiled and returned to the company of his nervous family awaiting him by the gates. His wife and daughters happily ran towards him with an expression of fear.

Later that night, Nosson HaKohen walked down to the house of Moshe Chaim. Moshe Chaim embraced his friend, but pulling himself back, he demanded the return of his stolen armor.

"A borrower," Moshe Chaim learnedly proclaimed, "is liable for the loss of the item regardless of the circumstance." Nosson HaKohen protested, "But this was war! I was hardly negligent." "That makes no difference" Moshe Chaim insisted, with a kind expression of sympathy for his unfortunate friend.

Nosson HaKohen shook his head in frustration, repeating "I should have to pay for a battle. What did you think was going to happen?" Moshe Chaim nodded in false agreement, quietly complaining over the loss of such expensive armor. He then turned to craftsmen, "We ought to ask a rav. I hear that everyone asks Rav Isserlein in Neustadt their sheilos." Nosson HaKohen agreed, and the two men went together to compose a letter to Rav Isserlein. They neatly read the letter and then went to a mutual friend, who was traveling to Neustadt the next day to visit his son in Rav Isserlein's Yeshiva.

The next day the letter was received at Rav Isserlein's house, read by one of his students who served as his secretary. The question was simple- should Nosson HaKohen, as a borrower, be obligated in the loss of the item? As Moshe Chaim noted, borrowers are obligated in the loss of their item no matter the reason, as the *mishna* in *Bava Metzia* (7:8) blithely states, "In every case the borrower (*shoel*) pays."

However, the borrower is given one exception; *mesa machmas melacha*, if the item dies or is harmed as a result of its use. In such a case, the borrower does not pay. Rav Isserlein insisted to his assembled students that the armor counted as an example of *mesa machmas melacha*, because the armor was damaged while in the use of warfare for which it was borrowed. Thus Nosson HaKohen did not need to pay for the loss of the stolen armor.

In order to understand the ruling of Rav Isserlein, we must examine the exemption *mesa machmas melacha* and how it relates to normal liability. The *gemara* in *Bava Metzia* (96b) begins by asking whether if the borrowed animal grows haggard as a result of burden should the borrower be obligated. The *gemara* responds by quoting one of the anonymous *rebbeim* who indignantly proclaims that the *gemara* seems to imply that the borrower ought to be liable if the animal dies, given that the *gemara* only questions the case of injury not death. Rather, the *rav* responds, even death of the borrowed animal from the toil is not liability, for the borrower can proclaim “I did not borrow it to hang it up as a curtain.” How is one to understand an exemption when the borrower is obligated in everything else?

The *rishonim* in their commentary on that *gemara* give various suggestion. The Ramban insists that while the borrower is always obligated for loss, he is not obligated for any negligence of the one who lent. The lender was negligent for lending an animal that could not perform the task required. The Ritva insists that according to the Ramban the animal must be unfit at the time it was lent out. If the condition of the lent item changed, or was affected by external factors, the owner is not negligent. Thus, for the Ramban, the exemption requires wrongdoing by the owner. However, fundamentally in all cases the borrower should be obligated.

The Rashba, a student of the Ramban, advocates an entirely different approach, arguing that when the owner lends out the animal, he does so while acknowledging the possibility of injury to the animal as a result of the labor and thus forgives the injury. The distinction is small yet substantial. The Ramban requires a direct fault in the item for the owner to be considered negligent, whereas the Rashba’s standard merely requires the owner to have considered the possibility.

A third side is perhaps¹ found within the side of the Rosh, quoted in the *Tur* (340:6), who discusses the case of an individual who borrows an animal so that he could travel a road known to be teeming with criminals. The Rosh argues that if the animal is stolen, the borrower is liable, because the damage did not stem from the journey itself, but rather an external factor; the robbers. If the animal dies of exhaustion however, the borrower would be exempt. This position is seemingly a third way because of the extremes of the Ramban and the Rashba. The Rosh seems to exempt the borrower even if the borrower was not negligent. The Ramban only exempts the borrower if the animal was not in a fit state when the animal was lent out.

¹ As noted by Rav Asher Weiss in *Minchas Asher* 3.118. It’s a great source for an in-depth look. He also has a litany of interesting cases raised in the responsa literature and how they relate to practical cases.

