



Adas Torah Journal of Torah Ideas

Nitzachon

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Editors' Preface

We are excited to present to you our tenth issue of *Nitzachon*. Over the course of the last six years, our *kehilla* has accomplished a lot in the pages of our beloved journal. We have written more than two hundred articles, with over a thousand pages of Torah ideas, reflecting the sincerity of our *kehilla's* commitment to *Talmud Torah*. We have spent hours learning the *sugyos* and ideas, writing about them, and discussing them with our friends and families. *Nitzachon* has also given us the opportunity to absorb Torah thoughts from dozens of Los Angeles's greatest rabbinic figures, past and present.

For most of *Nitzachon's* writers, putting together a well-written article requires personal sacrifice. It means waking up early, going to sleep late, or taking time off from work. *Kach hi darka shel Torah*. It means hours of writing, thinking through ideas again and again; discussing them with friends, family, and *rabbanim*. It means rearranging one's daily schedule to find even more time for *Talmud Torah* at the highest level.

As editors, it is immensely rewarding and inspiring for us to see firsthand what our devoted writers have produced and continue to accomplish. We dedicate this issue to you.

Michael Kleinman

Yaakov Siegel

Yaakov Rich

In Honor of our Children
Michael and Tally Kleinman
Asher and Nina Adler
Isaac and Daniella Kleinman
And our Grandchildren



Lesley and Brian Kleinman

מוקדש לזכרם של
נפתלי בן צבי ז"ל
חוה גולדשען בת יעקב ז"ל
אפרים בן אהרן ז"ל
תהיו נשמותיהם צרורות בצרור החיים

Dedicated in loving memory of
Harvey and Eva Rich z"l
Kurt Marcus z"l
May their memories be blessed



Alan and Marilyn Rich

Dedicated in Loving Memory of

Jacob Siegel

יעקב בן צבי הלוי

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רב מנשה רפאל בן החבר ר' חיים ופייגא

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שרה בת ר' יצחק משולם פייש וחיה חנה איידל

Jamie Lehmann

חיים מנחם בן ר' מנשה רפאל ושרה



Yitzchok and Barbara Lehmann
Siegel and Family

In honor of
Yaakov Rich,
Michael Kleinman,
and Yaakov Seigel,
and the work they do to make *Nitzachon*
happen



Adam and Naomi Rich

ראש וראשון



Rabbi Dovid Revah

Rabbi Yaakov Krause

Rabbi Arye Sufrin

Guest Contributors

Torah and *Mitzvos Shelo Lishma*

RABBI DOVID REVAH



In many places in *shas*, the *gemara* quotes the directive of Rav Yehuda in the name of Rav:

לעולם יעסוק אדם בתורה ובמצוות ואע"פ שלא לשמה, שמתוך שלא לשמה בא לשמה.¹
*One should study Torah and perform mitzvos, even if one is only doing so for an ulterior motive, because this will ultimately lead to studying and performing mitzvos for its own sake.*²

As the *Ruach Hachaim* (*Avos* 3:1) explains, attaining our goal of genuine *avodas Hashem* is like climbing a ladder. A person does not expect to reach the top immediately. He begins at the bottom and carefully makes his way to the top. Similarly, we begin doing *mitzvos* on the lowest level, *shelo lishma*, and gradually we begin to develop a deeper appreciation for them. Eventually, we will ascend to the summit and we will learn Torah and do *mitzvos lishma*.

The Rambam quotes this *gemara* twice, but with one significant variance:

תחילת דינו של אדם אינו נידון אלא על התלמוד ואחר כך על שאר מעשיו. לפיכך אמרו חכמים לעולם יעסוק אדם בתורה אפילו שלא לשמה שמתוך שלא לשמה בא לשמה. (הלכות תלמוד תורה ג:ה)

*A person will first be judged on how much Torah he learned and only afterwards on his performance of mitzvos.*³ *Therefore, a person should learn Torah even shelo lishma, since this will eventually lead him to learn lishma.*

1 *Pesachim* 50b, *Nazir* 23b, *Sota* 22b and 47a, *Sanhedrin* 105a, *Horayos* 10b, *Arachin* 16b

2 The exact definition of "*lishma*" is subject to disagreement. The Rambam in *Hilchos Teshuva* 10:2 explains that it is performing *mitzvos* solely because it is the true and correct thing to do. However, in the same *perek* a few *halachos* later, he says that it is learning Torah out of love of Hashem.

3 In *Avi Ezri*, Rav Shach explains that the reason the person is first judged in Torah is because learning Torah inspires performance of *mitzvos*, therefore success and failure in *mitzvos* is directly a result of how much Torah one did or did not learn.

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 and *Mara D'Asra* of Adas Torah since 2005.

כל העוסק בתורה כדי לקבל שכר או כדי שלא תגיע עליו פורעניות הרי זה עוסק בה שלא לשמה, וכל העוסק בה לא ליראה ולא לקבל שכר אלא מפני אהבת אדון כל הארץ שצוה בה הרי זה עוסק בה לשמה. ואמרו חכמים לעולם יעסוק אדם בתורה אפילו שלא לשמה, שמתוך שלא לשמה בא לשמה. (הלכות תשובה י:ה)

A person who learns Torah to receive a reward or be protected from calamity is learning Torah shelo lishma. But if a person learns Torah solely out of love of Hashem, this is learning lishma. Our Sages tell us that we should learn Torah even shelo lishma since this will eventually lead to learning lishma.

In contrast to the *gemara* which applies this rule to both learning Torah and performing *mitzvos*, the Rambam limits it to learning Torah. This is apparent because in both places the Rambam only mentions learning Torah *shelo lishma*, not performing *mitzvos*. Moreover, the Rambam in *Hilchos Talmud Torah* offers a justification for learning Torah *shelo lishma*, that *talmud Torah* is the first item for which we are held accountable. If this is the rationale for the path of beginning *shelo lishma*, it would only justify learning, and not performing *mitzvos shelo lishma*. But we must understand why the Rambam would not extend this rule to *mitzvos* as the *gemara* does.

The commentators offer two possible resolutions. First, although the *Bavli* applies this statement to both Torah and *mitzvos*, the *Yerushalmi* in *Chagiga* (1:7) limits it to Torah, without mentioning *mitzvos*.⁴ Perhaps the Rambam followed the *Yerushalmi* and not the *Bavli*.⁵ A second resolution is to suggest that the Rambam had a different text of the *gemara* than we have that only mentioned Torah and not *mitzvos*.⁶

Both these answers are problematic. If, in fact, there is a disagreement between the *Bavli* and the *Yerushalmi*, the *halacha* generally follows the *Bavli*. Why would the Rambam rule like the *Yerushalmi*?⁷ The second answer is even more difficult. The

4 In addition, as we will see, it is clear from the context of the *Yerushalmi* that the statement of Rav is specific to Torah and not to *mitzvos*.

5 See *Shulchan Aruch Harav Hilchos Talmud Torah* (4:3) who says that the Rambam is based on the *Yerushalmi*.

6 See *Igros Moshe OC* 1:20 who suggests the Rambam may have had a different *girsas*.

7 The *Shulchan Aruch Harav (Kuntrus Acharon 4:1)* answers that the Rambam agrees that the statement is true for *mitzvos* too. He explains that *Tosafos* says that *shelo lishma* is allowed if the person is at least committed to keep all the *mitzvos* that he learns. But if the person has no intention of fulfilling the *mitzvos* it would be better not to learn at all. He suggests that the Rambam, based on the *Yerushalmi*, understands that even if a person has no intention of keeping the *mitzvos* it would still be worthwhile learning. This discussion is only relevant to learning Torah, and therefore the Rambam emphasized Torah, even though he agrees it applies to *mitzvos* also. This resolution is somewhat difficult since the Rambam in *Hilchos Teshuva* seems to agree with *Tosafos*.

gemara in *Sota* (47a), after quoting the statement of Rav, illustrates the idea that *shelo lishma* leads to *lishma*. From the example, it is clear the statement must be referring to both Torah and *mitzvos*. The *gemara* says:

שבשכר ארבעים ושנים קרבנות שהקריב בלק מלך מואב זכה ויצתה ממנו רות שיצא ממנה שלמה דכתיב ביה אלף עולות יעלה שלמה.

As a result of the forty-two *korbanos* that Balak the King of Moab brought (which were clearly brought *shelo lishma*), Balak had a descendant, Rus, who converted and had a descendent King Shlomo, who offered a thousand *korbanos* in the *Beis Hamikdash*.

The *gemara* says that Balak's offering *korbanos shelo lishma* is what inspired Shlomo Hamelech over four hundred years later to offer *korbanos* in the *Beis Hamikdash lishma*. Clearly the *gemara* does not only apply to Torah, but is also about *mitzvos*, and it would be impossible to say the Rambam had a different text that only mentioned Torah.

I would like to suggest that the Rambam did, in fact, have a different text which said to learn Torah *shelo lishma*, without mentioning *mitzvos*, and to reconcile this with the continuation of the *gemara* which is clearly referring to *mitzvos*.

Rav Chaim Volozhin, in his *Ruach Chaim* (*Avos* 1:13), modifies Rav's statement. Rav Chaim says that a person should only learn Torah *shelo lishma* if their aspiration is to eventually learn and do *mitzvos lishma*. Elaborating on the *mashal* mentioned above about climbing a ladder, he says that reaching the first rung is only valuable if one is headed to the top. There is no point in climbing a ladder if one intends to stop half way. Similarly, doing *mitzvos shelo lishma* is only commendable if the hope is to eventually graduate to performing *mitzvos lishma*, but not if one is content with remaining with a *shelo lishma* performance.

Although this seems logical, Rav Chaim's clarification is contradicted from the proof the *gemara* brings from the story of Balak. It is very unlikely that Balak's intention when he brought the *korbanos* was to eventually serve Hashem *lishma*. Even so, Balak is brought as an example of an action *shelo lishma* which leads to *lishma*.⁸

However, a careful reading of Rav Chaim Volozhin's words will reveal that this is not a question. The *gemara's* statement has two parts. First, Torah and *mitzvos*, even if done for the wrong motive, will always have a positive effect, as *shelo lishma* leads to *lishma*. From the example the *gemara* brings with Balak, we can see that this is true regardless of intent. Even if one never wishes to do something *lishma*, a *mitzva*

⁸ See *Pachad Yitzchak Shavuot* (6:4) who raises this difficulty.

is a positive force and will have a positive effect. But there is a second part to Rav's *chiddush*, that one can and should do a mitzva *shelo lishma*. Without the words of Rav, one would think that it would be forbidden to do a mitzva for ulterior motives. This would be an act of *meila*, appropriating something belonging to Hashem for one's own use. The *mishna* in *Avos* (1:13) says

וראשתמש בתגא חלף.

One who exploits the crown of Torah shall pass away.

Rav Chaim is coming to reconcile how Rav can praise someone learning Torah for his own benefit when the *mishna* in *Avos* is so critical. Rav Chaim's resolution is that if a person is learning Torah *shelo lishma*, but recognizes that he is on a journey and is headed to eventually learning Torah *lishma*, it is praiseworthy. But it is forbidden to learn Torah *shelo lishma* if there is no intention to graduate to *lishma*. What Balak did was certainly wrong. However, although he was incorrect, the power of the mitzva still had a positive effect. The *gemara* references Balak only to show that a mitzva done even *shelo lishma* will be beneficial, despite being forbidden in that instance.

We can now understand the disagreement between the *Bavli* and the *Yerushalmi*. The *Bavli* contends that both *mitzvos* and Torah have the spiritual power to change a person. However, the *Yerushalmi* disagrees. Only Torah has the power of leading to *lishma*, not *mitzvos*. This is why the *Yerushalmi* does not reference the story of Balak as an example, but a different *midrash*.

הלואי אותי עזבו ותורתי שמרו... המאור שבה היה מחזירן למוטב. רב הונא אמר למד תורה אע"פ שלא לשמה שמתוך שלא לשמה בא לשמה. (איכה רבה, פתיחתא ב)
 [At the time of the destruction of the Beis Hamikdash, Hashem said, although Klal Yisrael stopped keeping mitzvos,] I wish they continued learning Torah because the light of Torah would eventually cause them to return to avodas Hashem. Rav Huna said: one should learn Torah *shelo lishma* since it will eventually lead to learning *lishma*.

The *Yerushalmi* says that Torah, which has a spiritual light, will effect a positive change in a person. *Mitzvos* may not have the same impact.

In conclusion, although the Rambam's version of the *gemara* only spoke of Torah and did not mention mitzvos, the *gemara* could still illustrate this with the story of Balak's *korbanos*. The *Bavli* holds that both Torah and *mitzvos* have the spiritual energy to better a person and demonstrates this with what happened to Balak. Even so, it may be that only Torah is permitted to be learned *shelo lishma*, but not *mitzvos*.

As outlined above, we need a special dispensation to use Hashem's Torah and *mitzvos* for our own purposes. According to the Rambam, Torah may be learned *shelo lishma* but not *mitzvos*. One may certainly ask: if both Torah and *mitzvos* *shelo lishma* will have positive consequences, why is Torah *shelo lishma* allowed and *mitzvos* *shelo lishma* not allowed? If we go back to the first Rambam we quoted, we will see that the Rambam himself offers an explanation, that a person is judged on their Torah study before anything else. Since learning Torah is so vital, Hashem allows us to learn even *shelo lishma* because it will eventually lead to *lishma*. But that leniency was not given for *mitzvos*, which don't carry the same weight as Torah.⁹ With Torah there is a *heter* to learn *shelo lishma*, but with *mitzvos*, the *halacha* will always be that, in the words of the mishna in *Avos*, exploiting the crown will cause one to pass away.

In truth, the Rambam does discuss *avoda shelo lishma* even referring to *mitzvos*. The Rambam says (at the end of *Hilchos Teshuva* 10:5)

לפיכך כשמלמדין את הקטנים ואת הנשים וכלל עמי הארץ אין מלמדין אותן אלא לעבוד מיראה וכדי לקבל שכר עד שתרבה דעתן ויתחכמו חכמה יתירה, מגלין להן רז זה מעט מעט ומרגילים אותן לענין זה בנחת עד ששיגהו וידעוהו ויעבדו מאהבה.
When we teach the unlearned, we teach them to do mitzvos for a reward. As they intellectually mature, we start educating them how to serve Hashem out of love until they will have pure motives.

Although the Rambam does permit *mitzvos* to be done *shelo lishma*, this does not seem to be based on the statement of Rav. Rav's statement applies to everyone, even a mature and educated person who recognizes the value of learning *lishma* but finds it difficult to do so. The Rambam here allows *mitzvos* to be done *shelo lishma* only by children and uneducated people who are incapable of doing *mitzvos lishma*.¹⁰

⁹ And, as mentioned above, if you learn Torah it will eventually lead to proper performance of *mitzvos* too.

¹⁰ There does remain one difficulty. According to what we said, the Rambam accepts the *Bavli's* opinion that even *mitzvos* have the power of elevating one to *lishma*, just that it is not a recommended course of action. However, this does not seem to be the Rambam's opinion. The Rambam says that as the children grow smarter, we should teach them to do *mitzvos lishma*. If *mitzvos* themselves have the power to elevate a person *lishma*, it should be unnecessary to teach anything. We should just wait for the *mitzvos* to work their magic, similar to in *Hilchos Talmud Torah*, where the Rambam does not say that we have to teach people to learn *lishma*, but rather that we let them learn *shelo lishma*, and on their own they will start learning *lishma*. (I heard this *diyuk* in the name of Rav Meir Stern). From this it would seem that the Rambam accepts the *Yerushalmi* that *mitzvos* do not have the same power as Torah. Perhaps we can answer that it may take time for the *mitzvos* to have the proper effect. Since it is prohibited to do *mitzvos shelo lishma*, we would not want to wait the length of time needed for the *mitzvos* to have the proper effect.

Tzom Gedalia and the Death of *Tzadikim*

RABBI YAAKOV KRAUSE



כה'אמר ה' צבאות צום הרביעי וצום החמישי וצום השביעי וצום העשירי
יהיה לבית-יהודה לששון ולשמחה ולמעדים טובים והאמת והשלום אהבו.

Thus said the Lord of Hosts: The fast of the fourth month, the fast of the fifth month, the fast of the seventh month, and the fast of the tenth month shall become occasions for joy and gladness, happy festivals for the House of Judah; but you must love honesty and integrity. (Zecharia 8:19).

The *gemara* in *Rosh Hashana* 18b explains that the “fast of the fourth month” is the ninth of Tamuz, on which Jerusalem was breached,¹ the fast of the fifth month is Tisha B’av when the *Beis Hamikdash* was destroyed, the “fast of the seventh month” is the third of Tishrei, on which Gedalia ben Achikam was killed, and the “fast of the tenth month” is Asara B’tves on which Jerusalem was besieged. Based on this, the Rambam in *Hilchos Taanis* and the *Shulchan Aruch Orach Chaim* 549 rule that we must observe these four fasts *midivrei kabbala*, due to the calamities that occurred on those days.

This *pasuk* in *Zecharia* is a response to the people in the Diaspora who asked if they were still required to observe Tisha B’av even though the second *Beis Hamikdash* had been built. The *Bach* explains that the people were really asking about all the fasts that were observed on account of the destruction of Jerusalem including the ninth of Tamuz and the tenth of Teves. On the *navi’s* reference to Tzom Gedalia, though, the *gemara* questions: “Why is this written?”² meaning why does the *navi* include Tzom

1 *Tosafos* s.v. *zeh* write that in the time of the second *Beis Hamikdash* it was breached on the seventeenth, and that is how it is observed today.

2 The *Tur* has this *girsas*, in which the *gemara* explicitly questions “*v’lama nichteve*” on Tzom Gedalia. Even our

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and *menahel* of Yeshiva Rav Isacsohn Toras Emes.

The article has been translated from its original publication in Hebrew.

Gedalia, which is unrelated to the *churban*, together with the other fasts?

In truth, this question is even more puzzling if we look earlier in the *navi's* response (7:5), in which he refers to only two of the fasts, that of the fifth month (Tisha B'av) and that of the seventh (Tzom Gedalia). There, Tzom Gedalia seems to be given equal status to Tisha B'av, even more so than the rest of the fasts!

The *gemara*, in response to its question of why Tzom Gedalia is included in the list of fasts, the rest of which are related to the *churban*, answers that Tzom Gedalia was included to teach that the death of the righteous is equivalent to the destruction of the *Beis Hamikdash*. For this reason, Tzom Gedalia is related to the *churban* just like all the other fast days. As the Rambam in *Hilchos Taanis* (5:2) writes, the death of Gedalia extinguished the ember of Israel.

However, the *gemara's* answer only explains why Tzom Gedalia is in the *navi's* list of fasts above. It doesn't fully explain why it alone is singled out and listed together with Tisha B'av earlier in the *navi's* response as opposed to any of the other fasts. Additionally, we can ask, as the Maharsha does, why Gedalia's death is marked by a fast whereas many *tzadikim's* deaths over the generations are not?³

It is also worth pointing out that immediately after Rosh Hashana, two days of *tefilla*, Torah and *ruchniyus* with *Malchiyos*, *Zichronos* and *Shofros*, while we are beginning our process of preparing for the holy day of Yom Kippur, we immediately fast; not a fast of *teshuva*, relating to the time period of *bein kese le'asor* and *dirshu Hashem b'himatzo*, but rather a seemingly unrelated fast symbolizing this concept of equating the death of the righteous to the destruction of the *Beis Hamikdash*.

I would like to explain this based on what is clear in the *pesukim* and Chazal that Hashem always intended for there to be a Jewish presence in Israel even after the *churban*, even if just a tiny one, as most of the people were sent to *Bavel*. In the third *perek* of *Yirmiyahu*, Hashem warns the *navi* not to go to *Bavel* with the rest of the exile, even though he wanted to go. And when Gedalia is killed, and the Jewish people want to flee to *Mitzrayim* fearing Nebuchanezar's anger, Yirmiyahu tells them that if they stay in Israel nothing would happen to them, but if they flee then they would be destroyed. They didn't listen and ran, taking Yirmiyahu and Baruch ben Neria with them, and when Nebuchanezar captured *Mitzrayim* he killed them all except for Yirmiyahu and Baruch who were taken to *Bavel*. During that time, the land of Israel was desolate for fifty-two years, as we find in the *gemara* in *Yoma* 54a based on the *pesuk* in *Yirmiyahu* 9:9.

version of the *gemara*, though, contains the response to the implicit question.

3 The Maharsha answers that since it occurred on the *Asseres Yemei Teshuva* it is a greater tragedy.

Why did Hashem want a Jewish presence in Israel even during the exile? When the Jewish people returned to build the second *Beis Hamikdash*, it was not on the level of the first one, as Chazal note that it was missing five things that were part of the first *Beis Hamikdash*: the *aron*, the fire, the *shechina*, *ruach hakodesh*, and the *urim vetumim*. Why were these missing? Perhaps because the second *Beis Hamikdash* wasn't really a continuation of the first one, but rather a new building with a new inception. Perhaps if there had been a constant presence in Israel during the exile after the first *Beis Hamikdash*, the power of *nevua* wouldn't have ceased, the *shechina* would never have fully departed, and the holiness of the first *Beis Hamikdash* could have rolled into the second.

However, the death of Gedalia caused the complete desolation of the land of Israel for those fifty-two years, and the ember of Israel was extinguished, not able to be fully reignited when the second *Beis Hamikdash* was built. Without his death, the destruction of the *Beis Hamikdash* would have only been a physical one, but now the destruction was a complete one on all levels, causing a spiritual void even after the building of the second *Beis Hamikdash*.

That is why the question of the Diaspora about if they have to fast after the building of the second *Beis Hamikdash* was really a question about both Tisha B'av and Tzom Gedalia, as they are both part of the same tragedy; one was a completion of the other, more so than any of the other fasts that the *navi* mentions later.

This also explains the timing of Tzom Gedalia. From the consequence of the death of Gedalia and the resulting desolation of Israel we learn the importance of continuity and the damage that can be caused by interruption, which is what caused the loss of the *shechina* after the first *Beis Hamikdash*. This is an integral lesson for the *Asseres Yemei Teshuva*, for in order to retain the spiritual achievements of Rosh Hashana and to continue growing as Yom Kippur approaches, we must remember the importance of continuity, without which all could be lost—like what happened with the death of Gedalia.

This idea is also hinted to in the Maharsha on the *gemara* in *Rosh Hashana*, quoting the *pasuk* in *Hoshea* 6:2:

יחינו מימים ביום השלישי יקמו ונחיה לפניו.

After two days will He revive us, on the third day He will raise us up, that we may live in His presence.

He writes that the two days refer to Rosh Hashana, during which we pray for life, but the third day, Tzom Gedalia, when we suffered a loss, we pray to both be raised up from this loss, and at the same time we continue to pray for life. Based on what we've

said above, we can explain this that while we grow tremendously in spirituality over the two days of Rosh Hashana, there is still a real fear of losing those gains over the course of the following week. But on the third day, Tzom Gedalia, by reflecting on the death of this *tzadik* and the terrible consequences that resulted from it, we can retain those spiritual gains and continue on to Yom Kippur.

This is also the connection between Gedalia's death and the death of all the righteous, as the *tzadikim* of each generation are the ones who perpetuate the tradition and serve to transmit the teachings of Sinai in an unending fashion, and the death of a *tzadik* therefore breaks that transmission. Even when another *tzadik* takes his place, it's not at the same level as what was previously (in the sense of *yeridas hadoros*), just as the second *Beis Hamikdash* was lacking with respect to the first one.

May we see a fulfillment of the words of the *navi* that the fasts become days of joy with the building of the *Beis Hamikdash* and the resurrection of the *tzadikim*, which are considered one and the same.

Chana: A Role Model for Transformative Prayer

RABBI ARYE SUFRIN



From the time we are young children, we are taught the importance of *tefilla*. The *gemara* in *Brachos* 26b teaches that according to Rabbi Yosi ben Rabbi Chanina, the requirement to *daven* three times a day is based on the *tefillos* of the *Avos*, and according to Rabbi Yehoshua ben Levi, it serves as a replacement for *korbanos*. There are many *halachos* attributed to *davening*, including the proper elocution of the words, *kavana*, preparation prior to *tefilla*, and proper attire.

For example, the *gemara* in *Shabbos* 10a, quoting the verse “*Hachon likras Elokecha Yisrael*,” “Israel, prepare to meet your God” (*Amos* 4:12) teaches us that we must be prepared before *davening*. “*Rabba* son of Rav Huna put on stockings and prayed, quoting this verse from *Amos*. Rava also removed his cloak, clasped his hands and prayed, saying, ‘[I pray] like a slave before his master.’”

The Rambam expounds on this concept of preparation for *davening*:

תקון המלבושים כיצד מתקן מלבושיו תחלה ומציין עצמו ומהדר שנאמר השתחוו לה' בהדרת קדש, ולא יעמוד בתפלה באפונדתו ולא בראש מגולה ולא ברגלים מגולות אם דרך אנשי המקום שלא יעמדו בפני הגדולים אלא בבתי הרגלים... דרך כל החכמים ותלמידיהם שלא יתפללו אלא כשהן עטופים.

How should one prepare his clothes? First, one should adjust one's clothes, distinguish and beautify one's self, as it says 'you should prostrate yourselves to Hashem in the beauty of holiness.' One shouldn't stand for tefilla in an undergarment, with a bare head, or with bare feet, if the local custom is to appear before important people with shoes... the ways of the wise and their students is to pray wrapped [in a tallis.]” (Hilchos Tefilla 5:5)

Rabbi Shlomo Ganzfried in his *Kitzur Shulchan Aruch* adds that even when praying alone in one's house a person should dress properly.

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It is clear that *tefilla* is an important part of our daily ritual and also a critical tool to connect on a personal and communal level with Hashem.

On Rosh Hashana, *tefilla* also plays a major part of the experience. This is why communities go out of their way to add enhancements to the *tefilla* experience. A special *chazzan*, who is fluent in the unique *nussach* and *davening* for the day, is often engaged by communities, engendering more *kavana* on this day. This assists the *tzibur* to use the opportunity of our prayer to coronate Hashem as our King.

This idea of the primacy of the role of *tefilla* on Rosh Hashanah can also be seen through the *haftara* we read which is associated with *Shiras Chana*. The *haftara* discusses Chana's struggle with childlessness that leads to passionate *tefilla* to Hashem. God responds with the birth of Shmuel, and Chana then offers her gratitude through prayer. Clearly, there is a fundamental connection between the story of Chana and Rosh Hashana. This is supported by the *gemara* in *Rosh Hashana* 11a:

בראש השנה נפקדה שרה רחל וחנה.

On Rosh Hashana, God remembered [for childbirth] Sarah, Rachel, and Chana.

Additionally, the *gemara* in *Brachos* (31a) notes:

כמה הלכתא גברוותא איכא למשמע מהני קראי דחנה.

How many most important laws [regarding prayer] can be learned from these verses relating to Chana!

On Rosh Hashana, there are nine blessings in the *Musaf* as opposed to the usual seven. The *gemara* in *Brachos* (29a) explains the reasoning behind this, and the reason for remembering Chana's prayer in our Rosh Hashanah liturgy:

הני תשע דראש השנה כנגד מי? אמר רבי יצחק דמן קרטיגנין: כנגד תשעה אזכרות שאמרה חנה בתפלתה, דאמר מר: בראש השנה נפקדה שרה רחל וחנה.

What is the significance of the nine brachos of Rosh Hashana? Rav Yitzchak of Kartignin said, in remembrance of the nine mentions [of God] made by Chana in her prayer (I Shmuel 2:1-10). As Mar said, on Rosh Hashana Sarah, Rachel and Chana were remembered [and conceived].

The *Talmud Yerushalmi* provides another connection between Chana's prayer and Rosh Hashana: "For she (Chana) said in her supplication, 'God will judge the lowly of the earth.'" From this it would appear that Chazal chose to remember Chana's prayer either because it was on Rosh Hashana that she finally conceived, or because

of the judgment of the world which is alluded to in her prayer.

With this understanding, we are aware of many other individuals whose prayers were answered by God on Rosh Hashana. Why does Chana's *tefilla* stand out and set her apart from the others?

The *baalei mussar* and *chassidic masters* explain that when reflecting on prayer, we often focus on praising Hashem, personal *bakashos*, and conclude by expressing gratitude. Chana's *tefilla* is different. It included an introspective experience that served as the precursor to her dialogue with God. Chana teaches us that in order to achieve a transformative and inspiring *tefilla*, it must begin with an introspective and reflective approach.

This idea is evident when looking back at the story of Chana, where we see immediately that she is extremely sad and wants a child desperately. The Navi tells us in *Shmuel Alef* (1:7): "*vativkeh, velo tochal*," "she wept, and did not eat." In the next *pasuk*, her husband Elkana responds:

ויאמר לה אלקנה אישה חנה למה תבכי ולמה לא תאכלי ולמה ירע לבבך הלא אנכי
טוב לך מעשרה בנים.

*Chana, why do you weep and why do you not eat and why is your heart
grieving, am I not better to you than ten sons?*

Elkana urges her to make peace with what Hashem has given her. Chana, however, ignores Elkana's comments and refuses to be content with her fate. She takes action. The *navi* tells us: "*V'Chana hi midaberes al liba*," "Chana speaks **within** her heart." (ibid. vs. 13), which denotes an introspective and meaningful *tefilla*. Only then does she turn to Hashem with her request and finally ends with a personal vow, dedicating her future son to Hashem. This approach is more meaningful because it is not just a personal request to Hashem, but rather it serves as a vehicle of personal reflection from within, an agent of change and a tool for growth.

We are able to deduce from here that there are actually two types of prayer. One is when a person asks Hashem for something and trusts that He will grant a positive outcome. The second type is deeper and reflects a more intimate relationship with Hashem. This second form of prayer requires a much deeper *kavana* and connection to Hashem. It requires that the person praying first go through full introspection and then possess full *bitachon* in Hashem. Even if upon self-reflection, the individual may lack the confidence in the worthiness of the prayer being answered, nevertheless this person prays and beseeches Hashem, relying solely on His mercy and compassion.

Chana is the one who introduces us to this second form of prayer. She did not

see herself as worthy and her humility did not allow her to see herself as deserving. She prayed and beseeched Hashem with complete and unbridled pure intentions. Evident in Chana's *tefilla* was an unmitigated and absolute *bitachon* in Hashem and the words of her *tefilla*, though silent, were clearly articulated and replete with meaning.

How powerful was this type of *tefilla*? The Baal Shem Tov explains that for Chana, who was barren, to ask for a child seems impossible and against nature. Even more, she asked that Hashem give her "seed of men," which Rashi explains to mean that the child be holy and righteous. That not only goes against nature, but possibly against the Torah's rule that "everything is in the hands of Heaven, aside for fear of Heaven." Yet so powerful was her prayer that God bent the rules, so to speak, and gave her the child she asked for, our holy and righteous prophet Shmuel. Clearly, Chana represents the most powerful type of *tefilla*, one that overrides nature and can create a new will in Hashem.

Perhaps now we can understand the connection between Chana and Rosh Hashana. The central theme of the day is *Malchuyos*, Kingship, and that Hashem is the true King! Like Chana, we must beseech Him with pure intentions, humility, and place our absolute trust in Him alone, utilizing an introspective approach. Upon achieving this, we can then turn to Him with any and all requests, whether for ourselves, for our families and loved ones, or for all of *Klal Yisrael*. Even more than that, through prayer we generate a new will in Hashem to be our King for another year, to grant us all, even if it originally was not in our cards, a happy and sweet year filled with health, *nachas*, *parnassa*, and Torah growth. May our year be filled with continued inspiration in all our material and spiritual endeavors.

שפתי ישנים



Rabbi Zalman Ury *zt"l*

RABBI ZALMAN URY ZT”L

For almost fifty years, the Jewish community in Los Angeles was graced by the presence of the great *talmid chacham* and educator, Rav Zalman Ury. Rav Ury was born in Poland in 1925. As a young man, he attended the esteemed yeshiva in Kletsk, where he studied with Rav Aharon Kotler and had the opportunity to develop a close relationship with the *mashgiach ruchani*, Rav Yosef Leib Nandik, a student of the Alter of Kelm. It was this relationship that gave Rav Ury a deep appreciation for the teachings of Rav Yisrael Salanter and the mussar school of thought.

When the war came, Rav Ury moved with the yeshiva to Vilna, and when the Nazis spread further, he was exiled to a labor camp in Siberia, and later to Samarkan in Soviet Uzbekistan. His entire family perished in the Holocaust. Throughout his exile, he devoted himself to the Jewish education of the younger children there, to ensuring the continuity of their yiddishkeit even in those trying times. It was there that he met his wife Chava, and together they emigrated after the war to the United States, where Rav Ury continued to learn with Rav Aharon Kotler in Lakewood, New Jersey, where he ultimately received his *semicha*.

After concluding his studies in Lakewood, Rav Ury moved with his family to St. Louis, where he headed a local day school and obtained his Bachelor's degree from Washington University. In 1957, they moved to Los Angeles, where he became the Educational Director at Hillel Hebrew Academy, as well as taking several teaching roles at local schools. Soon after, he was appointed supervisor of the Orthodox schools at the Bureau of Jewish Education in Los Angeles. Even after his retirement from this role, he stayed on as a consultant to the BJE for many years until his death in 2006.

In the mid-sixties, Rav Ury became the rav of the Young Israel of Beverly Hills, one of the few strictly Orthodox shuls on the west side of Los Angeles at the time. For several years, they had a building on Robertson Blvd. just north of Pico, until they moved in 1969 to Pico Blvd. two blocks east of Robertson, where the shul remains today. Rav Ury was known for his many *shiurim* and engaging *drashos*, and served as rabbi of the shul for over twenty-five years. At the same time, Rav Ury completed his Master's degree in education at Loyola University and his PhD at UCLA.

Rav Ury's gentle demeanor allowed him to build friendly relationships with all the personalities with which he interacted, both rabbinic and layperson alike. His devotion to Jewish education and his uncompromising Torah values remained a valuable resource to the LA Jewish community for the duration of his lifetime. He published a children's book, "The Story of Rabbi Yisroel Salanter" to spread the

teachings of Torah *middos* and of the greater *mussar* movement.

Toward the end of his life, Rav Ury gathered his *chidushei Torah*, *drashos*, and his correspondences with the *gedolim* of his time, and published two volumes called *Kedushas Avraham*, maintaining his legacy of *talmud Torah*: *lilmod*, but more importantly, *l'lamed*, for generations to come.

Rosh Hashana is Above Nature

RABBI ZALMAN URY ZT"l



ואמרו לפני בראש השנה מלכיות זכרונות ושופרות מלכיות כדי שתמליכוני עליכם זכרונות כדי
שיעלה זכרוניכם לפני לטובה ובמה בשופר.

And recite before me on Rosh Hashana Malchuyos, Zichronos, and Shofros.

Malchuyos in order to recognize My Kingship over you, Zichronos in order that your remembrance rise before Me favorably - and with what? With a shofar.

(Talmud Bavli, Rosh Hashana 16a)

It seems that when the *gemara* questions, “with what,” and responds, “with the shofar,” that it is referring to both the recognition of God’s Kingship, *Malchuyos*, as well as the raising of remembrances before him, *Zichronos*. It must be, therefore, that by blowing the *shofar* on Rosh Hashana, we are both being *mamlich* Hashem, establishing His Kingship, and also being *nizkar*, bringing ourselves to His attention.¹

Questions

Are we not *mamlich* Hashem every day, including Rosh Hashana, with our recitation of the *Shema*? What greater power does the *shofar*, which we blow only twice a year, have in this regard over *krias shema*?

How do we explain the prevalent customs pertaining to the meal on the evening of Rosh Hashana? People eat the head of a lamb or a fish and pray that they be a head and not a tail. We eat sweet fruits and pray that our year be good and sweet. What is the significance of eating these things, and what is the implication of the *tefillos* that we accompany them with? Why do we say the *yehi ratzon* prayers at the meal and not in shul?

What is Nature?

There is no such thing as a random occurrence in this world, and there is no such thing as nature in an independent sense. The *mekubalim* point out that *teva*, nature, has the

¹ Rav Saadia Gaon also writes similarly in his explanation of the mitzva of *shofar*.

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Translation has been provided by the editors of *Nitzachon*.

same *gematria* as *elohim*, God. In reality, “nature” is performed without interruption by Hashem. As a *maschal* for this, imagine a large city lit up at night by electric lighting. All the buildings and houses have their lights on, and even the streets are flushed with light all night long. So long as the local power plant is working properly, the residents of the city can benefit from all this light. But everyone knows that any malfunction at the power plant would cause an immediate cessation to their electricity. In the same way, the natural order is controlled by Hashem without stop, and should He decide to return the world to complete disorder, to *tohu vavohu*, He could merely end this influence and everything would return back to nothingness.²

It is normal for us to be able to distinguish between fruits that are sweet and those that are not. Similarly, it is normal for us to give a certain amount of significance to the head of something over the rest of it. These things seem to us to be natural. But on Rosh Hashana, it is incumbent upon us to rise above the natural and to understand that in reality, nothing has its own independent nature. When we eat the animal’s head or the sweet fruit on Rosh Hashana evening, we should recall that really God is the direct cause of these characteristics and of everything that we are able to naturally sense. We should understand that in reality, the sweetness of the honey is not a “natural” thing, but rather provided directly from God. When we come to this recognition, then we pray to Hashem, the immediate cause of all, that He judge us favorably on this *yom hadin*. If we were to say this *yehi ratzon* prayer in shul instead of over these foods at the meal, they would be lacking this depth of understanding obtained from the recognition that Hashem is in complete control of nature; they wouldn’t be said with the same feeling that they are said with at the meal.

The Shofar as the Symbol of Simplicity

The *shofar* is unlike any other musical instrument. The sound of the *shofar* is “natural”, without any artificial component or manmade enhancement. The purpose of the *shofar* is not for musical entertainment; on the contrary, the *shofar* inspires fear and awe. On Rosh Hashana, when we recognize as King the Master of nature, we take the *shofar*, the most natural of instruments, the quintessence of simplicity. We blow the *shofar* and we recall that God is unique in the most unequivocal way. And when this reality hits us to our cores, our eyes open, our souls overpower us, and we realize that we’ve been caught in the thicket of day-to-day life and we’ve been distanced from Hashem. The *shofar* allows us to cast off the yoke of our daily troubles and to accept *ol malchus shamayim*, the reign of God, with all our hearts, with the naturality and the simplicity which the *shofar* represents.

² See the Ramban at the end of *Parshas Bo*.

The Chain of Generations

RABBI ZALMAN URY ZT"l



When the *navi* Yeshaya came to King Chizkiyahu with the news of the future *churban* and *galus*, the king said that the words of God were good, since “there will be peace and truth in my days” (II *Melachim* 20:19).

Chizkiyahu’s words are difficult to understand; A righteous king such as Chizkiyahu doesn’t care that calamity will befall his descendants? He cares only about his own wellbeing? Should he not be concerned by the troubles of his people and his children?

The truth is, in the Jewish people’s chain of generations, each link - that is, each generation - is unique, and unlike that before or after it. Each generation must mold its own image, its own shape, in connecting itself with the chain before it. The previous generation bestows upon the next one their spiritual and material inheritance; they educate it and and urge it to observe and to keep the inheritance of the previous generations. But ultimately, it is the following generation who decides what their path is in life. King Chizkiyahu certainly cared about the future of his people and his descendants, but since he knew that their future was not in his own hands, he sufficed with his ability to to lead his generation on the path of Torah.

Differences between generations often express themselves by changes from good to bad, such as the change from Chizkiyahu to his son Menashe, and also in changes in the approach and viewpoint toward the framework of our holy tradition. Let us take, as an example, Choni Hamaagal. This holy *tanna*, who could bring torrential rains with his prayers alone, upon awaking from a slumber of seventy years, could not find common ground with the new generation of sages. Even his grandchildren could not recognize him and did not believe that he was who he said. Choni went to the *beis midrash* and listened to the discussion of the *chachamim*. They even brought up his name in their Torah discussions and praised the Choni of old who was able to solve all the issues and questions of the *chachamim* in his generation. Choni began to involve himself in the discussion, and was able to solve all their issues and clearly

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explain all the intricate concepts perfectly. To the astonishment of the *chachamim*, Choni revealed his identity to them. The *gemara* says that they did not believe him. “He became depressed, he begged for mercy, and he died. This is the meaning of what Rava said: ‘People say, either a *chavrusa* or death.’” (*Talmud Bavli, Taanis 23a*)

How is it possible that his family didn’t recognize him? How could the *chachamim* in the *beis midrash* discount him after he showed them his greatness in Torah? Did they not realize that he was greater in Torah than them? And even if he wasn’t Choni, shouldn’t they consider him an elder, and give him the proper respect?

Rav Eliyahu Dessler discusses this issue and writes as follows: “Each generation has a unique form of being *mekadesh shem shamayim*. And each individual in the generation needs to design his *avodas Hashem* to correspond to his generation’s unique form of *kiddush Hashem*. The generation of Choni Hamaagal connected to Hashem as children to a father. That’s why they saw Choni’s behavior (during the rain episode) as a child who misbehaves yet whose father does as he wishes. But in the generation of Choni’s grandchildren, however, the approach to *avodas Hashem* had changed; the *tzadikim* of that generation conducted themselves before God with more humility, like servants before a king. Thus, for example, the approach of Abba Chilkiya and Chanan Hanechba, Choni’s grandchildren, were the opposite of Choni’s approach ... ‘A *chavrusa* or death’ does not mean that Choni wished to die because he wasn’t being shown enough respect, *chas v’shalom*. Rather, he was not able to grow spiritually because he no longer had colleagues who shared his approach to *avodas Hashem*, or any students who wished to learn from it. And because of that, his life was no longer worthwhile.”¹ With this, all the questions we asked are resolved.

A Lesson in *Chinuch*

Parents and teachers are obligated to educate the younger generation, to influence them spiritually and to transmit the Torah and *mesora* to the best of their ability to impart and to the best of the children’s ability to absorb. However, they cannot force their approach to *avodas Hashem* onto the next generation. The new generation will somehow connect itself to the chain of tradition and will create its own unique link on that chain in its own fashion, in the way that Hashem plans for it to do so. Indeed, there are many paths to serving God.

1 *Michtav Me’Eliyahu*, Volume IV (ed. Carmel 1988, pp. 208-209.)

A Lesson in History

God's ways are mysterious. The chain of generations which began with Avraham Avinu continues to lengthen as each new generation links itself with its own ways and its own story. Although the generations continue to lessen in spiritual stature, the Jewish people do not get detached; somehow, each new generation adds its link to the chain, however small it may be. Thus, one may not give up hope in their generation. After all, look at Menashe, who, after years of evil, did *teshuva*. Perhaps precisely when the Satan and his army are in power and are going wild in this world, that is when those few who are connected to the Torah, who trust in *Toras Yisrael* notwithstanding all the threats and all the challenges, are most precious to Hashem. Perhaps their link on the chain is larger than we might expect. As Yonasan put it: "There is nothing stopping God from bringing victory through the many or through the few." (I *Shmuel* 14:6)

It is said in the name of the Arizal that even a small amount of *mitzvos* and *talmud Torah* in the later generations, close to the *geula*, are highly regarded in heaven, given that the challenges and the obstacles in those times of *ikvesa d'meshicha* are so much greater.