The Rashba exempts any case as long as it is a possibility. The Rosh takes a position that any injury or death incurred on the road as result of travel is exempt. However, danger encountered by highwaymen is not exempt.²

How do we understand these theoretical distinctions in their effects of the practiced law? We can see an evident connection in two separate disputes. The first is the aforementioned case of the Rosh, responding to that of the *Yad Rama*, Rav Abulafia. He states that the case of the dangerous road should be considered *meisa machmas melacha*. He reasons that he had borrowed the item for the purpose of traveling on that road. Thus, even though the physical strain of the road did not cause the death of the item, but rather the criminal presence on the road, the fact of traveling on the road exempts the borrower.

Rav Abulafia brings support from the case of the *gemara* of one who borrows a cat to kill mice. The cat dies as a result of eating too many mice. The *gemara* in *Bava Metzia* 97a states that this case is one of *meisa machmas melacha*. Rav Abulafia compares the two cases, stating that “just as we exempt the cat borrower...even though the act of mice killing itself did kill the cat, nevertheless since the act for which he had borrowed the animal caused the death.” Thus, the *Yad Rama* insists that the one who borrowed for a crime-ridden road is similarly exempt.

The Rosh argues strongly against the *Yad Rama*’s conclusion. The Rosh states that the case of the cat is dissimilar to the traveler. In the cat case, the act of killing the cat is directly connected with the death. The act of eating the mice directly correlates with the death of the cat. However in the case of the traveler on the road, the act of traveling did not lead to the death of the animal. The relationship is more strained. The death is only coincidental, but not a result of the physical process.

The approach of the *Yad Rama* can be understood to correlate with that of the Rashba. Since there was a possibility of loss, no matter the direct cause, the *Yad Rama* exempts the borrower. In contrast the Rosh and the Ramban reject the exemption for different reasons. The Rosh obligates the borrower because he advocates a model

2 Two other opinions are worthy of note. The first is that of the Rambam, who exempts the borrower only if the animal died during the work itself. The Ramban exclaims that the Rambam is a textual error. The Rivash suggests that the Rambam’s limitation is based in the practical difficulties of identifying the exact cause of the animal’s death. Rav Kahn suggested in shiur that I heard from him that the exemption is connected with the borrower’s ability to use the animal. The ability to use exempts him from any potential liability. The Machane Ephraim (*Hilchos Sheila* 4) argues that the exemption is because the act of borrowing was an erroneous transaction. The borrower borrowed for a specific use, and now that it is clear the item cannot perform the use, the transaction was based on erroneous premises.

predicated on damage that directly relates to the wear and tear of utilizing the animal itself. The Ramban similarly obligates the borrower, since the lender is not at fault.

A secondary dispute based on the opinion is the titular case of the article; the missing armor.

Rav Isserlein's approach stems from a similar approach to that of the *Yad Rama*. Rav Isserlein states that the case of the cat is indicative that even if the act of war does not itself damage the armor, but rather leads to the circumstance of the armor being stolen, nevertheless one is exempt. Thus, Rav Isserlein exempted the borrower of the armor from needing to pay for the loss, since the act of battle led to the damage.

He similarly brings proof for this exemption from a different case of the cats in the same section of *gemara Bava Metzia* (97a) as the previous case of cats. The *gemara* raises a question of one who borrowed a cat to kill mice, but the mice succeeded in collectively injuring the cat. The *gemara* does not raise the question in connection with *meisa machmas melacha*.³ The *Tosfos* on the spot however declares that such a case of the cat being killed would obviously be *misa machmas melacha*. Rav Isserlein cites this case writing that it proves "even if the object is not harmed and broken specifically due to the act proper, rather than since the task for which the object was lent leads to the result." The rats are external to the cat. Nevertheless, the borrower is exempt. Seemingly any task through which the object undergoes damages, even from an external factor.

However the Shach, Rav Shabbatei ben Meir, vehemently rejects the ruling of Rav Isserlein. He exclaims that "while the case of cats is logically considered *meisa machmas melacha* since the animal acted independently in its pursuit which led to the mice killing the cat." The Shach argues that this case should not be exempt according to the opinion of the Ramban. The armor bears no fault for the ultimate defeat. However in the case of the cat, the lender is still negligent since the animal behaved on its own accord. In contrast, in Rav Isserlein's case, the armor has no separate initiative. The loss of the battle was solely due to the fault of the borrower. It is the borrower's fault that he did not make proper use of the armor. We may also suggest that the Shach's point would equally be true to the Rosh. The armor was not damaged by the battle. It was lost merely incidentally. Rav Isserlein's falls along the principle opinion of the Rashba and the *Yad Rama*. Both opinions establish a doctrine of exemption based on the owner acknowledging the possibility of the event happening. They do not care about causation. The *Yad Rama* and the Rashba both understand that the exemption

³ See the reading of the Vilna Gaon, who does change the text of the *gemara* to explain that the text is talking about *meisa machmas misa*.

of *meisa machmas melacha* is found in the owner's acceptance of a probability of loss, whether a dangerous road or a frightful battle. Certainly in conflict with a rogue invader, loss is a likely outcome, no matter how the specific causation amounts

Rav Asher Weiss in his aforementioned article quotes a variety of cases from the responsa literature that fall within this dispute over the nature of the exemption. He quotes an interesting responsa of the *Har Karmel*, an 18th century Rav in Poland named Rav Eliyahu Margolios. Rav Margolios was asked about an individual who borrowed a book from his friend. In Poland at that time, all books were taxed and stamped with a confirmation. Any book not stamped with proof of tax payment was confiscated. Our unfortunate borrower brought the book to learn in a *beis medrash* where it was spotted by tax officers, who seized the book. Was the borrower liable? Rav Margolios suggests that this case is one where the Ramban's opinion is more lenient. Rav Margolios states that the Ramban would exempt the borrower since the loss was due to the negligence of the lender who was negligent for both not paying the book tax and then for not informing the borrower. Rav Margolios states that the Rosh would not exempt the damage, because the damage was not caused by the act of reading. Presumably Rav Isserlein would exempt the borrower.

Rav Isserlein folded his ruling about Nosson HaKohen into an envelope, sealing it with his iconic lionhead. He had a copy prepared for future release organized in his files. He sent it by messenger that night. The messenger strode down the central square, recognizing the injured Nosson HaKohen recounting his exploits before an enraptured audience. The messenger ran up to Nosson, clapping him on the back. "Here's the reply from Rav Isserlein!" A crowd gathered around the anxious Nosson, while others ran to the house of Moshe Chaim so that they could witness his response. Moshe Chaim arose frantically to the scene. The local Rav, Rav Shimon,⁴ explained the ruling of Rav Isserlein to the confused masses. "Rav Isserlein states that Nosson Hakohen is exempt because of the concept of *meisa machmas melacha*. Because the armor was given to Reb Nosson hakohen with the express purpose of battle, he is exempt from any loss related to the battle."

Moshe Chaim nodded his head in disappointment, and then strode towards Nosson, standing joyously. Moshe Chaim apologized to his friend; they had not spoken since the defeat. The two men walked along together as the *kehilla* made their way to the *Beis Knesses*. They had a *chavrusa* to attend to.

⁴ Most of the story is fictional, although the principal event is real (although many doubt the veracity of the questions in the *Terumas Hadeshen*)

End of Life in *Halacha*

DR. IRA HOFER



The issues surrounding end of life care create a variety of *halachic* issues for the diligent Jew. In fact these issues are highly complex and made even more challenging by the different perspectives between *halacha* and modern Western society. However, these challenges, and the juxtaposition of timeless *halachic* wisdom combined with modern medical understanding also make the topic quite fascinating.

Suffice to say, that the overall complexity of this *sugya*, combined with the intricate differences in any individual situation make it imperative that specific questions be referred to a competent *halachic* authority. Thus, this essay will not attempt to elucidate the actual *halacha*, nor attempt in any way to provide enough background to enable one to address these questions independently. Rather, this essay will attempt to provide an overview of the various major issues and considerations that must be made when evaluating specific situations.

To whom do these *Halachos* Apply?