Tishrei



Brandon Lurie

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The Beginnings of the New Year¹

BRANDON LURIE



The *mishna* in *Rosh Hashana* (2b) specifies four days that mark a new year. Two of the dates are accepted by all opinions; the other two are a subject of rabbinic disagreement:

- a) The first of Nissan is Rosh Hashana for Kings.
- b) The first of Tishrei is Rosh Hashana for the calculation of calendar years, *shemitta* years, *yovel* years, and for matters of agricultural significance.
- c) The first of Elul is Rosh Hashana for the purpose of animal tithes (according to Rabbi Meir); or the fifteenth of Nissan is Rosh Hashana for pilgrims (Rabbi Eliezer and Rabbi Shimon).
- d) The first of Shvat (Beis Shammai) or the fifteenth of Shvat (Beis Hillel) is Rosh Hashana for trees.

It is completely normal for a year to have different beginning dates. A year, after all, simply represents a period of time; that period of time can begin at various moments of the year.

Nonetheless, there are at least two dates which could be considered “natural” New Year’s Days, since the year breaks into two six-month periods - six months of summer and six months of winter. The summer months begin on the first of Nissan and the winter months begin on the first of Tishrei. It seems reasonable, therefore, that the year should also begin from one of these two dates; at the beginning of winter (first of Tishrei), or at the beginning of summer (first of Nissan).

Which of these two dates, then, is the real, “natural” Rosh Hashana? For this, we have no clear answer, for the fusing of summer and winter together creates the circular year, which has no start nor finish. The idea of Rosh Hashana remains a legal fiction: if one wishes to consider the beginning of summer Rosh Hashana, winter follows summer; if one wishes to consider the beginning of winter Rosh Hashana, summer follows winter. The two *roshei hashana* which are agreed upon in the *mishna* are the two “natural” ones - the first of Nissan and the first of Tishrei. The circular year

¹ This article is adapted from *Four Beginnings to the New Year* by Rabbi Mordechai Breuer

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denies precedence of one over the other, and the two dates are unanimously accepted halachically, each for its own purpose.

The deliberation about yearly periods also holds true for smaller daily periods. The day is also circular, with no actual beginning nor end, yet is split naturally into two sections; the daytime hours and the nighttime hours. Therefore, the beginning of sunrise and the beginning of evening represent natural starting points. The *halacha* recognizes both of these starting points: in the *Mikdash*, the day begins at first light (*Chullin* 83a), and outside the *Mikdash*, the day begins with the first appearance of stars.

The correspondence between the year and the day is recognizable from another perspective; the two seasons of the year parallel the two sections of the day. The “dying” natural world of winter only revives with the arrival of summer. Likewise, the nighttime seems created for the very purpose of sleep, and the daytime, for waking activity.

In light of this, Rav Shimshon Raphael Hirsch explained the details of the *halachos* of new years and new days. In his opinion, the rule is as follows: outside of the *Mikdash* the day begins with evening; even if one rose upon daylight, the day ends at night. Inside the *Mikdash*, however, the day begins with morning; even if the sun set at the onset of evening, the end of the day will once again be morning. Likewise for years, the year for *Eretz Yisrael* and its produce begins with fall; even if the spring and summer arrive, the end of the year will be fall again. For the holidays and kings of the people of Israel, however, the year begins with spring; even if the fall and winter arrive, the end of the year remains spring: “This month [Nissan] will be **for you** the first of months, the first **for you** of the months of the year” (*Shemos* 12:1).

It seems possible to apply this idea to the secular framework of new years and new days as well; the secular day begins midway through the night, and new years begin at a midpoint in the winter. We can surmise, therefore, that these days and years cycle from darkness to darkness. The beginning of the days are sunk in slumber, and the beginning of the years frozen in a deathly chill. Even if light comes and summer life is renewed, their end returns to sleep and dark cold.

While the message of the cyclicity of years and days is interesting, our *mishna* still requires further explanation. First, we must state that it is not at all clear that the *halachos* of the new year are necessarily tied to those of the new day. We will therefore address here only the topic of the new year. We will first attempt to define the difference between a year beginning in Tishrei and one beginning in Nissan.

The year for *Eretz Yisrael* and its produce begins with the onset of winter, at the rainy season. Only one who plows, plants and receives rain in winter will reap in

summer: “The lazy man does not plow because of the cold; therefore he will beg for food, empty-handed, in harvest time” (*Mishlei* 20:4). The first of Tishrei is therefore Rosh Hashana for most of the laws pertaining to the land; it is also Rosh Hashana for the purpose of counting years and gentile kings, for the very sustenance of man depends upon the blessing of the land - even “the king tills the field” (*Koheles* 5:8). The account of Creation itself, in *Sefer Bereishis*, involves Hashem’s exhortation to Adam to work the land upon his exit from the Garden of Eden. Therefore, it is reasonable that Creation finishes at the onset of fall, at the beginning of the year with respect to the land and sustenance. We therefore count the years of the world’s Creation from the first of Tishrei, for on this day Creation was finished, and the first year of the land (with human involvement) began.

As opposed to this, the history of the Jewish people begins on the first of Nissan, for in the “month of spring” the people of Israel left Egypt, and with the passage of twelve months their first year of freedom ended. From this point on, all historical Jewish years are numbered from Nissan. Likewise, the kings of Israel count their dynasties according to this benchmark, for they sit upon the throne of Hashem, who is revealed to the world through the history of Israel.

We find that two cycles coexist within the framework of the Jewish calendar: the year of the land and creation of the world (beginning on the first of Tishrei), and the year of the history of the Jewish people (beginning on the first of Nissan).

Interestingly, the two types of years are classified differently. Within the agricultural framework of creation, it is not appropriate to **number** months whatsoever; rather, each month is referred to by its **name**, according to its importance and meaning within the seasons of the year. This, we indeed find in the Torah: Nissan is called *Chodesh Ha-aviv* (Month of spring), Iyar is *Chodesh Ziv* (Month of Shining Light), Tishrei is *Chodesh Eisanim* (Month of Power), and Cheshvan, *Chodesh Ha-Bul* (Month of the Flood).

The Nissan-based year, however, which we explained to be historically-concerned, is both itself numbered as a whole (years from the Egyptian Exodus) and internally numbered with respect to months; Nissan is the first month of the Exodus, Tishrei the seventh. With this in mind, a pattern emerges: the months of the year beginning from Tishrei are **named**, while the months beginning from Nissan are **numbered**.

The lived experience of life is inherently linked to cycles and our categorization of time. But time can be categorized in various ways—ways that reflect our purpose in spending said time. In the Jewish tradition, time can be agriculturally based,

religiously rooted, and historically focused. The concept of Rosh Hashana aids us in establishing various purposes of time. Though time is indeed of the essence, ultimately what we do with that time is what defines our lives.

The Greatest Goat of All Time

ELI SNYDER



Amidst the marathon that is the Yom Kippur davening, there is a lengthy portion of the *Mussaf* prayers that is committed to describing the *avoda* once performed in the *Beis HaMikdash* on this hallowed day. While the service as a whole is quite unique, the portion that is perhaps the most striking and puzzling is the *shnei seirim*, the two goats. Two goats, as similar as can be, are designated by a lottery to two very different fates. One, the “*Seir LaHashem*,” is sacrificed in the *Beis HaMikdash* as a standard *korban chatas*, a sin-offering. The “*Seir LaAzazel*,” on the other hand, is sent off into the desert with an *ish iti*, a designated man, whereupon it is thrown to its death off a rocky precipice, but not before the *Kohen Gadol* leans his hands on its head and casts off the sins of the nation upon it. This does not appear to be an ordinary *korban*, if it is technically a *korban* at all. The sacrifice takes place outside of the *Beis HaMikdash*, it does not need to be performed by a *kohen*, and it atones for a much wider expanse of *aveiros* than a typical *korban chatas*. Even the initial selection process of the lottery is unique. There evidently lies a very deep message in this part of the *avoda*, one that relates to our personal *avoda* on Yom Kippur and to the general themes of the day.

In *Sefer Bereishis*, there exists a careful selection process that follows from *Adam HaRishon* until *Yaakov Avinu*, eventually resulting in *Bnei Yisrael*.¹ As the process progresses, the selection becomes more nuanced, more close to home. Avraham’s “rival” is his nephew, Lot; the two share a kinship but not parents. Yitzchak’s nemesis is his half-brother Yishmael, with whom he shares a father but not a mother.² Once we reach Yaakov and Eisav, not only are they full brothers, they even share a womb. This is the final selection that must take place, and they in fact struggle mightily against each other to reign supreme and bear the torch of Hashem’s chosen nation.

1 This concept is thoroughly and carefully expounded upon in a series of *shiurim* given by one my *rebbeim*, HaRav Amos Luban, in my days at Yeshiva Netiv Aryeh.

2 Yitzchak is also selected over his other half-brothers, the *Bnei Ketura*.

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Once they are grown, Yaakov is described in the Torah as an “*ish tam, yosheiv ohalim*,” “a wholesome/simple man, who dwelled in tents,” while Eisav is “*ish yodea tzayid, ish sadeh*,” “a man who knew how to trap, a man of the fields.”³ Rashi on this *pasuk* explains that in their youth they were quite similar, but once they reached thirteen, Yaakov went to the *Beis Medrash* and Eisav veered towards *avodah zara*. Nevertheless, Eisav’s skill at deception gave him a leg up on Yaakov in Yitzchak’s eyes.

Yaakov, who in the kabbalistic sources is the epitome of *emes*, truth, is in constant battle with Eisav, the representation of *sheker*, falsehood. While these concepts are of course opposites, the difference can be quite subtle. Yaakov also “deceives” his father to obtain his *bracha*. Yaakov voices his concern to Rivka regarding posing as Eisav, “*hein Eisav achi ish sair v’anochi ish chalak*,” “but my brother Eisav is hairy and I am a smooth skinned man,”⁴ whereupon Rivka concretizes his disguise by taking the skin of the two goats she just prepared and placing it on his arms. Yitzchak even remarks, “*Hakol kol Yaakov v’hayadaim yidei Eisav*,” “your voice is the voice of Yaakov but your hands are the hands of Eisav.”⁵ Here we have two brothers, both with hairy arms, *sair*, one Yaakov and one Eisav. The parallel with the Yom Kippur *avoda* should begin to become palpable and the *midrash* expounds even further:

ונשא השעיר עליו זה עשו...את כל עונותם עונות תם, שנאמר ויעקב איש תם.
(בראשית רבה תולדות פרשה סה)

‘And the he-goat (seir) will bear upon itself,’ this is Eisav... ‘all their iniquities (avonosam) to an uninhabited land,’ all the iniquities of ‘Tam’ (Avonos Tam), as it says, ‘Yaakov was an Ish Tam.’

The goat that is sent to the desert and thrown off a cliff is “Eisav” and it bears the *avonos* of Yaakov, i.e. the falsehood of *Bnei Yisrael* is transferred to Eisav. Through this action, we are dramatically and thoroughly removing *sheker* from our midst as a means to achieving atonement on Yom Kippur.⁶

The *mishna* in *Yoma* 6:1 states that the two goats should be as similar as possible in color, height and price, and should even be purchased in the same location. The

3 Bereishis 25:27

4 *ibid.* 27:11

5 *ibid.* 27:22. Something I have always liked about this *pasuk* is that Yitzchak sees one person, with the hands of one man and the voice of another, and opts to perceive him as Eisav, following his hands. The lesson we can infer from Yitzchak is that actions do indeed speak louder than words.

6 People often credit the *Seir Hamishtaleach* as the source of the term, “scapegoat” but I feel it is a shame to limit our understanding of what is taking place to such a limited interpretation.

only way to determine the goats' fates is by means of a *goral*, a lottery. There are times when truth and falsehood are so similar that the difference is virtually imperceptible; only Hashem can determine the reality.⁷ The *mishna* goes on to say that if one of the goats dies before the *goral* a replacement is procured, but if one dies after it is designated, a new pair is selected. The implication is that neither goat is absolutely good or bad, right or wrong, as truth is relative. Goat #1 might be sent *LaAzazel* in relation to Goat #2, but if you replace Goat #2 with a third, perhaps Goat #1 would go *LaHashem*. By posing as Eisav to obtain Yitzchak's *bracha*, Yaakov ultimately had to mislead his father. However, relative to the deception that Eisav perpetuated his entire life, Yaakov was completely correct and justified. The ultimate truth was that he should indeed receive Yitzchak's blessing.

Following the lottery, the *kohen* delineates between the two *seirim* by placing a red thread around the neck of the *Seir LaHashem* and another on the head of the *Seir LaAzazel*. Considering the goats themselves were virtually identical, a demarcation was quite necessary, but in context of our discussion, it might be interesting to conjecture the significance of the placement of the threads. Oftentimes *sheker* begins with a rationalization. A person knows something isn't true, but nevertheless justifies the action with excuses like "I really need that sale," "They probably won't even notice," or "It's ok, they lied first." This all happens up in the head. However, the heart knows not to trust that rationalization and do what is right. The neck is the interface between the head and the rest of the body.⁸ Truth can only be achieved by a delicate interplay between mind and body and cannot be isolated to the head.

The *mishna* in *Yoma* 6:6 quotes two opinions about when the clothing of the man who has taken the *seir* to the wilderness become *tamei*. There is a clear indication in many of our *halachos*, *minhagim* and even in the Hebrew words for clothing⁹ about

⁷ There are several instances in the Torah of Hashem having the sole ability to discern between a pair of specific instances. In the *gemara* in *Bava Metzia* 61b, Rava says that just like Hashem knew during *Makos Bechoros* the true father of each son to determine the first-born, so too He can tell when someone uses *kala ilan* (blue tree sap) and claims it to be *techeiles*. Speaking of *Mitzrayim*, in the *Haggada* it says that Hashem rescued us, "*lo al yidei malach, lo al yidei saraf, lo al yidei shaliach*," not through any intermediary. HaRav Nebenzahl points out that *Klal Yisrael* was so submerged in the Egyptian culture that any angelic messenger would have had trouble telling Jew from Egyptian and therefore He had to rescue us Himself.

⁸ I have heard, somewhat apocryphally, that this is the reason some *chasidim* don't wear neckties. There is a *halacha* that during *davening* you must have a *chatzitza*, separation, between your heart and your *erva*, hence the *minhag* to wear a "gartel" belt on the waist during *davening* as an exaggerated gesture. A tie sits on the neck and would be a *chatzitza* between the *moach* (brain) and the *lev* (heart). It is important to allow an interplay between our intellectual and emotional faculties when we connect to Hashem.

⁹ As mentioned in *Nitzachon* 2:2, "The *Klipa* of a *Kippa*: Addressing our Dress through the Custom of

the duplicitous nature of clothing. On Yom Kippur there is a *minhag* to abandon our traditional Yom Tov garb and don immaculate white clothing, as well as a *kittel*, reminiscent of *tachrichi hameis*, the shrouds of the dead. Along with the other *minhagim* of the day that steer us to ponder the *yom ha'misa*, this illustrates a very fundamental point along our line of discussion. When a person dies, all he gets to bring up to *shamayim* is himself. No possessions, fame or power, but even more so, no excuses or rationalization. Just his pure and most honest self that he has crafted throughout his lifetime. For better or for worse, this is literally all you have. It is a sobering thought and one that we aggressively remind ourselves every Yom Kippur. All you have is you.

The *seir hamishtaleach* ultimately teaches us a great deal about our *kavana* for Yom Kippur and about truth in general. The *midda* of Yaakov, and by extension *Klal Yisrael*, is *emes*. It can be subtle and sometimes it can be relative, but hidden under many layers it is always there. We need to trust more than just our minds but also our hearts and our *kishkes* to detect when something seems askew. In contrast to typical *korbanos*, once we have identified the *sheker*, it must be dramatically cast off. While we no longer have a venue in this day and age to physically perform the Yom Kippur *avoda*, by gleaning from its lessons we can hope to achieve a similar state of redemption.

Costumes," *begeid*, a garment, has the same root as *bogeid*, a traitor. A coat, *me'il*, hints at *meila*, a betrayal. When Hashem makes clothing for Adam and Chava, they are made of *ohr*, leather, which shares the same spelling as *iver*, blindness.

It Is Never Too Late For Teshuva

ROBERT MILLMAN



On Erev Yom Kippur, one of our customs is to ask forgiveness from one's fellow man. The basis for this practice is a *mishna* and *gemara* in Yoma:

עבירות שבין אדם למקום יום הכפורים מכפר. עבירות שבין אדם לחבירו אין יום הכפורים מכפר עד שירצה חברו. את זו דרש רבי אלעזר בן עזריה (ויקרא ט"ז) מכל חטאתיכם לפני ה' תטהרו עבירות שבין אדם למקום יום הכפורים מכפר עבירות שבין אדם לחבירו אין יום הכפורים מכפר עד שירצה את חברו. (משנה יומא ח:ט)
For sins between man and Hashem, Yom Kippur atones, but for sins between man and his fellow man, Yom Kippur does not atone, until he appeases his fellow. Rabbi Elazar ben Azaria derived this from a pasuk: "From all your sins before Hashem you shall be cleansed (Vayikra 16:30) – for sins between man and God, Yom Kippur atones, but for sins between man and his fellow, Yom Kippur does not atone until he appeases his fellow." (Yoma 8:9)

אמר רבי יצחק: כל המקניט את חבירו, אפילו בדברים - צריך לפייסו... רבי יוסי בר חנינא: כל המבקש מטו מחבירו אל יבקש ממנו יותר משלש פעמים, שנאמר אנא שא נא... ועתה שא נא ואם מת - מביא עשרה בני אדם, ומעמידן על קברו, ואומר: חטאתי לה' אלהי ישראל ולפלוני שחבלתי בו. (יומא פז).

Rabbi Yitzchak said, whoever aggravates his fellow, even through words, is required to placate him... Rabbi Yosi bar Chanina said, whoever beseeches forgiveness from his friend should not beseech him more than three times. And, if the person to whom forgiveness is asked passes away, the offender brings ten people and must stand them by his grave and say, "I have sinned against the Lord, the God of Israel, and so and so whom I wounded." (Yoma 87a)

The Yom Kippur prayer *Tefilla Zakka*, written by Rabbi Avraham Danziger, author of the *Chayei Adam*, ends as follows: "I fully and finally forgive everyone, so that you may grant me peace in the eyes of others, that they too forgive me absolutely."

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The reader of the *tefilla* forgives anyone who has wronged him, in the hope of enabling others to be forgiven and receive Divine grace himself.

The following story is of recent vintage, taking place in Israel this past April, 2018.¹ It is nothing more than extraordinary. It should serve as a stark example of how words matter and how they can create pain and hurt. Yet, it is never too late to do *teshuva* and seek forgiveness, whether to those in this world or the next.

At the end of March 2018, during his participation in a funeral on *Har Hazesim*, Rabbi Kletzkin saw a flier lying on the ground advertising the restoration of tombstones. Since Rabbi Kletzkin is also involved in the field of tombstones, he picked up the paper and put it in his jacket pocket. A couple of weeks later, on Wednesday, April 11, the 26th of Nissan, Rabbi Kletzkin returned home from another funeral, this time with his clothing soaked from the rain that day. He emptied the wet contents from his pockets and placed everything on the dresser to dry.

The next morning, he sorted out the items on the dresser, deciding what to throw out and what to keep. He took a closer look at that advertisement and saw a picture of two tombstones with the description “Before” on the dusty old one and “After” on the new restored one. He read the small print on the stone: The woman, Tova the daughter of the Rabbi David Shachor, merited to be buried in the graves of her forefathers while her sisters, Chaya and Sonia, who died *al kiddush Hashem*, did not.

It did not mention her mother or her husband, so the rabbi figured she was a survivor of the Holocaust who died with no family. Then he saw that her death took place on the 27th of Nissan in 1971, which meant that this day was the 47th anniversary of her death. “What *hashgacha pratis*,” he thought. “I had this flier in my pocket for two weeks and I happened to read it on her *yahrzeit*.” He went to shul that day and said *kaddish* for her. He told the rabbi of the shul, who learned *mishnayos* for her and told the whole congregation to do something *l’ilui nishmasa*. Rabbi Kletzkin was so excited about this *hashgacha pratis*, he felt compelled to do more for her. So he put this story on a recording and sent it out, and it eventually reached thousands of people that day. He mentioned that whoever hears it should do something *l’ilui nishmasa*.

The fact that her tombstone was on that advertisement is a whole different story of *hashgacha*. Rabbi Kletzkin found that she was a Holocaust survivor who never had family, and who ended up working as a pharmacist in Israel. Ten days later, on Monday,

¹ The story appeared in *Daily Emunah*, a publication of Rabbi David Ashear of Yeshivas Ateres Shimon in Far Rockaway, New York. It is reprinted here with permission. The story was repeated by Rabbi David Kletzkin, the head of the *Chevra Kadisha* in Jerusalem

April 23, Rabbi Kletzkin received a phone call from a man who identified himself as Aharon. He said, "I heard that story you sent out last week, and as soon as I heard the details, my body became full of goosebumps." And, this is what he said: About fifty years ago, he went to a health clinic in Tel-Aviv to buy a certain medicated cream for his skin. When he got home that day and opened it up, he realized it was the wrong cream. He took it back and accused them of taking his money and giving him a cheaper cream. The pharmacist explained that there was a mix-up with someone else who also needed a cream, but now that he opened the bottle, they couldn't take it back. Aharon then started to scream wildly at that pharmacist. The pharmacist said, "I wasn't the one who served you. I'll get Tova; she's the one in charge." Tova came out and Aharon began berating her, but she didn't respond. He then took the cream, threw it on the table and he cursed Tova, "your children should need this cream!" Tova turned red, but did not reply. Everyone was looking at her pitifully, as she didn't even have children and Aharon walked out in a rage. He knew he was wrong, but his ego got the best of him.

A few years later, Aharon became engaged, and a couple of weeks before his wedding, he was sitting in a rabbi's class. The topic was about *mida kneged mida*, how people get paid back for the evil they do to others. The rabbi in the class explained that the ones who tormented others need to have their souls rectified by going through a similar torment and therefore, the rabbi concluded by saying, whoever harmed another individual is much better off asking for forgiveness rather than suffering the consequences of his actions. Aharon took those words to heart. He said, I'm getting married now, I'm starting fresh. And he went to ask people for forgiveness, but he totally forgot about the episode with the pharmacist.

That summer he got married, looking forward to building a family, but sadly, years went by without having children. One day, he found himself back at that health clinic where he bought the cream from and remembered the incident with Tova. He went in and asked for Tova to try and receive forgiveness, but they told him she left several years before to a retirement home in Gedera. Later on he was driving near Gedera and went to that retirement home to find her. He was told she had already passed away, and they didn't know where she was buried. The only thing they knew was her father's name David Shachor, and that she died on the 27 of Nisan with no children. He tried to find where she was buried, but didn't have success.

About fifteen years ago, Aharon woke up one morning and when he looked in the mirror, he couldn't believe his eyes. His face was distorted, his lips were crooked and his voice changed for the worse, as well. He was hoping it was temporary, but after a few hours when it didn't go away, he went to the doctor. He ended up going from doctor to

doctor, but no one knew what it was and no one could help him. There was one option of a surgery, but it was dismissed because of the risks involved. He was a *chazzan* and a *baal koreh*, but could no longer keep his jobs with his distorted voice. He walked around full of shame every day with his deformity. He went to rabbis for *berachos* and they told him to try to correct a sin that perhaps he did with his mouth. He prayed every day that Hashem should allow him to be forgiven for whatever he did wrong.

Now, he said, fifteen years later, on Sunday, April 15, 2018, he heard in his Shul this story from Rabbi David Kletzkin of the tombstone. This was the woman he had been searching for. Now he knew where she was buried. He took a *minyan* to her grave and said *mishnayos* corresponding to her name. Then he burst out into tears and said, "I have sinned against Hashem and I have sinned against you. Please forgive me!" He prayed for forgiveness with all of his heart and the *minyan* of people there said "*mochul lach*" three times. He then went to the Kosel and prayed *mincha* and *maariv* with tears, and gave *tzedaka l'ilui nishmasa*. He thought perhaps Hashem allowed this to happen now so he could finally get his salvation. He said "Hashem, please heal me. And if I get healed, I'll publicize this miracle any way that I can." On Shabbos morning, a couple of weeks ago, April 21, Aharon woke up and looked in the mirror and was overjoyed to see that his skin returned to normal, just like it was fifteen years before. He went to tell his wife and she saw that the voice of his youth returned, as well. He went to Shul that morning, dancing with joy. And when it came time to read the Torah, as *hashgacha* would have it, the *baal koreh* said he had a hoarse voice and could not do it. They made an announcement if anyone in Shul could read. Aharon then got up and everyone watched in shock as he approached the Torah. He read the first *pasuk* and suddenly all of his emotion came pouring out. He cried for two minutes, while everyone watched in silence. Then he continued in his beautiful voice. And at the end of the *tefilla* he announced he was making a *melave malka* that night to repeat the story of his miracle. Aharon concluded by giving a message to the public: if you ever hurt another person, don't wait until it's too late, go ask forgiveness. Since then, hundreds of people have already reconciled their differences.

Our actions have consequences, but everything can be erased with a few words of remorse.

May we all be blessed with a year of health, *bracha*, happiness and success. (If you read this before Yom Kippur, consistent with our obligations articulated in the *mishna* in *Yoma*, make certain to forgive your fellow man for any wrongs directed toward you.) As this story so remarkably illustrates, it is never too late to do *teshuva* and ask for forgiveness from one you have wronged.

Pas Akum Throughout the Year and During the *Asseres Yemei Teshuva*

STEPHEN KIRSCHENBAUM



One of the more fascinating areas of *halacha* is the observance of Chazal's edict forbidding *pas akum*. Even among *halacha*-observing Jews, there are a wide variety of practices regarding this *halacha*, ranging from the most lenient to the strictest. While there are many other areas where there is a similar range of practices, *pas akum* is still unusual, as this range of observances seems to have existed already during Talmudic times.

Talmudic Background

The *mishna* in *Avoda Zara* 35b records that Chazal forbade the consumption of bread baked by a *nochri*. The *gemara* there explains the reason for this enactment is to limit social interaction with *nochrin*, thereby reducing the risk of intermarriage. The *gemara* states that this decree was one of the celebrated eighteen decrees issued by Hillel and Shammai in the *gemara* in *Shabbos* 17b. In general, these decrees are considered to be quite stringent and difficult, if not impossible, to rescind.¹ The aforementioned *mishna* also records that Chazal forbade consuming the oil of *nochrin* (*shemen akum*). Interestingly, the *gemara* recounts that Rabbi Yehuda Hanassi rescinded this decree of *shemen akum* because it proved to be too difficult for most of the community to abide by; in the pre-modern world, oil was often essential for cooking, as food would otherwise burn, and it was therefore exceedingly difficult to adhere to the *shemen akum* decree. It is important to also note that the repeal of the *shemen akum* edict does not mean that we may purchase oil even if it does not bear a proper *hashgacha*. Rather, it means that it is not necessary for the *mashgiach* (if *hashgacha* is required for the particular oil) to participate in the preparation of the oil as is required, for

¹ *Avoda Zara* 36a, but see the second *perek* of the Rambam's *Hilchos Mamrim*.

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example, for kosher cheese. Instead, periodic inspections suffice.

The Rif (*Avoda Zara* 14b) and *Tosafos* (*Avoda Zara* 35b s.v. *michlal*) cite the *Talmud Yerushalmi* (*Avoda Zara* 2:8) that states that Chazal also rescinded the *pas akum* decree because of the difficulty for most people to abide by it, as bread is “*chayei nefesh*” (one’s life depends on it).² In the time of the *gemara*, bread was considered a centerpiece of a meal. Notably, the *Yerushalmi* also cites an opinion that the edict was rescinded only to permit eating *pas palter*, bread purchased from a professional *nochri* baker in a commercial context, but not bread that one obtains in a social context from a *nochri*. Since the rescission of the *pas akum* edict was motivated by concern for *chayei nefesh*, this opinion cited by the *Yerushalmi* believes that Chazal rescinded the decree only for situations when it was necessary to do so. Interestingly, the *Bavli*³ seems to be deliberately ambiguous about this issue. First, the *gemara* in *Avoda Zara* 35b records Rabbi Yochanan’s assertion that the *pas akum* decree has not been rescinded. The *gemara* notes, though, that Rabbi Yochanan’s need to make such an assertion implies that someone had rescinded this decree. The *gemara* then cites some ambiguous episodes where it seemed that Rebbe had either completely or partially rescinded the decree. One possibility was that he permitted eating bread baked by a professional *nochri* baker (*pas palter*). This passage concludes by recounting that Ibu⁴ ate *pas akum* and that some prominent later *amoraim* refused to cite his Torah ideas because of this behavior (this might account for the fact that Ibu is rarely cited in the *gemara*). Parenthetically, this suggests that a rav’s stature is dependent upon scrupulous *halachic* observance, and not only on his intellectual acumen.⁵ The *gemara* in *Avoda Zara* 37a subsequently cites an incredible anecdote about Rabbi Yehuda Hanassi and his assistant Rabbi Simlai. The *gemara* records that Rabbi Yehuda Hanassi remarked to Rabbi Simlai that the latter was absent from the *beis midrash* when the rabbis rescinded the decree against *shemen akum*.⁶ Rabbi Simlai responded by asking that they should also rescind the decree of *pas akum*. Rabbi Yehuda Hanassi replied that his group would then be referred to as the “permissive *beis din*.”

This seems to be the source of the assertion of the *Teshuvos Chavatzeles Hasharon* that a rav should not issue a lenient ruling if he anticipates that *Klal Yisrael* will not

2 See *Tehillim* 104:15, and see *Sukka* 27a regarding Agrippas’ assistant.

3 Which we regard as authoritative; see the Rambam’s introduction to his *Mishna Torah*.

4 One of the earlier *amoraim*, the father of Rav; see *Sanhedrin* 5a.

5 See *Chagiga* 15b

6 This comment implies that the rescission of the *shemen akum* decree was an extraordinary and rare event; indeed, Chazal rarely rescinded enactments.

be receptive to the ruling, even if the rav is thoroughly convinced of the cogency of the leniency.⁷ This appears to be an application of the *gemara*'s rule that just as there is a mitzva to say something that will be heard, so too there is a mitzva not to say something that will not be heard.⁸

Accordingly, the *Bavli* implies that there was a basis to rescind the *pas akum* decree, but never explicitly states that this was done. These anecdotes reveal that most Jews found it too difficult to adhere to the *pas akum* stricture. Thus, Rebbi Yehuda Hanassi was willing in theory to rescind this decree, if not for his concern that he was not the appropriate person to do so. The *Bavli*'s ambiguity is the foundation for the various approaches among the Rishonim and *acharonim* regarding this issue.

Rishonim – Rambam and Tosafos

The Rambam believes that the *pas akum* proclamation remains in full effect, as he presents this prohibition in the same context as the prohibition to drink wine of *nochrin* (*stam yeinam*) and food cooked by a *nochri* (*bishul akum*).⁹ Still, the Rambam records¹⁰ that there are communities that are lenient and eat *pas palter* (as mentioned in the *Yerushalmi* and implied in the *Bavli*) when Jewish baked bread (*pas Yisrael*) is not available. The *Tur* in *Yoreh De'ah*, 112 explains the logic behind this *pas palter* leniency is that the concern for intermarriage is not relevant when the bread is purchased from a professional *nochri* baker, as it is a commercial rather than a social interaction. *Tosafos*, however, adopt a very different approach than the Rambam. They note that the common practice in their time is to consume *pas akum*. They also note that the *gemara* clearly implies that there is a basis to repeal the *pas akum* edict. *Tosafos* infer from the behavior of the Jews in their area that a *beis din* at some time must have rescinded the *pas akum* prohibition, even though this is never specifically recorded in the *Bavli*. They also cite in this context the *Yerushalmi*'s assertion in *Avoda Zara* 37a that the decree was rescinded. Nonetheless, *Tosafos* note there are those who are strict and do not rely on this lenient approach. *Tosafos* further explain that those who follow the lenient approach and those who follow the strict approach can eat together at the same table.¹¹

⁷ *Teshuvos Chavatzeles Hasharon*, 2:25, regarding the permissibility of stunning an animal before *shechita*.

⁸ *Yevamos* 65b

⁹ *Mishna Torah*, *Hilchos Ma'achalos Assuros*, 17:9.

¹⁰ *Id* at 17:12.

¹¹ For variations on *Tosafos*'s approach to support the lenient practice of Ashkenazic Jewry, see the *Ran*, 14b in the pages of the *Rif*, s.v. Rabbi Yehuda Hanassi, the *Rosh*, *Avoda Zara* 2:27, and the *Mordechai*, *Avoda Zara* 830.

It is noteworthy that Rav Hershel Schachter has stated that Rav Soloveitchik once remarked that not every Jewish practice is recorded in the *gemara*.¹² For example, Rav Soloveitchik assumed that Jews were reciting *selichos* even during the time of the *gemara*, even though this practice is first described by the *geonim*. Rav Soloveitchik argued that the Rambam's observation in *Hilchos Teshuva* 3:4 that every Jewish community recites *selichos* during the *Asseres Yemei Teshuva* implies that this practice must have originated in the time of the *gemara*. Otherwise, it would have been highly unlikely that such a practice would have been universally accepted by Jews, since in the era after the completion of the *Bavli*, there was no authority or community whose customs or rulings were binding upon all Jews. Similarly, *Tosafos* infer from their communities' behavior what must have occurred during the time of the *gemara* regarding the *pas akum* decree, even though this is not stated explicitly in the *gemara*.

This *Tosafos* is an example of their general approach to the practices of the Jews within their community. Namely, *Tosafos* seem to regard the practice of the people of their time to constitute the equivalent of an explicit Talmudic source. Thus, *Tosafos* believe that if the Jews of that time were eating *pas akum*, there must have been a *beis din* in the time of the *Bavli* that rescinded this decree, even though the *gemara* never records such an occurrence. The reason for this attitude stems from the profoundly high spiritual level of the Jews in the era of *Tosafos*.

It should be clarified that the lenient approach does not necessarily imply that bread does not require proper *hashgacha* to ensure it is kosher. Instead, the lenient approach implies that periodic inspections by a *mashgiach* suffice to ensure the *kashrus* of the bread, but a Jew's participation in the baking process is not required as it is, for example, with respect to kosher cheese.

Shulchan Aruch – Mehaber, Rama and the Shach

The *Shulchan Aruch* in *Yoreh De'ah*, 112:1-2 rules in accordance with the approach of the Rambam. Thus, Rav Yosef Karo regards the *pas akum* decree to be in full effect, but he notes there are some places that permit *pas akum* in a situation where *pas Yisrael* is not available. However, the *Shulchan Aruch* 112:5 mentions that there are those (the Rashba) who rule that if the available *pas akum* is of superior quality to the available *pas Yisrael* in a particular locale, then it is considered as if *pas Yisrael* is not available in that locale. Rav Moshe Feinstein asserts the fact that the *Shulchan Aruch* does not cite the dissenting opinion (the *Tur*) to the Rashba's leniency indicates that

¹² In lectures and conversations heard by author; See *Nora'os HaRav* 9:1-3.

the *Shulchan Aruch* must accept the Rashba's leniency as normative.¹³ Rav Binyamin Cohen rules that the Rashba's leniency applies only if the *pas akum* is superior to the *pas Yisrael* in terms of its taste and/or appearance. This leniency does not apply if the superiority of the *pas akum* is only in terms of its price and/or convenience.¹⁴

The Rama in *Yoreh De'ah*, 112:2 states there is an opinion that permits *pas akum* even when *pas Yisrael* is readily available in that locale. Rav Moshe asserts that since the Rama does not cite a dissenting opinion, this is the normative opinion according to the Rama. While the *Shach* notes that the common practice among Ashkenazic Jews is to follow this lenient approach, nonetheless the *Shach* adopts a compromise position and writes that he believes that one should not follow the lenient opinion unless the *pas akum* is superior in quality to the available *pas Yisrael* (in accordance with the opinion of the Rashba).

Late Acharonim – the Chochmas Adam, Aruch Hashulchan and Mishna Berura

This controversy continues to be disputed among the later *acharonim*. The *Chochmas Adam* 65:2 records the common practice to follow the lenient ruling of the Rama. However, he rules that it is proper for a *baal nefesh* (pious individual) to follow the somewhat stricter opinion of the *Shach*. The *Aruch Hashulchan* in *Yoreh De'ah*, 112:17 seems to adopt a stricter approach, that the practice¹⁵ in his locale—he does not state whether this was the practice in his hometown of Navaradok exclusively, or the entire region in which he resided—was to adopt the strict opinion of the Rambam and *Shulchan Aruch*. They would avoid *pas akum* even if it was superior in quality to the available *pas Yisrael*. He writes in 112:17 that “this is the proper approach and that one should not deviate from it.” The *Mishna Berura* in 242:6 writes it is “proper” to eat only *pas Yisrael* on Shabbos and Yom Tov, since such a custom constitutes *kavod* Shabbos and Yom Tov. The explicit source for this ruling is the *Magen Avraham* 242:4 who seeks to present a source for this preference in the *gemara* and *rishonim*. This preference is different than the preference for *pas Yisrael* during the *Asseres Yemei Teshuva*, as the latter preference is explicitly articulated in the *rishonim*.

Moreover, both the *Darkei Teshuva* 112:18 and the *Kaf Hachaim* in *Yoreh De'ah* 112:56 cite that the Arizal urges one to scrupulously avoid *pas akum* based on kabbalistic considerations. This probably explains why chassidim are particularly careful to avoid *pas akum* altogether.

¹³ *Teshuvos Igros Moshe*, *Yoreh De'ah*, 2:33.

¹⁴ *Chelkas Binyamin*, 112:46 and 51.

¹⁵ See *Chelkas Binyamin* 112:96 in the *tziyunim*.

In sum, there are four primary opinions in the *rishonim* and classic *poskim* regarding *pas akum*. Some rule that the rabbinic edict forbidding *pas akum* fully applies with no exceptions. Other *rishonim* believe that this edict was rescinded and does not apply if one obtains the bread from a *palter* (professional baker). Compromise opinions permit consuming *pas palter* if no *pas Yisrael* is available. A lenient modification of this compromise permits *pas palter* even if *pas Yisrael* is available, if the *pas palter* is superior in quality to the *pas Yisrael*.

Application to the Modern Era – Four Possible Leniencies for Factory Produced Bread

Rav Moshe Feinstein in *Igros Moshe, Yoreh De'ah* 2:33 writes (in 1962) that most observant Jews adopt the lenient approach of the Rama. A defense of this practice beyond the classic leniency of *pas palter* appears in a ruling of Rav Moshe that is cited by Rav Nata Greenblatt and Rav Menachem Genack in the *Mesorah Journal* 1:94. Rav Moshe in *Igros Moshe, Yoreh De'ah* 4:48 implies—this seems to not be a full endorsement of this practice but rather a possible avenue of leniency—that even those who are strict regarding *pas palter* might be lenient regarding factory-produced bread, where concern for social interaction and intermarriage is entirely irrelevant as there is no contact between the baker and the purchaser. By contrast, there is room to be strict regarding the *palter* discussed in the classic sources, as there was actual contact between the purchaser and the *palter*, thereby making the concern for intermarriage a real one. One might argue, however, that “*lo plug rabbanan*,” that rabbinic decrees apply even when the reasons for their enactment do not. Rav Moshe suggests that Chazal’s edict never applied when the bread is baked using industrial equipment that is not used in a home setting. Chazal’s enactment does not apply to industrial baking, since such equipment is never used for baking in a context where there can be potential contact between the baker and purchaser (home or bakery).

Safek (Possible) Pas Akum

One may suggest¹⁶ two other approaches to defend those who adopt the lenient approach. The first of these approaches is that although the major accepted *kashrus* organizations in this country adopt the lenient position regarding this issue, some *mashgichim* still make the effort to render the bread that they supervise as *pas Yisrael*.

The *Shulchan Aruch* in *Yoreh De'ah* 112:9 rules in accordance with the Rambam

¹⁶ Based on *Diyunei Halacha*, page 582.

and *Tosafos*¹⁷ that it is extremely easy to render bread as *pas Yisrael*. He rules that as long as a Jew engaged in even the most minimal participation in the baking process, such as adding a stick to the fire,¹⁸ the bread is considered *pas Yisrael*. Indeed, it is related that Rav Yisrael Salanter would make every effort to throw a toothpick into the oven used by the local *nochri* baker from whom Jews purchased bread to ensure that the bread Jews ate would not be *pas akum*. Interestingly, some major *kashrus* agencies have developed methods utilizing modern technology that are analogous to the classic ‘adding of the stick,’ to render the bread *pas Yisrael*. Moreover, Rav Elazar Meyer Teitz (of Elizabeth, NJ) is quoted as having said that the ovens in some bakeries are never intended to be extinguished. So, once a Jew makes even the most minimal contribution to the fire, any bread baked thereafter may be considered *pas Yisrael*.¹⁹ Accordingly, even if the *kashrus* agency does not certify the bread as *pas Yisrael*—because they cannot guarantee that it is *pas Yisrael*, as they only periodically inspect the factory—it is still possible the bread is *pas Yisrael*. It is thus conceivable to be lenient, following the rule of *safek derabbanan lekula* (one may be lenient in case of doubt of a rabbinic prohibition), as noted by the *Shach*.²⁰ It should be noted that this leniency might be relevant only if there is a considerably strong possibility that the bread is *pas Yisrael*.²¹ The *kashrus* agency that supervises the bread would be able to make such a determination.

Furthermore, a prominent rav once told the author that in the context of *pas akum*, even a small chance might qualify as a *safek*. Perhaps it is appropriate to hope that the major *kashrus* agencies will evolve to the point where they will request that their *mashgichim* contribute to the fire in some meaningful way. They will thus render the products they certify as *pas Yisrael* or even *safek pas Yisrael*, which the *Shach* specifically permits even according to the strict opinions regarding *pas Yisrael*. Additionally, perhaps technology might be developed that will allow the *mashgiach* to remotely turn on a heating element in the oven of a kosher-certified factory, even though it is only visited for inspection on a monthly basis.

Indirect Baking (*Ko'ach Sheini*)

A third possible leniency may be relevant regarding factory-produced bread. In a

17 *Avoda Zara* 38b, s.v. *v'ata*.

18 See *Chelkas Binyamin* 112, pp.34-36 for a full discussion of whether this act is only *b'dieved* or even *l'chatchila*.

19 See *Shulchan Aruch Yoreh De'ah* 112:10, *Chelkas Binyamin* 112:97, and his *tziyunim* number 279.

20 *Yoreh De'ah* 112:20, and see *Darkei Teshuva* 112:68.