Halacha recognizes four primary categories of *cholim*, ranging from a minor injury to those who are at the end of their lives. The *halachic* term for this latter group is a *goseis*, which is loosely translated as one whose death is near. However, there remains no clear definition of exactly what this is. The Rambam (*Peirush l'Mishnayos, Arachin* 1:3) and the Rama (*EH* 121:7, *CM* 211:2) seem to define this as someone literally taking their last breaths, while others seem to state the process can take up to several days. Notability, in modern medicine we now have the ability to prolong the life of an individual for weeks (or even longer) using invasive measures (such as a ventilator, dialysis, etc.) for a much longer period of time than possible during the era of the *rishonim*.

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As a result of these advances, the modern definition of a *goseis* is more challenging. Rav Auerbach *zt'l*, in correspondence, seems to state that it is very much dependant on the opinion of the doctor. Many modern *poskim* agree with this and hold that a *goseis* is one with a terminal disease from whom nothing further can be done.¹ The similar (though not identical) Western concept would be a patient who enters hospice care - i.e. when the focus of their care transitions from treatment of their disease to comfort and symptom alleviation. The biggest gap between these two concepts, is that patients in hospice care may last for months, while the traditional definition of a *goseis* is one on their death bed, a far shorter time. While the exact definition of a *goseis* is challenging in modern times, as we shall see, the *halachic* concepts that come from them are quite relevant to an approach to end of life issues.

The Relevant *Mitzvos* and the Status of a *Goseis*

Like many areas of *halacha*, the underlying *mitzvos* are a positive and negative commandment. On the one hand we have the positive mitzva to safeguard a life:

ושמרתם את חקתי ואת משפטי אשר יעשה אתם האדם וחי בהם אני ה'.
You shall keep My laws and My roles, by the pursuit of which man shall live, for I am Hashem. (Vayikra 18:5)

Simultaneously we have the negative commandment from the *Aseres Hadibros*:

לא תרצח.
You shall not kill. (Shemos 20:13)

So the question that now arises is: is the *goseis* different than any other person *halachically*? The *Shulchan Aruch* answers this directly:

הגוסס הרי הוא כחי לכל דברו.
A goseis is alive in all respects. (YD 339:1)

The *siman* then goes on to list a number of prohibitions of what can not be done to a *goseis* such as close their eyes, tie up the jaws or stop up the organs (though the list is a bit long to quote here). What is interesting about the list is that these are things done to a *mes*. Thus the simple *pshat* of the *halacha* is that we cannot begin to prepare a *goseis* for death until they have actually died.

Most *poskim* extend this *halacha* to include forbidding anything that could hasten the

¹ *Nishmat Avraham*, Volume 2, page 301

death of the *goseis*.² Particularly when a patient is in a fragile state, this may even include typical treatments (like taking vital signs) that are no longer of benefit.

The Unique Status of the *Goseis*

Thus, at first glance it would seem that there is essentially no difference with regard to end of life care for a *goseis* as compared to all other individuals. However, the *Shulchan Aruch* adds something interesting at the end of the *sugya*:

אבל אם יש שם דבר שגורם עכוב יציאת הנפש כגון שיש סמוך לאותו בית קול דופק
כגון חוטב עצים או שיש מלח על לשונו ואלו מעכבים יציאת הנפש מותר להסירו
משם דאין בזה מעשה כלל אלא שמסיר המונע (הכל בהגהת אלפסי פ' אלו מגלחין).
*But, if there is something outside the patient or body that prevents his soul
from leaving him, it may be removed, because doing so is not a positive
action to shorten life but removing an impediment from death. (YD 339)*

Thus, the difference between a *goseis* and others is that the natural course is for a *goseis* to die, whereas the expected course of an individual would be to continue living.

Prolonging Life vs. Hastening Death

Before going into a framework of permissibility for end of life decisions it must be emphasized, that this is an incredibly complex area of *halacha*. Even the definition of someone as a *goseis* requires a knowledgeable *posek*, and any specific decision depends on the details of a particular case. Thus, nothing here can be used to allow for independent decision making. Further, I will do my best to avoid any specific examples so that they are not misinterpreted in any way.

It should be stressed, that the extent of the *halachic* position is that, in the event that there is no ability to change the course of the disease and the patient is suffering greatly and wants to end their life, it may be permissible, but if the patient wants to pursue aggressive care, that is certainly allowed. The area of relevance is if the patient no longer wishes to be aggressive, when would it be permissible to decrease care.

With this introduction, this is the overall concept as I understand it: "One may not do anything to hasten death, but it may be permissible to not actively prolong the life."

Halacha prescribes a particular status to basic activities of life, such as food, oxygen and nutritional fluids. As a result, in all cases it would be forbidden to withhold

² Rama as quoted in *Nishmat Avraham* S339 pp 218

any of these items to a patient, regardless of decisions regarding other aspects of care, or the patient's wishes.

Note, that the language above is that it "may be permissible" to not actively prolong life. For a patient who wants to aggressively pursue options they may do so. However, for a patient in significant pain or other discomfort, it may be permissible to not actively prolong life. Appropriate *halachic* guidance is critical.

What does this mean in practice? Actions that directly cause death are forbidden. This would include giving drugs for the direct purpose of causing death (euthanasia), as well as actively removing life saving care (such as disconnecting a patient from a ventilator).

A modern development where this is of extreme relevance is that of extracorporeal membrane oxygenation or ECMO. ECMO is a device that is similar to a bypass machine the augments (or virtually replaces) the function of the heart and/or lungs in a patient with severe cardiac or respiratory failure. This invasive treatment is often a last resort for these patients, many of whom do not survive even on ECMO. The secular perspective is that withdrawing ECMO is not euthanasia, however from a *halachic* perspective the active discontinuing of care such as this would be forbidden.

In contrast intermittent live prolonging treatment (such as dialysis) can be viewed as started and stopped for each session (typically three times per week). Thus, in very specific situations, there may be an ability to not restart dialysis (or a similar treatment) if this is consistent with the desires of the patient.

The current understanding of medicine

The issues and concepts of end of life care has been the focus of much medical research. It goes without saying that a even a partial review of the literature is well beyond the scope of this article.

In general, the area of medicine focused on end of life care is called palliative care. However, this is not an exact analog to what is discussed with a *goseis*, as palliative care physicians focus on the alleviation of symptoms across a wide range of chronic illness, not only those at the end of life. Nonetheless, these specialists are often a good resource for facilitating complex decisions around end of life care and may be useful for the patient and the family.

A closer concept may be that of hospice care which is specifically focused on individuals with less than six months to live. While the concept of a *goseis* usually implies an even shorter projected lifespan, the general concept of a patient whose prognosis is terminal is similar. Once again, the focus here is not necessarily the

withdrawal of care but making decisions which optimize the quality of life with the understanding that quantity (i.e. duration) is limited.

It is perhaps with regard to this last point that modern medicine has made the greatest contribution. A seminal paper published in the *New England Journal of Medicine*³ examined the overall duration of life in palliative patients who pursued aggressive treatments as compared to those that focused on quality as well as quantity. What they found is that the more conservative treatments that placed an emphasis on patient comfort actually resulted in a longer overall duration of life as well. Thus, while at first glance the avoidance of treatment seems to be contrary to the overall goal of preserving life, when it comes to invasive (and often painful treatments) that are of questionable benefit, these goals may actually be in perfect alignment.

Conclusion

Halachic decision making around end of life issues is fraught with complications. Chief among them is meshing complex areas of *halacha* with challenging and uncertain medical realities. As a result, the specific instances of each case must be discussed between a qualified *posek* and the patient's doctors - two cases that seem similar at first glance may actually be completely different.

While this essay cannot be used to guide individuals on their own, hopefully it has provided an overview of the issues and can be useful in determining when seeking *halachic* guidance can be of help.

3 N Engl J Med 2010; 363:733-742; DOI: 10.1056/NEJMoa1000678

Interpreting the *Mabbul*

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Does traditional Judaism accept the simple and plain meaning of the Flood narrative in *parshas Noach*? That is, were all human, animal, creeping, and bird life species extinguished by a great flood in 1656 (2104 BCE), except for the inhabitants of the ark, which then repopulated the world after the flood subsided? In view of our modern understanding of Earth's history, do all humans today descend from Noach's extended family of eight (Noach, Shem, Cham, Yafes, and their wives)? Do all the above animal species we find on Earth today descend from one or seven pairs that survived on the *Teiva*?