21 See *Tosafos Kesubos* 9a, s.v. *ve'iba'is eima*, and *Shach, Yoreh De'ah*, 110 *Kelalei Sefeik Sefeika* 33.

factory, the bread is produced entirely by industrial machinery and the *nochri* workers have minimal involvement in the actual baking of the bread. Based on the *gemara* in *Chullin* 16a, perhaps only the very first breads that are baked in such circumstances are considered *pas akum*. The rest of the bread is produced by an industrial machine, and consequently not *pas akum*, because of the remote connection between the baking of the rest of the bread and the *nochri* who set the process in motion at the outset. As such, one might be able to assume that the factory-produced bread one purchases is from the *rov* (majority) of breads that are not considered *pas akum*.²² However, this lenient approach may be questionable, as even the classic process of baking is accomplished by machine (the oven), with the baker merely setting the baking process in motion. Thus, the action of baking seems to be attributed to the one who commenced the ongoing process, even though his connection to the actual baking is only *ko'ach sheini*. A response to this contention may be that in modern industrial machinery, the connection between the baking of almost all of the bread and the one who sets the baking process in motion is even more remote than it is in the classic baking process. Therefore, the *halacha* does not consider the bread to have been baked by the one who started the industrial baking process.

A precedent for such an approach might be based on those *poskim* who disqualify machine-baked *matza* because of the remote connection between the one who sets the process in motion and the *matza*-baking process.²³ Moreover, many of the *poskim* who accept machine-baked *matza*²⁴ are lenient because they believe that in the context of *matza* baking, the *halacha* only requires *lishma* (that the *matza* be baked for the purpose of the mitzva of *matza*). It does not, however, require *ko'ach adam* (that the *matza* be created by force of an observant Jew). Thus, even though these authorities accept machine-baked *matza* for use at the Seder, they do not consider the *matza* to be baked by the observant Jew who set the baking process in motion. Similarly, it is possible that bread that is baked in factories using industrial equipment is not deemed to be baked by the *nochri* that commenced process and consequently not considered *pas akum*.

Bread Worthy for Dignitaries (*Oleh Al Shulchan Melachim*)

A fourth lenient approach regarding factory-baked bread is the concept of “*Oleh al shulchan melachim*.” This rabbinic edict forbids eating food cooked by a *nochri* (*bishul*

22 Based on the principle of *kol deparish me'ruba parish*, see *Shulchan Aruch*, *Yoreh De'ah* 110:3.

23 See the *poskim* cited in *Teshuvos Yechave Da'as* 1:14.

24 *Teshuvos Achiezer* 3:69 and *Chazon Ish*, *Orach Chaim* 6:10.

akum) that is “fit for a king’s table.”²⁵ The *acharonim* debate whether this term is defined as something worthy for a king to eat even on an ordinary occasion, such as his breakfast, or whether it refers to food that is worthy to be served at a state dinner. Rav Yosef Dov Soloveitchik rules that the *bishul akum* prohibition applies only to food that is worthy to be served at a state dinner. Rav Hershel Schachter has ruled that the *bishul akum* prohibition applies even if the food is worthy to be served at a Shabbos table.²⁶ It is possible that the *pas akum* decree does not apply to factory-produced bread since it is not *oleh al shulchan melachim*, according to the lenient interpretation of this rule. However, this suggestion hinges upon the assumption that the leniencies that apply to the *bishul akum* edict apply to the *pas akum* edict as well. Indeed, we are much stricter about *bishul akum* than about *pas akum*. For example, the *palter* leniency does not apply to *bishul akum*.²⁷ As such, a leniency that applies to *bishul akum* should apply to *pas akum* as well. Indeed, the *Chelkas Binyamin* applies a leniency that appears only in the context of *bishul akum* to *pas akum*.²⁸ However, the argument can be made that the *rishonim* who believe that the *pas akum* edict predated the *bishul akum* edict would probably reject the idea of applying *bishul akum* leniencies to *pas akum*. They believe that the *pas akum* edict is fundamentally not characterized or controlled by the *bishul akum* edict, and therefore a leniency that the *poskim* articulate in the context of *bishul akum* does not necessarily apply to *pas akum*. Furthermore, many *poskim* explicitly or implicitly state that the *eino oleh al shulchan melachim* leniency does not apply to *pas akum*. However, *Teshuvos Avnei Neizer* in *Yoreh De’ah* 1:92, is inclined to rule that the *eino oleh al shulchan melachim* leniency does apply to *pas akum* as well. Thus, it is possible to use this argument as a lenient consideration regarding a food that is essentially permitted.

Accordingly, there are four possible arguments that factory-produced bread is not considered *pas akum*, even if the *kashrus* agency does not certify the product as *pas Yisrael*. Despite these four avenues of leniency that might apply in the modern era, there may be more reason to be strict about this issue in our times when intermarriage is widespread (and the need to create social barriers between Jews and non-Jews is great) and *pas Yisrael* is relatively easy to obtain. One could argue that Chazal and the *rishonim* were lenient about *pas akum* because of the great difficulty involved in

25 *Avoda Zara* 38a and *Shulchan Aruch*, *Yoreh De’ah* 113:1.

26 In conversations with author.

27 See, for example, *Shulchan Aruch Yoreh De’ah* 112:6.

28 *Chelkas Binyamin*, page 9, *Biurim s.v. Shemeikilim* and page 26, *Biurim s.v. Kichlich*.

observing such a *halacha* in their time. Today, however, while it might not be easy to fully observe this *halacha* in many Jewish communities, it is unquestionably considerably easier than it was in generations past. One could question whether the tradition to be lenient should be preserved when the initial motivation for this leniency is no longer relevant, generally speaking.

It is worthwhile to note that similar questions arise in the context of many other areas where Ashkenazic Jews have traditionally adopted a lenient approach, but the reasons for the leniencies are much less germane. Examples of this include relying on communal *eiruv*, consuming *chadash* in *Chutz La'aretz* and relying on *mechiras chametz*.

Asseres Yemei Teshuva

The *Tur* in *Orach Chaim* 603 cites the *Yerushalmi* in *Shabbos* 3:3 that states that if one is unable to eat food that is *tahor* in accordance with the rules of ritual purity throughout the year, then one should strive to eat such food during the *Asseres Yemei Teshuva*. The *Tur* then cites the Ra'avya who notes that the Ashkenazic practice is to follow in the spirit of this passage, and therefore even those who adopt the lenient approach to *pas akum* throughout the year should adopt the strict view during the *Asseres Yemei Teshuva*.

The *Shulchan Aruch* in *Orach Chaim* 603 rules in accordance with this opinion of the Ra'avya, and as a result, one should obtain *pas Yisrael* during the *Asseres Yemei Teshuva*. Moreover, the *Chayei Adam* 143 and the *Kitzur Shulchan Aruch* 130:2 both write that one should adopt other *chumros* (stringencies) during the *Asseres Yemei Teshuva* that one does not ordinarily observe throughout the year. For example, some modern-day *poskim* have recommended that even one who practices the lenient approach to the *chalav Yisrael* issue throughout the year should consume only *chalav Yisrael* products during the *Asseres Yemei Teshuva*.

While many observant Jews follow this *halacha* and do not eat *pas palter* during the *Asseres Yemei Teshuva*, nonetheless there are some otherwise carefully-observant Jews that seem to neglect this *halacha*. Perhaps they are relying on the four lenient considerations outlined above that suggest that any bread we purchase may not, technically speaking, be defined as *pas akum*. Additionally, later *acharonim*²⁹ clearly indicate that this is merely preferred behavior and not, strictly speaking, a required practice. Additionally, it may be sufficient to follow the compromise view of the

29 See *Sha'ar Hatziyun* 603:4, *Aruch Hashulchan* ad. loc., *Chayei Adam* ad. loc. and the *Kitzur Shulchan Aruch* ad. loc.

Rashba and the *Shach* during the *Asseres Yemei Teshuva*, especially in regards to factory-produced bread.

An interesting explanation³⁰ offered for the practice to avoid *pas palter* during the *Asseres Yemei Teshuva* can be that it is clear from the sources cited above that the *pas akum* decree was not completely rescinded. It was only rescinded in situations when it was quite difficult for most Jews to implement. Just as the *pas akum* decree was not rescinded regarding the home-baked bread of a *nochri*, so too it was not rescinded for the *Asseres Yemei Teshuva*, since it is not an excessive burden for most people to adhere to the *pas akum* decree exclusively during these days. Similarly, there is an interesting ruling of Rav Saadia Gaon³¹ that men should recite a *bracha* upon immersing in a *mikva* on *erev* Yom Kippur (this opinion is not accepted as normative). Rav Saadia Gaon's ruling is difficult to understand as we do not, generally speaking, recite a *bracha* on a *minhag* (custom) that emerged after the Talmudic era. It could be that Rav Saadia Gaon believes that the edict of Ezra (in biblical times) that a *ba'al keri* (a man who has experienced a seminal emission) must immerse in a *mikva* remains in effect for *erev* Yom Kippur despite the fact that it was rescinded for the rest of the year. Chazal³² rescinded Ezra's edict because it was too difficult for most Jews to follow.³³ However, because it is not an excessive burden for Jews to observe only on *erev* Yom Kippur, Rav Saadia Gaon believes that a *bracha* should be recited on the *erev* Yom Kippur immersion, since the original enactment of Ezra remains in effect on that day.

Conclusion

In sum, the practice in our communities is to follow the longstanding practice of Ashkenazic Jewry in adopting the lenient approach, and allowing *pas palter*. However, it is proper to follow the strict opinion and only eat *pas Yisrael* during the *Asseres Yemei Teshuva* as well as Shabbos and Yom Tov, since in most Jewish communities it is currently not very difficult to do so. Moreover, it is worth considering the possibility of “upgrading” one's practice regarding *pas akum* at least to the compromise approach of the *Shach* – to only eat *pas palter* if it is of superior quality to the available *pas Yisrael* – at least in regards to bakery-purchased bread, provided that such a *chumra* does not impinge on other considerations.³⁴ Nevertheless, it would seem that Sefardic Jews

30 The author cannot recall the source of the above-cited explanation.

31 Cited by the Rosh, *Yoma* 8:24.

32 *Gemara Berachos* 22a.

33 Rambam, *Mishna Torah*, *Hilchos Tefilla* 4:5; but see Meiri, *Brachos* 22a.

34 See the Rama, *Yoreh De'ah* 112:15, who presents the ruling—which the Rama notes is unique to the issue of

should make every effort to follow at least the compromise view of the Rashba and *Shach*. However, there appears to be more room to be lenient regarding factory-baked bread as opposed to bakery-baked bread even for Sefardic Jews, although the lenient approaches to factory-baked bread are each somewhat debatable.

Pas Akum—that one who follows the strict opinion regarding *pas akum* is permitted to follow the lenient ruling if his host serves *pas palter*.

A *Teshuva* Frame of Mind

NINA ADLER



George Bernard Shaw, an Irish writer and political activist in the first part of the 19th century said: “Progress is impossible without change, and those who cannot change their minds cannot change anything.”¹ I would like to explore this concept from a psychological and Torah view and examine how we can apply this when approaching the *teshuva* process throughout Rosh Hashana and Yom Kippur.

In 2006 Carol Dweck made a groundbreaking contribution to the field of social psychology and the study of motivation in her book *Mindset*. Dweck examines the relationship between people’s beliefs and how those beliefs affect goal-setting and success. Dweck explains that there are two distinct mindsets in which people view abilities or intelligence and learning or progress: “Individuals with a fixed mindset believe that their intelligence is simply an inborn trait; they have a certain amount, and that’s that. In contrast, individuals with a growth mindset believe that they can develop their intelligence over time” (Dweck, 2010)² This landmark study has greatly impacted many fields, especially the field of education. Teachers and parents are encouraged to praise effort, practice, and strategies, instead of success, in order to enable their students and children to focus on their potential and not on inborn traits. When ability is the focus, students tend to value how intelligent they appear and will bypass learning opportunities that require hard work or that might negatively reflect their performance. A student with a growth mindset views a challenge as an opportunity, and is more focused on the process and experience instead of the result. Although Dweck’s theory was monumental, I would argue that these principles were already present in the Torah as part of the *teshuva* process.

1 George Bernard Shaw Quotes. (n.d.). BrainyQuote.com. Retrieved July 25, 2018, from BrainyQuote.com Web site: https://www.brainyquote.com/quotes/george_bernard_shaw_386923

2 Dweck, C. S. (2010). Even geniuses work hard. *Educational Leadership*, 68 (1), 16.

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As we approach Yom Kippur our primary focus is meant to be on *teshuva*. *Teshuva* is a multistep process, each one necessary in order to complete the entire process. Rav Samson Raphael Hirsh in *Chorev*, a sefer of philosophy of Jewish laws and observances, lists the steps to *teshuva*; *viddui* (confession), *hishavon* (reparations), *charata* (contrition), and finally, *teshuva* (repentance).

Vidui is the recognition that you have made a mistake and that you need to make amends. This is not a simple task. This entails painfully honest self-examination, and requires measuring yourself against the ideals of what the Torah demands of us, not what other people are doing or what you think makes sense for you. *Teshuva* is completely impossible without recognition of wrongdoing and the ability to see ourselves honestly and thoroughly. I would argue that without a “growth mindset” this is completely impossible. How can you truly examine yourself if you do not believe that you have the ability to change and improve?

Hishavon is making amends. This means sincerely asking for forgiveness to those you have wronged, and even requires multiple times of returning to ask for forgiveness if it is not granted immediately. This is a humbling and potentially humiliating experience. One must declare their wrongdoings and beg for forgiveness. This step is completely voided if one lacks a sincere desire to improve.

Charata is the experience of sincere remorse. This process is completely in one’s own mind. Rav Hirsch explains, “do not let grief and the thought of your sin take such a hold of you as to make you incapable of building better for the future. Rather, let the depth of your contrition for your wrongdoing be matched by the strength of your resolution to do better.”³

Teshuva is finally accomplished when one resolves to change their behavior for the future. Rav Hirsh eloquently states, “confession is vain, reparation for an offense committed is of little significance, the most heartfelt contrition is powerless, if you do not win from them the strength henceforth to avoid that sin and to keep your future life purer than your past has been.”⁴

Perhaps the most important takeaway is that when distilled down to its essence, *teshuva* is futile without adjusting and scrutinizing our mindsets. We must see that we did something wrong, admit our shortcomings, feel remorseful and then modify our behavior without viewing *teshuva* as a perennial demand.

The effect of the mind on proper *teshuva* can be seen throughout *Tanach*. Perhaps

³ *Chorev* Section V, Chapter 79, 516

⁴ *Chorev* Section V, Chapter 79, 517

the most striking difference in state of mind is between Bilaam, the greatest prophet of the nations, and Dovid Hamelech. Both men made mistakes, but their reaction to those errors are diametrically opposed.

עין רעה ורוח גבוה ונפש רחבה מתלמידיו של בלעם הרשע.

Those who have an evil eye, an arrogant spirit, and a greedy soul are disciples of the wicked Bilaam. (Avos 5:19)

When examining the story of Bilaam, we can see how these traits and his outlook led him to immorality and ultimately the title *Bilaam Harasha*, Bilaam the wicked. Chazal explain that Hashem decided to grant the gift of prophecy to someone among the nations, thereby preventing a claim that if they had a prophet they too would have served Hashem. Bilaam was given an extraordinary ability of prophecy and yet he had no vision; he was paralyzed by his fixed mindset.

When Bilaam was on his way to curse *Bnei Yisrael* at the behest of Balak, his donkey kept stopping, for an angel of Hashem was in his way. Bilaam continuously hit the donkey until Hashem gave the donkey the ability to speak and revealed the angel to Bilaam. Bilaam's view was so obstructed that at one point he could not even see the angel of Hashem standing right in front of him; his donkey was more visionary than him.

From a cursory glance it appears that Bilaam regretted his actions.

ויאמר בלעם אל מלאך ה' חטאתי כי לא ידעתי כי אתה נצב לקראתי בדרך ועתה אם רע בעיניך אשובה לי.

I have sinned because I did not know that you were standing before me; now therefore, if it is wicked in your eyes, I shall return. (Bamidbar 22:34)

Rashi explains that although he seems to have proclaimed his wrongdoing, his reply was actually laced with sarcasm and irreverence. Bilaam replied that there was a contradiction; the angel was proclaiming that Bilaam should stop but Hashem had already permitted him to go. Bilaam justifies his mistake. Bilaam mocked the angel as well as Hashem, and Bilaam's one-track mind was to blame. Bilaam is blinded by his hatred of the Jewish people and finds fault with the angels proclamation, even when the right choice was staring at him in the face. Hashem then allows him to continue on his journey but only allows blessings to pour out onto *Bnei Yisrael*.

One would expect that after all that Bilaam encountered, he could see that he was wrong and that Hashem was protecting the Jewish people. Bilaam, however, lacked perspective; his negativity was all-encompassing, and he devised another way

to bring curses onto *Bnei Yisrael*. Bilaam suggested sending out women from Moav to entice the men of *Bnei Yisrael* into committing immorality, thereby bringing down the wrath of Hashem upon them.⁵ This was his Evil Eye, his *yetzer hara*, preventing him from stopping what he was doing and seeing the full picture. Bilaam was unable to be impressed, his own agenda blinded him, and he goes down in history as a failure, a *rasha*, and an example of what not to do.

Unlike Bilaam, Dovid Hamelech is an example of someone with a growth mindset. Dovid Hamelech composed *Tehillim* for us to learn from and daven from in times of need. We learn in *Hoshea* 14:3 “Take for yourself words and return to Hashem.” The commentators⁶ explain that the words referred to mean confession through *tefilla*, and the most poignant expression of *teshuva* and *tefilla* is *Sefer Tehillim*, which is also referred to as *Sefer Teshuva*.

Dovid composed *Tehilim*, a book of prayers written like a diary of events and struggles throughout his life. *Tehillim* doesn’t flow, but rather demonstrates the urgency and tensions of Dovid’s turbulent and difficult life. Dovid channeled the power of prayer with the mentality that life was a test and that he could overcome his own natural shortcomings through hard work and with the help of Hashem.

Perhaps the most striking story about Dovid Hamelech is his relationship with Batsheva (*Shmuel* II:11). Dovid Hamelech saw Batsheva, had a relationship with her and then sent her husband out to the frontlines of the battlefield when he returned from war.⁷ Noson Hanavi came to Dovid with a parable of a man with many sheep who steals sheep from a poor man and Dovid cries out that he should be put to death. Dramatically, Noson declares “*ata ha’ish*,” “you are that man.” Without hesitation, clarification, or justification, Dovid cries out “*chatasi*,” “I have sinned.” He is absolved of punishment and the narrative continues.

There are some opinions that the whole purpose of the incident was to teach future generations about the power of *teshuva*.⁸ We are able to see the intense agony and remorse that Dovid felt in *Tehillim* chapter 51, where he directly discusses the incident and begs for forgiveness. It is important to note that Dovid composes this

⁵ *Sanhedrin* 106a

⁶ Radak, *Ibn Ezra*, *Metzudas Dovid*

⁷ This is a highly simplified and condensed version of the story; it is complicated and there are many opinions as to the nature of the *chet* and if Dovid sinned at all. This article is not an exploration of that episode, but rather an examination of Dovid’s response. I am following the opinion that although there was not a transgression of the letter of the law, Dovid did lapse morally.

⁸ *Avoda Zara* 4b-5a

prayer after he had already been forgiven and absolved of personal punishment. This *teshuva* is an internal *teshuva*. Dovid seeks character refinement and strives to improve for the future, begging Hashem to help him on his journey. Dovid Hamlech pleads with Hashem:

[הרב] כבסני מעוני ומחטאתי טהרני. כי פשעי אני אדע וחטאתי נגדי תמיד.

*Wash me (launder me) thoroughly of my iniquity and purify me from this sin,
For I know my transgression and my sin is always before me. (Tehillim 51:4)*

This is the most striking *pasuk* to me in terms of mindset. Dovid understands that *teshuva* is not a routine to repeat year after year because of “fixed” tendencies. Rather, Dovid lives with his past failures in order to bring about a greater commitment for the future. It is healthy to live with a sense of where we came from. *Teshuva* is a painful and sometimes embarrassing process that requires a complete cleansing, a type of rebirth, a *lev tahor*. Dovid pleads with Hashem to help him achieve what he is longing for, a pure heart and a renewed spirit.

When comparing the words and actions of Bilaam and Dovid Hamelech after they say *chatasi*, we see a very big difference. Bilaam says *chatasi* without sincerity and proceeds to pursue his own agenda. His declaration was empty, effortless, devoid of any desire for internal *teshuva*; his mindset was fixed. Dovid’s declaration of *chatasi*, however was authentic, heartfelt and lead to meaningful changes for himself and future generations.

The *gemara* in *Yoma* 87a teaches us the danger of someone who repeats the same sins multiple times. Someone who continuously repeats the same sin after repenting creates an unbreakable habit or cycle. The sin becomes as if it is permitted to him. Bilaam is an example of someone who continuously gets stuck in a cycle of destructive behavior while Dovid teaches us that real *teshuva* is likened to a rebirth.

As we approach Yom Kippur, let us remember the power of our beliefs. Mindset is not restricted to discourse on education and parenting. Growth is not limited to childhood; it is a lifelong pursuit. While we attempt to teach our children to work toward their potential by praising their effort, practice, and strategies, perhaps the most important lesson we can teach is by modeling that behavior. A growth mindset enables us to approach life with the belief that we can learn from our mistakes, improve, achieve, and ultimately evolve. This perspective allows for overcoming challenges and demonstrates those accomplishments for the next generation. Yom Kippur and the *teshuva* process is a perfect exercise in changing habits and mindsets. May Hashem help us along our journey to *teshuva* and may our *tefillos* be accepted.

The Answer is Blowing in the Wind: Are Canvas *Sukkas Pasul*, *B'dieved*, or *Kosher L'chatchilla*?

ELAZAR SHEMTOV



Many are scrupulous when it comes to finding a *mehadrin esrog* and *lulav*, often searching with a magnifying glass, careful to ensure they get the best “Triple Aleph” or “*Mehadrin min HaMehadrin*” set they can afford with a reliable *hechsher* and a solid *yichus*. But when it comes to a *sukka*, it can be tempting to go with a pop-up or snap-together *sukka* which is quickly assembled, easily stored, and significantly less expensive than more durable options. Such *sukkas* typically use canvas or tarp tied to metal poles to form the walls. This article considers whether such *sukkas* are kosher according to the *gedolei haposkim*, and if it is possible to modify it to make it more halachically robust if one’s custom is to use such a canvas *sukka*.

In the *gemara* in *Sukka* (24b), Rav Acha bar Yaakov declares “any *mechitza* that cannot withstand a common wind is not a *mechitza*.” Rashi explains that Rav Acha is referring to where the wind causes the *mechitza* to sway back and forth. The *gemara* asks that the *mishna* states that a *sukka* that uses trees as its walls is kosher and trees sway in the wind. The *gemara* answers that the trees are strong (and therefore do not sway with the wind). The *gemara* then asks what about the branches of the trees (surely they sway) and answers that they are secured and also do not sway.

On the prior *daf* (*Sukka* 23a), the *gemara* brought a *beraisa* in which Rabban Gamliel and Rabbi Akiva argue whether it is permissible to build a *sukka* on a ship. Rabbi Akiva held that is permissible and in fact made a *sukka* on a ship. The next day, the wind blew Rabbi Akiva’s *sukka* down. Abaye comments that both Rabban Gamliel and Rabbi Akiva agree that the *sukka* is *pasul* if a normal land-wind could blow it over and their disagreement is limited to a sea-wind which is the equivalent of an

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abnormal land-wind. From this *gemara*, one might argue that the wind must be able to make the walls actually fall down to render the walls *pasul*.

However, the *rishonim* and *poskim* all bring Rav Acha's standard down as the *halacha*, including the Rambam, *Tur*, and *Shulchan Aruch*, both in *Hilchos Sukka* and *Hilchos Shabbos*.¹ The *Mishna Berura* (630:48) also explicitly confirms that the wall is *pasul* even if the wind merely makes it sway back and forth and not actually fall down.² The *Shaar HaTziun* (45) cites this explanation to Rashi, Ran, Ritva, and the *Or Zarua*.

Rav Shlomo Zalman Auerbach in *Halichos Shlomo* (*Sukka* 7:1) accordingly *paskens* that canvas walls that move even a little by a normal wind are *pasul*, and writes that is the implication of all the *rishonim* as well as the *Mishna Berura*. Rav Ovadia Yosef³ likewise rules that such walls are not fitting for a *sukka*, no matter how securely fastened they are since they may become loose and one may find himself eating and blessing in a *pasul sukka*.⁴ He states emphatically that even if only one of the three required walls is made from secured canvas, there is no room to be lenient.

But what about all the pop-up canvas *sukkas* that are so prevalent in America? Surely, there must be a firm basis for such a common *minhag*? Well, Rav Moshe Feinstein explicitly cautions that their prevalence does not imply any *halachic* endorsement.⁵ In fact, Rav Moshe concludes that one should not use a canvas *sukka* even if it is securely tied unless one has no alternative.⁶

On the other hand, one major opinion that appears to support firmly secured canvas *sukkas l'chatchilla* is the Chazon Ish in *Hilchos Eruvin* 13:6, who understands that Rav Acha's principle only applies if the wall sways in the wind by more than three *tefachim*.⁷ That gives some leeway for securely fastened canvas *sukkas*. (Yet, even

1 See Rambam *Hilchos Sukka* 4:5, *Hilchos Shabbos* 16:15; *Tur* and *Shulchan Aruch*, OC 362:1 and 630:10.

2 The *Mishna Berura* there also states that even if the *sukka* is built in an area that is shielded from the wind and the walls will not sway at all, the *sukka* would still be *pasul* if the walls could not withstand a normal wind. See also *Aruch HaShulchan* 630:31.

3 See Chazon Ovadia *Sukkos* (pp. 1-5), *Yabia Omer* OC 9:59, and *Yacheve Daas* 3:46.

4 Based on the same concern cited by the *Shulchan Aruch*, OC 630:10.

5 *Iggros Moshe*, OC V 40b (see last paragraph). Apparently the *sukka* outlets did not ask for his *haskama* before manufacturing and distributing them throughout America.

6 *Ibid*. There is a limited circumstance where Rav Moshe would allow a canvas *sukka l'chatchilla*: if the canvas is heavy enough that it would not move three *tefachim* in a normal wind while untied then it would be kosher when it is tied. But it is doubtful whether any canvas *sukka* sold today would not sway just 9.45 inches in the wind when untied. Such a standard would seemingly require very heavy canvas.

7 This *shiur* is not stated anywhere in the *rishonim*. The Chazon Ish also does not distinguish between *mechitzos* of an *eruv* or for a *sukka*. Rav Moshe believes a *sukka* has a stricter standard. See *Iggros Moshe*, OC V 40b.

according to the Chazon Ish, one has to be sure that his canvas walls do not sway even a millimeter more than three *tefachim* (9.45 to 12 inches).)

Rav Ovadia's concern that the walls may become untied or loose is actually from the explicit words of the *Shulchan Aruch* (OC 630:10) that states that it is not proper to make a *sukka's* walls from flax canvas even if they are securely tied (and therefore do not sway) because at times they may become loose. The *Shulchan Aruch* therefore advises that reeds are placed less than three *tefachim* apart to establish *lavud*. So, even with the Chazon Ish's loose standard of three *tefachim* for swaying walls, how does one get past the explicit words of the *Shulchan Aruch*?

The *Piskei Teshuvos* (630:9) quotes a few *acharonim*,⁸ including Rav Yosef Chaim Sonnenfeld and Rav Menashe Klein, who are *melamed zechus* for those who use canvas *sukkas* and argue that if one ties the canvas securely on all four sides to the frame, then the concern of the *Shulchan Aruch* may not apply. However, Rav Moshe and Rav Ovadia explicitly reject this distinction, as it is not mentioned in any of the *rishonim* or *acharonim*. Rav Moshe Sternbuch, in *Moadim U-Zemanim* 1:84, states it is proper to be stringent and not use a canvas *sukka*.

While the Chazon Ish and the *acharonim* cited by the *Piskei Teshuvos* do provide a basis for a firmly secured canvas *sukka* that definitely does not sway more than three *tefachim*, it is difficult to disregard the opinions of Rav Moshe Feinstein, Rav Shlomo Zalman Auerbach, and Rav Ovadia Yosef, among others,⁹ who disapprove of the use of canvas *sukkas*, notwithstanding their prevalence. This is especially true considering the mitzvah of *sukka* is a Torah-level obligation.¹⁰ One might consider if he would feel comfortable wearing and reciting the applicable *brachos* on *tefillin* that were considered *pasul* by many of the *poskei hador*, albeit kosher by some. Likewise, one might consider if he would feel comfortable feeding his family meat considered *treif* or *neveilos* by many of the *poskei hador*, but kosher by some.

One who relies on the Chazon Ish might accordingly consider upgrading his canvas *sukka* through a couple of relatively easy options. The first option is suggested by the *Shulchan Aruch* himself; if one wishes to use canvas for the walls, he should weave the canvas with reeds placed less than three *tefachim* (approximately 9.45

8 *Salmas Chaim* 253, *Kinyan Torah* 4:70, and *Mishne Halachos* 5:77.

9 See also the OU's position: <https://oukasher.org/halacha-yomis/canvas-sukkah-kosher-walls-move-wind/>

10 The mitzva of eating bread greater than a *k'beitza* (or, according to some, a *k'zayis*, if eaten within a *seuda*; see *Nitei Gavriel* 48:7) in a kosher *sukka* is a Torah-level obligation and if one makes a "*leyeshev basukka*" in a *pasul sukka*, he also transgresses the severe Torah-level prohibition of reciting a *bracha l'vatala*.

inches) apart, relying on the *halachic* principle of *lavud*.¹¹ The principle of *lavud* considers the space between two objects that are within three *tefachim* of each other to be halachically sealed. Since a kosher wall only needs to be ten *tefachim* tall, only the first ten *tefachim* (about 32-40 inches) would need kosher poles or beams¹² secured horizontally less than three *tefachim* apart to establish a *halachic* wall through *lavud*. The other option is to simply place wood boards on the bottom ten *tefachim* to serve as the *halachic* walls and then use the canvas above the ten *tefachim* for privacy or comfort. Only three kosher walls are necessary, although four kosher walls may be preferable.¹³

The *chashivus* of fulfilling the Torah-mitzva of dwelling in a *sukka* cannot be overstated. It is our opportunity to host the holy *ushpizin* and dwell with the *shechina*. May we all be *zoche* to dwell in the *sukka* of the skin of *levyasan* speedily in our days.

11 See the end of *Shulchan Aruch*, OC 630:10.

12 While many use straps or cords for this purpose, it is unclear whether that would suffice since they also may become untied or loose and sway in the wind. See, however, the OU which appears to support the use of firmly secured straps for *lavud*: <https://oukosher.org/halacha-yomis/canvas-sukkah-kosher-walls-move-wind/>

13 *Chaye Adam* (146:3).

Chanuka



Adiv Pachter

Alan Tsarovsky

Chanuka: Humility and *Emuna*; Transforming *Din* to *Rachamim*

ADIV PACHTER



The holiest day of Chanuka is *Zos Chanuka*, the eighth day of Chanuka. On the eighth day we read “*U’Vayom hashmini nasi l’vnei Menashe Gamliel ben Pedatzur*” (*Bamidbar* 7:54) from the *pesukim* in *Bamidbar* that discuss the dedication offerings. The *Sefer Magen Avraham Al HaTorah* explains that the *yom hashmini* in the *pasuk* corresponds to the eighth day of Chanuka. Menashe has the same letters as *neshama*; that is to say that on the eighth day of Chanuka, after we have lit candles for eight days, we merit for the ultimate *tikun* of the *neshama*. The letters of Menashe and *neshama* also spell “*mashlimin hadlakas shmoneh neiros*.” This is why the *korban* of the day is that of Gamliel ben Pedatzur. All of *Klal Yisrael* can truly say and feel Gamliel; i.e. *gam li El*; we feel a closeness to Hashem. Pedatzur also has the *gematria* of *Shechina*, both equal 385, a reiteration that on this day we reconnect with the *Shechina* because we have a *pedus* (*Pada*) from the *tzaros* (*Tzur*).

In order to gain a deeper appreciation for the holiness of Chanuka, let us learn a line from *Maoz Tzur*.

The second to last paragraph of *Maoz Tzur* says that the Greeks gathered against us, breaching the walls of our towers and defiling all of the oils. We continue to say “*U’minosar kankanim, naase nes lashoshanim. Bnei vina, yemei shmona, kavu shir u’reanim*.” “And from the one remnant of the flasks a miracle was wrought for the roses. Men of insight – eight days established for song and jubilation.”

On this, the Rimanover Rebbe comments that the *nes* of Chanuka is directly correlated to the *midda* of “*v’nakei lo y’nakeh*.” In *Sefer Shemos* 34:6-7 we learn about the Thirteen *Middos* of Hashem. It concludes by saying “*v’nakei lo y’nakeh*.” Hashem cleanses but not completely. It is quoted in the name of the Seforno that this means that when someone repents out of *ahava*, Hashem cleanses his sin fully. However, if

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one only does *teshuva* out of fear, such people only receive partial cleansing. Thus it is explained that this *midda* connotes the *midda* of *din*.

The question is clear; how could the miracle of Chanuka be related to *din*?

He answers by quoting the *mishna* in *Avos* 4:27 where Rabbi Meir says: “*Al tistakel bakankan, elah mah sheyesh bo...*” Do not look at the vessel; rather look at what is in the vessel. Yes, the *midda* of “*v’nakei lo y’nakeh*” seems to represent *din*; but it really depends on our focus. We need to change of frame of reference and look at it correctly. We should not focus on the surface level of anything. We must delve deeper. Rabbi Meir is teaching us not to look at the **two** sets of *kuf* and *nun*; meaning if you take away these letters from *v’nakei*, you are left with *vav* and *hey*. And if you take away these letters from *yi’nakeh*, you are left with *yud* and *hey*. And **this** name of Hashem represents *rachamim*. And it is precisely through this lens that will bring out the *yeshua* and the Ultimate Miracle.

קנקן
ינקח לא ינקח

In order to have this proper focus and be able to delve deeper, we need to possess the trait of humility. If we are arrogant, we may think that we have the ability to assess a situation as we initially perceive it. However, with the proper mindset that Hashem is the Master of the world, we can take a step back and realize the face value of anything is just that. And that there is a Mastermind behind everything. With this, we will be able to flip a situation that seems to be full of *din* into a situation of *rachamim*.

On the note of humility, the *Shem Mishmuel* discusses the first part of the paragraph quoted above from *Maoz Tzur*. He quotes the *Midrash Rabba* which says that there were three gifts created in the world; wisdom, strength and wealth. Of these gifts, wealth is the most external to a person and wisdom is most intrinsic to a person. “Intellect resides in the deepest recesses of the person and is completely obscured from others. The Greeks were known for their outstanding wisdom... When they oppressed the Jewish people, they were even able to reach the wisdom of the Torah... Oil represents wisdom. When Chazal say that the Greeks defiled the oil, they mean that they were clever enough to subjugate the very heart of the nation- to contaminate their Torah wisdom, the oil of the Jews, and to defile it... However, Chazal tell us that the Greeks polluted all of the oil in the Temple except for one vial, which was sealed by the *Kohen Gadol*... who was the symbol of the True Torah Jew, who was remarkably wise but nevertheless the paradigm of humility.”

This is how the *Shem Mishmuel* interprets the *pasuk* in *Iyov* 28:12 which says “And wisdom, where (*mei’ayin*) will be found?” However this can also be read

as a statement rather than a question; “And wisdom, from nothingness (*mei’ayin*) will it be found.

In the *Sefer Imrei Yosef*, the Spinka Rebbe quotes the *halacha* that the mitzva of *neiros* is “*mishetishka hachama*.” He explains that the time period of *tishka hachama* represents the period of *galus* that we find ourselves in. In such times, we need to strengthen our *emuna* in Hashem and believe with a full heart that everything that happens is *hashgaschas Hashem*. This is why the mitzva of *neiros* is “*Ad she’tichleh regel min hashuk*.” *Regel* connotes the low point of a person. We need to infuse the light of the menorah into the lowest points of the bitter *galus* that we find ourselves in. We can do this by strengthening our *emuna* as well as nurturing our humility to truly see the depths of what may be transpiring and with that may we all be *zoche* to the ultimate *nes* and *yeshuas Hashem*.

Lessons in Dissent: The Mitzva of *Hadlakas Neiros* in the House of Shammai

ALAN TSAROVSKY



The annual act of *hadlakas neiros* is de facto perhaps Judaism's most observed mitzva. Although *Am Yisrael* has uniformly lit the *neiros* in the same exact manner from time immemorial, the *gemara* in *Shabbos* 21b discusses several "options" as to how to fulfill the mitzva of lighting the candles. Despite the menu of choices available, what the *Shulchan Aruch* 671:2 requires as practical *halacha* is the standard the *gemara* refers to as *mehadrin min hamehadrin*:

כמה נרות מדליק בלילה הראשון מדליק אחד מכאן ואילך מוסיף והולך אחד בכל לילה עד שבליל אחרון יהיו שמונה ואפילו אם רבים בני הבית לא ידליקו יותר. הגה וי"א דכל אחד מבני הבית ידליק (רמב"ם) וכן המנהג פשוט ויזהרו ליתן כל א' וא' נרותיו במקום מיוחד כדי שיהיה היכר כמה נרות מדליקין [מהר"א מפראג].

How many lights should one kindle? On the first night, he kindles one [light]. From then he continues to add one each night, until on the last night they are eight. And even if the household members are many, they should not kindle more. Rem"a: And some say that every one of the household members kindles (Rambam) and such is the widespread custom. And they should take care to each place their lights in a unique place, so that it will be apparent how many lights they are kindling. (Rabbi Abraham Kara of Prague)

The *halacha* follows the position attributed to *Beis Hillel* in the famous dispute between *Beis Hillel* and *Beis Shammai* as to what the standard of *mehadrin min hamehadrin* requires. This should not be surprising, given that in general, the performance of *mitzvos* follows the positions of *Beis Hillel*. The *gemara* in *Eruvin* 13a

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explains that the *halacha* follows *Beis Hillel* over *Beis Shamai* because *Beis Hillel* were “*nochin v’aluvin*,” they were humble and modest. This has generally been understood to mean that they would consider *Beis Shamai*’s views and counter-arguments prior to stating their own conclusions.

Despite the conclusion of the *halacha* and its consistency in its treatment of this *machlokes* just as any other between *Beis Hillel* and *Beis Shamai*, this *machlokes* is in fact not like any other between these two academies. Unlike the hundreds of other disputes between *Beis Hillel* and *Beis Shamai* across the thousands of pages of the *gemara*, the *gemara* here offers a postscript that is as fascinating as it is anomalous:

אמר רבה בר בר חנה אמר רבי יוחנן שני זקנים היו בצידן אחד עשה כבית שמאי ואחד עשה כדברי בית הלל. זה נותן טעם לדבריו כנגד פרי החג וזה נותן טעם לדבריו דמעלין בקדש ואין מורידין.

Rabba bar bar Chana said that Rabbi Yochanan said: There were two Elders in Sidon, and one of them acted in accordance with the opinion of Beis Shamai, and one of them acted in accordance with the opinion of Beis Hillel. Each provided a reason for his actions: One gave a reason for his actions: The number of lights corresponds to the bulls of the Festival. And one gave a reason for his actions: The number of lights is based on the principle: One elevates to a higher level in matters of sanctity and one does not downgrade.

In the conclusion of this debate, the *gemara* describes two particular “Elders of Sidon”, and says essentially that there were later *amoraim* who followed both *Beis Hillel* and *Beis Shamai*! The *gemara* goes out of its way to say that **both** positions were valid in the eyes of the *amoraim*! Furthermore, it even states that it was the reasoning of each that compelled the “Elders” to act in accordance with the divergent views.

In general, whenever the *gemara* describes multiple conflicting practices, that should be enough to motivate anyone to investigate the merits of a minority opinion. However, in this case, there is something altogether more provocative. The *gemara* is explicitly telling us that *Beis Shamai*’s opinion here has more legitimacy than usual. It is almost as if the *gemara* is begging us to consider it further.

Therefore, notwithstanding the *halacha*’s preference for *Beis Hillel*, and in the spirit of “*Elu v’elu divrei Elokim chayim*,” this article examines this *machlokes* more deeply, noting the relative strengths of *Beis Shamai*’s position and weaknesses in *Beis Hillel*’s and vice versa. The aim of this article is to posit a theory as to why the *gemara* ultimately validates both *Beis Hillel* and *Beis Shamai* with respect to their positions

on the *mehadrin* standard of *hadlakas neiros* and what the implications may be for our own observance of this mitzva.

Background to the Mitzva of *Hadlakas neiros*

Understanding this *machlokes* requires some initial background and context. Let us therefore turn to the source of the mitzva itself to gain some preliminary understanding.

The Lighting

The *gemara* in *Shabbos* 21b sets forth three levels of lighting:

ת"ר מצות חנוכה נר איש וביתו, והמהדרין נר לכל אחד ואחד, והמהדרין מן המהדרין ב"ש אומרים יום ראשון מדליק שמנה מכאן ואילך פוחת והולך, וב"ה אומרים יום ראשון מדליק אחת מכאן ואילך מוסיף והולך.

The Sages taught in a baraisa: The (1) basic mitzva of Chanuka is each day to have a light kindled by a person for themselves and their household. And the (2) mehadrin, (those who are strict in the performance of mitzvos), kindle a light for each one in the household. And the (3) mehadrin min hamehadrin, who are even more meticulous, adjust the number of lights daily. Beis Shamai and Beis Hillel disagree as to the nature of that adjustment. Beis Shamai says: On the first day one kindles eight lights, and from there on gradually decreases the number of lights until on the last day of Chanuka, he kindles one light. And Beis Hillel says: On the first day one kindles one light, and from there on, gradually increases the number of lights until, on the last day, he kindles eight lights.

The first two levels are straightforward. Either each day a person can light one candle for themselves and their household or every person in the family can light their own candle. But when we get to the *mehadrin min hamehadrin* approach, there is a dispute regarding the number of candles that should be lit each night.

The *gemara* continues and provides reasons for the thinking of the two academies:

אמר עולא פליגי בה תרי אמוראי במערבא ר' יוסי בר אבין ור' יוסי בר זבידא. חד אמר טעמא דב"ש כנגד ימים הנכנסין וטעמא דב"ה כנגד ימים היוצאין. וחד אמר טעמא דב"ש כנגד פרי החג וטעמא דבית הלל דמעלין בקדש ואין מורדין.

Ulla said: There were two amora'im in the West, (Eretz Yisrael) who disagreed about this dispute, Rabbi Yosei bar Avin and Rabbi Yosei bar Zevida. One said that the reason for Beis Shamai's opinion is that the

number of lights corresponds to the incoming days, i.e., the future. On the first day, eight days remain in Chanuka, one kindles eight lights, and on the second day seven days remain, one kindles seven, etc. The reason for Beis Hillel's opinion is that the number of lights corresponds to the outgoing days. Each day, the number of lights corresponds to the number of the days of Chanuka that were already observed. And one said that the reason for Beis Shamai's opinion is that the number of lights corresponds to the bulls of the festival of Sukkos: Thirteen were sacrificed on the first day and each succeeding day one less was sacrificed (Bamidbar 29:12–31). The reason for Beis Hillel's opinion is that the number of lights is based on the principle: One elevates to a higher level in matters of sanctity and one does not downgrade.

Beis Shamai maintain that the lights should to be lit in descending order, either to correspond to the number of days that remain or to follow the model of the *Musaf* offerings on Sukkos (*parei hachag*), when each day, one less bull is offered.¹ Beis Hillel maintain the lights are lit in ascending order, either to correspond to the number of days that have been observed or to follow the model that one ascends in matters of holiness (*ma'alin bakodesh*).²

The *gemara* then ends the brief discussion with the fascinating statement we cited above:

אמר רבה בר בר חנה אמר רבי יוחנן שני זקנים היו בצידן אחד עשה כבית שמאי
ואחד עשה כדברי בית הלל. זה נותן טעם לדבריו כנגד פרי החג וזה נותן טעם לדבריו
דמעלין בקדש ואין מורידין.

So, not only were there Elders who followed each approach, but they did so because of the reasons stated, *parei hachag* and *ma'alin bakodesh*. This *maskana* excluded the issue of counting the days from the stated reasoning of the “Elders”.

So, it is fair to say that as far as the conclusion of the *gemara* is concerned, 1) both academies had valid approaches to *hadlakas neiros*; 2) *parei hachag* and *ma'alin bakodesh* are the primary reasons in the dispute and simultaneously 3) there is something so compelling about those reasons that each was followed.

1 As found in Bamidbar 29:12-34

2 The concept of “*ma'alin bakodesh*” as a factor in *halacha* appears in numerous places in *Shas* and will be analyzed later in this article. Generally speaking, every sequence of *mitzvos* performed, where two or more must be accomplished, is governed by this procedural rule which instructs us to move from the less holy to the more holy. According to the *Pri Megadim* (*Mishbetzos Zahav Orach Chaim* 42:1), this is biblically mandated.

However, as the issue transitioned into *halacha l'maaseh*, there was a decided shift toward *Beis Hillel*. In codifying the *halacha*, the Rambam writes:

כמה נרות הוא מדליק בחנוכה. מצותה שיהיה כל בית ובית מדליק נר אחד בין שהיו אנשי הבית מרובין בין שלא היה בו אלא אדם אחד. והמהדר את המצוה מדליק נרות כמנין אנשי הבית נר לכל אחד ואחד בין אנשים בין נשים. והמהדר יותר על זה ועושה מצוה מן המובחר מדליק נר לכל אחד בלילה הראשון ומוסיף והולך בכל לילה ולילה נר אחד. (הלכות חנוכה ד:א)

How many candles should one light on Chanuka? The mitzva is that a single candle should be lit in each house, regardless of whether there are many members of the household, or merely one person [lives] there. A person who performs the mitzva in a beautiful and conscientious manner should light candles for every member of the household, whether male or female. A person who is even more conscientious in his performance of the mitzva than this and observes the mitzva in the most desirable manner should light candles for every member of his household, a candle for everyone, on the first night. On each subsequent night, he should add a candle [for each of the members of the household].

Although the Rambam essentially summarizes and repeats the three levels of the mitzva found in the *gemara*, when it comes to the final level, *mehadrin min hamehadrin*, he only cites *Beis Hillel*'s opinion, effectively deciding against *Beis Shamai*. This is despite the *gemara*'s *maskana*.

As we ponder why the *halacha* sided with *Beis Hillel*, we should also ask why *Beis Hillel* and *Beis Shamai* did not share the same view. Didn't each side know the argument of the other? Was *Beis Shamai* not aware of the *halachic* principle of *ma'alin bakodesh*? Additionally, was *Beis Hillel* not aware of the connection of Chanuka and Sukkos that *Beis Shamai*'s position implied?

Purpose of the Lighting

In thinking over these questions, it behooves us to also consider exactly what we are accomplishing by lighting the candles in the first place. The *Pnei Yehoshua* on the *gemara* in *Shabbos* suggests that the reason why having a different number of lights each night is considered *mehadrin min hamehadrin* is based on *pirsumei d'nisa*, publicizing the miracle of the story. In other words, additional lights draw attention to the historic miracles that are the backbone of the story of Chanuka. Arguably, this is the reason that the *halacha* requires us to place the *neiros* near the entrance to our homes, in such a fashion as would be seen by the outside world.³ Presumably, the

³ See *Shulchan Aruch* 671:5

more people who see the *neiros* and the more *neiros* there are, then the greater the remembrance of the miracle.

What is the primary miracle we want to remember, the celebration of the military victory of the Maccabees over the Greeks and Hellenists or the restoration of the service in the *Beis Hamikdash*? The anniversary of both events is the 25th of Kislev. Perhaps this is the heart of the dispute of the academies of Hillel and Shammai.

Rav Shmuel Borenstein (1856-1926), in his *Shem Mishmuel*, explains that *Beis Shamai* believe that the Chanuka lights commemorate the defeat of the enemy and our salvation. Rav Tzvi Hirsch Morgenstern agrees, and in his *Ateres Tzvi* (Chanuka 5669), notes that *Beis Shamai* prefer to highlight that the strength of the miracle of Chanuka is the defeat of the enemy. This occurred on the first day of Chanuka and its impact diminished over time. Therefore, the Chanuka lights are lit in descending order to commemorate the diminishing impact of that initial victory.

In the same vein, according to the *Ateres Tzvi*, *Beis Hillel* prefer to highlight the holiness that resulted from the miracle of the lasting of the lights in the *Beis Hamikdash*. Just as the holiness increased each day because of the rededication of the Temple and its lights lasting, so too, the mitzva of the *neiros* should celebrate that increase in holiness by adding a light for each day of the miracle.

Thus, according to *Beis Shamai*: 1) the *neiros* should be lit in a descending fashion, with fewer candles being lit as each night of Chanuka passes; 2) this should parallel how the *parim* (sacrificial bulls) are brought during Sukkos; 3) the primary *nes* to be remembered is the military victory which occurred on the 25th of Kislev, thus giving that evening the primary cause for celebration.

On the other hand, according to *Beis Hillel*: 1) the *neiros* should be lit in ascending fashion, with an additional candle lit as each night of Chanuka passes; 2) this is because each night of Chanuka is an additional night of holiness and we are required to be *ma'alin bakodesh*, to ascend in holiness; 3) the primary *nes* to be remembered is the lasting of the oil during the rededication of the *Beis Hamikdash* which lasted for eight days, with each day lengthening and aggrandizing the miracle even more, which itself was the primary cause for celebration.

In Defense of my Rebbe...

Knowing that the two schools of thought had their own focus and that the *gemara* validated each approach, we can now turn to several important questions. Is there an actual reason to reject applying the principle of *ma'alin bakodesh* to the *neiros*? Alternatively, is there a substantial basis to consider *parei hachag* and the *neiros* so

intimately connected that the performance of each mitzva must parallel each other? Lastly, does the validity accorded by the *gemara* mean that we ourselves should have been obligated to follow *Beis Shamai* in some fashion as well?

Defending *Beis Shamai* against *Beis Hillel*

As set forth in the *gemara*, *Beis Hillel's* reasoning is based on the principle of *ma'alin bakodesh*. But as we examine this more closely, it may be the case that this rule was not correctly applied.

First, the period of Chanuka lasts for eight days, but, aside from the *neiros*, there does not seem to be a clear recognition, in ritual or description, of the additional holiness of the later days. For instance, after the *gemara* directs that we are to observe the holiday in future years, we are told in fact the opposite:

לשנה אחרת קבעום ועשאום ימים טובים בהלל והודאה.

In future years this period was established as a time of "yamim tovim" which includes words of thanksgiving and praise for our salvation.

Each day is called a *yom tov* because each day was an equally independent miracle. Furthermore, the *Beis Yosef* in *Orach Chaim* 670 famously asks why we even celebrate eight days of Chanuka and not just seven, since the first day of the miracle was not miraculous at all. Although he offers multiple explanations, he first mentions that the oil was divided into eight parts and the same miracle occurred on each day, when 1/8th of the oil lasted the entire night.

Even if one looks at the standards that were less than *mehadrin* in the *gemara*, the practice was to light an equal number of candles each day. If there was truly more *kedusha* in the later days, then shouldn't there have been some additional distinction or demarcation of the days which were less significant? For this reason, perhaps, not only are the days equal in terms of the miracle that occurred, they are equal in terms of other aspects of the celebration and commemoration.⁴

Furthermore, if we were to stipulate that there is a distinction in the *kedusha* of the days, then wouldn't it make more sense to argue that the first night was the holiest, since that was both the beginning of the rededication of the Temple and the anniversary of the victory over the Greeks? This is described by the Rambam in the *Mishna Torah* as he begins *Hilchos Chanuka* (3:1):

⁴ For other practices of Chanuka, the days are treated equally; there are no eulogies on any of the days and *al hanisim* as well as *hallel* are equally recited on each day.

וכשגברו ישראל על אויביהם ואבדום בחמשה ועשרים בחדש כסלו היה, ונכנסו להיכל ולא מצאו שמן טהור במקדש אלא פך אחד, ולא היה בו להדליק אלא יום אחד בלבד, והדליקו ממנו נרות המערכה שמונה ימים עד שכתשו זיתים והוציאו שמן טהור.
The day that the Israelites were victorious over their enemies and destroyed them was the twenty-fifth day of Kislev. When they reentered the Temple, they found only one cruse of ritually pure oil, enough to burn only one day. Yet they were able to light with it the candelabrum for eight days, until they had time to press olives and produce new ritually pure oil.

Finally, the applications of the principle of *ma'alin bakodesh* elsewhere in the *gemara* are different than as used here. The rule of *ma'alin bakodesh* is meant to prioritize matters that are considered by the *halacha* to be intrinsically more holy. But when examining how the principle is applied in other *sugyos* of *Shas*, a pattern emerges:

- *Berachos* 28: The *Chachamim* reject removing Rabbi Elazar Ben Azaria as *nasi*.⁵
- *Shabbos* 79: *Tefilin shel rosh* are not to be used for the *tefilin shel yad*.
- *Shabbos* 79: The parchment of *tefilin* cannot be used for *mezuzah*.
- *Megila* 26: Money earned from sale of a *Beis Knesses* cannot be used to purchase *Sifrei Kodesh*.
- *Horayos* 12: A disqualified *kohen gadol* cannot serve as a regular *kohen*.

While this list is not exhaustive, in each of these cases, the *sugya* mentions the rule of *ma'alin bakodesh* as a reason to limit someone's ability to act. *Ma'alin bakodesh* is generally regarded as a rule that disallows one from prioritizing something patently holier over something that is less. But nowhere else in *Shas* does it appear as an affirmative reason for doing a mitzva in a certain way!

There is no obvious distinction in *kedusha* between the days of Chanuka, but considering that both the anniversary of the military victory and the rededication of the *Beis Hamikdash* takes place on the 25th of Kislev, the first night could arguably be deemed to reflect the highest level of *kedusha*. Here the rule of *ma'alin bakodesh* was misapplied since it generally instructs what not to do and generally does not provide a basis for a positive action. Therefore, *ma'alin bakodesh* may not work as a reason to justify how to perform the mitzva of the *neirot*.

⁵ The *gemara* records the famous removal of Rabban Gamliel from his role as the *nasi*. He was removed because of his poor treatment of Rabbi Yehoshua and was replaced by Rabbi Elazar ben Azaria. After Rabban Gamliel and Rabbi Yehoshua reconciled, Rabbi Yehoshua approached Rabbi Akiva who in turn felt that Rabban Gamliel should have been reinstated. (Given that Rabbi Yehoshua's mistreatment was the entire reason for the removal). The rest of the *Chachamim* responded that they could not remove Rabbi Elazar ben Azaria, as this would be in violation of *ma'alin bakodesh*.

Beis Shamai contends that the *neiros* should be lit in a fashion like the *parei hachag* brought on Sukkos. Through this justification, *Beis Shamai* affirmatively linked these two holidays in both the general sense and in the specific sense of these two *mitzvos*. Is it possible that the reasoning is that Sukkos and Chanuka are intrinsically intertwined and should be celebrated in similar fashions?

The *gemara* (ibid.) itself establishes that the period of the *nes* of Chanuka was indeed eight days:

מאי חנוכה דתנו רבנן בכ"ה בכסליו יומי דחנוכה תמניא אינון דלא למספד בהון ודלא להתענות בהון, שכשנכנסו יוונים להיכל טמאו כל השמנים שבהיכל. וכשגברה מלכות בית חשמונאי ונצחום בדקו ולא מצאו אלא פך אחד של שמן שהיה מונח בחותמו של כהן גדול, ולא היה בו אלא להדליק יום אחד. נעשה בו נס והדליקו ממנו שמונה ימים. לשנה אחרת קבעום ועשאו ימים טובים בהלל והודאה.

What is Chanuka? The Sages taught: On the twenty-fifth of Kislev, the days of Chanuka are eight. One may not eulogize on them and one may not fast on them. When the Greeks entered the Sanctuary, they defiled all the oils that were in the Sanctuary. And when the Chashmonean monarchy overcame them and emerged victorious over them, they searched and found only one cruse of oil that was placed with the seal of the High Priest. And there was enough oil there to light the menorah for only one day. A miracle occurred, and they lit the menorah from it eight days. The next year the Sages instituted those days and made them holidays with recitation of hallel and special thanksgiving in prayer and blessings.

Perhaps *Beis Shamai* is asserting that the fact that there were eight days of use of this miraculous oil was not coincidental, and that the eight days of Sukkos and Shemini Atzeres were intentionally connected to this period. Indeed, the connection between these two holidays is arguably grounded historically, theologically and with respect to the ritual observance of each as well.

First, consistent with the story of Chanuka, at least in the historic if not religious sense, the two holidays were connected from the very first Chanuka. In the Book of Maccabees (II 10:6-8),⁶ we find that upon cleaning the Temple of the filth leftover from the Hellenists, the celebration of the first Chanuka was done in the manner of

6 Any reference to the Book of Maccabees in this article is meant to be a historical one and not a theological or *halachic* one. While this book describes the historical events surrounding Chanuka, it was never canonized as part of the Tanach. The references are only meant to highlight that a historical relationship between the two holidays of Chanuka and Sukkos dates to the original Chanuka and can serve as context for the view of *Beis Shammai's* link between them.

Sukkos. We find that “they kept eight days with joy, after the manner of Sukkos... therefore they now carried *lulavim*... and they dictated that all the nation keeps those days every year.”⁷ Thus, a connection between Sukkos and Chanuka was historically established by the Maccabean Jews themselves.

Second, there are only two eight-day periods on the Jewish calendar where a full *hallel* is recited, namely Chanuka and Sukkos. On a simple level, Chanuka has only two positive *mitzvos*, *hallel* and the *neiros*. So perhaps, since *hallel* is performed in the same fashion on both holidays, so too should the *neiros* follow the pattern of a counterpart ritual from Sukkos. The question is, of course, which corresponding ritual of Sukkos would be the counterpart to the *neiros*? This, then, brings us to a potential third point in favor of *Beis Shamai*.

Beis Shamai represents the position that the *parei hachag* have a direct relationship to their counterpart, the *neiros*. Perhaps the bridge between these practices is the *hallel*. The *gemara* in *Arachin* (10a-b) establishes a direct connection between the recitation of *hallel* on Chanuka and the offering on Sukkos of the *parei hachag*. It states that the central reason that *hallel* is said on each day of Sukkos and not on each day of Pesach is because on Sukkos, there is a unique *korban* which is brought every single day, referring to the *parei hachag*. So, the *gemara* itself directly connects *hallel* to the *parei hachag*.

On the other side, we find an interesting connection made by Rav Soloveitchik.⁸ He notes that the Rambam chose *Hilchos Chanuka* as the section in which to set forth the *halachos* of *hallel*. Rav Soloveitchik explains this placement that each Yom Tov has many aspects, but only one central motif. Chanuka’s central motif is the praise of God and is synonymous with *hallel*. He argues that because *hallel* is so basic to Chanuka, it acquires an added dimension and finds expression within the *hadlakas neiros*. It is not coincidental, accordingly, that the passage of “*haneros halalu*,” which explains the purpose of lighting on Chanuka, states: “*kedei lehodos u-le’hallel l’shimcha ha-gadol al nisecha*.”⁹ Thus, *hallel* is not only expressed verbally, but also demonstratively in the form of *hadlakas neiros*. Therefore, according to this approach, the *neiros* are thematically connected to and may even be an additional manifestation of *hallel*. So, *Beis Shamai*’s argument that lighting the *neiros* should

7 There is the possibility that the reason the *halacha* later rejected *Beis Shammai* is that accepting it might have inadvertently validated the text of the Book of Maccabees itself as worthy of inclusion in the Jewish cannon. While I did not research this question in detail, I remain curious about such a possibility.

8 See “Rabbi Joseph B. Soloveitchik’s Thoughts On Chanukah,” by Rabbi Dr. Kenneth Brander, in *Bein Kotlei Ha-Yeshiva*, vol. 3, Kislev 1986, pp. 1-7.

9 *Maseches Sofrim* (20:6) even states that to remind us that the *neiros* are an aspect of *hallel*, “*haneiros halalu*” should be recited before the actual *hadlaka*.

follow the pattern of the *parei hachag* may rest on the fact that both of these *mitzvos* are intimately bound to *hallel*.

Lastly, these two *mitzvos* fundamentally consider the role of non-Jews in the historical and theological life of the Jews. When it comes to the *parei hachag*, the total number of bulls offered is seventy, corresponding to the seventy nations of the world. It happens to be that there are no other *mitzvos* on Sukkos that vary in number and it's clear that both *Beis Shamai* and *Beis Hillel* stipulate that the *mehadrin* level of the mitzva of the *neiros* required some variation on a day-to-day basis.¹⁰ So, on a superficial level, each of these eight-day holidays have one mitzva which for each day of the holiday has a different amount that needs to be done.

But there exists a more philosophical connection as well. With respect to the *parim*, there is a well-known *gemara* in *Sukka* (55b) which explains the significance of the declining number of bulls that are offered each day of Sukkos.¹¹ On the one hand, we bring these sacrifices to show concern for the welfare of the nations of the world. On the other, Rashi (*Bamidbar* 29:18) attributes the declining number of *korbanos* to the nations' declining prominence over time:

ומנחתם ונסכיהם לפרים: פרי החג שבעים הם. כנגד שבעים אומות שמתמעטים והולכים, סימן כליה להם, ובימי המקדש היו מגינין עליהם מן היסורין.

And their meal offering and their drink offerings for the bullocks: The bullocks offered on the Feast of Tabernacles are seventy in all, in allusion to the seventy nations of the world, and they gradually decrease in number each day, an omen to them of gradual annihilation, but during the period when the Temple existed and these sacrifices were offered they protected them against this misfortune.

If *Beis Shamai* is indeed focused on the *neiros* as a commemoration of the military victory of the Jews over their non-Jewish oppressors, then it makes perfect sense to link these two *mitzvos*.

The *parei hachag* represent the faith in the eventual decline of the nations of the world whose influence often runs counter to the values set forth in the Torah. The *neiros* represent the actual decline of an oppressive enemy non-Jewish nation. Essentially, the Chanuka *neiros* celebrate the fulfillment of a promise that is reflected

¹⁰ This may be why, for instance, *Beis Shamai* did not assert that the connection of *neiros* on Chanuka should be to the *arba minim*, which do not vary in number.

¹¹ On the first day of the eight-day period, thirteen *parim* are offered and each day the number declines by one, until the last day when seven are offered.

in the mitzva of the *parim*. The power of the Greeks in the general history of man and the specific story of Chanuka is ultimately a historical footnote. Their actual influence and prominence have long since vanished, just as the *parei hachag* are meant to reflect. From this we see that nations whose values are antithetical to the Torah will decline in influence just as the Greeks did, and per *Beis Shamai*, the *neiros* are the ritual link between the theological message of the *parim* and the actual events of history.

So, if we were to support Shammai, we could easily argue that 1) historically, the Maccabees celebrated Sukkos as part of the initial Chanuka celebration so the two holidays are linked in general; 2) Chanuka and Sukkos are the only two holidays that last for eight days, for which a full *hallel* is said each day and since the *neiros* are the only other positive mitzva of the holiday, it should be performed in the same manner as a counterpart from Sukkos; 3) the counterpart of *neiros* should be the *parei hachag* since both are intimately related to the mitzva of *hallel* and therefore should be performed in a similar fashion; and 4) both of these *mitzvos* vary in the nature of their daily performance on their respective holidays and 5) both fundamentally incorporate a consideration of non-Jewish nations in their theological message.

For these reasons, the *halacha* could have justifiably followed *Beis Shamai*.

Defending Beis Hillel against Beis Shamai- Hallel Reflects the Distinct Themes of Chanuka and Sukkos

Beis Shamai's position rests on the notion that the holidays of Chanuka and Sukkos are fundamentally connected. Setting aside the practices of the Maccabees for the moment, the best evidence of that connection is the fact that these are the only times during the year when a full *hallel* is said for the entirety of the Chag. However, while the text of the *hallel* recited is the same, the underlying rationale is quite distinct, and therein lies the crux of the dispute.

The previously cited *gemara* in *Arachin* discusses the criteria for the recitation of *hallel*. Rabbi Yochanan is quoted as saying that the full *hallel* is said for the entirety of Sukkos, Chanuka, the first day of Pesach and Shavuot. This is a total of 18 days in *Eretz Yisrael* and 21 days in *Chutz L'Aretz*. The *gemara* proceeds to inquire why a full *hallel* is not said for the entirety of Pesach, Rosh Chodesh or on Shabbos. In the *sugya*, the *gemara* delineates the elements of when a full *hallel* should be said as follows:

- There should be a unique *korban* offered on that day.
- The period should be called a *moed*.
- There should be an *issur melacha*.
- The day should not be one of judgment.

The *gemara* instantly recognizes a problem. The eight days of Chanuka, during which a full *hallel* is said, have no unique *korban*, are not called a *Moed*, and *melacha* is permitted on them. So, how could it be that the *hallel* is required to be said on all eight days of Chanuka, without these elements present?

The *gemara* continues by bringing a separate argument to support the practice of reciting *hallel* on Chanuka, that when there is a miracle which takes place in *Eretz Yisrael*, then those who were involved in the miracle say *hallel*.

If the underlying obligation is different, does that mean that the actual experience of reciting the *hallel* should be different as well? Perhaps the purposes of the *hallel* of Chanuka and Sukkos are not the same.

What emerges from the *sugya* is that there can be basically two different “*mechayevim*” (obligating triggers), which necessitate the recitation of *hallel*. A special date, a “*moed*”, that possesses intrinsic holiness expressed through a special *musaf* offering and a *melacha* prohibition, requires *hallel*. Alternatively, if there is a miraculous salvation that occurs to the Jewish people, then that would require the recitation of a *hallel* in response as well.

Indeed, there is a distinction that describes each *hallel* as uniquely different. The *hallel* that is said as a manifestation of the *moed* is said to help experience the *simcha* of the Yom Tov.¹² According to the Ramban, this type of recitation of *hallel* is an obligation of *kria*, a procedural reading done on a Yom Tov. This version of *hallel* helps us to express our joy at gathering together on *moed* as a people because the *moed* itself brings us together to celebrate the presence of Hashem.

On the other hand, the *hallel* that is said in response to a miracle is considered a *hallel* of *shira*, singing a song of thanksgiving, and is meant to express the experience of *hoda’a*, gratitude. As the *Semak* (146) discusses the *d’oraisa* status of *hallel* for Chanuka, he points to the *pasuk* in *Devarim* (10:21), “He is your praise and your God.” What is striking is that he discusses *hallel* alongside the mitzva to thank God after a miracle was performed. He includes the mitzva of *korban toda* and the *bracha* of *gomel*, said upon the return from a dangerous situation. Evidently, according to the *Semak*, the recitation of *hallel* as a *shira* is a manifestation of our communal obligation to thank Hashem after we have experienced a miracle.

Although both types of *hallel* arguably have the status of a *d’oraisa* obligation, the experience of each is distinct. On the one hand, the *hallel* of Sukkos expresses

12 The Ramban notes, in his commentary on the *Chumash*, that every festival obligates us in the mitzva of *simcha*. Accordingly, on Pesach, Shavuot and Sukkos, the *pasuk* “*v’samachta b’chagecha*” requires offerings, meat, wine and the recitation of *hallel*.

simcha for gathering at a time objectively fixed each year that has been designated as *mikra kodesh* for Hashem. The *hallel* of Sukkos is required as a matter of *kria*, a formal recitation to designate that there is a distinction in the season that is separate and apart from the rest of the year objectively. It expresses *simcha* as we focus not on a specific event in the natural physical world, but rather Hashem's presence outside the bounds of time, nature or physicality.

On the other hand, *hallel* of Chanuka is a demonstration of gratitude for a miraculous result of a specific historical event that was subjectively experienced once and remembered each year afterwards. The *hallel* of Chanuka is required as a matter of *shira*. It expresses *hoda'a* and is an expression of gratitude for a miracle in the natural order. There are times in history when Hashem manipulates nature, time and the physical world and shows us His existence and guidance. For those times, we experience and express gratitude for the benefit we received.

While this distinction is not just theoretical and may have *halachic* implications as well,¹³ it is clear that the recitation of *hallel* is connected to the particular experience it is meant to honor. Thus, an attempt to blur the distinct nature of the two *hallels*, by connecting *parei hachag* with the *neiros*, could conflate the meaning of the two holidays themselves, and thereby miss the opportunity to realize that each experience is designed to teach us a unique lesson.

Ma'alín Bakodesh Was Correctly Applied

Let's revisit the other argument, that perhaps *ma'alín bakodesh* was incorrectly applied.¹⁴ As we stated, the *gemara* refers to each day as a "*yom tov*," so perhaps they

13 Fascinatingly, this distinction has a very interesting practical *halachic nafka mina*, regarding whether women should be obligated in the recitation of *hallel* on Chanuka. When it comes to the *hallel* of Sukkos, the mitzva is considered a positive time-bound one, and therefore women are not obligated to recite it. (As noted in *Sukka* 38a, *Magen Avraham* 422:5, and *Biur Halacha*, 422, d"h "*hallel*.") But, according to Rav Moshe Shternbuch (*Moadim U'Zmanim Siman* 146), the fact that the *hallel* of Chanuka is ultimately, at its core, a *shira*-based one means that the source of its obligation is independent of time. Therefore, it can be considered a *mitzvas asei shelo hazman gerama* and the exemption may not apply. In fact, the opposite may be true. Since the trigger for the *hallel* is the miracle, and *af hen hayu b'oso hanes*, women were included in both the danger and the miraculous historical saving of the Jewish people, then it's possible that women, who are ordinarily exempt from positive time-bound *mitzvos*, may actually be obligated in *hallel* on Chanuka. Nonetheless, many *poskim*, including Rav Shlomo Zalman Auerbach, argue that today, the *hallel* of Chanuka is a *kria* one. They posit our present recitation is required as a result of the holiday time period and because a *shira*-based *hallel* is reserved for those who actually experienced the *nes* and not those commemorating it in later generations. However, there is agreement that the tone of these *hallels* remains a reflection of the obligating mechanism and therefore, the recitation of the *hallel* of Chanuka should focus in on the gratitude for the *nes*.

14 Summarizing the above argument: 1) there is no distinction between the holiness of the days themselves, 2) if there is a distinction then perhaps it exists only between the first day and the rest of the days of Chanuka, since it is on the first day when the anniversary of both the conclusion of the war and the rededication of the

are equal in stature. However, if the opposite is true, then perhaps it is the first night that should have been considered more holy, given the duality of its celebration. It is, after all, the anniversary of both the rededication of the *Beis Hamikdash* and the commemoration of the victory over the Greeks.

Beis Hillel's position ultimately rests on the premise that the later days were holier than the first day. Perhaps we can make a distinction that would support this premise. Although the rededication of the *Beis Hamikdash* took place on the 25th of Kislev, the miracle of the *neiros* was that they lasted, not that they were lit, and that miracle really took place over the course of the days that were to come. In reality, the first night, first and foremost, was a commemoration of the military victory.

Perhaps *Beis Hillel* wanted the focus of the *neiros* to be the celebration of the later days which demonstrated the extent of Hashem's miraculous guidance of the events of the war and the rededication of the *Beis Hamikdash*, rather than purely focusing on the military victory itself. Often, military victories are devoid of spiritual meaning and their results are attributed to strategy, leadership and skill. *Beis Hillel's* shift of focus to the subsequent nights perhaps was meant to show that there could not be a rational or natural explanation for the events. As each night passed, the "holier" that day became, because there was no denying the *Yad Hashem* that was guiding the entire series of events.

This explains why *Beis Hillel* maintains that the rule of *ma'alin bakodesh* was correctly applied. The previous day was less holy than each subsequent one, and *Beis Hillel* argues that over-inundating the first day with lights would prioritize a less holy subject over an intrinsically holier one. This would violate the rule of *ma'alin bakodesh*. Thus, *Beis Hillel* uses the rule as it is applied elsewhere in Shas, as one that prohibits putting the less holy above the more holy. *Beis Hillel's* position takes the focus away from the first night, and directs it toward the miracle of the *shemen*, signifying that God is the reason for victory.

For these reasons, the *halacha* had a sound basis to follow *Beis Hillel*.

Elu v'Elu

Perhaps we can now understand why *Beis Shamai's* position did not actually prevail.

Beis Shamai viewed the entire course of events of Chanuka as being directly parallel to Sukkos. Sukkos is a commemoration of God's complete and apparent sustenance of the Jewish people in the *midbar*. For *Beis Shamai*, the *neiros* and the

Beis Hamikdash occurred, or 3) *ma'alin bakodesh* is generally a rule that tells us not to prioritize a subject over a holier one.

parei hachag are intimately connected because they represent the obvious fact that the Jewish people, their history and their fate are entirely bound up with their support from Hashem. There is no fear that God could abandon the Jewish people, and most certainly not in their time of need. So, for *Beis Shamai*, Hashem's presence in the military victory is as obvious as it is in the miraculous rededication of the *Beis Hamikdash*. In the world of *Beis Shamai*, perhaps there is an expectation that the Divine is always seen, and there is no possibility that one would view an experience in natural terms as opposed to supernatural ones. All events are entirely in the hands of the *Ribbono Shel Olam*.

Beis Shamai, however, ignores the reality that human psychology is not always in agreement with our *hashkafic* ideals. The military victory is not the same as the *shemen* in the *Beis Hamikdash*. The military victory could have been interpreted as not involving God at all in the minds of those present.

Perhaps then, *Beis Hillel's* argument is that because the war's end could have been explained without God's participation, the miracle of its victory cannot be placed on the same level as the experience of the oil. While *Beis Hillel* recognizes the miracle of the war, it must be properly contextualized as a lesser miracle than that of the lights in the *Beis Hamikdash*. It is possible to deny the super-natural nature of the victory, but it is impossible to reduce the miracle of the oil to human endeavor. *Beis Hillel's* argument may be that practical *halacha* must recognize that in the ordinary human psyche, it is a challenge to constantly acknowledge the presence of the Divine in the human experience. This is particularly true in areas full of hubris such as military victories. The victory of the Jews over the Greeks could have been considered miraculous for the pious and a matter of strategic advantages for the agnostics among them. However, God's presence in the *nes* of the *shemen* had to be undeniable to those present and to future generations as well.

So, in the end, while the practical *halacha* favors *Beis Hillel*, perhaps we can now apply a teaching that is taught often with respect the *piskei halacha* of *Beis Shamai*. *Beis Shamai* maybe was *paskening* for a "higher level" of cognition of God, one that is eternally committed and completely unbreakable. It has been said that the *halacha* will follow *Shammai* when the *Mashiach* comes. The *Mikdash Melech* wrote in his commentary on the *Zohar* :

In the time of the Messiah, we will follow the law according to Shamai. Hillel represents kindness and Shamai severity (hence the rulings of Beis Hillel are almost always more lenient). When the Messiah comes the advantage of the severity will be revealed and therefore the law will be

in accordance with Beis Shamai. Beis Shamai comes from a high level this present world is incapable of withstanding and only when Messiah comes will we be able to follow their opinion. (Mikdash Melech to Zohar, Bereishis 17b)

Maybe we can “rescue” the position of *Beis Shamai* at a future time. *Beis Shamai*’s view in this *machlokes* may be harsher because, rather than prioritize or contextualize the role of human achievement in matters such as military victories, it expects us to ignore them. In the times of the *Mashiach*, however, we assume that human psyche will be entirely different in its cognition of Hashem’s presence in the world. At that time, the hand of God will be clear to all people in all matters.

In those future times, the *psak* of *Beis Shamai* will realize the validity that the Elders of Sidon already demonstrated. Everyone will only see the *Yad Hashem* of every war and every miracle of history. It is then that we will celebrate the very apparent connection of God’s presence from the *midbar* through all miracles that have and will sustain the Jewish people throughout the course of their extraordinary fate.

We pray of course, that soon we will be able to apply the *psak* of *Beis Shamai* as we all reach the “higher level” of understanding and experiencing the presence of Hashem.

Machlokes L'shem Shamayim



Rabbi Yaakov Siegel

Yaakov Rich

It's Worth the Effort: Consider Skipping the House *Minyan* and Going to Shul

RABBI YAAKOV SIEGEL



In our Pico Beverlywood neighborhood, far more men go to shul on Shabbos morning than go for *Kabbalas Shabbos* or Shabbos *mincha*. *B'li ayin hara*, so many of our shuls' mens' sections are full for *shacharis* and *mussaf* on Shabbos, yet there are plenty of empty seats Friday nights and Shabbos afternoons. In most cases, those who are absent are not skipping *tefilla b'tzibur* – instead they are davening at one of the many house *minyanim* around Beverlywood and Pico-Robertson.

There are legitimate reasons to regularly daven at a house *minyan*; it's a much shorter walk and a quicker *tefilla*. There are even noble reasons to daven in a house nearby; so a father can help with the children and prepare the *seuda*, and he can start the *seuda* earlier while the kids are still awake. Nonetheless, as we will discuss, there are *halachic* and communal benefits of going that extra half-mile that may outweigh the benefits of davening in a house *minyan* close to home. While house *minyanim* do serve important communal purposes, providing the opportunity for *tefilla b'tzibur* to those who are unwilling or physically unable to walk to shul, it is worthwhile for every able-bodied and religiously-motivated man¹ to consider making the extra effort to daven in shul.

Davening in Shul: The Purpose of Creation

Before we begin our analysis, it is worthwhile to see the words of the Ramban at the end of *Parshas Bo* who attaches a stunning degree of importance to davening in shul.

¹ Our analysis and discussion will be focused on men davening in shul. How it pertains to women is discussed below in footnote 12.

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וכוונת כל המצות שנאמין באלהינו ונודה אליו שהוא בראנו. והיא כוונת היצירה שאין לנו טעם אחר ביצירה הראשונה ואין אל עליון חפץ בתחתונים מלבד שידע האדם ויודה לאלהיו שבראו. וכוונת רוממות הקול בתפלות וכוונת בתי הכנסיות וזכות תפלת הרבים זהו שיהיה לבני אדם מקום יתקבצו ויודו לאל שבראם והמציאם ויפרסמו זה ויאמרו לפניו בריותיך אנחנו.

The purpose of all of the mitzvot is for us to believe in God and acknowledge to God that He created us. And this is the purpose of Creation, as we find no other reason for Creation. And God has no desire for this world other than for man to know and acknowledge to his God that He (God) created him (man). And the purpose of lifting our voices in prayer, and the purpose of shuls and the merit of communal prayers is for there to be a place for people to gather and acknowledge to God that He created them and caused them. And they can publicize this by saying in front of Him, "We are Your creations!"

The Ramban is saying that gathering together in shul doesn't just serve personal or communal goals. Rather, the entire purpose of Creation is for people to acknowledge Hashem as their Creator, and this is best done as a community by davening in shul.

With this in mind, let's look at the *halachic* sources.

Don't be a Bad Neighbor

The *gemara* in *Brachos* (7b-8a) lists numerous advantages of davening *b'tzibur*, including that Hashem is never disgusted by the *tefillos* of a *tzibur*, and that it is always an *eis ratzon*, a time that Hashem is more agreeable, when a *tzibur* is davening.² As part of this discussion, the *gemara* says:

אמר ר"ל כל מי שיש לו בית הכנסת בעירו ואינו נכנס שם להתפלל נקרא שכן רע... ולא עוד אלא שגורם גלות לו ולבניו.

Reish Lakish said, anyone who has a shul in his city and does not enter it to daven is called a "bad neighbor"... Furthermore, he causes exile to him and his children.

The *Shulchan Aruch* (90:11) quotes this *gemara* verbatim as *halacha*.

It is somewhat ambiguous as to how much skipping of shul makes a person a *shachen ra*, as neither the classic *rishonim* on the *gemara* nor the *nosei keilim* on the

² See the *Zohar* in *Vayeichi* (p. 234a) and *Pekudei* (p. 245b), who explains that for *tefillos* of the *rabim*, Hashem immediately opens the door to the "*heichal*" and allows the *tefillos* in. But for the *tefillos* of an individual, Hashem stops them by the entrance to the "*heichal*" and first analyzes the merits and sins of the person praying, as well as the quality of the prayers, before determining whether he will allow the prayer to enter His "*heichal*".

Shulchan Aruch provide guidelines. Rav Yosef Eliyahu Henkin *zt"l*³ says that perhaps the *gemara* means to call a person a *shachen ra* if he skips shul even once, "*b'li siba hami'akeves*" without any reason that held him back. It is also possible, however, that one would not be called a *shachen ra* even if he comes to shul occasionally.

Why would there be such harsh reaction toward someone for not going to shul? Sephardic Chief Rabbi Rav Yitzchak Yosef *shlit"a*, in *Yalkut Yosef* (OC 90) quotes the *midrash* in *Shemos Rabba* (33:1; as explained by *Etz Yosef*) that says that when Hashem gave the Torah to the Jewish people, He asked that the Jews make a house for Him to stay and visit, wherever they may be. Thus, when we went into *galus*, Hashem went to *galus* with us, and now His *shechina* dwells in our shuls. Since Hashem, in His kindness, has joined us and moved into our neighborhood, *kaviyachol*, if someone doesn't want to make the effort to go and visit Him, he could be considered a bad neighbor, and a decree of additional *galus*, while harsh, could make sense.

The source for the idea that Hashem's *shechina* dwells in our shuls is *Brachos* 6a:

מנין שהקב"ה מצוי בבית הכנסת שנאמר (תהלים פב, א) א-להים נצב בעדת א-ל
ומנין לעשרה שמתפללין ששכינה עמהם שנאמר א-להים נצב בעדת א-ל.
From where do we know that Hashem is present in shul? It says (Tehillim 82:1) "God stands in the divine assembly." And from where do we know that when ten [Jews] are praying that His presence is with them? It says, "God stands in the divine assembly."

This is intriguing; the very same *pasuk* that teaches us that the *shechina* dwells in our shuls also teaches us that the *shechina* dwells wherever there is a *minyan*. So if a person davens in a house *minyan*, is he still a *shachen ra*, a bad neighbor, since he didn't go visit Hashem in shul? Or perhaps might he even be considered a good neighbor since he visited Hashem's *shechina* in a house *minyan*?

The *Tzelach* (Rav Yechezkel Landau, 1713-1793, rav of Prague, also known as by the name of his responsa, *Noda Biyehuda*) strongly felt that one is called a *shachen ra* if he skips shul for a house *minyan*. He presented his case in a Shabbos Shuva *drasha* he delivered in Prague, which was printed in *Drashos Hatzelach* (5:20):

כל מי שיש לו בית הכנסת בעירו ואינו נכנס שם להתפלל נקרא שכן רע (ברכות ח).
ואף שמתפלל במקום איזה בית במנין, שאינו דומה קדושת בית הכנסת שהוא מקדש
והקב"ה מצוי בו, וכשאדם נכנס לבית הכנסת יצר הרע נעקר מליבו ודומה לקדושת
ארץ ישראל, והתפילה עולה למעלה במסלה העולה בית אל כי השר אין לו שליטה

³ In a *teshuva* published in *Hapardes* in Adar 1952.

על אויר בית הכנסת, משא"כ כשמתפלל בבית שחסר כל המעלות. ומכל שכן אם מתפלל יחידי בלי מנין, שאז עונשו מרובה ואין תפילתו של אדם נשמעת אלא בבית הכנסת. ואף בימי הגשמים וביתו רחוק מכל מקום "חשבתי דרכי" (תהילים קיט:נט) כתיב, ויחשוב הפסד מעל מנעלים כנגד שכר מצוה ושכר פסיעות שיש.

"Anyone who has a shul in his city, and doesn't enter to daven is called a bad neighbor (Brachos 8a)." This is true even if the person davens with a minyan in someone's house. Because the house minyan does not compare to the holiness of a shul, that is like the holiness of the Temple, and that Hashem's presence is found there, and when a person enters a shul the yetzer hara is uprooted from his heart and it is similar to the holiness of Eretz Yisrael. And the prayer ascends directly to Hashem from a shul because no ministering angels rule over the airspace of a shul [only Hashem Himself]. And this is not the case for davening in a house, which is missing all these benefits... and [furthermore, the gemara says] the prayer of a person is only heard in a shul. And [the obligation to go to shul instead of a house minyan] is even in the winter and the person's house is far, nonetheless it says (Tehillim 119:59) "I have calculated my walk," meaning a person should calculate the small amount of wear on his shoes compared with the reward for the mitzva and the reward for the journey that he receives.

The Tzelach is clearly saying that a person who davens in a house *minyan* is called a *shachen ra* because Hashem's *shechina* is present in a shul, more so than in a house *minyan*. On top of that, he adds additional reasons to daven in a shul instead of a house *minyan*; namely that a person's *tefillos* are more readily accepted in shul, and a person can find more inspiration in shul. We will discuss both of these ideas in greater detail shortly.

The *Mishna Brura* (90:38), however, disagrees with the *Tzelach*. He writes:

ואם מתפלל בביתו בעשרה בכל גווי אינו נקרא שכן רע דכל בי עשרה שכינתא שריא. ומיהו עכ"פ מידי חובת בהכ"נ לא נפיק אא"כ אותו המקום שמתפללין בו קבוע לקדושה.

If he is davening in his house with a minyan, in all cases he is not called a shachen ra – a bad neighbor – because where you have ten men, Hashem's shechina is present. Nonetheless, he has not fulfilled his obligation to go to shul unless that place that they are davening is permanently used for holy purposes.

So according to the *Mishna Brura*, even though Hashem's presence is found in shuls, since His *shechina* does go to every *minyan*, davening in a house *minyan* would not make a person a *shachen ra*. Furthermore, it seems that the *Mishna Brura* would entirely permit a person to daven in a house *minyan* if the location in the house is a place that is permanently used as a shul or *Beis Medrash* (and at least one of these exists in Beverlywood). But to daven in someone's living room or dining room would not be satisfactory, as the person has not fulfilled "his obligation to go to shul."