If one accepts the plain meaning of the *Chumash* as written, there are many additional questions that the *Mabbul* story raises, such as: was the entire world completely submerged? How did all the species (e.g. marsupials from Australia) get to the *Teiva*? How did they all fit and survive the disparate environment? How were these millions of species fed by eight people? In addition, one might ask how the entire world was repopulated in a few hundred years (e.g. to the time of Avraham), and/or how to explain the indigenous peoples of Australia and the Americas, which had apparent continuous populations thousands of years before and after the *Mabbul*.

Beyond the details of the *Mabbul* narrative, questions are also raised by modern observations of the geological and paleontological records, including ice caps and cores, fossil strata, and tree rings. I don't intend to review all of this data, which is widely available,¹ but will assume for this discussion that a full examination of this data is inconsistent with a simple reading of the text – i.e. a complete inundation of the Earth and destruction of nearly all land-based life.

¹ See, for example, <http://www.talkorigins.org/faqs/faq-noahs-ark.html>

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One approach to these questions is that the entire episode involved supernatural phenomena, but this seems still problematic in view of today's available historical evidence, and also goes against the principle that God wishes the world to operate naturally as much as possible. The *Mabbul* story, with just two of each of millions of species repopulating the entire world, seems so fantastical that one might argue that any rational analysis would conclude the story is one that has a theological message and purpose rather than a factual or historical one. If the purpose of the *Mabbul* was just to wipe out nearly all of the living land creatures, a simple pandemic would have done quite nicely without invoking so many apparent supernatural phenomena.

Do we have license to interpret the *Mabbul* beyond the plain meaning of the text? Even though the *midrash* [*Midrash Rabba* 32:10] suggests that *Eretz Yisrael* was not inundated, a non-literal reading of the *Mabbul* leads to a much larger and more fundamental discussion about the limits of non-literal interpretations of *Tanach*. Certainly we don't strictly follow a literal understanding when it comes to certain idioms such as "*Yad chazaka*." We invoke a principle that the Torah speaks in 'the language of Man.' There is also an accepted principle that the Torah sometimes uses exaggerated language (e.g. describing buildings that extend into heaven ('*shamayim*', *Bereishis* 11:4 and *Devarim* 1:28)). Hence, one might suggest that when the Torah states (*Bereishis* 7:19-20) the flood waters covered all the high mountains under the heavens ('*shamayim*'), this is also an exaggeration and the flood was in actuality less extensive, as suggested by the above *midrash* and some *mefarshim*.²

When it comes to the obviously mystical description of Creation in *Bereishis*, there is much room for interpretation. In fact, the Rambam (*Moreh Nevuchim* 2:25) goes as far to say that he would have interpreted *Bereishis* to be in concordance with the eternal universe promoted by Greek philosophy, had it been convincingly proven. However, as one proceeds further along the historical path in the *Chumash*, we confront the difficult question of how far can a non-literal explanation extend without ultimately impacting the essential foundations of Judaism, such as *Torah MiSinai*. In addition to the Rambam, R Sa'adya Gaon (*Emuna v'Deos* 7:2) makes clear that we must deviate from a literal understanding if there is good reason to do so, such as if the literal meaning is contrary to our senses. An example given is in *Bereishis* (3:20) where Chava's name was given as such since she was the mother of "all living." Clearly, the simple meaning here is not intended. In relation to the *Mabbul*, by analogy, we might stipulate that the death of "all flesh" (*Bereishis* 7:21-22)

² Rabbi Gedalyah Nadel, *BeToraso Shel R' Gedalyah*, p77 ff; see also pp. 116-119 on the *Mabbul*.

was not meant literally, if we accept the modern evidence to the contrary. Even the Ramban, who often favors the more supernatural approach with respect to miracles, notes that the simple reading of “my bow I placed in the clouds” (*Bereishis* 9:12) does not indicate the bow is a new creation as a simple reading might imply. The Ramban understands that the bow is just part of God’s original Creation, as informed by the Greek scientific explanation that the bow is a result of the refraction of sunlight in water.