The *Mishna Brura's* source is from *sefarim* from the Sephardic tradition. He cites the *Shaarei Teshuva* (OC 90:11) who is quoting the Chida in *Machzik Bracha*, who in turn cites *Malki Bakodesh* written by Rav Ezra Malki, the 17th century rav of Rhodes, Greece.⁴ It is somewhat surprising that he chooses the approach of the Sephardic *rabbanim* instead of the *Tzelach*, who was one of the most influential *poskim* in the Ashkenazic tradition. One could be tempted to speculate whether the *Mishna Brura* simply never saw the *Tzelach's drashos* (which were not publicized as widely as his other works), and if he would have, whether he would have followed the *Tzelach's* approach.⁵

Chovas Beis Hakneses: The "Obligation to Go to Shul"

But what is this "obligation to go to shul" the *Mishna Brura* says one can only fulfill by davening in a place that's permanently dedicated as a shul or *Beis Medrash*? While the *Mishna Brura* does not give his source, there are some obvious statements in Chazal that establish an "obligation to go to shul".

Rav Yitzchak Yosef *shlit"a* (*Yalkut Yosef* OC 90)⁶ says the *Mishna Brura* is referring to the line of *gemara* in *Brachos* 6a that immediately precedes the *gemara* we quoted above:

תניא אבא בנימין אומר אין תפלה של אדם נשמעת אלא בבית הכנסת שנאמר

4 The *Malki Bakodesh* does not actually use the words "*chovas beis hakneses*," as those words come from the *Shaarei Teshuva* who is summarizing the Chida's quote of *Malki Bakodesh*. But it is important to note that the *Mishna Brura* does not preface his comments with "*kasuv Bishaarei Teshuva* – it is written in the *Shaarei Teshuva*". The *Mishna Brura* is not merely quoting what an earlier *acharon* says, but rather when he says that there is a *chovas beis hakneses* we must assume that he really holds there is a *chova* and must have a source in Chazal for this obligation.

5 It is worthwhile to note that Rav Herschel Schachter is quoted in the *Journal of Halacha and Contemporary Society* (Vol. 46 p. 54) as saying that one who davens in a house *minyan* is called a *shachen ra*. In a personal conversation on August 28th, 2018, Rav Schachter confirmed that he is *paskening* like the *Tzelach* over the *Mishna Brura*.

6 In that section of *Yalkut Yosef*, Rav Yosef has an entire section on the benefits of davening in shul. In it he ends with seven quotes from Chazal, each one providing a different benefit of davening in a shul. All of them should be quoted in this essay, but there is simply not enough room.

(מלכים א ח, כח) לשמוע אל הרנה ואל התפלה במקום רנה שם תהא תפלה.

It was taught: Abba Binyamin says, a man's prayers are only heard in a shul, as it says (Melachim 1 8:28) "to listen to the song and the prayer." In the place of song, there shall be prayer.

Rashi explains (*d"h bimakom rina*):

במקום רנה: בבהכ"נ ששם אומרים הצבור שירות ותשבחות בנעימת קול ערב.

In the place of song means in shul. Because that is where the community says songs and praises [to Hashem] with beautiful-sounding melodies.

The *Einei Yitzchak*⁷ explains that Rashi means that in shul, people daven more slowly and properly, and therefore Hashem responds more kindly to their *tefillos*. The *Meiri* (*d"h kol she'adam*) explains the *gemara* similarly.⁸ While Hashem surely does listen to *tefillos* outside of shul,⁹ the *gemara* is telling us that He responds more kindly to *tefillos* said in shul, and for this reason there is a *chovas beis hakneses*, an obligation to go to shul.¹⁰ Since the primary purpose¹¹ of the obligation of *tefilla* is for us to ask

7 A classic commentary on *Ein Yaakov* written by the Magid of Vilkomir, Rav Chaim Yitzchak Aharon Rappoport; 1802-1904.

8 This is also the way the *Kesef Mishneh* understands the Rambam (*Hilchos Tefilla* 8:1).

9 See the *Pnei Yehoshua* on this *gemara*.

10 According to the Rambam (*ibid.*), who the *Shulchan Aruch* (90:9) quotes, the rule of "*ein tefilla nishmaas ela biveis hakneses*" applies both to an individual and to a *tzibur*. This means that even when an individual cannot daven with a *minyan*, he should still daven in shul, because that's where Hashem responds more kindly to *tefillos*. The Rambam further implies that a *tzibur* should also daven in shul, because even a *tzibur's* *tefillos* are "listened to" better in shul. The *Tur* (90:9 as explained by both the *Beis Yosef* and *Bach*, the most important commentaries on the *Tur*) learns differently than the Rambam and holds that the rule of "*ein tefilla nishmaas ela biveis hakneses*" applies only to a *tzibur*. This means that if one wants Hashem to respond in the kinder way described in this *gemara*, he must daven both with a *minyan* and in a shul. According to the *Tur*, the sole purpose of this *gemara* is to discourage house *minyanim*.

It is important to note that *Tosafos* in *Avoda Zara* (4b *d"h keivan*) quotes our *gemara* in a slightly different way, "*ein tefillaso shel adam nishma'as ela im hatzibur*," the *tefillos* of a person are only heard with a *tzibur*. The *Tzelach* (*Brachos* 6a) presents two ways to understand *Tosafos*. First is that *Tosafos* agrees with the *Tur* that the *gemara* means that Hashem only listens to the *tefillos* if you're with a *minyan* and in shul. The *Tzelach's* second (and preferred) approach is that *Tosafos* understands our *gemara* to only be discussing someone davening *biyichidus*, on his own (i.e. *tefillaso shel adam*), and holds that an individual's *tefillos* are only heard in shul, whereas a *tzibur's* *tefillos* are heard anywhere. While this approach of the *Tzelach's* understanding of *Tosafos* would mean that this *gemara* would not be opposed to house *minyanim*, it is not the way most *acharonim* understand the *Tosafos* (see for example Rav Akiva Eiger in *Gilyon Hashas d"h ein* and *Machatzis Hashekel* OC 90:17)

11 See the *Mishna* in *Brachos* 16b that says that a worker who is harvesting fruit in a tree need not come down when he says *krias shma*, but does need to come down when he davens *shmoneh esrei*. Rashi (*d"h ma she'einan*), quoting *Brachos* 20b, explains that "*tzilusa rachamei hi*" – since the purpose of davening is begging Hashem for mercy, one must daven in a way in which he can have *kavana*.

Hashem for our needs, then it becomes a *chova*, an obligation, to try¹² to daven in the way that Hashem is more likely to listen—davening in shul.¹³

The *Yerushalmi* in *Brachos* (35a) is even more explicit about the obligation to daven in shul:

ר' אבא רבי חייא בשם רבי יוחנן צריך אדם להתפלל במקום שהוא מיוחד לתפילה.
Rabbi Abba in the name of Rabbi Chiya says in the name of Rav Yochanan:
a man must daven in a place that is designated for prayer.

The *Pnei Moshe* says this means a *beis kneses*. It is important to note that the *Yerushalmi* uses the word “*tzarich*,” which implies an obligation. The *Yefei Mareh* on

12 It is just as important – if not more so – that Hashem listen to, and accept the *tefillos* of women. For this reason, Rav Chaim Pinchas Scheinberg (quoted in *Rigshei Lev* p.177 note 3) says that women, to the extent feasible, should try to daven in shul, since their *tefillos* will be more accepted in shul. It is only because of their responsibilities as mothers and wives that Chazal did not obligate them to go to shul. And if they are unable to daven in shul, they should try to daven at the same time that the *tzibur* is davening. Rav Ephraim Greenblatt (*ibid.*) also ruled that women should try to daven in shul, because that is where they are able to daven with more *kavana*, which helps their *tefillos* be accepted. See, however, *Halichos Beisa* (p.48-49 notes 26 and 27) who quotes the Vilna Gaon, who, in a directive to his family, discourages women from davening in shul. *Rigshei Lev* (p. 181 note 11) quotes Rav Moshe Halberstam *zt”l*, who discourages women from going to shul during the week, since it could be considered a breach of modesty, especially in a community where women typically do not go to shul during the week.

13 It is important to note that when the *Shulchan Aruch* (90:9) presents the obligation to go to shul to daven with a *minyan*, he uses the expression “*yishtadel adam li’hispalet b’veis hakneses im hatzibur*,” one should try to daven in shul with a *minyan*. The *poskim* debate whether this unusual language of “*yishtadel*” means that davening with a *tzibur* is optional but recommended, or obligatory. Rav Aryeh Pomeranczek (Brisk and B’nai Brak 1908-1942) in *Emek Bracha* (*Birchos Krias Shma* 1) rules based on the *Shulchan Aruch*’s “*yishtadel*” that davening with a *minyan* is not obligatory. This is the opinion of *Chavos Yair* (115, although he does not note the *Shulchan Aruch*’s language of *yishtadel*). Rav Menacham Tzvi Eichenstein (Rav of St. Louis, 1910-1981) in an article published in *Hapardes*, Adar 1952, says the *Shulchan Aruch* means that there is an obligation to daven with a *minyan*, but it is not obligatory to have the *minyan* meet in a shul. It is clear from the *Mishna Brura*’s use of the expression “*chovas beis hakneses*” that he disagrees with Rav Eichenstein. Rav Moshe Feinstein, in a 1963 *teshuva*, also strongly disagrees with Rav Pomeranczek and Rav Eichenstein and writes (*Igros Moshe* OC 2:27) that *tefilla b’tzibur* is an obligation and not just a *hidur mitzva*, or suggestion. (The idea that *yishtadel* means *hidur mitzva* was promoted by Rav Eichenstein in his article mentioned above. He sent that article to Rav Moshe, asking him for his comments, which Rav Moshe provided and were printed in *Hapardes* alongside Rav Eichenstein’s article. While Rav Moshe did not address the *Shulchan Aruch*’s *yishtadel* in his response in 1952 as it was not germane to his points then, it is very reasonable to assume that in his 1963 *teshuva* he is directly responding to, and arguing with Rav Eichenstein’s description of *yishtadel* as *hidur mitzva*.) Rav Moshe’s proof is from the fact that the *Shulchan Aruch* rules (90:16) that one is obligated to walk 18 minutes out of his way, or 72 additional minutes along his way to daven with a *minyan*. And when the *Shulchan Aruch* says *yishtadel*, his intention is not to say that it is voluntary, but rather to encourage one to fulfill the obligation even though it often entails great effort. This appears to also be the opinion of the *Aruch Hashulchan* (90:20-21) and *Shulchan Aruch Harav* (90:17). (See Rav Moshe’s *teshuva* for an interesting proof that one is obligated to daven in a way that Hashem will listen to his *tefillos*.)

this *Yerushalmi*, and the *Torah Temima* (*Shemos* 20:21) say that this *Yerushalmi* is consistent with the *Bavli* in *Brachos* 6a quoted above, meaning that “*tzarich adam lihispalet*” a man must daven in a shul, because it is to those *tefillos* that Hashem “listens” to the most.

In general in our community, people daven more seriously and with more *kavana* in shul than they do in house *minyanim*. Often house *minyanim* meet in living rooms or dining rooms with many distractions such as artwork, family photos, and overly comfortable sofas and armchairs. While they are entirely appropriate for a person’s home, they can seriously distract a person from his *tefillos*. Often the tone and vibe of a house *minyan* is more friendly and laid back than that of shul. And while that can sometimes contribute to the appeal of the house *minyan*, it can make it harder to find the seriousness needed to daven with *kavana*.

And since we daven more seriously in shul, the *gemara* promises that Hashem will respond more kindly to those *tefillos*. And because of this, says the *Mishna Brura*, there is a *chiyuv*, an obligation, to daven in a place that is dedicated for *kedusha* such as a shul or *beis medrash*. But even without a formal obligation, *merubim tzorchei amcha* – our community has so many desperate needs for which we are constantly davening; personal needs for health and *refua*, *parnassa*, *shiduchim*; children who are committed to a Torah life; communal needs of peace and prosperity for *Klal Yisrael* in America, Israel, and around the world. If Chazal tell us that if we want Hashem to listen to our *tefillos* then we should daven in shul, we should consider making the extra effort to follow their direction.¹⁴

Birov Am Hadras Melech

The *gemara* tells us in many places¹⁵ that it is usually better to perform *mitzvos* in large groups because of “*birov am hadras melech*, the glory of the King is increased with a large crowd” (*Mishlei* 14:28). When the *Shulchan Aruch* (OC 90:9) states that one should daven with the *tzibur* in shul, the *Magen Avraham* (OC 90:15) explains:

עם הצבור. אף על פי שיכול להתפלל בביתו ב', מ"מ ברוב עם הדרת מלך.

With the *tzibur*: even though he could daven in his home with ten men, nonetheless, “*birov am hadras melech*”, the glory of the king is increased with a large crowd.

14 As mentioned above from the *Mishna Brura*, this reason does not apply to a house *minyan* that meets in a room or back-house that is *kavua likdusha* – dedicated exclusively for use as a shul or *beis medrash*. The reasons we will now develop, however, will apply even to such a *minyan*.

15 See for example *Brachos* 53a, *Pesachim* 64b, *Rosh Hashana* 32b, et. al.

So clearly it is much better to daven in a shul than a house *minyan*, as not only would one be sacrificing the *hadras melech* of his own davening, but not coming to shul would reduce the *hadras melech* in shul as well. This Magen Avraham is quoted as *halacha* by the Mishna Brura (90:27).¹⁶

This concern of *birov am* would apply even if someone were to have a room in his home or a back-house designated only for use as a shul or *beis medrash*. If it only accommodates a small number of people, *birov am* would dictate that one should instead choose to daven in shul where there will be a larger crowd.

Birov Am? So How do New Shuls Ever Start?

The obvious question is, if we are required to try to daven in the largest possible *minyan*, how and why could a community have multiple shuls? There are hundreds of communities in *Klal Yisrael* that have multiple shuls, larger and smaller, often within close walking distance of each other. Shouldn't everyone be required to daven in the largest *minyan* in the neighborhood, and never start newer, smaller shuls?

While this question demands a thorough analysis of its own, we will summarize some of the reasons given by the *poskim* for forgoing *birov am hadras melech*, and davening in or starting a smaller shul, and then analyze how they may be relevant to our discussion about house *minyanim*.¹⁷

The Radbaz (*Tshuvos Radbav* 3:472) provides a few situations which are grounds to start a new shul or *minyan*:

1. If people find that it is too distracting to daven with *kavana* in the existing shul. This could be because of commotion caused by people in the shul, or by personalities in the shul that people don't get along with.
2. If people want to daven with a specific rav or rebbe who they feel will help them grow in their *avodas Hashem*.
3. If there are groups who have different *minhagim* or *nuschaos*, and neither group wants to conform to the others' *minhagim*.

Rav Moshe Feinstein (*Igros Moshe* O:H 1:31, explaining the *Teshuvos Harosh* 253) suggests three more situations in which one can start a new shul or *minyan*.

4. If people will come daven at the new shul who otherwise wouldn't have davened in shul at all.

¹⁶ Rav Herschel Schachter explains the Magen Avraham this way in *B'ikvei Hatzon* p. 24. The Radbaz (3:472), that we will discuss below, is clear as well that in most circumstances *birov am* would obligate a person to daven in a larger *minyan*. This is also the opinion of the *Shu"t K'sav Sofer* (CM 39) and *Shu"t Avnei Nezer* (OC 36).

¹⁷ See Reb Ari Wasserman's *Hegiyonei Haparsha* (*Shemos* pp. 307-338) for a neatly organized and thorough treatment of this topic.

5. *Kinas sofrim tarbe chochma*. If the presence of a new shul would challenge the old shul to increase its seriousness in Torah and *tefilla*.

6. If not starting a new shul or *minyan* would cause fighting in the community.¹⁸

Regarding house *minyanim*, most of these reasons do not apply, but some might in limited circumstances. Often in our neighborhood, house *minyanim* can be more distracting than the shul,¹⁹ do not have a rav, are not started to practice different *minhagim*, and do not challenge the existing shuls to improve the seriousness of their Torah and *tefilla*. On the other hand, it is likely that there are people who daven *b'tzibur* on Friday night and Shabbos mincha only because there are house *minyanim*. Both Rav Ephraim Greenblatt and (*l'hibadel bein chaim lichaim*) Rav Moshe Sternbuch, quoted in *Journal of Halacha and Contemporary Society* (Vol. 46 p. 53), *pasken* that one may start a *minyan* in someone's house on Friday night and for Shabbos *mincha* if people will come to daven there that otherwise would not daven with a *minyan*. Rav Herschel Schachter, also quoted there, disagrees and *paskens* that one cannot start a house *minyan* even if it means some people won't daven with a *minyan*. Regardless, for an able-bodied, God-fearing Jew who would go to shul if there were no house *minyanim*, even Rav Greenblatt and Rav Sternbuch would agree that he should do his utmost to go that extra half-mile and daven in shul.

Too Many Lost Opportunities for Growth

Beyond the *halachic* reasons to go to shul rather than a house *minyan*, there are critically important personal and communal reasons as well.

A shul serves multiple vital purposes. The most obvious one is that it is a place where people can daven with *kavana* with a *tzibur*, connect with Hashem, and ask Him to fulfill their needs. Another no less important function of a shul is that it gives people exposure to their rav, who can help encourage their growth in Torah and *mitzvos*. Many children and young adults have *rebbeim* who are consistently involved in encouraging their growth in Torah and *mitzvos*. When they start careers

18 Rav Moshe also adds that it's possible that the Rivash holds that the rule of *birov am hadras melech* is only a rule for an individual – meaning that a group can break away, but each individual has an obligation to try to daven in a large *minyan*, not just a *minyan* of ten. If this were the case, then this would mean that there would be no problem of *birov am* in starting a house *minyan*, but just that every able-bodied individual without an extenuating need would be obligated to go to the larger shul. Rav Moshe does point out however, that the Re'em argues with this point and holds that there is *birov am* even for a *tzibur*.

19 It is possible that some shuls could be more distracting than a house *minyan*, particularly if a person tends to be overwhelmed by large crowds. In such a case, a person might be best served by finding a quieter or smaller shul in which to daven of Friday night and Shabbos *mincha*.

and become *ba'alei batim*, it often becomes the responsibility of the shul rav to take over the encouragement and nurturing of their spiritual growth. If a person only sees his rav once a week on Shabbos morning, it is very difficult to build a personal relationship with him, and the rav has very little opportunity to help the person start or continue on a path of personal growth.

Additionally, if the rav is trying to encourage improvement and growth in his *kehilla* at a communal level, he needs more opportunities to speak to his *tzibur* than once a week for fifteen minutes. If the *tzibur* is also in shul Friday night and at *seuda shlishis* or for a *shiur* before *mincha*, the rav has the opportunity to develop a broader message over the course of a Shabbos, or he can work on more than one idea at once.

Furthermore, *kabbalas Shabbos* and *seuda shlishis* can be times of great inspiration. If there is a large group in shul who get into the singing and the rav's inspirational *d'var torah*, the experience can be transformational for a person's Shabbos and their whole week. But this type of experience is nearly impossible to create in a mostly empty shul. If it feels like everyone is somewhere else, then the atmosphere can become almost depressing. If it feels like everyone is here in shul, the atmosphere can become electric. This is true as well for a packed *seder limud* before *mincha*, which could really invigorate a person's week of learning.

With all of these considerations, it does not take too much imagination to envision how inspired a community can be if people would make the extra effort to daven in shul three times every Shabbos.

But What About my Wife and Kids?

Many have noble reasons for davening in house *minyanim* on Friday night and Shabbos *mincha*. For some with young kids, it can give them up to an additional half hour with their children at the Shabbos *seuda* before the kids go to sleep. While *chinuch habanim v'habanos* is of paramount importance, this calculation might be *yatza sechara bihefseida*, as it is possible for the losses to outweigh the gains. True, one could have more time to spend with his children, but in doing so he might decrease in their eyes the importance of a serious davening in shul and the value of exerting extra effort for *avodas Hashem*. Furthermore, if the father's inspiration and commitment to Torah and *mitzvos* would grow from his relationship with his rav and increased attendance in shul, that could have a far greater impact on his success in being *mechanech* his children to become inspired *b'nai* and *b'nos Torah*.

Some wives want their husbands stay to home from shul or go to house *minyanim* to be home more to help with the preparation for the *seuda* and with the

young children. A good husband should give priority to these requests. If ignoring the wife's request would cause issues of *shalom bayis*, one should certainly not go to shul, as *shalom bayis* is such an important value that Hashem even allows His name to be erased to preserve it (*Vayikra Rabba* 11:7). Nonetheless, a husband should try to figure out a way to both help his wife and go to shul to daven in the optimal way. It might be helpful for the husband to offer to take on additional responsibilities around the house and with the children at other times that could offset the challenges his wife may have while he is away at shul. That, or buy her jewelry.

If, for reasons of *shalom bayis* or for other extenuating needs, a *ben Torah* in our community is unable to daven in shul on Friday night or Shabbos afternoon, he should consult a rav to discuss whether it would be preferable for him to daven in a house *minyan* or at home by himself. Many times, I have heard people in our community say, "There's no problem at all with davening at a house *minyan*; I see *chevrei kollel* there," or "I see [so-and-so *talmid chacham*] davening there." The *Rosh* writes in a *teshuva* (11) that a *talmid chacham* needs to avoid davening alone at home where he learns, because if he is not davening with the *tzibur* people will not judge him *l'kaf z'chus*. Rather, they will learn from him not to go to shul, and "*lo yachoshu al hatefilla klal, v'nimtzeu batei knesios biteilos*" – people will no longer care about *tefilla* at all, and the shuls will end up empty. In our community where there are numerous shuls, if a *ben Torah* davens at home, people will assume he's davening at a different shul. But if he davens in a house *minyan*, people may learn from him that it's "no big deal", and it runs the same risk of contributing to the emptying out of the shuls, and perhaps the *Rosh* would say in this case that the *ben Torah* would be better off davening at home.

Now More than Ever

To summarize, we have presented three *halachic* and two personal and communal reasons to make the extra effort to daven in shul rather than in a house *minyan*:

1. *Shachen ra*: One who does not daven in shul is called a *shachen ra*, a bad neighbor to Hashem. According to the *Drashos Hatzelach*²⁰ this applies to davening in a house *minyan*, but according to the *Mishna Brura* it only refers to someone not davening with a *minyan* at all. We questioned whether the *Mishna Brura* saw the *Drashos Hatzelach*, and if he would have changed his mind if he had.

2. *Chovas beis hakneses* and *ein tefillos nishma'os ela b'veis hakneses*: There is an obligation to daven in a shul because that is where people are able to daven with the most *kavana*, and Hashem will therefore be much more receptive to the

20 And Rav Herschel Schachter.

tefillos. Sometimes house *minyanim* take place in rooms with distractions, and in atmospheres that could be less serious. These concerns would not apply to places that are designated to be used as shuls or *batei medrash*, where the *tefilla* is taken seriously.

3. *Birov am hadras melech*: It is better to perform *mitzvos* in large groups because it brings more glory to Hashem. This concern would apply even to a house *minyan* that meets in a room or back-house that is only used as a shul or *beis medrash*.

4. The more often a person comes to shul, the more opportunities there will be for his rav to encourage and support his and his family's growth in Torah and *mitzvos*. There will also be many more opportunities for the person to build a personal relationship with his rav.

5. *Kabbalas Shabbos* and *seuda shlishis* are special times for inspiration that could last for a week or more, and a packed *seder limud* before *mincha* on Shabbos could be invigorating for one's week of learning. But there needs to be a large crowd of the *kehilla's* members to make it special.

There's no question that living an inspired and committed frum life in 21st century Los Angeles is filled with challenges *mibayis u'michutz*, from outside and from within. What we need more than anything to overcome these challenges for ourselves and our families, is (1) a strong *kehilla* of people who are committed to working with their rav on growing in Torah and *mitzvos*, and (2) a lot of *siyata dishmaya*. You get both of those at shul. The walk is not so far, and the weather is usually nice.

In Defense of House *Minyanim*: A Response to Rabbi Yaakov Siegel

YAAKOV RICH



Batei knesses are among the crown jewels of the Jewish exile. Although shuls existed throughout the era of the Second Temple, it is difficult to imagine a smooth transition of the *avoda* from *korban*-centric to prayer-centric, from the few centrally located in the *Beis HaMikdash* to all Jews everywhere, without the existence of the *beis knesses*, the communal center of prayer. After the destruction of the Temple, shuls became more than just centers for prayer; they were used for Torah study, as places of gathering for *drashos*, *shiurim*, or public announcements, and even as centers of distribution for the needy and other communal needs. Because of this, shuls retain a revered status in *halacha* and *aggada*. They represent not only prayer, but the *tzibur*, the community, which is extremely important in the eyes of *halacha*. Thus, for example, it is an express *chiyuv* for an existing community to build a shul which provides regular *minyanim*.¹ Additionally, *halacha* forbids many actions inside a shul which display disrespect toward the surroundings.² However, the shul is not the be-all and end-all of *halacha* or even of *tefilla*; not all communal *mitzvos* are obligated to be performed in a shul. If one has access to a *minyan* for *tefilla b'tzibur* that is in an alternative location, should he go out of his way to attend a *minyan* in a shul instead?

Rabbi Yaakov Siegel, in his article, has made his arguments in favor of praying exclusively in a shul, and avoiding *minyanim* orchestrated in an individual's home, and he has graciously invited me to express my own arguments to counter. I'll be clear about the parameters of what these arguments encompass. In the course of a regular week, a man is obligated in twenty-two *tefillos* – three times daily with an

1 See, for example, *Shulchan Aruch* in *Orach Chaim* 150:1, and the Rama in 55:22.

2 See the *halachos* presented in *siman* 151 of *Shulchan Aruch Orach Chaim*.

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additional *musaf* on Shabbos. If one generally endeavours to daven with a *minyan*, he'll find himself most likely in a shul for a majority of those *tefillos*. There are only three or four *tefillos* out of the twenty-two when it is common to find people attending house *minyanim* – *mincha* and *maariv* on Friday evening and *maariv* immediately after Shabbos (as well as perhaps the preceding *mincha*, though in my perception this is less common than the other three). The reason for this is of course that the commute to shul for those *tefillos* are restricted to walking instead of driving and it is often more convenient to daven in your own or your neighbor's home. The arguments I will lay out in this article will be to the effect that although in general it may be ideal to daven in a shul in many cases, practical considerations are often sufficient to justify davening with a house *minyan* instead, and in fact sometimes may even justify a preference for the house *minyan* over a shul.

Part I: From the Gemara to the Shulchan Aruch... Or Not?

A vast majority of the sources involving *tefilla* in a *beis knesses* are not *halachic*; they are generally either *aggadic* in nature or use the language of encouragement and advisement. The main source regarding *tefilla* in a shul that can be found in the *Shulchan Aruch* (which we will soon see) originates with a *gemara* in *Brachos* that we no longer have in our printed editions of the *Talmud Bavli*. A full understanding of the development of this source requires that we foray into the world of variant *girsas*. Although this can at times become confusing, nonetheless, since I have found that this particular issue is not well elaborated upon in any of the most available sources and has caused some misunderstanding among several *acharonim*,³ I have decided to devote some space to it, as it is crucial to the understanding of our topic.

In our Vilna edition of the *Talmud Bavli* (which follows the earlier Venice edition), we have the following on daf 7b-8a in *Brachos*:

א"ל רבי יצחק לרב נחמן מ"ט לא אתי מר לבי כנישתא לצלויי אמר ליה לא יכלנא
א"ל לכנפי למר עשרה וליצלי אמר ליה טריחא לי מלתא ולימא ליה מר לשלוחא
דצבורא בעידנא דמצלי צבורא ליתי ולודעיה למר א"ל מאי כולי האי א"ל דאמר
ר' יוחנן משום ר' ש"ב בן יוחי מאי דכתיב ואני תפילתי לך ה' עת רצון אימתי עת רצון
בשעה שהצבור מתפללין.

Rav Yitzchak said to Rav Nachman, "Why doesn't the master come to the shul to pray?" He replied, "I am not able." [Rav Yitzchak] said, "Master should gather to him ten [men] and pray [with them]?" [Rav Nachman]

³ For examples of this, see below in footnote 30.

replied, “This is a difficulty to me.” [Rav Yitzchak] said, “Master should tell a messenger of the community that at the time the community prays, he should come and inform the master.” He replied, “What is the point of all this?” [Rav Yitzchak] answered, **“As Rabbi Yochanan said in the name of Rabbi Shimon ben Yochai: What does this pasuk refer to: ‘As for me, let my prayer to You, Hashem, be at a favorable time’? (Tehillim 69:14) At a time when the tzibur is praying [– that is a favorable time for prayer].”**

In the story presented by the *gemara*, Rav Yitzchak is trying to convince Rav Nachman that even if he cannot pray with a *tzibur*, he should at the very least pray at the same time that the *tzibur* is also praying. He supports this with the statement of Rabbi Yochanan (bolded above) who learns that “*eis ratzon*,” the favorable time for prayer mentioned in *Tehillim*, is the time when the *tzibur* is davening.

Now, it seems that this *girsas* that we have for Rabbi Yochanan’s statement is not the version that most *geonim* and *rishonim* had. Let’s take a quick look at the *Sheiltos* who quotes this very statement:

ומתבעי ליה לצלויי בהדי ציבורא דאמר רבי יוחנן משום רבי שמעון בן יוחי אין תפלתו של אדם נשמעת אלא עם הציבור שנאמר ואני תפילתי לך ה' עת רצון אימתי עת רצון בשעה שהצבור מתפללין.

And one should pray together with a tzibur, as Rabbi Yochanan said in the name of Rabbi Shimon ben Yochai: A man’s prayer is not heard⁴ unless he prays with the tzibur, as it says, “As for me, let my prayer to You, Hashem, be at a favorable time.” When is a favorable time? When the tzibur is praying.

This version of Rabbi Yochanan is a bit different than ours, but it is the version found in the *Behag* as well.⁵ We can assume that the *Sheiltos* and *Behag* still had this

⁴ It’s not clear what is meant by saying that a *tefilla* is “not heard”. There are several phrases used in the *gemara* to identify the quality of a person’s or a group’s prayers, such as “*ein tefillaso nishmaas*”, “*ein hakadosh baruch hu mo’es bo*”, “*hakadosh baruch hu matzui*”, “*shechina shora imahem*”, “*lo ka midchi*”, “*K’ilu makifo choma shel barzel*”, and it’s not clear if they are particular fine-grained categories or levels of the quality of *tefillas*, or if they are merely rhetorical devices which are common in *aggadic* statements. In the spirit of *ein meishivin al ha-aggada*, I will simply ignore these descriptions in this article and take the statement to mean that what’s being described either should or should not be done. (Although see *Tosafos* in *Avoda Zara* 4b who distinguish between “*ein tefilla nishmaas*” and “*ka midchi*”).

⁵ The *Behag* is quoting verbatim from the *Sheiltos*, but it’s hard to imagine that he would have done so if he didn’t have the version of the *gemara* that the *Sheiltos* cites. Additionally, this is the *girsas* is found in a *teshuva* of Rav Natronai Gaon printed in *Torasan shel Rishonim* pp. 21-22 (Frankfurt am Main, 1882).

statement in the context of the story with Rav Yitzchak and Rav Nachman, so it still needs to be relevant to that story. Rav Yitzchak's point was that even when not praying with the *tzibur*, one should still pray at the same time as the *tzibur*. We can understand his usage of Rabbi Yochanan as follows: Even though Rabbi Yochanan advocates davening with the *tzibur* (which implies the same time and the same place), since his *drasha* from the *pasuk* involves the time that the *tzibur* davens, this shows that there is value to davening simultaneously with the *tzibur* even if not in the same location.⁶

So far, this statement of Rabbi Yochanan has nothing to do with *batei knesses*. It has to do with davening with a *minyan*, or at the very least at the same time as a *minyan* is davening. The *girsas* of the *Sheiltos* and the *Behag* which we just saw was later inherited by the *Baalei HaTosafos*. We find this version of Rabbi Yochanan in the *Semag*, the *Raavan*, the *Rokeach*, and *Tosafos* in *Avoda Zara* (4b) along with many others.⁷

The third version of Rabbi Yochanan that we need to see comes from the *Rif*.⁸ He has the following *girsas*:

ואמר רבי יוחנן משום רבי יוסי בן זמרא אין תפילתו של אדם נשמעת אלא בבית הכנסת שנאמר ואני תפילתי לך ה' עת רצון אימתי עת רצון בשעה שהציבור מתפללין.
And Rabbi Yochanan said in the name of Rabbi Yosi ben Zimra: a person's prayer is not heard unless he is in a shul, as it says, "As for me, let my prayer to You, Hashem, be at a favorable time". When is a favorable time? When the tzibur is praying.

This version of the *Rif* is almost identical to the version of the *geonim* and the *Baalei HaTosafos*, except that "*im hatzibur*" is replaced with "*b'veis haknesses*." If we assume that the *Rif* had this statement of Rabbi Yochanan, as we do, in the context of the story with Rav Yitzchak and Rav Nachman,⁹ then this presents us with two

⁶ It may even be that Rav Yitzchak considers Rabbi Yochanan's teaching to be that davening at the same time as the *tzibur* is actually considered "*im hatzibur*".

⁷ This *girsas* of "*ein tefillas shel adam nishmaas ela im hatzibur*" for Rabbi Yochanan can also be found in the *Sidur Chasidei Ashkenaz* by Rabbeinu Shlomo of Worms (a generation before Rashi), the *Sefer HaManhig*, the *Orchos Chaim* of Rav Aharon Hakohen of Lunel (*Hilchos Tefilla* 53&69) quoting in the name of the Rash, in the *halachos* of Rabbeinu Shalom of Neustadt (14th century), and in *Ateres Zekeinim* (*Devarim* 4:29). [See also Shaul Lieberman in *Hilchos HaYerushalmi L'Rambam* (p. 35) who suggests that the Rambam also had this *girsas* in our *gemara*.]

⁸ The *Rif's girsas* is also shared by Rabbeinu Yonah as well as the *Ra'ah*.

⁹ This is not a given, as while the *Rif* brings this teaching of Rabbi Yochanan, he omits the story with the dialogue between Rav Yitzchak and Rav Nachman.

questions. What does this have to do with Rav Yitzchak's point that Rav Nachman should daven in his house at the same time that the *tzibur* davens?¹⁰ And how does Rabbi Yochanan's proof text ("*Va'ani Tefillasi*") relate to his opening statement that prayers are only heard in a shul?

The easiest and most likely answer to the above questions on the Rif's *girsas* is that his *girsas* are really the same in meaning as the *girsas* of the *geonim* and the *Baalei HaTosafos*. Rabbi Yochanan is saying that *tefillas* are only heard in a shul because that's where the *tzibur* is. He really means that *tefillas* are heard with a *tzibur*, as is evident by the *pasuk* that he brings for support. His mention of *beis knesses* is just *urcha d'milsa*, but in theory a *minyan* elsewhere would be the same.

The *Tur*, who likely had access to both the *girsas* that we've just seen,¹¹ "*im hatzibur*" and "*b'veis haknesses*", explicitly reconciles them exactly the same way that we just did above:

לא יתפלל אדם אלא בבית הכנסת עם הציבור דא"ר יוחנן אין תפילתו של אדם
נשמעת אלא בב"ה פירוש עם הציבור.

A person should only pray in a beis knesses with the tzibur, as Rav Yochanan said, a person's prayer is only heard in a beis knesses, meaning: with the tzibur.

The *Tur* here, using the Rif's *girsas*, shows that he understands "*b'veis haknesses*" to mean "with the *tzibur*." This is how we understood the Rif above and it fits satisfactorily with the context of the *gemara* from which it's taken as well as with the alternative *girsas* of "*im hatzibur*."¹²

10 In fact, if you understand *b'veis haknesses* here to be literal, then Rav Yitzchak is undermining his own point. If Rabbi Yochanan is saying that *tefilla* needs to be only in a shul, then once Rav Nachman is not going to the shul, what does it matter if he davens simultaneously with the *tzibur* or not?

11 Besides for his father, the Rosh, being the intellectual descendant of the *Baalei HaTosafos*, the *Tur* likely had access to the writings of the *Baalei HaTosafos* (certainly our *Tosafos* to *Avoda Zara*, and perhaps the *geonim* as well). The Rosh himself, though, in *Piskei HaRosh* here has a *girsas* similar to the Rif with a small addition:

א"ר יוחנן אין תפילתו של אדם נשמעת אלא בב"ה [בשעה שהציבור מתפללין] שנאמר ואני תפילתי לך ה' עת רצון אימתי עת רצון
בשעה שהציבור מתפללין.

(Regarding the *girsas* of "*besha'a shehatzibur mispalelim*", see footnote 16 below.)

Another hint that the *Tur* had the *girsas* of the *Baalei HaTosafos* (besides for the Rif's presented in the *Tur* itself) can be found in the *Baal HaTurim* (*Bereishis* 28:16):

וייקץ יעקב משנתו ויאמר ס"ת צבור לומר שאין תפלתו של אדם נשמעת אלא בצבור.

12 This understanding of the *Tur* is also advanced by Rav Menachem de Lonzano (whose objection to the *Beis Yosef* we'll see below), Rav Yom Tov Lipmann Heller (in *Maadanei Yom Tov*), and the *Chasam Sofer* (in *Drushim V'agados*). The reconciliation of *girsas* that we're ascribing to the *Tur* is also given by the *Cheshek Shlomo*.

However, it seems that the *Beis Yosef* did not understand the *Tur* in the way that we have just explained.

לא יתפלל אלא בב"ה עם הציבור דא"ר יוחנן אין תפילתו של אדם נשמעת וכו':
בפרק קמא דברכות ומפרש רבינו דבב"ה דקאמר היינו עם הציבור. ומשמע מדבריו
שאם אינו מתפלל עם הציבור לא שאני לן בין מתפלל בב"ה למתפלל בבית אחר.
אבל הר"י כתב בשם הגאונים שאפילו כשאין הציבור מתפללין יש לו לאדם להתפלל
בב"ה מפני שהוא קבוע ומיוחד לתפילת ציבור.

One should only pray in a beis knesses, as Rabbi Yochanan said etc.: [This is found] in the first chapter of Brachos. And our teacher [the Tur] understands that the "in a beis haknesses" mentioned here is only with a tzibur. His words imply that if one is praying alone, it makes no difference whether he prays in a beis knesses or in another location. But Rabbeinu Yonah writes in the name of the geonim that even when not praying with the tzibur, one should pray in a beis knesses since it is the location dedicated to the prayer of the tzibur.

The *Beis Yosef* seems to understand that the *Tur* requires one to pray not only with a *tzibur*, but in a shul with the *tzibur*. When the *Tur* says "*b'veis haknesses, peirush: im hatzibur*", he means that one should daven in a shul, but that it's only necessary when there's a *minyan* there.¹³

This *Beis Yosef* is astonishing. Not only does he show no indication that he is aware of the other *girsas*, which were not uncommon, this understanding of Rabbi Yochanan no longer fits within the context of *gemara* with Rav Yitzchak and Rav Nachman! Additionally, the implication that the *Beis Yosef* derives from the *Tur* is quite arbitrary. This is expressed by Rav Menachem de Lonzano, a younger contemporary of the *Beis Yosef* from Jerusalem. After quoting the *Tur* and the *Beis Yosef*, he writes:

ואני אומר שאין ראוי ליחס לטור סברא זו, ואם באנו להוציא משמעויות רעות
הנראית בתחלת העיון, נוכל להוציא משמעויות אחר ולומר, דמשמע מדבריו שאם
אינו מתפלל בבהכ"ס, לא שאני לן בין מתפלל בצבור או ביחיד...

But I say that this is not a proper understanding to attribute to the Tur. And if we were to make inferior inferences from our initial readings of the Tur (without inspection), we would be able to infer another implication as well: that the Tur implies (by saying that one should pray in a beis knesses with a tzibur) that if one is not praying in a beis knesses, then it

¹³ This understanding of the *Tur* seems to be shared by the *Bach* as well.

makes no difference whether he prays with a tzibur or by himself (which is of course false)...¹⁴

Rabbi Menachem continues at length to prove that the *Tur* is to be understood as we explained above, that one should daven with the *tzibur* who, in general, daven in the shul.^{15 16}

At the end of the day, the *Beis Yosef* codifies this in the *Shulchan Aruch* using almost the exact language of the *Tur* (while omitting the source from *Brachos*):

ישתדל אדם להתפלל בבית הכנסת עם הציבור.

One should strive to pray in a beis knesses with the tzibur.

The *Shulchan Aruch* here implies that one should daven both with the *tzibur* **and** in a shul. It's interesting to note, though, that the *Shulchan Aruch* uses a softer language, "*yishtadel*" – one should "attempt" to do so, implying that there is no *chiyuv* to do so.¹⁷ This makes sense, as even if you understand the Rif's *girsas* to be literal in

¹⁴ *Derech Chaim* (Lvov, 1931; pp. 82-89)

¹⁵ It is possible, with a little bit of a stretch, to read the *Beis Yosef l'kaf zechus* as being in line with our understanding of the *Tur*. We could say that when the *Beis Yosef* writes "*u'mashma mi-dvarav...*" he doesn't mean this particular phrase of the *Tur*, but rather from the continuation of the *Tur* in this *siman*. The *Tur* continues to write that if one is not able to daven with the *tzibur* he should daven at the time that the *tzibur* davens; he does not mention anything about – in the place where the *tzibur* davens – the *beis knesses*. Perhaps this is what the *Beis Yosef* is referring to – the implication of the *siman* as a whole, rather than these words quoted from the *Tur* that "*lo yispallel ella b'veis haknesses im hatzibur*".

¹⁶ Rabbi Menachem de Lonzano also notes that he found in Jerusalem a manuscript of *Maseches Brachos* which had the following [fourth] *girsas*:

דא"ר יוחנן אין תפילתו של אדם נשמעת אלא בשעה שהצבור מתפללין שנאמר...

This *girsas* still survives today in the Munich and Paris manuscripts and is similar to the Rosh's version (see above, footnote 11). In terms of content, though, this *girsas* is not really different from the *girsas* in our own Vilna *shas*.

¹⁷ This can be confirmed by a quick look at other places where the *Shulchan Aruch* uses the word "*yishtadel*". For example (in *Even Haezer* 2:6):

לעולם ישתדל אדם לישא בת תלמיד חכם ולהשיא בתו לתלמיד חכם

One should strive to marry the daughter of a talmid chacham, and to marry his daughter to a talmid chacham.

Another example (*Orach Chaim* 250:1):

ישכים בבקר ביום ששי להכין צרכי שבת ואפילו יש לו כמה עבדים לשמשו ישתדל להכין בעצמו שום דבר לצרכי שבת כדי לכבדו
One should arise on Friday morning early to prepare the necessities for Shabbos. Even if he has many servants to help him, one should strive to prepare at least something for Shabbos on his own in order to honor it.

What's more interesting is that in other places where the *Shulchan Aruch* uses the language "*yishtadel*", it's because the *Tur* also uses that language. Here, though, as we saw, the *Tur* uses the more straightforward language of "*lo yispallel ella b'veis haknesses im hatzibur*." It could be that since the *Beis Yosef* understands that the *Tur*'s inclusion of *beis knesses* is literal, he is forced to downgrade the language a bit since he knows there is no *chiyuv* to daven in a *beis knesses*. According to our understanding of the *Tur*, this is just about *tefilla b'tzibur*, for which there are stronger sources available in order to show more of an obligation. (The issue of *tefilla b'tzibur*, separate

its specification of a *beis knesses*, the *gemara* never implies that there is any obligation involved here. The *gemara* itself is contained in an *aggadic sugya* and does not use any *halachic* language at all.¹⁸

from *tefilla b'veis haknesses*, is beyond the scope of this article.)

It's worthwhile here to address the *Igros Moshe* (*Orach Chaim* 2:27) who writes that *tefilla b'tzibur* is a *chiyuv* notwithstanding the *Shulchan Aruch's* *lashon* of "yishtadel". It may be tempting to extend this to mean that Rav Moshe understands that *tefilla b'veis haknesses* is also a *chiyuv* (which he does not explicitly say). It's clear to me that this is, in fact, not the case for two reasons:

(1) If this were the case that *tefilla b'veis haknesses* is a *chiyuv* on par with *tefilla b'tzibur*, then the very case that Rav Moshe brings to prove his point - that a traveler is required to walk up to four *milin* ahead to accomplish *tefilla b'tzibur* - should also apply to *tefilla b'veis haknesses*. That is, one should be required to walk up to four *milin* to accomplish *tefilla b'veis haknesses*. And nowhere do we see that this is true. In fact, the *Shulchan Aruch's* language is "kdei l'hispalleg b'asara," which implies that it matters not if it's in a shul or elsewhere.

(2) Rav Moshe himself in another *teshuva* (*Igros Moshe* OC 1:31) frames whether *tefilla b'tzibur* is a *chiyuv* or not as a *machlokes* between the Rambam and Tosafos. The Rambam, according to Rav Moshe, holds that *tefilla b'tzibur* is a *chiyuv* because he holds like the *amoraim* in the *gemara* who give the reason for *tefilla b'tzibur* as "ein hakadosh baruch hu mo'es b'tefillasan shel rabbim" - i.e. that a *minyan's* *tefillos* are never denied, and one is *mechuyav* to daven in a place where his *tefillos* are possible to be heard. [However, Rav Moshe posits, this is only true if the *minyan* is davening in such a way that the *shechina* is with them, which for example is not the case if they are davening in a *makom metunaf*.] Throughout his arguments there, it's clear that the *chiyuv* of *tefilla b'tzibur* (according to Rav Moshe's understanding of the Rambam) comes from sources that refer only to the idea of davening with a *minyan* and not from anything involving *tefilla b'veis haknesses* (see there at length).

To be clear, Rav Moshe in this *teshuva* is not claiming that by saying "yishtadel", the *Shulchan Aruch* means that it is a *chiyuv*. He's merely claiming that just because the *Shulchan Aruch* uses the term "yishtadel", that does not mean that it's **not** a *chiyuv*.

18 Rabbi Siegel, in his article, places a good deal of emphasis on the *Mishna Berura* in 90:38 which implies that there is some *chiyuv* which lies behind attending a *beis haknesses*. A closer examination, though, yields some doubt in the matter. And because we live in a time in which much weight is given to the words of the *Mishna Berura* as a *posek acharon*, I will detail the issue here at length.

The *Mishna Berura* in question is regarding the issue of being called a *shachen ra* by not davening in a *beis haknesses* if one exists in a person's town. (We will discuss this issue more in detail in a later section of this article.) He writes there:

ואם מתפלל בביתו בעשרה בכל גווי אינו נקרא שכן רע דכל בי עשרה שכינתא שריא ומיהו עכ"פ מדי חובת בהכ"נ לא נפיק
אא"כ אותו המקום שמתפללין בו קבוע לקדושה.

These are not the *Mishna Berura's* own words, but rather he's quoting verbatim from the *Shaarei Teshuva*, and looking in the *Shaarei Teshuva* one finds that this actually comes from the *Malki Bakodesh* of Rav Ezra Malki (quoted in turn by the *Machazik Bracha*). But if one takes a look at the *Malki Bakodesh*, they'll find that the term "*chovas beis haknesses*" is not actually there, but rather there's just the phrase "*midei beis haknesses lo nafik*." It seems that the term "*chovas beis haknesses*" is a creative mashup made by the *Shaarei Teshuva* (perhaps in an attempt to improve the sentence's somewhat questionable grammar) by incorporating a phrase from a few lines up in the *Malki Bakodesh*. Rav Ezra Malki, in a *teshuva* printed in the back of his published hagada, deals with a case where someone's house is attached to a shul and there is a window connecting his house to the inside of the shul. The question is whether he can join with a *minyan* davening in the shul even though he is separated by the wall with a window. Rav Malki begins by delineating the "*madregos*" of quality of *tefillos* according to his understanding of the *gemaros* in *Brachos*; he believes that *tefilla b'veis haknesses* and *tefilla b'tzibur* are both

Part II: When to Be *Mehader*

As we've explained up to this point, the *Shulchan Aruch* is introducing a new idea: the preference that *tefilla b'tzibur* be in a shul. This idea cannot be found explicitly in the *Talmud* nor in the *rishonim*, so there is no previous discussion of such an idea or the reason behind it. Faced with this challenge, the *nosei keilim* try to determine what the reason is behind this idea. Why is it important for a *tefilla b'tzibur* to be in a shul as opposed to anywhere else? There are two main answers to this provided by the *acharonim*.

The first comes from the *Magen Avraham*, who writes that the reason is because of the concept of *b'rov am hadras melech*, that a mitzva is enhanced by being performed with a large group of people. Since *tefilla b'tzibur* in a shul is likely to involve a bigger crowd than a *minyan* assembled elsewhere, the *Shulchan Aruch* is applying the concept of *b'rov am* to the *beis knesses*. The *Pri Megadim*, however, finds this problematic. Doesn't the *Shulchan Aruch* also say that a *beis knesses* is preferable when a person is davening alone? It would make sense if the preference for a *beis knesses* were for the same reason both for *tefilla b'tzibur* and *tefilla b'yechidus*, and of course the reason of *b'rov am* can't apply to *tefilla b'yechidus*.¹⁹ So what's the reason for the preference

independent *maalos*, but that *tefilla b'tzibur* is better than *tefilla b'veis haknesses b'yechidus*. In this delineation, he gives no indication that he believes that *tefilla b'veis haknesses* is a *chiyuv*.

After a full discussion on whether the wall prevents the person in his home from joining the *minyan* next door, Rav Malki concludes that this person is considered to have accomplished *tefilla b'tzibur*, but not *tefilla b'veis haknesses*:

אך לא חשוב כאילו הוא בבה"כ לצאת י"ח בה"כ... לא חשוב המקום שהוא עומד בו קדוש כקדושת בה"כ ולא נפיק בזה אלא כמתפלל ב'.

At the end of this, Rav Malki also writes that this person is not called a *shachen ra* and adds the point which is quoted by the *Shaarei Teshuva* about a person who davens with a *minyan* at home (minus the "*chovas*" term). It's pretty clear from the context that Rav Malki is trying to say that the person has not reached the *maala* of *tefilla b'veis haknesses*, and not that there is an actual *chiyuv* to daven in the *beis haknesses*. (If there was, why wouldn't he point out that the person is *mechuyav* to just go next door?)

Somehow, this term of "*chovas beis haknesses*" was rolled into the other sentence about davening at home with a *minyan* by the *Shaarei Teshuva*, and was copied straight into the *Mishna Berura*. Now, it's possible that the *Mishna Berura* is imbuing the *chova* term with more significance than Rav Malki (or even maybe the *Shaarei Teshuva*) was, but I think that without him saying so explicitly, it's difficult to make such an argument, and it certainly should not be used as a primary source to show that *tefilla b'veis haknesses* is a full-fledged *chiyuv*.

19 In fact, as we'll see in the next section, the idea that davening in a shul is preferable when davening alone does indeed have many sources in the *gemara* and the *rishonim*, and so the reasoning behind that idea already has expressions in the *rishonim*. I'll point out, though, that the *Pri Megadim*'s objection to the *Magen Avraham* is not completely sound. Recall that according to the *Beis Yosef*, the *Tur* holds that *tefilla b'tzibur* should be ideally in a shul, but *tefilla b'yechidus* shows no preference for a shul at all. Therefore, according to this understanding of the *Tur*, there must be a reason for the preference of a shul for *tefilla b'tzibur* which does not apply to *tefilla b'yechidus*. This, according to the *Magen Avraham*, makes perfect sense. And when the *Shulchan Aruch* (influenced by

for a shul for *tefilla b'yechidus*? The answer is explicit in the *Beis Yosef* (brought from Rabbeinu Yonah) above: “*mipnei she-hu kavua u'meyuchad l'tefillas tzibur*” – because the shul is a place which is designated for *tefilla b'tzibur*, and therefore it is a preferable place to daven in general.

Both these reasons for *tefilla* in a shul are logical. It's more likely for a *makom meyuchad l'tefilla* to be conducive to the proper *kavana* required for a person's davening.²⁰ Anywhere else there may be distractions that detract from the atmosphere necessary for a proper *tefilla*. Likewise, the Magen Avraham's reason of *b'rov am* can not only be understood as being *mekadesh shem shamayim* by performing the mitzva of *tefilla* with a large crowd; but additionally, perhaps a person's *tefilla* can be intensified by the knowledge that he is praying together with so many others.

Whatever the reason may be for the *Shulchan Aruch*, whether it's because of *b'rov am* or because of *makom kavua l'tefillas tzibur*, it's clear that this idea of davening in a shul is what we would call a *hidur mitzva*, a nice way of performing an existing mitzva, in this case, *tefilla*.²¹ But how far does one have to go to perform a mitzva *b'hidur*? What must he sacrifice? The answer to that is clearly subjective. For example, obtaining a particularly nice-looking *esrog* (symmetric, nice color, no spots, etc.) for Sukkos, a classic example of *hidur mitzva*, might be expensive, or it might take a lot of time and effort to find among the many *esrog* vendors, taking time away from other responsibilities. It's certainly a nice thing to do, but a person must weigh the costs and benefits according to his particular circumstances.²²

Talmidei Rabbeinu Yonah) writes that one should daven in a shul when davening without the *tzibur*, that could be for a separate reason with which the *Tur* does not agree.

20 In reality, when the *rishonim* use “*makom kavua l'tefillas tzibur*” as the reason for davening in a *beis knesses b'yechidus*, this is most likely more about connecting in some way to *tefilla b'tzibur* (by davening in the time or place that the *tzibur* davens) as we'll discuss below. But the only way I could think of to extend this reason to *tefilla b'tzibur* is to frame it as enhancing people's *kavana* by being a place which is designated for *tefilla* in general.

21 It is not difficult to argue that *b'rov am hadras melech* is a *hidur mitzva* and is not considered a *chiyuv*. See, for example, Rambam in *Peirush HaMishnayos* (*Pesachim* 5:6), and Magen Avraham (690:24). A full exposition of the parameters of *b'rov am*, though, will have to be left for another time.

22 The full *sugya* of *hidur mitzva* is also beyond the scope of this article, but it is sufficient here to maintain that *hidurei mitzva* are not *chiyuvim* and they are not *me'akev* in the performance of the mitzva in question. This can be seen in the myriad cases in which the issue of *hidur* arises. Even if it may be considered an independent mitzva (rather than a component of the mitzva being enhanced), as some *acharonim* hold, it is clear that there is no *chiyuv* for the *hidur* to be performed. It's noteworthy, however, that there are a couple particular *mitzvos* in which there is an implication in the *gemara* or *rishonim* that there is an aspect of *hidur* which is *me'akev*, like *lulav hayavesh* and *ksivas sefer torah shelo lishma*, and the *acharonim* discuss what sets these apart from *hidurei mitzva* in general.

As another example, let's take the idea, also from *Brachos*, that one should daven in a room with windows to the outside.²³ Rashi explains that this allows a person to have a deeper *kavana*, as the sky outside reminds him of the heavens.²⁴ This makes it into the same *siman* of the *Tur* and *Shulchan Aruch*. But how far must one go to accomplish this ideal, this *hidur mitzva*? For instance, in our shul on Shabbos morning there are two different *minyanim* in two separate rooms. One room has windows to the outside and the other does not. Should one go out of his way to attend the *minyan* in the room with windows? Maybe, but he must weigh that with other considerations that affect him. Perhaps the pace or the starting time or the atmosphere or the *baalei tefilla* and *baalei kria* of the other *minyan* is more to his suiting and would enhance his *tefilla* experience even more so than the windows. Perhaps he (or his wife) prefers to begin the Shabbos meal earlier as this enhances his (or her) *oneg shabbos*, and thus he wishes to attend the earlier *minyan* in the room without windows. These factors have to be taken into account.

The same can be said in our case. Davening in a *beis knesses* is something that the *Shulchan Aruch* advocates because it enhances one's *tefilla*. But there are so many other factors associated with a person's *kavana* and the quality of his *tefilla*, and in this regard not every person is the same. Additionally, like any *hidur mitzva*, it must be weighed with the practical considerations relevant to the person's unique circumstances. In the case of a house *minyan*, let's imagine that it takes place for *mincha* and *maariv* on Friday evening, and that attending the house *minyan* saves one 30-40 minutes of commute time to davening. That time may allow one to make extra preparations for Shabbos,²⁵ or assist his wife with various tasks, or to begin the meal earlier before his children are asleep. All these are important considerations when deciding if the *hidur mitzva* is appropriate. It may even be the case that one's *kavana* at shul will suffer if he knows that because of being there, he will have to start the meal later without his children.

23 This idea is brought in the *gemara* twice, on 31a and 34b, both times from Rabbi Chiya bar Abba (the second time in the name of Rabbi Yochanan). It's listed in the *Tur* in our own *siman* 90 and in the *Shulchan Aruch* in 90:4.

24 *Talmidei Rabbeinu Yonah* alternatively explain that the light from the windows allows a person to concentrate better on his *tefillos*. [Or perhaps, that the air coming indoors is better for concentration as well; see *Perisha* (OC 90:4)]. According to *Talmidei Rabbeinu Yonah*, today when we have air conditioning and electric lighting, the issue of windows in a shul is less important, but according to Rashi, it retains its importance as much as ever.

25 It could be that foregoing davening in a shul, a concept for which the *Shulchan Aruch* uses the term "*yishtadel*", would allow one to perform his own preparations for Shabbos, another concept for which the *Shulchan Aruch* uses the term "*yishtadel*". See above, footnote 17.

In addition to those external considerations, the nature of the house *minyan* itself might provide relevant considerations as well. Perhaps the person in question prefers a smaller, quieter group to daven with and finds the larger shul atmosphere distracting. Perhaps the house *minyan* has a speaker give a *dvar torah* which he really tends to enjoy and increases his level of *oneg shabbos*. Perhaps the room in which the house *minyan* is held has a view of the outside which, similar to the windows prescribed by the *gemara*, inspire a deeper *kavana* in his *tefilla*. There is no one-fits-all answer to whether a house *minyan* is better or worse than attending a shul.

Part III: Davening Alone in Shul

In the previous sections, we've shown that the only indication in the Talmud that *tefilla b'tzibur* is better performed in a shul is only evident in one *girsa* belonging to the Rif, and is only understood to be referring literally to a shul by the *Beis Yosef*, who in *Shulchan Aruch* presents the idea as a *hidur tefilla*. We then argued that incorporating a *hidur* such as this one must be weighed with all the other factors that can increase or detract from the quality of one's *tefilla* and that can affect his unique situation positively or negatively.

In 1952, there was a new Young Israel community in Saint Louis that owned a small building which was sufficient for their daily and weekly services, but which would not be able to hold the expected crowd for Rosh Hashana and Yom Kippur. The shul decided to rent out a ballroom at the local Hamilton Hotel to accommodate the larger crowd they were expecting. However, another older shul in the community, which was located not far from the hotel, was upset that this might make members who otherwise would have attended their shul to instead attend the services at the attractive hotel ballroom. A *shaila* was sent to the Chief Rabbi of St. Louis, Rav Menachem Tzvi Eichenstein, to determine whether this arrangement for the Young Israel was appropriate.

Keep in mind that this scenario is almost identical to our case of a house *minyan*. A location that is otherwise used for the mundane, not *tefilla*, is temporarily repurposed for *tefilla b'tzibur*. If we follow the *Pri Megadim's* reason for the *Shulchan Aruch's* *hidur* of *beis haknesses*, then the *hidur* is not applicable here just as it's not in a house *minyan*. Only according to the *Magen Avraham* would we be able to distinguish between the hotel and the house *minyan* on the grounds that the hotel retains *b'rov am*.

Rav Eichenstein spends the first section of his *teshuva* (printed subsequently in *HaPardes* 26:6) discussing whether *tefilla b'tzibur* needs to take place in a shul. He concludes, as we have so far, that there is no *chiyuv* that *tefilla b'tzibur* be in a

beis knesses, and that the *Shulchan Aruch* that we quoted above is presenting a *hidur mitzva*.²⁶

There are, however, several other sources in the *Bavli* and *Yerushalmi* that imply that there is value, even if it's not a *chiyuv*, to *tefilla* in a *beis knesses* over other places. Rav Eichenstein and the other *gedolim* involved explained all of these sources as referring to someone who is not davening with the *tzibur*, but rather by himself. In some cases, the source is vague and open to interpretation, and in other cases there are clear reasons to understand the source as referring to *tefilla b'yechidus*. It would be too tedious to engage with each of them here, but we'll look at one, perhaps the most well-known, which also comes from the *Bavli* in *Brachos* only two *dapim* before the *gemara* we had earlier with Rabbi Yochanan.

תניא אבא בנימין אומר אין תפלה של אדם נשמעת אלא בבית הכנסת שנאמר
לשמוע אל הרנה ואל התפלה במקום רנה שם תהא תפלה.

A braisa: Abba Binyamin says a man's prayer is only heard in a *beis knesses*, as it says, "To listen to the song and to the prayer" - in the place of song, there is where there should be prayer. (*Brachos* 6a)

Notice that according to the *girsas* of the *Rif* in Rabbi Yochanan which we discussed in the previous sections, Rabbi Yochanan's statement is identical to Abba Binyamin's here except for the proof texts they bring. But unlike Rabbi Yochanan, most commentators understand that Abba Binyamin is actually referring to davening in a *beis knesses* when one is alone (*b'yechidus*) and not to *tefilla b'tzibur*. How do we know?

1. The *gemara* immediately following this and later on *daf* 8 imply that *tefilla b'tzibur* is always heard by Hashem, and if Abba Binyamin were referring to *tefilla b'tzibur*, then he would be denying this fact; he would be implying that *tefilla b'tzibur*

²⁶ In the end, Rav Eichenstein prohibited the arrangement in this particular case because he felt that the location chosen by the shul in this case - the hotel ballroom - was a place designated for *kalus rosh* and events that are against the spirit of Torah and *tefilla*.

Rav Eichenstein sent out his *teshuva* to several *gedolei hador* around the world - Rav Benzion Uziel, Rav Dov Berish Weidenfeld, Rav Moshe Feinstein, Rav Eliyahu Henkin, Rav Yerucham Warhaftig, and Rav Yonasan Steiff - for confirmation. Most of them did not directly address the first part of his *teshuva* dealing with *tefilla b'veis haknesses*, and certainly none of them wrote anything contrary to it. Rav Moshe in particular spent his response mostly dealing with the final point of Rav Eichenstein's - that people should not daven in a *makom metunaf* or a place designated for *peritzus* or the like. (Regarding Rav Moshe's opinion, see above footnote 17.) Mainly Rav Uziel and Rav Henkin are the two that explicitly agreed with Rav Eichenstein's presentation on *tefilla b'veis haknesses*. It's arguable that Rav Uziel's response implies that there is not even a *hidur* involved in *tefilla b'veis haknesses* unless one is davening *b'yechidus*.

is not heard when it's not in a shul.²⁷ In fact, according to the *girsas* of the *geonim* and the *Baalei HaTosafos* in Rabbi Yochanan on *daf* 8, if Abba Binyamin were talking about *tefilla b'tzibur*, Rabbi Yochanan would be directly contradicting him.

2. The precise wording of Abba Binyamin, "*tefilla shel adam*", implies that this refers to a *yachid* and not the *tefilla* of the *tzibur*.²⁸

3. The *pasuk* that he brings - "*lishmoa el harina*" (I *Melachim* 8:28) - is clearly referring to the *tefilla* of a *yachid*, as it is Shlomo praying to Hashem in the newly-built *Beis Hamikdash*.²⁹

Abba Binyamin's idea that *tefillas yachid* is better in a shul is eminently understandable. Just as we saw in the last section that Rabbi Yochanan (and Rav Yitzchak) encouraged a *yachid* to daven at the time that the *tzibur* daven, so too it makes sense that there is value in davening in the place where the *tzibur* daven. These are ideas which show us that when davening, even if one is not able to daven directly with the *tzibur*, which is ideal, there is still the opportunity to connect one's *tefillas* to the *tzibur* by either davening at the same time or at the same place that the *tzibur* do.³⁰

27 This proof is given by Rabbi Menachem de Lonzano in *Derech Chaim*, among several others. It's also given by Rav Uziel in his *teshuva*.

28 This one is given by the *Tzelach* (*Brachos* 6a), and quoted in several of the aforementioned *teshuvos*. The *Tzelach* actually holds that Abba Binyamin doesn't just mean that a *yachid* should daven in a shul, but that he should daven in a shul when the *tzibur* is still there after the *tzibur* is finished with the main *tefilla*. In other words, he should daven *shemoneh esrei* when the *minyan* is still there saying e.g. *Ashrei* and *U'va L'tziyon*, which is what Abba Binyamin means by "*b'makom rina*" - i.e. in the place where the *tzibur* is still saying *shiros v'tishbachos* - "*sham t'hei tefilla*".

29 It seems to me that this is an integral component of Abba Binyamin's *drasha*, the fact that the *tefilla* being referred to in the *pasuk* (Shlomo's reference to his own prayer) is said in the *Beis Hamikdash* - the ultimate *makom rina*. However, admittedly, it is a weak proof in general to invoke the context of *pesukim* that Chazal use for *aggadic derashos*. In this case in particular, one may counter that Shlomo's *tefilla* was in fact *tefilla b'tzibur* as it was said "*neged kol kahal yisrael*" (8:22).

30 There is a strong current of *acharonim* who believe that, unlike what we've just argued, Abba Binyamin is actually referring to *tefilla b'tzibur*, and that either he is encouraging that *tefilla b'tzibur* be in a *beis knesses*, or what he means by "*b'veis haknesses*" is actually just "*b'tzibur*". This belief comes from the misunderstanding that *Tosafos* in *Avoda Zara* (4b), when they quote "the first chapter of *Brachos*" as saying "*ein tefillaso shel adam nishmaas ella im hatzibur*", that *Tosafos* are referring to Abba Binyamin. This leads many *acharonim* to the understanding that *Tosafos* either had that *girsas* in Abba Binyamin or that that is how they explained Abba Binyamin. (See for example, *Chidushei Rabbi Akiva Eiger*, *Tzelach*, and *Kehillas Yaakov* to *Brachos* 6a, and *Machatzis HaShekel* OC 90:17.)

The reality is, as I hope I've shown satisfactorily above, that *Tosafos* there are actually referring to Rav Yochanan (on 8a), as that is the *girsas* that all the *Baalei HaTosafos* have there. It's pretty certain that in Abba Binyamin's case, *Tosafos* had the same *girsas* that we do; I have not found any alternative *girsas* to Abba Binyamin's teaching in other sources. [Another hint that *Tosafos* are referring to *daf* 8a and not *daf* 6a is that they quote the *gemara* as "*ein tefillaso shel adam*" rather than "*ein tefilla shel adam*", which is a minor difference which exists in Rabbi

Likewise, all the other sources which can be brought from Chazal that encourage *tefilla b'veis haknesses* either can be shown to be referring to *tefillas yachid*, or at the very least are vague enough that they cannot be shown to be referring to *tefilla b'tzibur*.³¹

Part IV: A Bad Neighbor

The *gemara* shortly after the one with Rabbi Yochanan which we discussed above cites a statement from Reish Lakish:³²

אמר ר"ל כל מי שיש לו בית הכנסת בעירו ואינו נכנס שם להתפלל נקרא שכן רע שנאמר כה אמר ה' על כל שכני הרעים הנוגעים בנחלה אשר הנחלתי את עמי את ישראל ולא עוד אלא שגורם גלות לו ולבניו שנאמר הנני נותשם מעל אדמתם ואת בית יהודה אתוש מתוכם.

Reish Lakish said: Anyone who has a beis knesses in his city and does not enter it to pray is called a bad neighbor (shachen ra), as it says (Yirmiyahu 12:14) "To all my bad neighbors who infringed on the inheritance that I have given to my nation Israel". Not only this, but he causes exile to himself and his children, as it says (ibid) "I will detach them from their land and I will detach the House of Judah from their midst."

Reish Lakish calls anyone who does not visit his local shul a *shachen ra* - a bad neighbor, and he brings a *pasuk* from *Yirmiyahu* to prove it.³³ Again, here is an *aggadic*

[Yochanan's statement, but not Abba Binyamin's.]

31 One important source that might be relevant to *tefilla b'tzibur* that many quote in relation to this topic is the *Yerushalmi* in *Brachos* (5:1). I will not discuss that source here in full, as that would likely fill several pages. I will point out, though, that Rav Yochanan's teaching there, "*tzarich adam l'hispallel b'makom meyuchad l'tefilla*" is not referring to a *beis knesses* as many *acharonim* (like the *Pnei Moshe* followed by Rav Chaim Kanievsky) understand it, but merely to any specific location where a person consistently prays, as is shown to be the case by the *Gilyonei HaShas* there (followed by the *Sdei Yehoshua*). Additionally, if the meaning of Rabbi Yochanan there were a *beis haknesses*, that would contradict the teaching of Rabbi Yochanan recorded in the *Bavli* that we've just discussed. (It would also contradict, as the *Gilyon Hashas* - among others - notes, all the *rishonim* and *poskim* who say that *tefilla b'yechidus* should be done in a shul.)

Rather, the most likely explanation of the *Yerushalmi* there can be found in the *peirush* of the *Rash Sirilio* (the earliest extant commentary to the *Yerushalmi*), and his conclusion there is that Rabbi Yochanan is merely advocating that when a person davens consistently in their own home, they should daven at the same time with the *tzibur*. This understanding, as the *Rash Sirilio* explicitly notes, is consistent with the teaching of Rabbi Yochanan in the *Bavli*.

32 Professor Yaakov Elman (who passed away recently; *yehi zichro baruch*) has noted that the statements emphasizing the importance of *batei knesses* come, on the whole, from *Eretz Yisrael* rather than *Bavel*. (See Prof. Elman, "*Torah ve-Avodah: Prayer and Torah Study as Competing Values in the Time of Hazal*", in "*Jewish Spirituality and Divine Law*" ed. Mint, Schiffman, 2005)

33 It's difficult to determine what in the *pasuk* shows Reish Lakish that God is calling people that don't visit his

gemara which encourages *tefilla b'veis haknesses* without expressing any *chiyuv* to do so. But that said, one still wants to avoid being considered a *shachen ra*, especially if Reish Lakish means that he is a *shachen ra* to Hashem.³⁴

The problem is that Reish Lakish doesn't give parameters for what he calls "*eino nichnas sham l'hisparallel*." There are two criteria that matter here: (1) What counts as "*nichnas sham l'hisparallel*", and (2) how frequently does one need to visit to escape being considered a *shachen ra*? There are several *acharonim* who discuss the first criterion. For example, the *Tzelach* in his *derashos* and the *Malki Bakodesh* discuss whether davening with a *tzibur* is enough to be considered "visiting the *shechina*" or whether it has to actually be a shul.³⁵ The *Mateh Moshe* discusses whether davening in a shul *b'yechidus* counts or not. But no one seems to discuss the second criterion: how infrequent is Reish Lakish talking about? Is one a *shachen ra* unless he always attends a shul without exception? This seems unlikely. Is one a *shachen ra* only if he never goes to shul? That could be.³⁶ It could also be that a *shachen ra* is someone who doesn't daven in a shul on a regular basis, however that may be defined.

Whatever the case may be, I do not think that this idea of *shachen ra* can be applied to the average attendee of a house *minyan*. Even if you'll define going to a house *minyan* as not being "*nichnas sham l'hisparallel*" (as the *Tzelach* seems to), the frequency with which people generally go to house *minyanim* is small. Like I mentioned at the start of this article, most people who daven *tefilla b'tzibur* will be attending a shul for over 80% of the week's *tefillos*. Only for a couple *tefillos* per week do people generally attend house *minyanim*, and it's difficult to say that even that low frequency categorizes a person as a *shachen ra* by Reish Lakish's standards.

Part V: Taking Advantage of Opportunities

Baruch Hashem we have a shul with a lot of activity. Not only are there multiple *minyanim* daily, but there are regular *shiurim*, learning *chaburos*, guest speakers on a spectrum of topics of interest, and of course *drashos* on Shabbos. All of these are

batei knesses bad neighbors. I suspect that, in fact, Reish Lakish does not use this *pasuk* to learn that people that don't visit shuls are called *shachen ra*, but rather uses the *pasuk* exclusively for the second part of his teaching, that these people cause exile to themselves and their children. The construction of this teaching, though, makes that confusing, as Reish Lakish splits the *pasuk* into two halves and inserts them between each part of his teaching.

34 The *Perisha* actually writes that *shachen ra* here means that he is a bad neighbor to his actual neighbors, the people who live in his town, since by not going to shul, he could cause that a *minyan* not be completed, which in turn causes the *shechina* not to visit.

35 See note 18 above.

36 This option is also tentatively suggested by Rav Henkin in his response to Rav Eichenstein.

opportunities for the members of the community to grow in Torah and *Avoda*.

However, I think it would be a mistake for a person to think that just because the shul provides many opportunities for growth, that he has to necessarily take advantage of all of them. The truth is that not everyone is the same and that different individuals are inspired by different experiences and different ideas. The benefit of having various opportunities for growth available to the community is not to be able to fill each member's calendar with more obligations, but rather to be able to reach more people in the community by providing opportunities that may particularly appeal to them over others.

For example, our shul has a *daf yomi shiur* in the mornings (and in the afternoon on Shabbos). It's a fantastic *shiur*, and it provides members with the opportunity to grow in their knowledge of Torah and in their appreciation of *shas*, and to join the thousands of *daf yomi* studiers across the globe. At the same time, I don't think that everyone should attend the *daf yomi shiur*. There are those that benefit and grow from the experience, but there are others for whom it would be a waste, or even counter-productive. There is what to say for encouraging those that would gain from it to attend and thus grow in their *limud hatorah*, but to maintain that everyone should make the effort to go to *daf yomi*, I think is incorrect.

The same could be said for most of the other events and learning opportunities that take place at the shul. If *daf yomi* is not the thing for you, perhaps it's the *Yoreh Deah chabura* or the *parsha shiur*, or the rabbi's *drasha* on Shabbos mornings. Or maybe it's none of these; maybe for you it's learning at a *seder limud* together with a *chavrusa* or just by yourself, or listening to *shiurim* on YUTorah.

As Rabbi Yaakov Siegel points out, *kabbolas shabbos* and *seuda shlishis* at shul could be times of great inspiration. But they could also not be; it depends on the person. If you are someone who feels that he would not gain from the singing or the *drasha* at *seuda shlishis* at his shul, then I don't feel that there is anything wrong with choosing other opportunities for growth and inspiration over those. Not only that, but it may be that not attending the shul would provide a better experience. If one attends a house *minyán* on Shabbos afternoon where he really enjoys the *chevra*, the atmosphere, the davening and singing, or the *divrei torah* that he shares there with his friends, he could very well miss that opportunity by going to the shul instead. If one gains personally from sharing *seuda shlishis* with his family, singing *zemiros* or spending that time with his wife or his children, then going to shul instead may provide a detriment to his personal and spiritual growth.

Conclusion

To summarize all that we've laid out in this article, *ain Hakadosh Baruch Hu mo'es b'tefillasan shel rabbim*, Hashem does not rebuff the prayers of a *tzibur*, wherever they may be. And as the *Tzelach* (and others) conclude, *tefillas hatzibur nishmaas b'chol makom she-mispallelin*. That said, the *Shulchan Aruch* encourages *tefilla* in a shul for the purpose of stronger *tefilla* with better *kavana*. But being that not all shuls are the same and not all individuals are the same, it is incumbent upon the individual to determine where and when and with whom his *tefillas* will attain their best quality and at the same time not take away significantly from his other responsibilities. If that place happens to be a house *minyan* once or twice a week, *y'yasher cheilo* - more power to him.

To provide a point-by-point response to the arguments in Rabbi Siegel's summary:

1. Even if davening in a house *minyan* counts as the "*aino nichnas sham l'hispalet*" of Reish Lakish, it is still difficult to argue that Reish Lakish calls someone a *shachen ra* if they are going to shul for most every *tefilla* except for a couple times a week.

2. We've shown that *tefilla b'veis haknesses* is not a *chiyuv*, but according to the *Beis Yosef*, it is indeed a *hidur mitzva* because of its likely contribution to a person's *kavana*. Thus, like any *hidur mitzva*, it must be weighed with the practical considerations of accomplishing it, and it must be determined if, in your particular case, it is actually being *mehader* your *tefilla*.

3. *B'rov am hadras melech* is not really an additional factor here, but it's actually the reason that the *Magen Avraham* gives for why *tefilla b'veis haknesses* is a *hidur*. But that just brings us back to the previous point.

4. Going to a house *minyan* once or twice a week does not necessarily hinder a member's relationship with and access to the *rav* of the shul. A person can interact with and gain from the *rav* at the shul on Sunday, Monday, Tuesday, Wednesday, and Thursday (as well as Friday and Shabbos mornings) by attending the various *minyanim* and learning events and opportunities over the course of the week. Are we really to think that by going elsewhere for, say, *maariv* after Shabbos, that this really prevents the nurturing of such a relationship?

5. Which events and which experiences provide a person with inspiration are not universal. To encourage someone to take advantage of an opportunity that he will not gain from is, I think, detrimental and counterproductive on the whole. In general, it is up to the individual to decide which opportunities he thinks will lead him on the path of growth in Torah and *tefilla*, and it is the responsibility of the community and the shul to try and provide the opportunities that will inspire the range of people in their midst.

Halacha and Machshava



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Avraham Avinu began to declare ethical monotheism to the world at around the same time – according to one opinion, in exactly the same year – that people started building a tower to the sky. This can be described as a time of grand projects, an era of bold aspirations: one to physically reach the heavens and the other to advance an enduring insight that could uplift humanity. Comparing these simultaneous ambitions can allow us to better understand their motive forces and underlying character, examine how they impacted on one another and see how they would independently unfold. In so doing, we can discern a key inflection point of Avraham's colossal spiritual insights – namely, his conviction and insistence that the *derech Hashem*, the way of God, is to do *tzedaka* and *mishpat*.

The Beliefs Underlying the Tower of Bavel

The verse in *Bereishis* 11:1 introduces the events leading up to the Tower of *Bavel* by stating that the people of *Shin'ar* had a “single language” (*safah echas*) and “common words” (*devarim achadim*). Rashi focuses on the second, seemingly redundant, term as revealing three different ways of understanding the true purpose and aims of the people of *Shin'ar* in building the tower.

Rashi's first explanation is simply the plain translation of the term “*devarim achadim*,” meaning that they had a common plan. In this case, their aim was to conquer the heights. The verses in *Bereishis* 11:2-3 describe how this group of people had created a technology to make bricks in order to construct a city even though their area had no quarries. As a result of this technology, they were able to settle a region that could not otherwise have been developed because it had no readily available building materials. Juxtaposing this to the verse in *Bereishis* 11:1, Rashi implies that the people's common aspiration – the “*devarim achadim*” – was, having overcome the earth, to strive to dominate the sky. So, they started to work on a tower to the heavens

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in order to wage a battle against God. According to this approach, the translation of “*devarim achadim*” is simply that they had a unified goal.

This interpretation of the phrase assumes that the word “*achadim*” is an adjective that modifies the word “*devarim*.” Yet, it is also possible to read the word “*achadim*” as a noun for “singleness” or “oneness,” suggesting that the people of *Shin’ar* were interested in, and were discussing with each other, “words of oneness” or various types of oneness, and, in particular, about the singularity of God in the world.

Hence, Rashi’s second explanation of the people’s shared purpose is that they desired not only to physically dominate the heavens, but also to spiritually challenge the oneness of God. They acknowledged God, but they could not countenance His exclusivity and transcendence. Like the Russian cosmonauts who, when reaching space for the first time, are reported to have remarked sardonically that they reached the heavens but did not see God there, the people of *Shin’ar* strove to climb to the sky in order to invade what they thought of as God’s exclusive domain. According to this second approach, the translation of “*devarim achadim*” is that they had formulated a plan against the unique One of the universe, i.e., God.

These first two of Rashi’s explanations account for the word “*achadim*,” but, as the Maharshal emphasizes, they do not explain why the verse uses the plural term “*devarim achadim*” instead of the singular “*davar echad*,” which would be a more precise formulation. Rashi therefore offers a third interpretation that accounts for the plural usage: the phrase “*devarim achadim*” is tantamount to the term “*devarim chadim*,” which means sharp or cutting words. Knowing about Noah’s flood, the people at that time believed that every 1,656 years the sky would fall, and they started building a comprehensive system of towers that could act as buttresses and supports to hold up the sky. Their words were “cutting” because they attributed the flood to happenstance as opposed to attributing it to God.

These three explanations have something in common. In each of them, the people’s shared purpose derived from their belief that God was an adversary to be conquered physically or spiritually, or else that He was completely absent and that the sky was going to crash down on them if they did not endeavor to hold it up. According to Rashi’s three interpretations of this verse, the theological premise of the Tower of *Bavel* was that God was either an adversary or else entirely absent.

The Resulting Moral and Social Implosion in *Shin’ar*

This viewpoint led to moral and social collapse of the people of *Shin’ar* who subsequently came to be called the dispersed or fragmented generation (*Dor Haflaga*).

People emulate God in accordance with their understanding, or their lack thereof, and are impacted by their understanding of ultimate causes in the universe. In this way, the imperative to emulate the Divine (*imitatio dei*) – and the precept of “*vehalachta bederachav*” (see *Devarim* 28:9; *Rambam Sefer haMitzvos*, Asei 8) – is not only a *halachic* obligation but also is a natural phenomenon. The people of *Shin’ar* viewed God as uninterested, contemptuous, or adversarial toward them and they, likewise, ended up treating one another in that manner.

The *midrash* (*Pirke deRabbi Eliezer* 24:7) describes their fraying of normal empathy and states that the builders of the tower would carry bricks up on one side and would come down on the other side. If a man fell off of the tower and died, no attention was paid to him. But if one brick fell down, they would sit and weep and say: “Woe betide us! When will another one be hauled up in its place?”

Even worse, their main technology for construction was the furnace to harden the bricks, “*venisrefa lesraifa*” (*Bereishis* 11:3). Rashi says that Nimrod originated the plan to build the Tower of *Bavel* (*Bereishis* 10:8) and also that Nimrod was called “*Amrafel*” (which is a contraction of “*amar pol*”) because he told Avraham “plunge into the fiery furnace” (*Bereishis* 14:1). This is an allusion to the *midrash*, also quoted by Rashi, which says that Avraham smashed Terach’s idols and Terach denounced him to Nimrod, who cast Avraham into the fiery furnace (*Bereishis* 11:28, 18:27). Rashi further comments that “*Ur Kasdim*,” where Avraham was from, was so named because “*ur*” means fire and they would cast individuals into the fiery furnace (*Bereishis* 11:28).¹

Thus, the fiery furnace that was used to make bricks to build a city and then to construct the tower of *Bavel* also came to be used to cruelly punish anyone who spoke with a dissenting or independent voice. The technology that was developed to build cities became transformed into an instrument of cruelty and oppression. The *Dor Haflaga* who had lived by the conviction that God was antagonistic or absent, over the course of time, imitated their own erroneous impression of the Divine and, as a result, they became uncaring and cruel toward other people.

Avraham’s Countervailing Conviction

Avraham had the directly opposite belief. The verse in *Bereishis* 18:19 describes Avraham’s firm conviction that the way of God – the “*derech Hashem*” – is to do *tzedaka* and *mishpat*. The verse states:

¹ Indeed, the verse specifies that Hashem described Himself to Avraham as having taken him out from *Ur Kasdim* (*Bereishis* 15:7), which has even more poignant meaning in view of this *midrash* that Hashem delivered Avraham from the actual furnace for which *Ur Kasdim* had been named.

כי ידעתיו למען אשר יצוה את בניו ואת ביתו אחריו ושמרו דרך ה' לעשות צדקה ומשפט למען הביא ה' על אברהם את אשר דבר עליו.

Onkelos translates this to mean: “For it is revealed before me that he will command his children and his household after him and they will guard proper ways before Hashem to do *tzedaka* and *mishpat*[.]”² The implication of this translation is that the *tzedaka* and *mishpat* referenced by the verse are actions that the children and household of Avraham would take in the future. According to this understanding, the phrase “to do *tzedaka* and *mishpat*” primarily modifies the word “and they will guard” (*ve-shamru*), with the subject of both being “his children and household.” According to this translation, the verse tells nothing specific about the nature of Hashem. It only states that Avraham will instruct his children and household how to act before Hashem.

The Rambam in *Hilchos Matnos Ani'im* 10:1 takes the same approach of connecting the *tzedaka* and *mishpat* in this verse to the actions of people, and states:

חייבין אנו להזהר במצוות צדקה יתר מכל מצוות עשה שהצדקה סימן לצדיקי זרע אברהם אבינו שנ' כי ידעתיו למען אשר יצוה וכו'.

We have to be more careful about the commandment of charity [tzedaka] than every other positive commandment because charity [tzedaka] is a sign for the righteous [tzedikei] of the descendants of Avraham our forefather [zera Avraham Avinu]³ as the verse states: “Because I know that he will command ...”

Thus, like Onkelos, the Rambam understands the *tzedaka* and *mishpat* in this verse to refer to the actions of Avraham and his descendants, rather than to a theological statement about the essential nature of Hashem.⁴

Rashi, however, gives an alternate interpretation of the verse. He writes that “*ki yedativ*” is not simply to know cognitively, but is “*lashon chiba*” – a term of affection – and that the reason for Hashem’s affection toward Avraham is expressly stated in the verse: “*lema’an asher yetzave*,” which Rashi explains as “*lefi she-hu metzave es banav alai lishmor darki*,” “because he commands his children about Me to guard My way.” This interpretation of “*derech Hashem*” as “*darki*” – “My way,” in the first person – reflects the understanding of the verse that *tzedaka* and *mishpat* are essential to Hashem’s nature. Rashi explains:

2 The Ramban cites a text of Rashi that quotes a variant of Onkelos’s translation as being “[f]or I have known him.”

3 This might be a reference by the Rambam to the verse “*ki beYitzchak yikarei lecha zera*,” that the Abrahamic line proceeds through Yitzchak.