A good summary discussion of the non-literal interpretation of the Bible can be found by Rabbi Jeremy Wieder.³ His conclusion is there is a significant consensus among Torah authorities (besides R’ Sa’adya Gaon and Rambam, he includes Rashba, Ibn Ezra, and a majority of “*chachmei sefard*”) that when confronted with convincing evidence to the contrary, one may interpret narratives in a non-literal fashion so long as they do not impact *halacha* or the fundamentals of Judaism. According to this view, in the case of the *Mabbul* narrative, an appropriate non-literal understanding would appear acceptable, as it has no direct consequence on these critical areas. It appears that an important conclusion to take from this topic is that the Torah’s goal is not primarily to impart lessons in history or science, particularly in relation to the earlier developments, but rather is to teach theological and moral values relevant to the recipients at Sinai.

However, there is legitimate concern that non-literal interpretation of some passages creates a “slippery slope” that could impact *halachic* passages or our belief in fundamentals.⁴ A related question is that of whether miracles that are clearly supernatural could be interpreted non-literally. According to the principles above, a nonliteral interpretation that doesn’t impact *halacha* or our *ikkarim* would be permissible. The Rambam (*Moreh Nevuchim* 2:42) states that Bilam’s donkey and any passage with an angel speaking should be interpreted as a dream. However, R’ Sa’adya Gaon is - in that case - concerned with the slippery slope. If many passages that have little impact are interpreted nonliterally, it would generally reduce credence in the literal reading of sections of Torah that are affecting *halachic* issues or *ikkarim*. For example, the miracles that Moshe performed, if interpreted nonliterally, would impact credibility of the principle that Moshe was/is the pinnacle of prophecy, as

3 <https://www.yutorah.org/sidebar/lecture.cfm/716561/rabbi-jeremy-wieder/non-literal-interpretation-of-scripture-in-jewish-tradition/>

4 Joshua L. Golding, “On the Limits of Non-Literal Interpretation of Scripture from an Orthodox Perspective,” *Torah u’Madda Journal* (10/2001)

well as the Revelation at Sinai. One might argue that the 'pre-historic' chapters of *Bereishis* extending perhaps to the generation of the dispersion are less subject to a concern of impact to the credibility of the key narratives of the Jewish nation that are part of the *ikkarim*. Rabbi Wieder discusses non-literal interpretation of later historical narratives and notes this growing concern, and it is certainly an important question that requires much more scrutiny.

Perhaps it is this concern that explains an important aspect of the general topic of non-literal interpretation of Torah. These discussions often engender a strong response from some in both the Jewish and non-Jewish world. This is perhaps more notable regarding the topic of Creation and evolution. An extensive and excellent discussion of Creation in the view of modern understanding can be found in *The Challenge of Creation* (Rabbi Natan Slifkin, Gefen, 2018). However, the suggestion in this book that *Bereishis* might be interpreted in a non-literal fashion led to a widespread controversy. The approaches discussed in Rabbi Slifkin's book, which deviate from a simple literal reading of *Bereishis*, are supported by a number of valuable sources, including Rabbi Gedalya Nadel,⁵ Rav Kook (*Letters of Rav Kook*, Letter 91), and Rav Dovid Tzvi Hoffman (commentary on *Bereishis*). The non-literal approach is also applicable to the *Mabbul*.⁶ For example, as discussed above, Rabbi Nadel explains the *Mabbul* did not cover the entire world, but only affected the region occupied and seen by man at that time (presumably Mesopotamia, which has a geography conducive to flooding). This would also then imply that not all post-*Mabbul* species descended from the teva occupants.

A consequence of such strong belief and controversy is an attempt by some to 'fit' Torah literal descriptions into the modern historical and scientific understanding or vice-versa; some refer to this as Concordism.⁷ Although in some cases this might be a worthwhile endeavor, it also leads to an approach 'biased' by a literal interpretation that may be unintended, and can result in "pseudo-science", which ultimately may be completely discredited, with a negative impact on the author, group, and/or religion. In relation to the *Mabbul*, such a famous attempt was made by Immanuel Velikovsky in his infamous book *Worlds in Collision*, (Macmillan, 1950), which, in spite of being completely discredited by academia as totally incorrect, gained a popular following following. A more rational and solid attempt to harmonize science and Creation was

⁵ See footnote 2.