4 See also *Moreh Nevuchim* III:53.

כי ידעתיו. לשון חבה כמו מודע לאישה (רות ב:א) הלא בועז מודעתנו (שם ג:ב) ואדעך בשם (שמות לג:ז). ואמנם עיקר לשון כולם אינו אלא לשון ידיעה שהמחבב את האדם מקרבו אצלו ויודעו ומכירו. ולמה ידעתיו למען אשר יצוה לפי שהוא מצוה את בניו עלי לשמור דרכי. ואם תפרשהו כתרגמו יודע אני בו שיצוה את בניו וגו' אין למען נופל על הלשון.

“For I have cherished him.” It is an expression of affection like “moda” in “an intimate of her husband (Rus 2:1) and like “modatanu” in “[i]s not Boaz our intimate?” (Rus 3:2) and like “vaeidacha” in And I have become familiar with you by name” (Shemos 33:17). However, the essential meaning of all of them is nothing but the meaning “knowing,” for one who cherishes a person draws him close to him and knows him and becomes familiar with him. The verse means: And why have I cherished him? “lema’an asher yetzave” – i.e., because he commands his children about Me to adhere to My way. But if you will explain it according to its simple translation “I know of him that he will command his children etc.,” the word “lema’an” does fit the language of the verse.

Hence, the phrase “lema’an asher” in the verse means “so that” according to Onkelos and “because” according to Rashi, who translates it as “left.” Also, the word “yetzave” is future tense according to Onkelos and present tense according to Rashi (*Bereishis* 18:19 s.v. yetzave). The verse as understood by Onkelos is action oriented, with the goal being for Avraham to instruct his children and household to practice *tzedaka* and *mishpat*. The verse as explained by Rashi is inner-oriented. Hashem’s discussion with Avraham about Sodom was not so that he would take a specific action but, rather, it resulted from the fact that he had correctly grasped that the way of Hashem is characterized by principled righteousness and justice, and that he had continually sought to model and to impress this theological insight upon his children and household.⁵

In short, Onkelos and the Rambam interpret the verse as describing the way Avraham will instruct his children to act, while Rashi interprets it as describing a key

⁵ In *Parashas Chayeh Sara*, the *eved Avraham* reaches part of this realization during the time he seeks a wife for Yitzchak on Avraham’s behalf. He starts off recognizing that Hashem does *chesed* but, nevertheless, he views it as being a haphazard quality rather than being an enduring and principled trait. In *Bereishis* 24:12, he asks Hashem to do *chesed* with Avraham, but he also says in the same verse “*hakrei na lefanai hayom*,” which hedges and wrongly attributes the Divine *chesed* to happenstance (“*hakrei*”). After the events by the well, however, he thanks Hashem in *Bereishis* 24:26 for not withholding “*chasdo ve-amiso*” from Avraham. The *eved Avraham*, at that point, correlates Hashem’s lovingkindness to His essential character, i.e., “His truth,” which establishes that this Divine *chesed* is an enduring and principled way that Hashem relates to the world. Indeed, this statement in the verse by the *eved Avraham* is the first time the word “*emes*” is used anywhere in the Torah.

Divine attribute of Hashem. According to Onkelos and the Rambam, people act with *tzedaka* and *mishpat* as a way of following along the path toward Hashem. According to Rashi, people first come to understand that *tzedaka* and *mishpat* constitute an essential aspect of Hashem's nature. Their resulting actions of *tzedaka* and *mishpat* derive, not only as acts they take out of respect for the Divine, but also from their striving to emulate some aspect of Hashem's essential character.⁶ By paraphrasing the verse's use of "*derech Hashem*" (the way of God) to write "*darki*" (My way), Rashi emphasizes that the phrase "to do *tzedaka* and *mishpat*" is descriptive of Hashem.

Thus, according to Rashi, the verse includes something exceedingly rare in *Chumash*: a statement of theology that describes the way of God. This perhaps also explains why Rashi interprets "*ki yedativ*" as "*lashon chiba*," i.e., an expression of affection. Avraham managed to grasp – and Hashem revealed to Avraham and enabled him to glimpse – this aspect of the way of Hashem. Just as Avraham understood a bona fide insight into the character of the Divine personality, *kavyachol*, Hashem responded to Avraham not only and purely through action but also with personal affection (*chiba*).⁷

Indeed, this is the first time in the Torah that Hashem consults a person about His actions and is concerned with the opinion and thought of humanity. The purpose of "*hamechase Ani meiAvraham*" (shall I conceal from Avraham) is not to affect the outcome with regard to Sodom or for Avraham to do anything, because the outcome did not change and Avraham was not charged to do anything beyond the discussion itself. Yet, this is the first time that Hashem consults with humanity. It is the only time until that point that Hashem had checked with an individual about His actions or had expressed concern with the individual's opinion of the Divine course.

Parashas Vayera conveys that, in addition to the fact that Hashem was Avraham's protector and benefactor: *Anochi magen lach, secharcha harbei me'od* (*Bereishis* 15:1), Avraham also had become an intimate of Hashem: *ki yedativ* (*Bereishis* 18:19), and that this resulted from his understanding and dedicated instruction to his children and household that the way of Hashem is to do *tzedaka* and *mishpat* (*Bereishis* 18:19).

⁶ Both of these approaches are expressed in the eleventh *bracha* of *Shemone Esrei* which, based on *Tehillim* 33:5, refers to Hashem during most of the year as the King who loves *tezdaka* and *mishpat* (reflecting His love for these actions by people) but then, during the ten days leading up to Yom Kippur, refers to Hashem as *HaMelech HaMishpat* (reflecting our awareness of this as part of His essential nature).

⁷ Rashi's approach might explain the observation of the Abarbanel that the Torah does not include a comparable introductory reflection and statement of intention before Hashem tells Noach about the Flood. The purpose there was simply to instruct Noach to build an ark. The purpose here was not action oriented but instead was simply communication between Hashem and Avraham based on Avraham's insight into unique attributes of Hashem, which reflects and conveys a "*lashon chiba*."

Avraham's Consequent Concern for People's Individual Wellbeing

Avraham, accordingly, developed a different aspiration than the *Dor Haflaga*. This was grounded in his conviction of Hashem's principled righteousness and justice, and in his consequent belief of the worth and inherent value of each individual. The Torah records only a few stories about Avraham's conduct, but it describes extensive detail about how he cared even for complete strangers.

Indeed, *Parashas Vayera* starts with Avraham sitting outside even though it was excruciatingly hot. Rashi explains that Avraham was waiting there to see whether there were travelers he could invite into his home (*Bereishis* 18:1). The *gemara* (*Bava Metzia* 86b) further emphasizes that this appears immediately after the portion about Avraham's *bris mila* and underscores that the sick (in this case, Avraham, recuperating from his *bris mila*) usually remain indoors to rest but, nevertheless, Avraham went outside to personally see if he could invite wayfarers. When the three guests saw that Avraham was adjusting his bandages, they tried to draw away from him because they did not want to trouble him. But he ran toward them, exerting great energy and alacrity to invite them into his home (*ibid.*).

Moreover, even though Hashem had appeared to him – which surely was a great privilege and an exquisite moment for Avraham Avinu – Rashi quotes the *gemara* (*Shavuos* 35b, *Shabbos* 127a) stating that Avraham asked Hashem to wait while he went to invite the travelers into his home (*Bereishis* 18:3). In the meantime, he ran to the cattle (while he was still recovering physically), and Rashi emphasizes that he personally took three calves so that he could serve his guests tongue in mustard which was a delicacy (*Bereishis* 18:7). Thus, Avraham demonstrated great care and concern toward complete strangers who, as Rashi emphasizes, in fact were idolaters (*Bereishis* 18:4).

Avraham's concern extended not only to these travelers but even to the people of Sodom whose ways “were exceedingly wicked and sinful to Hashem” (*Bereishis* 13:13) and who, by that time, had caused human suffering to such an extent that their actions had become completely intolerable to Hashem (*Bereishis* 18:20). Yet, even then, Avraham showed concern for the inherent and potential worth of the people who dwelt in Sodom. He stepped forward, asserting to Hashem that perhaps there was enough goodness in the city to render it redeemable (*Bereishis* 18:23). Avraham acknowledged during his argument with Hashem that the overwhelming majority of the residents of Sodom were completely wicked. But his contention was that a cadre of righteous individuals, combined with the presence and force of Hashem, could salvage the city (*Bereishis* 18:28), and that it would violate Divine justice to sweep away all of these individuals collectively (*Bereishis* 18:25).

The point here is that Avraham cared about the individuals who lived in Sodom and might be decent notwithstanding that the overall society had offended every principle and core ethic that he held dear and sacred. Even in that circumstance, Avraham maintained that the people had individualized and unique value, and that, if there was even a minyan of uncorrupted citizens of Sodom, they might be able to redeem the metropolis as a whole (*Bereishis* 18:32).

Avraham's visceral understanding that the way of Hashem is to do *tzedaka* and *mishpat* and his conviction about the individual value of each person are connected. Indeed, the verse in which Hashem attests to the correctness of Avraham's knowledge of the way of Hashem (*Bereishis* 18:19) is a direct prologue to Avraham's advocacy for the residents of Sodom (*Bereishis* 18:23) and of his belief that ten worthy individuals, even in that corrupted culture, could transform the city as a whole (*Bereishis* 18:32). Thus, Avraham persisted in his respectful argument with Hashem, and Hashem appreciated Avraham's concern and effort even for the people of Sodom.⁸

How Avraham Reached His Belief

The Torah does not specify how Avraham reached his conclusion that the way of Hashem is to do *tzedaka* and *mishpat*. But the question about how old Avraham was when he recognized his Creator gives some indication.

The *Ra'avad* quotes the *gemara* in *Nedarim* 32a (see also *Bereishis Rabba* 95:3) that Avraham was three years old when he recognized his Creator. This is based on the fact that the verse (*Bereishis* 26:5) uses the word "*eikev*" when referencing the fact that Avraham heard Hashem's voice and the *gematria* of "*eikev*" is 172 and Avraham lived until 175 (*Bereishis* 25:7). If Avraham recognized Hashem at the age of three, either he must have attended the Yeshiva of Shem veEver (see, e.g., Rashi *Bereishis* 14:18 that Malki Tzedek the king of Shalem was Shem ben Noach), or else he had an intuitive and innate understanding about Hashem that emerged when he became old enough for basic cognition.⁹

The Rambam (*Hilchos Avoda Zara* 1:3) states that Avraham was forty years old when he came to this understanding. He describes how Avraham arrived at an awareness of Hashem:

⁸ See *Mizrachi Bereishis* 18:33.

⁹ Rav Shmuel Nachum suggests the first of these explanations to explain how Avraham could have been three years old when he discovered Hashem. However, the *Kesef Mishne* notes that Shem veEver were in *Eretz Canaan* while Avraham was in *Bavel*. The second possibility is reflected generally (although not with reference to Avraham specifically) by *Rabbenu Bachya's* introduction to the tenth chapter of *Chovos Halevavos*.

כיון שנגמל איתן זה התחיל לשוטט בדעתו והוא קטן והתחיל לחשוב ביום ובלילה והיה תמיה היאך אפשר שיהיה הגלגל הזה נוהג תמיד ולא יהיה לו מנהיג ומי יסבב אותו, כי אי אפשר שיסבב את עצמו, ולא היה לו מלמד ולא מודיע דבר אלא מושקע באור כשדים בין עובדי כוכבים הטפשים ואביו ואמו וכל העם עובדי כוכבים והוא עובד עמהם ולבו משוטט ומבין עד שהשיג דרך האמת והבין קו הצדק מתבוננתו הנכונה, וידע שיש שם אלוה אחד והוא מנהיג הגלגל והוא ברא הכל ואין בכל הנמצא אלוה חוץ ממנו, וידע שכל העולם טועים ודבר שגרם להם לטעות זה שעובדים את הכוכבים ואת הצורות עד שאבד האמת מדעתם, ובן ארבעים שנה הכיר אברהם את בוראו.

After Avraham was weaned, while still a youth, his mind began to reflect. By day and by night he was thinking and wondering: "How is it possible for the sphere to continue to move without having anyone move it? And who turns it? Is it possible for it to turn itself?" And he had no teacher and nobody to inform him. Rather, he was sunken in Ur Kasdim among foolish idolaters. And his father and mother and the entire nation served idols and he would worship with them. But his mind was always reflecting and understanding until he ascertained the correct way and understood the path of tzedek from his correct comprehension, and he knew that there is only one God and He is the one who controls the celestial spheres and He created everything and there is no other deity besides Him. And he knew that the entire nation had erred and that the thing that had caused them to make this mistake was that they served the stars and the images until the truth was lost from their consciousness. And Avraham was forty years old when he recognized Creator.

The *midrash* brings a third approach that Avraham was 48 years old (*Bereishis Rabba* 30:8, 64:4, 95:3).¹⁰ Avraham was born in the year 1948 from the creation of the world. Thus, according to the *midrash*, Avraham recognized Hashem in 1996, which was the same year that Nimrod and the *Dor Haflaga* built the Tower of Bavel (*Rashi Bereishis* 10:25; see also *Bereishis Rabba* 26:3).

The question, then, is how Avraham arrived at this awareness of Hashem when he was 48 years old. The *midrash* (*Bereishis Rabba* 39:1), through a parable, addresses generally how Avraham came to recognize Hashem:

אמר רבי יצחק משל לאחד שהיה עובר ממקום למקום, וראה בירה אחת דולקת
אמר תאמר שהבירה זו בלא מנהיג, הציץ עליו בעל הבירה, אמר לו אני הוא בעל

¹⁰ The *Hagahos Maimuniyos* states, based on these *midrashic* sources, that this is actually the position of the Rambam and that the proper text of the *Mishne Torah* is that Avraham was 48 years old when he recognized his Creator (compare *Kesef Mishne ad loc.*).

הבירה, כך לפי שהיה אבינו אברהם אומר תאמר שהעולם הזה בלא מנהיג, הציץ עליו הקב"ה ואמר לו אני הוא בעל העולם.

Rabi Yitzchak said [it is explained through] a parable of someone who wandered from place to place and saw a certain palace lit up [i.e., a "bira dolekes"]. He said: "Will you say that this palace has no master?" The owner of the palace looked out at him and said to him: "I am he, the owner of the palace." So it was that our forefather Avraham said: "Will you say that this world has no master?" The Holy One Blessed be He One looked out at him and said to him: "I am He, the owner of the world."

So, the *midrash* says that Avraham saw a lit up palace and went to find of its owner. There are two ways to understand the metaphor in this *midrash*. One is that the palace was beautifully adorned with bright chandeliers. In this sense, the analogue is that Avraham saw the stunning order of the cosmos and became inspired to recognize the Creator who had fashioned the Universe.

However, there is another possibility that the palace in the metaphor was lit up because it was on fire and was burning down. The traveler in the story went to find the owner because he could not believe that such a beautiful palace could be burning and there is nobody who cares.

If so, the analogue is that Avraham saw the atrocities of the *Dor Haflaga* who had lost all sense of human empathy and, worse, threw people who spoke out against them into the fiery furnace as fuel to make more bricks, which is why the area became called *Ur Kasdim* (Rashi *Bereishis* 11:28). Indeed, they threw Avraham into this furnace for questioning their belief system (Rashi *Bereishis* 11:28, 14:1, 18:27; see also *Bereishis Rabba* 38:13). And monstrosity it was Terach, Avraham's father, who delivered him to Nimrod (*ibid.*).

Thus, the proverbial palace was ablaze. It was being destroyed. Rather than approaching this terrible outcome as an inevitability, Avraham went to find the "owner of the palace" with the firm conviction that there must be a *ba'al ha-bira* who fundamentally transcends the human cruelty that had come to characterize the *Dor Haflaga*.

The *gemara* (*Avoda Zara* 19a) emphasizes that Avraham specifically separated himself from the *Dor Haflaga*. The members of the *Dor Haflaga* were overwhelmingly engaged in one project and Avraham in another, as underscored by the juxtaposition in the verses between the Tower of *Bavel* and the generations leading up to the birth of Avraham. In this context, Avraham's firm belief and established conviction that the

way of Hashem is to do *tzedaka* and *mishpat* resulted from his categorical rejection of the theological postulates of that society which had believed that God either was antagonistic to them or else was entirely absent from them.

Accordingly, while the *Ra'avad* suggests that Avraham's great insight resulted from his indigenous awareness of Hashem (and, therefore, Avraham could recognize his Creator at the age of three) and the Rambam suggests that it was a consequence of his logical deduction (and, therefore, Avraham needed the mature mind of forty, as stated in the *mishna* in *Pirkei Avos* 5:21), the *midrash* which states that Avraham was 48 years old when he recognized his Creator suggests that his belief was fueled by his revulsion against the cruel culture that the *Dor Haflaga* had become. Avraham's enduring spiritual insight was less of a calculation and more of a concentrated force of conscience.

Conclusion

Avraham's great understanding of the Divine was not only his belief that there is one God but also his conviction that the way of Hashem is to do *tzedaka* and *mishpat*. The society of the *Dor Haflaga* which endeavored to build the Tower of *Bavel* and to conquer the heights had been based on the mistaken belief that the sky was falling and that God is antagonistic to people and indifferent to their inherent worth. They modeled their own behavior after their erroneous view of the Divine character and this led to their social and moral collapse. Yet, Avraham knew that the way of Hashem is to do *tzedaka* and *mishpat*, and that his monotheistic belief in Hashem's principled righteousness and justice would prevail over the *Dor Haflaga's* monolithic obliviousness of and apathy toward the value of individual human beings.

Indeed, the important thing is not specifically how Avraham came to recognize his Creator (and the Torah does not tell us that), but that Hashem directed His attention and concern toward him – i.e., the single individual out of the vast cosmos. This was a newfound value of the individual made manifest by the care and concern of the one God toward Avraham, resulting from Avraham's insight that the way of Hashem is to do *tzedaka* and *mishpat* (*Bereishis* 18:19). In the momentous year 1996 after Creation, Avraham understood – and ultimately shared with the world – what the people of *Shin'ar* could not then understand: that by grasping intellectually that *tzedaka* and *mishpat* are essential to Hashem's nature, real world consequences flow and both societies and individuals flourish.

Self Interest, Wealth, and Conformity in Jewish Thought

RABBI DANIEL KORDA



The approach of *Yiddishkeit* to wealth, power, and conformity is frequently misunderstood. For example, the 19th century philosopher Frederic Nietzsche claimed that Judaism portrayed wealth as evil, endorsing the creation of poor, weak common folk easily controlled by the social elites. Such an approach could not be further from the truth. A brief survey of the Jewish sources on these topics portray a far more nuanced reality.

The Jewish Attitude to Self Interest

Nietzsche assumed that *Yiddishkeit* negates power and wealth while celebrating altruism and poverty. As many an uninformed liberal Jewish thinker has stated, the flagship statement for this philosophy is the Torah's famous declaration that "*v'ahavta l'reyacha kamocha*." Ostensibly, this seems to fit the classic Nietzschean critique of Jewish thought; man is asked to abdicate his own self-identity and instead help others. Indeed, Rabbi Akiva's statement that "*v'ahavta l'reyacha kamocha ze klal gadol baTorah*"¹ validates the notion that unbridled altruism is the ultimate telos of Jewish life. However, the same Rabbi Akiva is the source of a seemingly contradictory doctrine, that of "*chayecha kodmin*:"

שנים שהיו מהלכין בדרך, וביד אחד מהן קיתון של מים, אם שותין שניהם - מתים,
ואם שותה אחד מהן - מגיע לישוב. דרש בן פטורא: מוטב שישתו שניהם וימותו,
ואל יראה אחד מהם במיתתו של חבירו. עד שבא רבי עקיבא ולימד: וחי אחיך עמך
- חייך קודמים לחיי חבירך. (בבא מציעא סב:)

¹ *Yerushalmi Nedarim* 9:4. Also see the *Bavli* in *Shabbos* 31a for a slightly less explicit version of Rabbi Akiva's statement.

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Two people are walking in the desert and one has a canteen of water. If both drink, both will die [because there is not enough water to support both of them until the next rest stop]. If one of them drinks [all the water], he will reach the next settlement [alive]. [In this case], Ben Patura said it is better that both drink and die instead of one watching the other die, until Rabbi Akiva came [and taught] the verse "the life of your brother will be with you" to mean that your life is [your priority] before your friend's.

Rabbi Akiva's statement forces a drastic reinterpretation of the original doctrine of "*v'ahavta l'reyacha kamocha*." What was originally understood as an unequivocal endorsement of altruism must now be understood as a heavily contingent phrase. Indeed, the Ramban makes explicit that the verse of "*v'ahavta*" does not endorse the abdication of one's own desires and ego. Rather, the command is focused on actions; a person should look out for another's interests in the same manner he would look out for his own. This allows for "*chayecha kodmin*," because it presupposes and endorses the presence of the commanded individual's own self-interest. In turn, it is this self interest that serves as the model for how others should be treated. "*V'ahavta*" is only relevant where altruism does not interfere with the basic necessities of life.² The *Torah Temima* (Parshas Kedoshim 128) utilizes these two statements of Rabbi Akiva to fashion an even more extreme approach, that "*v'ahavta l'reyacha kamocha*" only means the abdication of hate, and not the adoption of love. *L'halacha*, the Gra cites the Ramban as the source for the position of the Rama in *Yoreh Deah* 251:3

פרנסת עצמו קודמת לכל אדם, ואינו חייב לתת צדקה עד שיהיה לו פרנסתו.
*One's self-sufficiency comes before anyone else, and a person is not required to give charity until he is self sufficient.*³

Emerging from this discussion is a Jewish approach to altruism that is very different than the one initially imagined by Nietzsche. Altruism emerges not from the absence of self-awareness, but rather can only occur when a person is self-aware enough of their own needs to perceive the needs of others.

2 Ramban, *Vakiykra* 19:17. Rabbi Aharon Lichtenstein notes that the Rambam may disagree with this more limited view of "*v'ahavta l'reyacha kamocha*." Lichtenstein, "Jewish Philanthropy - Whither?" in "*Toward a Renewed Ethic of Jewish Philanthropy*" ed. Prager 2010, p. 219 note 31.

3 Translation from Rav Aharon Lichtenstein, *ibid* p. 210. He notes that the *Ba'al HaTanya* disagrees with this ruling, and understands "*chayecha kodmin*" to be limited to the literal situation of the *gemara* in *Bava Metzia*, where the choice is of life or death, and not less intense questions of consumption.

The Jewish Approach to Wealth

The *rishonim* and *acharonim* also make clear that the Jewish attitude towards wealth is more nuanced than that envisioned by Nietzsche. It is undeniable that there is a strong and consistent stream of Jewish thinkers that view wealth as a negative development and that celebrate poverty. The comment of Rashi to *Devarim* 11:16 that “a person only rebels against God from satiation” is typical.⁴ Lines like this play perfectly into the Nietzschean account of Judaism where wealth is eschewed.

However, there is an equally potent group of thinkers who have a much more positive approach to wealth. Indeed, the *gemara* in *Eruvin* 86a comments that “Rabbi Akiva would give respect to the wealthy.” Although the commentators point out that this was only because the wealthy had the ability to give charity,⁵ the very fact that he managed to hold the wealthy in high esteem instantly challenges the black and white perspective on poverty constructed by Nietzsche. This construct is further challenged by Rabbi Avraham Horowitz, who remarks that in their giving of charity, the wealthy deserve respect because they are mimicking God’s own altruistic behavior.⁶

Rabbi Akiva’s position is treated with the utmost seriousness by the Jewish codifiers, interpreted as an obligation by both Rashi and the Mahrasha.⁷ It is thus safe to say that mainstream Rabbinic Judaism has a far more nuanced approach to poverty and wealth than that supposed by Nietzsche.

A second interpretation of Rabbi Akiva’s statement further eviscerates the idea that in *Yiddishkeit*, only the poor are celebrated. The Rama states:

*It seems to me that everything is dependent on mazel, and this is [determined by] the moment and time that a person is born. Because this... reflects what he is prepared for in the world. And if the Holy One, Blessed be He, knows that a person’s nature cannot stand the test of wealth and it will cause him to sin, that person’s merits cause him to lose the goodness [of wealth], lest he become arrogant in his wealth.*⁸

The implication of the Rama is that a wealthy person has a superior personality, one that can stand the test of wealth. Now, statements like that of Rashi that “a person

4 For a full development of negativity of wealth in Jewish thought, see the seventh chapter of Ben Sasson’s *Hagut V’Hanhaga*. Even though this work is limited to the perspective on wealth in medieval Poland, it provides an excellent cross-section of the various perspectives.

5 See the continuation of Rabbi Akiva’s statement along with the explanation of Rashi.

6 Ben Sasson, p. 76

7 Ben Sasson, p. 77

8 *Toras Ha’ola*, 3:53:117a-b. Quoted by Ben Sasson, 78

only rebels against God from satiation” can be interpreted in a positive light. While wealth does bring with it a greater capacity to sin, it follows that the *neshamos* chosen to be wealthy must be capable of resisting such a temptation. The Rama has turned Nietzsche’s conception of Judaism on its head; now, in black and white, is the opinion that wealth implies greatness, or at least the possibility of greatness.

The position of the Rama is further bolstered by the *gemara*’s statement in *Gittin* 59a that “from the time of Moshe until Rebbe [Yehuda HaNasi, the author of the *mishna*,] we did not find Torah and greatness in one place.” The commentators explain that Torah refers to rabbinic scholarship, while greatness is a reference to wealth.⁹ The *Toras Chaim* explains that this phenomenon’s restriction to Moshe and Rebbe was not accidental. Moshe was the prophet chosen to deliver the Written Torah, while Rebbe was the scholar who finally committed the Oral Torah to the cloth.¹⁰ In light of the Rama, this juxtaposition makes sense: the true greatness of the *neshama* can only be achieved with victory over wealth. That both of these giants become the greatest scholars in Jewish history in spite of their extraordinary wealth testifies to the unique nature of their personalities. They are complete men, and therefore fit to be transformative leaders of the Jewish people.

The Jewish Attitude towards Conformity

Having concluded that Judaism promotes poverty, thinkers such as Nietzsche claim that the emphasis on poverty was not accidental, but rather designed to create a subservient, powerless group of people easily swayed by an elite priestly class. According to Nietzsche, both the emphasis on poverty and the subsequent “subservient” mentality [i.e., one who is easily manipulated] date from the destruction of the Temple, where the priests developed a monopoly over religious thought.

Practically, the opposite is true. The destruction of the Temple allowed for the great decentralization of the Jewish People. No longer did the *navi* speak with God; instead, the *chacham* was forced to reach *halachic* rulings with his knowledge and logic alone. The result was the phenomenon of *machlokes*,¹¹ where different *halachic* authorities reached opposing conclusions and adopted differing behaviors.

The concept of independent *halachic* opinions is supported by numerous passages in the *gemara*; in *Brachos*, the *gemara* records the scholar Rav Giddel

9 See *Keren Ora* in *Taanis* 25a for an example of this view.

10 *Toras Chaim*, *Sanhedrin* 36a

11 Literally: to split into parts, colloquially used to refer to a dispute among the sages.

observing women as they left the ritual bath, a practice against the nominal law. The *gemara* explains that Rav Giddel was able to exempt himself due to his exceptional piety. On a larger scale, the *gemara* in *Yevamos* records that *Beis Shammai* continued following their own *halachic* rulings, in spite of the law being with *Beis Hillel*. The idea of the independent *halachic* thinker reaches its apex with comment of the Gra that a competent scholar who comes to a conclusion opposing the stated premise in the *Shulchan Aruch*, but abandons his opinion for that of the *Shulchan Aruch*, violates the prohibition of “You shall not turn your head in Judgement.” Rabbi Hershel Schecter notes¹² that this independence is accorded specifically to the *halachic* competent; the average Jew is expected to follow his designated sage. It is apparent that Rabbinic Judaism expects and encourages the independent thought of its *halachic* thinkers, in contrast to the inflexible and tyrannical image of the priest drawn by Nietzsche.

A discussion about the success and conformity in *Yiddishkeit* would be incomplete without a discussion of “*v’halachta b’drachav*.” Ephemeraly, Chazal’s treatment of “*v’halachta b’drachav*” as a blanket statement to follow the ways of God, reflects exactly the Nietzschean critique of the priests. Within this rubric, there is no reason to assume one of God’s behaviors, whether it be inflicting war or visiting the sick, take precedence. However, this verse is limited by the *midrash* to reflect only Divine mercy, forgiveness, compassion, patience, and a general inclination towards giving.¹³ The *midrash* seems to be playing directly into the hands of Nietzsche by including behaviors that encourage self-debasement, excluding the other behaviors of Hashem in *Tanach*, including anger, vengeance, and justice. These latter behaviors are the ones that thinkers like Nietzsche hold are critical to the development of independent, non-conformist thought.

A careful analysis of the Rambam’s approach to *v’halachta b’drachav* explains why Chazal limited the concept as they did. In *Hilchos Deos* (1:5-6), the Rambam adopts the restrictive interpretation of the *midrash*:

We have been commanded to walk in medium ways and these are the ways of good and straightness as it says “v’halachta b’drachav,” and this is the explanation of the mitzva: Just as He [God] is called compassionate, so too you should be compassionate. Just as He is called merciful, so too you should be called merciful. Just as he is called holy, so to you should be called holy.

¹² For a complete discussion, see *Nefesh HaRav* 61-63

¹³ *Eliyahu Rabba* 24

The commentaries on the Rambam are bothered by how this Rambam interacts with the prior Rambam (1:4), where Rambam defined the “medium path” as the path between any two opposing character traits, famously exempting arrogance. Now, the “medium path” seems to be endorsing particular character traits.¹⁴

The *Maseh Rokeiach*, in his commentary on the Rambam, suggests that the “medium” path mentioned previously is directed at a different group of individuals than that of this. The previous directive, to follow a path between character traits, was directed at the average Jew. Now the Rambam is stating that the path for the elite Jew is very different. These Jews possess the intellectual maturity to leave the relative safety of the “moderate path.” They can embrace a particular character trait, without fear the trait will come to dominate their personality. Their “moderate path” is far different than the moderate path of the normal Jew. The *Chaim U’Melech* expands on this notion, explaining that only the characteristics of compassion, etc. are cited by the classic commentators as reflective of “*v’halachta b’drachav*” because there is more room for human error when exercising them. To properly understand when to use character traits like anger and jealousy would require supernatural or near supernatural wisdom.

The Rambam’s approach makes clear that *v’halachta b’drachav* does include all the manners in which Hashem acts, even those perceived as “negative.” Chazal’s minimization of the “negative” *middos* does not render them untouchable as Nietzsche would have led one to believe, but rather serves to limit them to those mature enough to handle their combustible nature.

¹⁴ *Maseh Rokeiach* also adds the following question: If God is described as having particular, prominent character traits, how can the intimation of His ways be considered moderate? See also the *Em HaBanim*, who disagrees with the merits of this question.

Yom Tov and the Jewish People

YAAKOV ZUBER



The days that are most special to the Jewish people are Shabbos and Yom Tov. While they are similar in that adherence to the sanctity of the day by avoiding the action of any of the thirty-nine *avos melachos* is vital, there are differences, in which certain actions are permitted on Yom Tov and prohibited on Shabbos. The primary difference concerns cooking, *ochel nefesh*, which is permitted on Yom Tov so as to allow a Jewish home to consume freshly cooked food and enhance the Yom Tov experience. The source for the permission to cook on Yom Tov is the *pasuk* that states “*ach asher y’achol l’chol nefesh hu l’vado y’ase lachem*, only that which is to be eaten for each person is what may be done for you.”¹ This article will elaborate on the essence of Shabbos observance, the logic as to why Yom Tov would seemingly be more permissive than Shabbos, and subsequently expound on the differences between the various *Yamim Tovim* themselves.

In teaching us the mitzva of Shabbos by way of the *Asseres Hadibros*, the Torah appears to present multiple purposes in observing Shabbos and abstaining from *melacha*. In the first set of *Asseres Hadibros*,² the Torah declares that the day of Shabbos is holy because “For six days Hashem made the Heavens and the Earth...and He rested on the seventh day, therefore Hashem blessed and sanctified the seventh day.” From this *passuk*, it appears that Shabbos is a testimony to the creation of the world. However, in the second set of *Asseres Hadibros*, the motivation in keeping the laws of Shabbos is presented in a different manner.³ “And you should remember that you were servants in the land of *Mitzrayim*, and Hashem brought you out of there with a strong and outstretched hand, therefore Hashem commanded you to observe the day of Shabbos.” Which is the primary purpose, commemoration of the creation

¹ *Shemos* 12:16

² *Shemos* 20:11

³ *Devarim* 5:15

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of the world, or the remembrance of *Yetzias Mitzrayim*? Chazal discuss another difference between the commandment of Shabbos in the two sets of *Asseres Hadibros*. In *Sefer Shemos*, the mitzva of Shabbos observance is predicated on the word “zachor, remember,” while in *Sefer Devarim* it is “shamor, watch.” Why does the Torah present the mitzva of Shabbos observance with two different descriptions?

The *Meshech Chochma*⁴ presents a beautiful approach which sheds light on the incongruence of the *Asseres Hadibros*. The primary purpose of Shabbos observance is indeed remembering that Hashem created the world in six days and rested on the seventh day. However, if that was the only reason presented, then non-Jews would also be required to observe Shabbos, as they are also part of the world that was created by Hashem in six days. In fact, we are taught that *goy sheshavas chayav misa*, a non-Jew that abstains from performing *melacha* on Shabbos is punished by death. Why would he be punishable by death if the theme of Shabbos is one that connects with him as well?

That, writes the *Meshech Chochma*, is the additional lesson taught to us in the second set of the *Asseres Hadibros*. A basic difference between the philosophies of Chazal and Aristotle is the interaction between Hashem and the world. Aristotle’s school of thought posits that there is no Divine Intervention, and Hashem does not interact with, nor control, the world on a constant basis. A basic tenet of Judaism is that Hashem did not merely create the world which we inhabit; He keeps the world going every moment as if it is continuously being created. As a nation, we experienced that phenomenon most clearly at *Yetzias Mitzrayim*. The miracles of the *Makkos* and their significant change to the laws of nature clearly exhibited to us that Hashem is indeed the controller of the world in a constant and unending manner. The elemental purpose of Shabbos observance is for the reason recorded in the first *Asseres Hadibros*; the rest from the initial Creation. But that on its own would be insufficient, as that would indicate that subsequent to Creation there was a disconnect between Hashem and the world. Remembering *Yetzias Mitzrayim* by observing Shabbos confirms our true understanding of Hashem’s relationship with the world.

A non-Jew that observes Shabbos does testify that Hashem created the world in six days and rested on the seventh, but that is not a sufficient testimony and would instead tarnish the proper understanding of the lesson of Shabbos. Such a non-Jew is to be punished by death, because it is worse to testify incorrectly than to not testify

4 Written by Rabbi Meir Simcha Hacoen from Dvinsk (1843-1926); he was a rav and prominent leader of European Orthodox Jewry in the early 20th century. Aside from the *Meshech Chochma*, he is well known for his work on the Rambam’s *Mishna Torah* entitled *Or Sameach*.

at all. Only the Jewish people can properly understand that Hashem is constantly running and overseeing the world, and that is due to our having experienced in a most profound way that direct hands-on connection between Hashem and the world. The understanding of Divine Intervention can be learned intuitively, such as in the case of a Jewish convert, who is indeed obligated to observe Shabbos and certainly does not get punished by death for observing Shabbos, much as any other Jew does not receive such punishment. That is because the observance of Shabbos for the convert is inherently and deeply different than the observance of a non-Jew. One believes, and is testifying, that Hashem is part of everyday life, and we connect and are held accountable to Him. The non-Jew is content with the belief that the world was indeed created by a God without further direct involvement.

This distinction is not simply an integral part of Shabbos observance. This belief is an axiom that distinguishes a Jew from a non-Jew. Aristotle did not believe in *s'char v'onesh*, reward and punishment, that makes mankind held accountable to a greater Being, because he advanced the theory that there is no Divine Intervention, to which follows the theory that there is no reward and punishment. Rambam, in his compilation of the thirteen basic tenets of Jewish faith, lists reward and punishment as one of them. Shabbos observance cannot occur in a manner that conflicts with that basic belief, but rather must revolve around the recognition of Hashem's constant surveillance. Shabbos cannot merely be a testimony that the world was created by Hashem.

The first *Asseres Hadibros* utilizes the word “*zachor*” in teaching us the basic objective of Shabbos, which is to “remember” that Hashem created the world, while the second *Asseres Hadibros* employs the word “*shamor*” which can be understood as a constant understanding of Hashem's involvement in the world.

Observance of *Yamim Tovim*

The purpose of the *Yamim Tovim* is entirely different than the purpose of Shabbos. While the *Yamim Tovim* do relate to *Yetzias Mitzrayim* and the miracles that accompanied that event, we emphasize that Hashem did something personally to us by taking us out of *Mitzrayim* and designating us as his chosen people. This does not relate to the creation of the world, and therefore a non-Jew has absolutely no connection to any of the *Yamim Tovim*. Pesach directly relates to *Yetzias Mitzrayim*. Shavuot is the ultimate purpose of that event in that we became connected to Hashem through the giving of the Torah. Sukkos commemorates the *Ananei Hakavod*, Clouds of Glory, which involved Hashem bringing us into His home. And Rosh Hashana and

Yom Kippur include our being mentioned before Hashem and receiving atonement. In contrast to Shabbos, which is sanctified by Hashem, Yom Tov is sanctified by the Jewish people as a nation, which is evidenced by the words of *kiddush*, *mikadesh Yisrael v'hazmanim*. Typically, we describe the occurrence of Yom Tov as controlled by us, in that Yom Tov is celebrated on a specific day of a month; and since we control when a month ensues, effectively we control Yom Tov. According to what we have written above, an alternative explanation can be provided. Yom Tov is inherently ours because it recalls an event that made us who we are, a nation of our own. Shabbos is not something that is inherently ours, as on a basic level it speaks to everyone by testifying about the creation of the world, and we are the ones that usher Shabbos observance to the proper level through including Divine Intervention. For this reason, in direct contrast to Yom Tov, Shabbos is described by the *gemara* in *Beitza* 16a as a gift from Hashem to us. Yom Tov is “ours,” more so than Shabbos, whose elemental purpose is shared by all inhabitants of this world.

Ochel nefesh is permissible on Yom Tov because its celebration and observance are “ours.” Shabbos is sanctified by Hashem, and we are sanctified by Hashem, and therefore there is no reason that cooking would be permissible on Shabbos. However, as we are the “owners” of Yom Tov, cooking food on Yom Tov is permissible as we are the sanctifiers of Yom Tov and Yom Tov is not more sanctified than ourselves.

Burial on Shabbos and Yom Tov

Tosafos in *Bava Kama* 80b rules that although *amira l'akum*, asking a non-Jew to perform a *melacha* on Shabbos on behalf of a Jew, is generally permissible in order to fulfill a mitzva, it is not permitted to ask a non-Jew to bury a Jew on Shabbos. *Tosafos's* reasoning is that the burial on Shabbos would be an embarrassment to the dead person's soul and would not be something that would bring happiness to the deceased. On the other hand, a non-Jew may be asked to bury a Jewish person on the first day of Yom Tov, as it is a mitzva for the deceased to be buried. This ruling requires clarification because burial does not involve *ochel nefesh*, so why is there a distinction between Yom Tov and Shabbos? Per our explanation earlier, that Shabbos relates to non-Jews as well, while Yom Tov is exclusively ours, *Tosafos's* ruling is wholly clear. Yes, burial on any day is a mitzva, but the deceased would not want someone that is associated with the elemental reason for observance of Shabbos to desecrate Shabbos on his behalf. Yom Tov, on the other hand, has no relevance to a non-Jew, and therefore it would not concern the deceased whatsoever if a non-Jew buried the *niftar* on Yom Tov.

Various Levels of Yom Tov

An uplifting *midrash*⁵ sheds light on the difference within the *Yamim Tovim* regarding the connection between *Klal Yisrael* and Hashem. The *pasuk* in *Shir Hashirim* (3:11) states, “With the crown with which his mother crowned him.” The *midrash* relates a discussion amongst the *tannaim* attempting to explain the allegorical meaning of the *pasuk*. One *tanna* explains, “First Hashem loves the Jewish people like a daughter, then like a sister, and finally like a mother.” Initially, at the time of *Yetzias Mitzrayim*, the Yom Tov of Pesach, Hashem loved us as one loves a daughter, in that the parent bestows goodness to the child who is exclusively a receiver. So too, when leaving *Mitzrayim*, we are described⁶ as *arom va’erya*, completely devoid of *mitzvos* and only on the receiving end of good from Hashem. Subsequently, at Sinai, the day of Shavuot, Hashem loved us as a sister, because there was activity from both sides. The Jewish people were united as one and reached the level of *na’ase vi’nishma*, and in turn, Hashem bestowed upon us the Torah. Sukkos, on the other hand, is when Hashem loved us like a child loves a mother. That is because the celebration of Sukkos is the return of Hashem’s glory to our midst, as a result of our *teshuva* after the sin of the Golden Calf. In fact, per a calculation presented by the Vilna Gaon, the Yom Tov of Sukkos is the first instance of the return of the *ananei hakavod* after it left us due to the sin of the *Egel*. A mother gives unconditionally to her child, and so too, we gave exclusively to Hashem and therefore merited Hashem’s glory. Yom Tov, in contrast to Shabbos, involves a complete exclusivity between *Klal Yisrael* and Hashem, with differences in the manner of the relationships within each Yom Tov.⁷

⁵ *Midrash Shir Hashirim* 3:21

⁶ *Yechezkel* 16:8

⁷ See my article in *Nitzachon* 3:2 which describes the difference between the *Yamim Tovim* in comparing to the various steps of a relationship between husband and wife.

Did Moshe Rabbeinu Have An Anger Management Problem?

CHARLES KAUFMAN



There is a remarkable conundrum within the story of the *makos* in *Parshas Bo*:
וַיֵּצֵא מֹשֶׁה-פָּרֹעֶה בַּחֲרִי-אֵף.
And he went out from Pharaoh with burning anger. (Shemos 11:8)

In fact, the *gemara* in *Zevachim* 102a quotes Resh Lakish saying that Moshe slapped Pharaoh in the face. What possibly could have been so upsetting to cause Moshe Rabbeinu to so lose his equilibrium?

If we review the course of events during Moshe's meetings with Pharaoh we see a constant string of events in which Pharaoh breaks his word, insults Moshe, mocks Moshe (and Hashem) and seemingly acts in every possible way that could give rise to justifiable anger on Moshe's part, yet, Moshe keeps calm:

וַיֹּאמֶר אֱלֹהִים יְהִי כֵן ה' עִמָּכֶם כְּאֲשֶׁר אֶשְׁלַח אֹתְכֶם וְאֵתִּיטְפְּכֶם רְאוּ כִּי רָעָה נֹגַד פְּנִיכֶם.
(*And in sarcasm Pharaoh said*) "Oh yeah, God will go with you like I'll let you and your little ones go." (Shemos 10:10)

Let us review the events leading up to Moshe's outburst at 11:8:

- 1) The plague of darkness has concluded and Pharaoh sends for Moshe.
- 2) Pharaoh seems to relent and is willing to let Israel go with limits.
- 3) Moshe demands release with seemingly no limits, even requesting that Pharaoh himself provide *Bnei Yisrael's* sacrificial animals.
- 4) Pharaoh refuses and tells Moshe to go, warning him that he would not see Pharaoh's face again.
- 5) Moshe agrees, "Right, I won't see your face again."
- 6) In front of Pharaoh, Moshe gets a direct revelation from *HaKadosh Baruch*

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Hu detailing the final plague, *makas bechoros*, and details of the coming Exodus.