⁶ See Rabbi Slifkin p. 302 and also <http://www.rationalistjudaism.com/2010/10/dealing-with-deluge.html>

⁷ David Shatz, "Is There Science in the Bible? An Assessment of Biblical Concordism" *Tradition* 41:2 (2008).

made by Dr. Gerald Schroeder in *Genesis and the Big Bang* (Bantam 1990). Although Dr. Schroeder suggests a plausible case for some scientific interpretation of the six days of Creation, his approach still suffers from discrepancies between Torah and current science. The approach also seems problematic as it is biased by interpretation of Torah as an historic or scientific document that would seem eventually subject to rejection based on an authentic theological interpretation. One must also note that our understanding of the relevant science is far from complete, and future advances may change our scientific perspective significantly. An extensive discussion of the validity of Concordism can be found in Professor Shatz's article (see footnote 7).

The *Mabbul* narrative contains a number of theological messages, including morality, righteousness, reward and punishment, and about the proper care of our planet and its creatures. However, there appears to be another aspect to this saga as well. It is well known that there are a number of pagan flood stories that have significant similarities to the *Mabbul*. The “Epic of Gilgamesh” was found on ancient Babylonian cuneiform fragments, and apparently originated prior to Sinai. It also recounts a hero, his family, and animals that survive a catastrophic flood in a boat. The hero also sends forth birds to determine when it is safe to disembark. However, the “Epic” message is one of base pagan deities and ideology. It is understandable that the same actual historic *Mabbul* event, most likely confined to the center of civilization in Mesopotamia, could be interpreted by the pagans of that period as relating to their primitive beliefs. The “Epic” story depicts exactly the polytheistic pagan message that the Torah intends to combat. It's clear that a major aspect of the Torah's intended teaching is to uproot the idolatrous beliefs that were so prominent around the Sinai period. Similarly, the Rambam (*Moreh Nevuchim* 3:37) notes that the Torah stipulates a number of *mitzvos* to counter some of those idolatrous practices. It is suggested by Dr. Joel Wolowelsky⁸ that the *Mabbul* narrative is expressed precisely in the language of people in that period familiar with these pagan flood accounts, exactly to counter these pagan fictions and beliefs. Yet another approach suggested by Professor Shubert Spero⁹ is that these early narratives in *Bereishis* are metaphors. The *Mabbul* story provides insight into pre-historic destruction, context into the development of civilization, and the narrative of the Jewish nation. As with other narratives in the Torah, there are many more messages derived from the *Mabbul*,

8 Joel B. Wolowelsky, “A Note on the Flood Story in the Language of Man,” *Tradition* 42:3

9 Shubert Spero, “The Biblical Stories of Creation, Garden of Eden, and the Flood: History or Metaphor,” *Tradition* 33:2 (1999).

e.g. Rabbi Lord Jonathan Sacks,¹⁰ who suggests an important lesson in collective and individual responsibility. This perhaps further emphasizes that the primary goal there is not historical but moral and theological.

What should we conclude? It doesn't seem that how one interprets the basic *Mabbul* narrative has any major significance for *halacha* or directly impacts the fundamentals of Judaism. Therefore a nonliteral interpretation would be an acceptable approach according to opinions cited above, which resolves an apparent conflict with available modern evidence. In addition, one might suggest that our attitudes about modern scientific understanding also matter. If one believes in a strict literal interpretation of Torah narratives that do not impact *halacha* or our fundamental beliefs, contrary to strong modern evidence, it could be argued that this leads to a perspective that incorrectly diminishes the validity of accepted modern science and understanding. Besides providing a potential point of confusion and challenge to perceptive youth, this could have important and even deadly consequences if widely accepted. On the other hand, of course, science is incomplete, and one must judiciously consider all aspects of such topics. Furthermore, one certainly also needs to carefully consider such interpretations and how they might potentially impact *halacha*, or influence our fundamental beliefs now or in the future.

¹⁰ <https://www.rabbisacks.org/covenant-conversation/noach/individual-and-collective-responsibility/>