7) Moshe relates to Pharaoh the details of the coming plague, literally there won't be a home in *Mitzrayim* that isn't holding a *levaya*. And Pharaoh's servants will come to urge us to leave.

8) Moshe leaves with burning anger.

No mocking, no sarcasm; it's hard to see precisely what upset Moshe, as we've certainly seen worse behavior by Pharaoh. In fact, Rabbi Shimon Schwab, in his *Maayan Beis HaShoeva*, brings two proofs that prior to the revelation at (6) Moshe couldn't have been upset:

- How can two people agree to something if one of them leaves angry.
- It's impossible for a *navi* to receive a *nevua* if he is emotionally upset.

If anything, this makes our question stronger. Clearly, Moshe was upset with Pharaoh, but what did Pharaoh do?

Who was Moshe Rabbeinu?

Richard Pipes, who was *niftar* this year, fled Nazi-occupied Poland with his family in 1939. He went on to become the premier sovietologist at Harvard University and the Director of East European and Soviet Affairs under President Reagan. He made the following observation regarding the Soviet Union: "If the Russian people throw off the yoke of their Communist overlords, they still aren't out of the woods, as they have no model of a leader as public-servant." Their only *mesora* was from the tzars, who were no public servants. You paid taxes to them, served in their army, and sometimes died for them; there was no reciprocal duty.

I would suggest that the model for Western society of the public servant was none other than our own Moshe Rabbeinu. *Shemos Rabba* notes that when Moshe went out and saw the suffering of his brothers in *Mitzrayim*, "*v'haya nosein kseifav umesaye echad v'echad mehen*," "and he gave his shoulder and help to each of them." He ignored his rank and station and bent his strength to assisting each one of them. In addition, throughout the journey in the *midbar*, Moshe constantly stepped up to defend *Klal Yisrael* from Hashem's wrath. ("Take my name out of your book.")

Similarly, we see his leadership while shepherding his father-in-law's flocks:

אמרו רבותינו כשהיה מרע"ה רועה צאנו של יתרו במדבר ברח ממנו גדי ורץ אחריו
עד שהגיע לחסית כיון שהגיע לחסית נדמנה לו בריכה של מים ועמד הגדי לשתות,
כיון שהגיע משה אצלו אמר אני לא הייתי יודע שרץ היית מפני צמא עיף אתה
הרכיבו על כתיפו והיה מהלך, אמר הקב"ה יש לך רחמים לנהוג צאנו של בשר ודם
כך חייך אתה תרעה צאני ישראל, הוי ומשה היה רועה.

Our teachers have said: Once, while Moshe Rabbeinu was tending his father-in-law] Yisro's sheep, one of the sheep ran away. Moshe ran after it until it reached a small, shaded place. There, the lamb came across a pool and began to drink. As Moshe approached the lamb, he said, "I did not know you ran away because you were thirsty. You are so exhausted!" He then put the lamb on his shoulders and carried him back. The Holy One said, "Since you tend the sheep of human beings with such overwhelming love, by your life, I swear you shall be the shepherd of My sheep, Israel. (Shemos Rabba 2:2)

So, we see that the *midah* most essential for leadership is the care and love for those being led.

Moshe and *Klal Yisrael* didn't hate the Egyptians. This point is made abundantly clear in an analysis of *Parshas Yisro* by the *Ksav Sofer* who asks why Bnei Yisrael didn't defeat the Egyptians at the edge of the Yam Suf, if they were strong enough to defeat Amalek, the premiere military force of the time? He suggests that they had gratitude to the Egyptians, who were their hosts for 210 years, and were unwilling to attack them.

לֹא־תִתֵּעַב מִצְרִי כִּי־גֵר הָיִיתָ בְּאֶרֶץ.

Do not hate the Mitzri since you were sojourners in their land. (Devarim 23:8)

לֹא תִתֵּעַב מִצְרִי - מִכֹּל וְכֹל אֶף עַל פִּי שִׁזְרוּקוֹ זְכוּרֵיכֶם לִיאֹר. מִה טַעַם, שֶׁהָיוּ לָכֶם אֲכִסְנִיא בְּשַׁעַת הַדָּחָק.

Thou shalt not abhor an egyptian all in all (utterly), although they cast your male children into the river. Why? Because they were your hosts in time of need (during Joseph's reign when the neighbouring countries suffered from famine). (Rashi there)

Moshe Rabbeinu grew up in the palace of Pharaoh as Pharaoh's grandson. We might rhetorically ask: To what profession was Moshe being educated? Plumber? Electrician? Contractor? No, there can only be one course of instruction for the grandson of Pharaoh, the art of kingship. No doubt, Moshe was educated in the history and greatness of the Egyptian people.

In fact Moshe's identity is somewhat ambiguous. Should he have been seen as a Jew or a Mitzri? The *chartumim* (magicians) of Pharaoh were confused: "Some of their divinations saw the eventual redeemer of the Jews would be a Jew and others

saw the eventual redeemer would be a *Mitzri*.” When Moshe saves Yisro’s daughters they say a *Mitzri* saved them.

In Los Angeles, many of us (yes, even from Jews) call The Lakers “our” team and feel every win or loss as if it were our own. Moshe knew that the Jews were his brothers. “Sometime after that, when Moses had grown up, he went out to his brothers and witnessed their labors.” (Shemos 2:11) However, while the Jews were his brothers, the Egyptians were his people; he had been trained to be a king of *Mitzrayim*.

Now let us return to the scene in Pharaoh’s throne room. Let’s stop to observe some objective truths:

- When Moshe predicts a plague is coming, it comes; he has a perfect record.
- *Makas bechoros* was so severe that Pharaoh ran down to meet Moshe and begged the Jews to leave.

What did Pharaoh do wrong?

Imagine for a moment that a young man and woman had been seriously dating for three months. At this point, the young lady expresses the tremendous respect and even love she has developed for the young man. He, for his part, looks at his watch and asks. “Do you think the ball game has started yet?” Do you think he might indeed deserve a slap in the face?

So when Moshe told Pharaoh of the awful carnage about to come, literally, every family will be holding a funeral, what does Pharaoh do? The Torah doesn’t record that Pharaoh said a word. What could Pharaoh have done? Moshe has just predicted a calamity of Biblical proportions. He could have said. “Moshe that cost is too high, just go already” or “Moshe you need to give me a minute, that’s a lot to process.” Instead he said nothing at all. It’s like he looked at his sundial and asked his secretary if the game had started. And Moshe sees Pharaoh completely abrogating his duty as a leader and willing to toss the dice with the lives of millions just to score a point against Hashem. Moshe sees a leader lacking in the most basic *midos* necessary to lead, character traits that are central to Moshe’s own nature. When Moshe sees Pharaoh caring less for the lives of the *Mitzrim* than Moshe himself does, finally, in burning anger, Moshe slaps Pharaoh in the face.

Kashrus in Israel

DR. JONATHAN NISSANOFF



I had been to Israel many times as a child, but most of the time we ate at my relatives' homes, so dealing with *hechsherim* wasn't an issue for me. When my family wanted to take my uncle out to dinner, he refused. He said that he doesn't trust any of the *hechsherim* in Israel. This seemed a bit odd to me. So I asked him where he obtained his meat. He said he did his own *shechita*! This was my first introduction to the complexities of the *kashus* issues in Israel.

I recently visited *Eretz Yisrael*, only to find out that nothing has really changed. There is limited *kashrus* transparency, with few written or published standards for *kashrus*. There is the *Rabbanut hechsher* for each city in Israel, as well as *Mehadrin*, *Badatz*, and various other *hechsherim* with no real understanding who you can rely on, and, well, you are starting to get the picture. The whole thing made no sense. Why wouldn't the government just use one *hechsher*? (I promised that I wouldn't discuss politics.)

In America, life is so simple. We have about 400 *hechsherim*. Most are reliable, some are not. We look for the reliable symbols on foods or at restaurants, and we are all good. Some of us keep *chalav Yisrael*, others don't. Pretty much everything is otherwise *glatt*. I cannot remember the last time I went to a meat restaurant in Los Angeles that wasn't *glatt* kosher.

It's not so simple in Israel. When walking into a mall where there is a food court, or a hotel's restaurant, most of people eating in those establishments will have *kipas*, *tzitzis* hanging out, and some will even be yeshiva students that we would recognize. Yet, many others whose *kashrus* you would trust would refuse to eat in those places. Not understanding these mutually exclusive realities, I embarked on a journey to try to dissect the real issues and understand them better. Hopefully this article will shed some light on the differences between the Israeli *hechsherim*, their reliability, and whether one can feel comfortable eating at those establishments.

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Of the many supervisions that are found in *Eretz Yisrael*, most people hear that there are two main ones, *Mehadrin* and non-*Mehadrin*. What exactly are the differences between them? Embarrassingly, I recently asked the *mashgiach* of one of the restaurants in a hotel, with a *shtreimel* and *kapata*, if the *hashgacha* was acceptable since several people had told me to specifically ask this question and not be embarrassed that I am asking the frum *mashgiach* who is actually giving the *hashgacha*. The *mashgiach* said that he doesn't trust the *hashgacha* and wouldn't eat at this establishment himself. I then asked him if he eats at his own house. He then laughed and told me that this is a very common occurrence and that I don't know how the *hechsherim* work in Israel. He himself was a reliable *mashgiach*, and the food is kosher *al pi halacha*, but it is not at the level that he is comfortable eating. How is that possible if he is the *mashgiach*, I asked. He explained that the *hashgacha* was *rabbanut*. I was scratching my head, not understanding how he couldn't rely on his own *hashgacha*. It turns out that it is true that some *mashgichim* who supervise the non-*Mehadrin* products in *Eretz Yisrael* do not even eat from their own *hashgacha*. It is based on many factors, including the *shechita* itself. So, how does the *Mehadrin* slaughtering process for kosher meat vary from the non-*Mehadrin* process? What differences are there between *Mehadrin* and non-*Mehadrin* milk and dairy products?

I won't get into the politics behind all the issues here, even though there are many. I won't even get into the money issues, of which there are many as well. I will stick to the basics for a more fundamental understanding of the actual *halacha* and let the reader decide whether he feels that he can rely on a particular *hashgacha*. If you decide not to read on, I will give you a spoiler to the end of this article with the answer to the question of whether you can eat at any of the kosher establishments in Israel regardless of *hashgacha*. The answer is, it depends!

In *Eretz Yisrael* there are two types of *hechsherim*, *Mehadrin* and non-*Mehadrin*. The non-*Mehadrin* supervision is usually performed by the local *rabbanut*, the official local and regional government offices of the Israeli Rabbinate. Some of the local *rabbanuts* are more reliable than others. The *rabbonim* who give this type of *hechsher* often do not eat from this certification themselves. Based on research that I have done, including many discussions with *kashrus* experts in Israel, I have learned that local *rabbanuts* certify these products because they feel it is important that there should be a complete, inexpensive variety of kosher products available, so the consumer will not be tempted to buy non-kosher products. Therefore, the *Rabbanut* is willing to bend over backwards with *kulos* to make sure that as many food products as possible have a *hechsher* and are kosher *al pi halacha*. This means that no Jew would violate any *issurim* by eating this food.

Many people, however, prefer to eat only food that can be eaten *lechatchila*, hence, the *Mehadrin hechsherim* were developed.

The *lechatchila kashrus* includes proficient inspection of fish, greens and legumes for insects and bugs, prohibiting the use of many items, including but not limited to strawberries, other berries, certain cuts of meat, and the certainty that the milk, vegetables, foods and other items are not the result of *chilul Shabbos*. It also means that there is a *mashgiach temidi* present while the kitchen operates.

In a regular *kashrus* environment, a *mashgiach* pops in from time to time (*yotzei v'nichnas*), not necessarily daily, and the level of *kashrus* adherence in the kitchen is inferior to the *Mehadrin*, as there isn't anyone there at all times watching over the staff and their activities. Clearly, as is in any other area of *hechsherim*, if the establishment violates the rules of *kashrus*, then they may lose their *hashgacha*, and in turn, their ability to make a living.

The Jerusalem Rabbinat employs *mashgichim*, as well as a *mefakeiach* (supervisor) who is not assigned to a specific establishment, but goes to a number of places supervising his subordinates, the *mashgichim*.

Lets get into some of the nitty gritty details:

Mehadrin is a general term, meaning enhanced/stricter *kashrus*. People use it to describe a particular standard, or they might mean a general term for one or several *hechsherim* (kosher supervisions) such as *Badatz Eida Chareidis*, Rav Landau, Rav Rubin, *Sheeris Yisrael*, or Rav Machpud. The term can also be used by a local rabbinat *hechsher* to denote a higher level than their usual standard. In other words, it can mean anything or nothing. There is no universal standard. A person needs to ask the specific organization(s) what they mean by *Mehadrin*. This can include not relying on the *heter mechira*, a *mashgiach temidi*, more careful checking of bugs in vegetables and grains, using "bug free" leafy vegetables, *chalav Yisrael*, *glatt* meat, slower and more careful *shechita* and *kashering*, using milk only from *shomer Shabbos* farms, and checking if fruit is *orla* rather than relying on the majority of that species.

Badatz is the name of several organizations, such as the *Badatz Eida Chareidis*, *Badatz Mehadrin* (Rav Rubin), and others. Again, each has their own standards, and can be asked. Anyone can call themselves "*Badatz*," as the word doesn't have a formal definition on its own.

It is critical to understand that according to Israeli law, the only body that is permitted to write the word "kosher" on a product or eating establishment is the *Rabbanut* or an organization that the *Rabbanut* endorses. The word "*Mehadrin*" is actually not bound by Israeli law and therefore, has no real meaning or guarantee

of *kashrus*. It is imperative to make sure that you know who is giving the *hechsher* in a “*mehadrin*” establishment. I will tell you a scary story to make this point. I was traveling to Florida with my wife for a conference several years ago. We looked up online “*glatt* kosher establishments” that would deliver for Shabbos. There was a restaurant called “Jerusalem Glatt.” I called them to order for Shabbos. As I was ordering, my wife asked me to ask them who their *hechsher* was. (I told my wife that the place was called Jerusalem **Glatt**, so what was she worried about? She insisted.) Embarrassed, I asked the person on the phone. To my shock, he said they are not under any supervision! I never lived that one down, nor have I ever ordered from a restaurant since without asking who their *hashgacha* was, regardless if the name of the restaurant has the word Glatt in it.

Mehadrin (from *hiddur*, meaning “beautified” or “embellished”) is the generic term describing a certain level of *kashrus* covering for example the presence of a supervisor in a kitchen, the type of meat being served (*glatt* vs. non-*glatt*), how *shemita* is being handled, etc.

Badatz (acronym for *Beis Din Tzedek*) is a name for a *kashrus* organization that supervises kosher products. They typically only supervise *Mehadrin* products. This is the case for the most well-known ones, *Badatz Eidas Hacharedis*, *Badatz Chassam Sofer* from Bnei Brak or *Badatz Beit Yosef*.

There are other, non-*badatz* agencies certifying and requiring *Mehadrin* products, such as Rav Landau in Bnei Brak.

The *Mehadrin hechsherim* ensure the kosher consumer that their products are supervised in an uncompromising manner.

Interestingly, all *Rabbanut hechsherim* are mandated to take ingredients from all *Rabbanut* supervisions for any city or municipality whether the particular *Rabbanut* is well-versed in kosher supervision or not. A *Mehadrin hechsher* is not bound to this mandate. Therefore, one can see that there is some sort of consistency with the *Rabbanut*, but not necessarily with the *Mehadrin*.

What are the Differences in the *Shechita*?

In practice, there are many differences in the *Mehadrin shechita* process in order to ensure that the proper high standards are maintained. These differences are evident even prior to slaughtering, when the chicks are being raised. When they are approximately ten days old, they are inoculated. Special care is taken not to puncture any vital organs, which would render the bird non-kosher. It is common practice for *Mehadrin hechsherim* to send a *mashgiach* to the farm to ensure that the

inoculations are done properly. There is no *mashgiach* supervising the inoculations of non- *Mehadrin shechted* fowl, since it is assumed that the inoculations will not render the birds *treif*.

There are differences between the quality of *Mehadrin* and non-*Mehadrin shochtim* as well. Care is taken that the *Mehadrin shochtim* have impeccable credentials and skills. To qualify for a non-*Mehadrin shechita*, the *shochet* only needs to be certified to be acceptable. Additionally, *Mehadrin* knives are checked very carefully. Even a minute structural change will cause a *Mehadrin* knife to be rejected. The *Mehadrin shochet* exchanges his *chalaf*, slaughtering knife, frequently. Typically, the knife is not used for a very long period and is usually checked every fifteen minutes. This ensures that the knives are kept in top form and minimizes questions to disqualify chickens. After the *shechita*, if there is even a very small *pegima* (nick or blemish), the birds of a *Mehadrin* production are rejected. Non-*Mehadrin* knives are checked for *pegimos* before *shechita* and after *shechita*. If a *pegima* is found after *shechita*, the birds will be disqualified only if the *pegima* is big enough to render it *halachically treif*. Since there is a considerable financial loss if a bird is *treif*, the *rabbanim* of the *mashchetos* (slaughterhouses) tend to be lenient.

The pace of slaughtering differs significantly. According to *Mehadrin* supervision, the birds should be *shechted* more slowly, usually twelve birds a minute or less. Any *shaila* in the *shechita* will disqualify the bird. Non-*Mehadrin* supervision allows for a quicker *shechita*, and any *shailos* are decided according to the *Shulchan Aruch's* lenient position. There are two complete teams of *Mehadrin shochtim* that work interchangeably. One team works for thirty minutes and then rests for thirty minutes. Usually not more than 25-35 birds are *shechted* per minute. The non-*Mehadrin shochtim* usually work for forty minutes and then rest for twenty minutes. There is one substitute for every two *shochtim*. A non-*Mehadrin* team *shechts* approximately 100 birds per minute.

After the chicken is slaughtered and defeathered, an internal check is made. There are *Mehadrin mashgichim* on the line who check every lung for disease, as well as the tendons for torn ligaments, *tzomes hagidin*. Sometimes intestines and gizzards are also checked. On the non-*Mehadrin* line there is a *mashgiach* who does not have time to check everything. It is assumed that the birds are not *treif*. The kidneys are usually taken out of a *Mehadrin* bird, as mandated by the *Pri Megadim*. The *mashgichim* ensure that the birds are completely clean from blood inside and out, and that there are no blood clots (*tzirus dam*). Non-*Mehadrin* birds' kidneys are not removed, and often their lungs are not taken out. The level of cleanliness from blood is considerably less than in the *Mehadrin shechitos*.

What is the difference between *Glatt* (*Chalak* in Israel) vs. non-*Glatt*?

The third *perek* in *Chulin* discusses the thorough examination of an animal's lungs and renders an animal *treif* if there is a hole and possibly an adhesion in the lung.

The word "*glatt*" actually means "smooth" in Yiddish, and refers to the lack of adhesions on the lungs of an animal.

To understand this, we need to define another word that has taken on a whole new meaning, *treif*.

In the vernacular, the word refers to anything unkosher. In truth, *treif* refers specifically to an animal that has died a violent death, as the verse states, "Do not eat meat from an animal torn (*treifa*) in the field." (*Shemos* 22:30) More broadly defined, this also includes animals that have physical defects that *halacha* determines will limit their lives.

One of the more common invalidating defects is a punctured lung in most animals (excluding fowl). Aside from these holes, there are often *sirchos*, scar tissue or adhesions, that sometimes develop on the lungs. These are problematic, since they indicate that there either was a hole that subsequently sealed up that did not heal properly, (Rashi, *Chullin* 46b) or that a hole is developing in this soft tissue. (*Tosafos* *ibid.*)

Most adhesions on the lungs render the animal *treifa*; not kosher. (*ibid*) Some, however, describe techniques by which one can squeeze, palpate and test some adhesions to ascertain whether they are bona fide *sirchos* or merely *rir* (spittle-like discharge), which would mean the animal is kosher. (*Mar Yaakov Gaon*)

Rabbi Yosef Karo (the *Beis Yosef*), who most Sephardim hold by, and who is the author of the Code of Jewish Law, does not allow for these tests and holds that all adhesions are considered *treifa*.

On the other hand, Rabbi Moshe Isserles, in his glosses to the Code, while opining that one should not be *meikel* and rely on these tests, states that it was the practice among Ashkenazic Jews to allow reliance on this test. (*Shulchan Aruch*, *ibid.* 39:13) Therefore, only for Ashkenazim is *glatt* kosher an issue since they are the only ones who rely on the test rendering a meat only kosher vs. *glatt* kosher (without any adhesions.)

While on the topic of *glatt* kosher, it should be noted that if you go to a kosher butcher, you may find another category of meat called *glatt* (or *chalak*, the Hebrew equivalent) *Beit Yosef*.

Glatt in the classical sense means that there were no adhesions whatsoever (*glatt bli ririn*), but since it is very uncommon to find totally smooth lungs, the majority of

meat sold nowadays as *glatt* relies on the process of peeling and testing mentioned by Rabbi Isserles, but only for very light and soft adhesions which come off easily. (*Beit David* 39:6) As mentioned, Sephardim don't rely on this at all.

This is the case only for beef. When it comes to other animals, such as deer, calves (veal) and lamb, all agree that no type of *sircha* may be removed. Therefore, all other "kosher" animals sold today are by definition *glatt* kosher. (*Shulchan Aruch, Yoreh Deah* 39:13)

At the same time, when it comes to finding *sirchos*, not all areas of the lung are equal. While all hold that there are certain areas of the lung where a *sircha* will not render the animal non-kosher, there is a disagreement as to what exactly these areas are. In this aspect the Sephardic view (following the *Beis Yosef*) is more lenient, with more areas where a *sircha* can exist without affecting the kosher status of the animal. Those same *sirchos* would make the entire animal *treif* for Ashkenazim (following the rulings of Rabbi Isserles, the Rama). In other words, while Rabbi Karo is more strict on the type of *sircha*, he is more lenient when it comes to where it can be found.

In practice, many Sephardim follow the stringencies of both Rabbi Moshe Isserles and Rabbi Yosef Karo, so that they (a) don't rely on any of the tests of *sirchos*, and (b) also don't rely on the leniencies of Rabbi Yosef Caro about the *sirchos* found in certain areas.

Based on this, one can find three different types of kosher meat on the market: 1) plain kosher meat; 2) *glatt* kosher; and 3) *glatt* or *chalak* *Beit Yosef* (or *glatt bli ririn*), which follows the rulings of the Sephardim.

This poses a huge problem for Jewry around the world: Ashkenazim cannot eat the Sephardi meat because there may have been *sirchos* in the areas that make the animal *treif* according to the Rama, and the Sephardim cannot eat the Ashkenazi meat because it may have had *ririn* which is not permitted for Sephardim. To fix this problem, Rav Eliazer Melamed writes that today, '*chalak*' meat means that "the stringencies of both the *Shulchan Aruch* and the Rama are kept, because if only the stringencies of the *Bet Yosef* were kept, there would be animals that are not '*chalak*' according to the Rama, and sometimes even '*treif*'. This was the directive of the *Rishon L'Tziyon*, Rabbi Mordechai Eliyahu ztz"l – that for '*chalak*' *kashrus*, the stringencies of both the '*Bet Yosef*' and the Rama must be kept at the same time."

How important is it have a *Mashgiach Timidi*?

The next issue that we need to deal with is the issue of whether an establishment needs a *mashgiach temidi* or a *yotzei v'nichnas*. *Mehadrin hashgachas* always rely only

on a *mashgiach temidi*, but *Rabanut* doesn't require this stringency. The reason why the *Rabanut* allows for an institution to not have a *mashgiach temidi* is based on the gemara in *Chulin* 69 that if a Jew has wine in the store and has non-Jews in the store, and the Jew is in and out, we consider the wine *mutar*. Based on this, they allow the *kulah* of not having a *mashgiach temidi*.

Furthermore, they also rely on the fact that a *mashgiach's* reputation is so important to maintain that he wouldn't dare risk his livelihood and reputation by not making sure that he is following the rules of *halacha*. This concept is based on the same reliance we have for *yichud* with doctors or rabbis, *uman delo mare nafshei*, no one wants to worry about reputation.

What are the Differences in Kashering ?

During *kashering*, when the chickens are soaked and salted, care is taken that *Mehadrin* birds are soaked for a complete half-hour. The water is relatively clean and not too cold, as soaking in cold water is questionable. Non-*Mehadrin* birds are usually soaked for thirty minutes, but it cannot always be guaranteed. The water temperature is not always measured, which may not be optimum for *kashering*. There is an additional *Mehadrin mashgiach* that makes sure that the birds are salted completely, whereas there is usually no *mashgiach* standing constantly at the salting table of the non-*Mehadrin* salting to make sure that the chickens are adequately salted. This is not to say that the temperature and the salting is not adequate; rather, there is no standardization that is used and supervised in these areas for non-*Mehadrin kashering*.

The next issue is the amount of time a meat needs to be salted. The gemara in *Chullin* 113 tells us that there is a *chumra* to *kasher* within 72 hours so the blood doesn't coagulate. After 72 hours, according to some *acharonim*, frozen meat allows us to stop the clock without having it salted. Rav Moshe Feinstein held that we should not be *maykil* on this by freezing the meat, but *b'dieved* it is hard to prohibit it.

This is an issue with international meat, such as South American imported meat. It takes more than 72 hours from being *shechted* to when you salt the *basar*. So the *Rabbanut* uses this *heter* called *basar kafu*, meaning that time freezes just like the meat freezes. The *Badatz hashgachas* get the meat salted before sending it over to Israel.

Are There Really Any Issues With Dairy products?

There is a difference of opinion whether Chazal decreed that milk from a herd of cattle that belongs to a *mechalel Shabbos*, a non-observant Jew, falls into the category of *chalav akum*. Both the Chazon Ish *zt"l*, and Rav Moshe Feinstein *zt"l*, ruled that this milk is permitted. Based on this *psak*, most *Mehadrin* and non-*Mehadrin* milk is

milked without a *mashgiach* present on the premises of non-observant farms. The only difference between *Mehadrin* and non-*Mehadrin* is that *Mehadrin* milking is not done on Shabbos. There are some *Mehadrin hechsherim*, however, that send a *mashgiach* to the *chaliva* (milking), although, usually, it is not for the entire *chaliva*, and often not even from the beginning of the milking. Tnuva Yerushalayim, which carries the *hechsher* of the *Eida Hachareidis*, takes milk only from *shomer Shabbos* farms.

Due to an increase of non-Jewish workers on many farms, *kibbutzim*, and *moshavim*, a question was recently posed to the *poskim* whether the milking performed by a non-Jew on a non-*shomer Shabbos* Jewish farm constitutes *chalav akum* (non-supervised milk). If it does, who on the farm is going to vouch for the fact that the non-Jew didn't milk the cows? The members of the farm are not *shomer Shabbos*. The questioners reasoned that a *mechalel Shabbos* may be a Jew, but he certainly does not have *halachic* credibility to vouch for the fact that the non-Jewish workers are not doing the milking. If their milking renders the milk *chalav akum*, we would not be able to drink any milk from a *mechalel Shabbos* farm. To avoid this problem, *Mehadrin hechsherim* (as in the case of Tnuva, the largest dairy company in Israel) send a *mashgiach* to the farms once a week to make sure that no non-Jew is doing the *chaliva*. As mentioned earlier, Tnuva's branch in Yerushalayim takes milk only from *shomer Shabbos* farms.

Regarding dairy products, in general, there are many differences between *Mehadrin* and non-*Mehadrin*. According to the *Rabbanut Harashit*, no liquid *chalav akum* may be used even in a non-*Mehadrin hechsher*, but powdered *chalav akum* may be used in non-*Mehadrin* products, based on a *psak* from Rabbi Zvi Pesach Frank. There are other powdered milk byproducts made from *chalav akum*, which are also used in non-*Mehadrin hechsherim*. *Mehadrin* products never use non-supervised powdered milk.

Furthermore, the cultures used to coagulate the milk in cheese and yogurt are often from *chalav akum* in non-*Mehadrin hechsherim* and from *chalav Yisrael* in *Mehadrin* ones. There can be a dramatic difference in *Mehadrin* and non-*Mehadrin* ingredients in manufactured products, as well. Regular beef gelatin can be used in non-*Mehadrin* products such as marshmallows, yogurts, and ice cream. Flavorings and colorants differ between *Mehadrin* and non-*Mehadrin* products also.

Do You Need To Worry About Eating Fruits And Vegetables?

There are a number of critical *halachic* issues pertaining to fruits and vegetables grown in *Eretz Yisrael*. There is a Torah prohibition against eating insects. Since there

is a greater prevalence of insect infestation in Israel than in many other countries, there are requirements that have been set by both non-*Mehadrin* and *Mehadrin hechsherim* regarding Israeli produce. The *Rabbanut* has mandated that all restaurants and caterers, both non-*Mehadrin* and *Mehadrin*, purchase leafy vegetables from sources that grow produce in controlled environments such as the former Gush Katif hothouses. *Mehadrin* establishments also require that canned vegetables be purchased from insect-controlled sources; non-*Mehadrin* does not have this policy.

Other *halachic* differences that pertain to fruits and vegetables are the requirements of separating *terumos* and *ma'asros*. It is a daunting task to control the tithing of the fruits and vegetables. It requires constant vigilance of the *kashrus* organizations and their *mashgichim*. *Mehadrin hechsherim* do their best to ensure that all *terumos* and *ma'asros* under their certification have been separated. Non-*Mehadrin hechsherim* are generally more lenient. Another *halachic* problem is *orla*, the prohibition of the fruits produced during the first three years of a tree's growth. The problem with *orla* fruits is further complicated with new agricultural advances. Today's trees now give edible fruit in their second year of growth. Furthermore, the older and taller the tree, the more time and money it takes to pick. It makes economic sense to uproot some trees every few years and replant again. This restarts the *orla* count. Other fruits that are commonly replanted are grapes, where shoots are being continuously put into the ground.

How do the *Mehadrin* and non-*Mehadrin* certifications deal with *orla*? There are many opinions in approaching this issue. The most lenient approach is that of the Chazon Ish *zt"l*, who says that since the majority of fruits grown in Israel are not *orla*, the *halacha* gives us the right to assume that the fruits sold in the market place are from the kosher majority. This is a leniency for the consumer, and the position taken by the non-*Mehadrin* certifications. *Mehadrin* certifications would not certify a product based on assumptions, but would take the strictest opinion that states if the total *orla* volume of fruit in the marketplace is less than .5%, the fruit is permitted. This is based on the *halacha* that if *orla* is co-mingled with kosher fruit, it is nullified in a 200 to 1 ratio (.5%).

The next issue is checking bugs, *bedikas tolaim*. The *Shulchan Aruch* holds that a creature that is found whole is not *batel* to the food. The *Aruch Hashulchan* holds that any bug not visible to a human eye, but only by magnification, is *mutar*. However, Rav Shlomo Zalman Auerbach, in *Shmiras Shabbos K'hilchasa* 3:105 and the Chazon Ish are *machmir* that if you can use magnification and see the bug, it is *asur*.

The *Rabbanut* does not require a lot of sifting of flour to find bugs, but the

Mehadrin does. They will look through every part of the flour. The *Rabbanut* relies on the Rama based on the *gemara* in *Makos* 13b that a chopped-up bug would be *batel*.

Is Gelatin Kosher?

Gelatin is a odorless substance created by boiling the bones of animals. It helps bind and solidify jelly, jellios and other substances. The *gemara* doesn't put animal bones in the same category as *basar*. Since you are not allowed to cook meat and milk together, the *Mehadrin* doesn't allow this substance to be used with dairy products. The *Rabbanut* relies on the *gemara* in *Chullin* 114 that says that one who cooks bones with milk is *patur*. Gelatin is even more *mekil* since it isn't fit for human consumption on its own.

The Rama in *Yoreh Deah* 87 says that is it *mutar* to put milk into an animal's stomach which is completely dry like wood, since it is not considered *basar*. The *Shach* 87:33 says that any innards are the same as bones. You should not rely on this *lechatchila*, except for *batel beshishim* in the *taaroves*.

Rav Chaim Ozer Grodzinski, in his sefer *Achiezer*, says you can use gelatin from a non-kosher animal. He says that it will not be edible for animal consumption. It is considered to have undergone a *shinui* and is almost always going *batel beshishim*.

The Rambam in *Hilchos Maachalos Asuros* 14:18 says it is *asur* to eat the bones of *neveilos* and *treifos*, based on the Torah in *Parshas Shemini*, so according to the Rambam, this is an *isur deoraisa* of "*mibsaram lo tochailu*." Therefore the OU only certifies gelatin made from bones of kosher fish or kosher animals that had a proper *shechita*. The *Rabbanut* is *mekil* and certifies products from *treifos*.

How Do We Deal With Wine?

Wine presents the same issues in *Eretz Yisrael* as in *Chutz La'aretz*. However, it is harder to tell a non-observant Jew than a non-Jew not to touch the wine. *Mehadrin hechsherim* are more insistent to use *shomer Shabbos* workers and to have a *mashgiach* making sure that the wine is properly double-sealed. Non-*Mehadrin* standards regarding wines are more lenient.

Conclusion

In conclusion, I hope that I have shed light on some of the frustrations I have been through when visiting Israel and trying to keep kosher when eating out. I am also not making any judgments as to the level of *kashrus* by either the *Rabbanut* or any of the other *hechsherim*. I have used this opportunity to make sure anyone visiting an establishment that offers food has the tools to make the appropriate decisions for

himself as to what he is comfortable with when relying on a particular *hechsher* in Israel.

My father always said “a signature on a contract is only as good as the person signing the contract.” Therefore, integrity and reliability of the actual *mashgiach*, not “*glatt*,” “*super-glatt*,” or “*Beis Yosef-glatt*” labels or signs, should be the true guidelines for the kosher consumer. All too often, the consumer gets caught up in hearsay, fancy advertising, and propaganda, without bothering to do the needed research to separate fact from fiction. Therefore, it is always advisable to purchase meat and eat at eateries that have been endorsed by a respectable rabbinic authority or a respected *kashrus* organization regardless of whether it is “*Rabbanut*” or “*Mehadrin*,” as those names by themselves are relatively meaningless if you don’t know the actual person who is supervising the establishment. It is certainly advisable to purchase meat and poultry from a restaurant that displays genuine commitment to Torah and *mitzvos*, along with reliable supervision. Otherwise, my advice is to just *shecht* the animal yourself and eat at home. You will certainly avoid all the above confusion.

Lex Talionis: Three Approaches in *Peshuto Shel Mikra*

ZAC GRODZINSKI



In my previous article (Volume 5:2), I introduced the readers to the late Rabbi Yehuda Cooperman and to his unique method used to study *peshuto shel mikra*. As I described, it seems initially that the Torah was written in an overly convoluted way with various related *halachos* scattered in different books of the Torah, relying on Chazal to use their “*drasha* toolbox” to organize and systematize the seemingly unorganized, unsystematic and often contradictory *halachos*. In addition, there is often a glaring disparity between how Chazal interpreted a *pasuk* in terms of a *halacha* and the simple meaning of the *pasuk* itself. In these cases, Rabbi Cooperman distinguishes between the “how” and “why” questions. Those who have studied *gemara*, or even simply Rashi’s commentary on *halacha*-centric sections of the Torah, are well versed in the “how” questions. How did Chazal determine the correct reading of the *pasuk*? How did they resolve the seeming inconsistencies? The answers to these questions are generally mechanistic descriptions which employ the various traditional “*drasha* tools,” either *middos she-hatorah nidreshes bahen*, passed down traditions (*kabalos*), or combinations of the two. While these answers are sufficient to determine the *halacha* which is derived from a given *pasuk* or section, the why questions are still left unanswered. Why did the Torah write those sections in such a way, requiring Chazal to calculate the answers? Why didn’t the Torah simply write the *pesukim* in a way that would agree with Chazal’s interpretations? Using Chazal themselves as his justification (they having formulated the idea of *Ain Mikra Yotzei Midei Peshuto* [*Shabbos* 63a, *Yevamos* 24a]), Rabbi Cooperman, employing the traditional *meforshim* over the generations, outlined many of the functions that *peshuto shel mikra* has above and beyond serving as a basis for Chazal’s *drashos*.

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In the last article, I showed *peshuto shel mikra's* ability to preserve the *halacha* that was applicable at the time of the Torah's writing—a *halacha leshe'a*, or temporary *halacha*. In this article, instead of presenting a single function of *peshuto shel mikra* and bringing multiple examples that use that function, I will use one example as a basis to study three unique functions or approaches. For each approach, I will briefly bring one other example simply to show its applicability outside the topic of focus.¹

The Problem²

The *pasuk* states:

וכי ינצו אנשים ונגפו אשה ויצאו ילדיה ולא יהיה אסון ענוש יענש כאשר ישית עליו בעל האשה ונתן בפללים. ואם אסון יהיה ונתתה נפש תחת נפש. עין תחת עין שן תחת שן יד תחת יד רגל תחת רגל. כויה תחת כויה פצע תחת פצע חבורה תחת חבורה. *When men fight, and one of them pushes a pregnant woman and a miscarriage results, but no other damage ensues, the one responsible shall be fined according as the woman's husband may exact from him, the payment to be based on reckoning. But if other damage ensues, the penalty shall be life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise.* (Shemos 21:22-25)

This is the first appearance in the Torah of the *lex talionis*, or law of retaliation,³ whereby a person is punished with bodily harm as a result of causing bodily harm to another. While this law was interpreted literally by some Second Temple writers,⁴ and possibly by the *tanna* Rabbi Eliezer,⁵ Chazal's essentially undisputed tradition is that this *pasuk* refers to monetary compensation. According to Chazal, this law as written in the Torah was never implemented in its literal sense; rather there was a *kabala*⁶ that the interpretation of the phrase *ayin tachas ayin* is monetary.

1 Note to the reader: The additional example sections can be skipped over without detracting from the main points related to *lex talionis*.

2 Many of the sources in this section are taken from AlHatorah.org - "An Eye for an Eye"

3 See also *Vayikra* 24:19-20 and *Devarim* 25:11-12

4 Philo, *The Special Laws* 3:33:182; *Jubilees* 4:43-45

5 See the uninterpreted *braisa* quoted in *Bava Kama* 84a, and see below at the end of Approach #3.

6 The term *kabala* implies a long standing tradition, unlike a *peirush* or *drasha* of Chazal which could have been developed by Chazal themselves and may be disputed in certain cases. See Rabbi Cooperman's *Mevo Lelimud Hatorah* (pp. 25-26) where he categorizes and explains the significance of each of the terms.

Compare *Ibn Ezra* (ad loc.):

והכלל, לא נוכל לפרש על התורה פירוש שלם, אם לא נסמוך על תורה שבעל פה כאשר קבלו תורה שנכתב מיד האבות, כך קיבלנו תורה שבעל פה, אין הפרש ביניהם.

While this may suffice for the “how” question, the “why” question remains completely unanswered. Why did the Torah write *ayin tachas ayin* if it actually meant money? Why not just write *dmei eino yeshalem*? To answer this question, I will, as Rabbi Cooperman did, present three approaches taken by three different *meforshim*.⁷ Each approach, apart from answering our specific *lex talionis* question, will outline a unique “function” that the *peshuto shel mikra* has in addition to the *halachic drasha* applied to the *pasuk*.

Approach #1: Ideal *Halachos*, *Dinei Shamayim* and Practical Implications

The first approach we will look at is that of the *Seforno*. Commenting on the *pasuk* in *Shemos*, the *Seforno* writes:

כך היה ראוי כפי הדין הגמור שהיא מדה כנגד מדה, ובאה הקבלה שישלם ממון מפני חסרון השערותנו, פן נסכל ונוסיף על המדה לאשמה בה.

This is what ought to be the judgment against the offender, if we were to apply the principle of midda keneged midda. However, according to tradition, only financial compensation is exacted due to our lack of accuracy [in gouging out the perpetrator's eye], lest we err and retaliate more than required and become guilty.

The simple understanding of this comment is that the *peshuto shel mikra* teaches us what the ideal *halacha* would have been if only we were able to more accurately injure the perpetrator to the exact same extent that he injured the victim. While Chazal practically applied the law (with monetary compensation) and read the *pasuk* in accordance with that ruling, the *peshuto shel mikra* preserves what the ideal *halacha* is, even though it is not practically applied.

Though this approach does apply a “function” to the *peshuto shel mikra*, to expose the “ideal” *halacha*, it seems that it can be taken one step further. Even though there are no practical implications with regards to *dinei adam* in the *beis din shel mata*, if *ayin tachas ayin* represents what the *halacha* ideally would be, it makes sense that things would be quite different with respect to *dinei shamayim* in the *beis din shel ma’ala*. And sure enough, basing himself on the *mishna* and *gemara* in *Bava Kama* (92a), the Rambam writes:

Ramban (ad loc.): הידוע בקבלת רבותינו שהוא ממון

Seforno (ad loc.): ובאה הקבלה שישלם ממון

⁷ The three approaches relating to *ayin tachas ayin* are taken from Rabbi Cooperman's *Peshuto Shel Mikra* Section 1 Chapter 4.

אינו דומה מזיק חבירו בגופו למזיק ממונו. שהמזיק ממון חבירו כיון ששלם מה שהוא חייב לשלם נתכפר לו. אבל חבל בחבירו אע"פ שנתן לו חמשה דברים אין מתכפר לו. ואפילו הקריב כל אילי נביות אינו מתכפר לו ולא נמחל עונו עד שיבקש מן הנחבל וימחול לו.

A man who inflicts physical injury upon another is unlike one who damages another's property. If one damages another's property, as soon as he has paid what he is required to pay, he obtains atonement. If, on the other hand, he wounded another person, even though he has paid compensation on five counts, he does not obtain atonement. Even if he has offered up all the rams of Nevayos, he is not atoned unless he asks forgiveness of the injured person who should pardon him. (Hilchos Chovel Umazik 5:9)

As can be seen, this ruling is based on the fact that unlike regular property damage, the laws of personal injury have an additional "ideal" component to them, as described by the *peshuto shel mikra*. According to this, *ayin tachas ayin* isn't simply a *halachic* ideal left for the angels; rather it dictates what the law is in the heavenly court and yields practical implications for man with respect to *dinei kapara*.

Approach #1 - Additional Example: *Dinei Shamayim*⁸

The prohibition to shave one's head as a sign of mourning is recorded twice in the Torah. The first time is directed specifically towards *kohanim*.

לא־יקרחה קרחה בראשם.

They shall not make a baldness on their heads. (Vayikra 21:5)

The second time applies to everyone.

בנים אתם לה' אלהיכם לא תתגדדו ולא־תשימו קרחה בין עיניכם למת.

You are children of the Hashem your God. You shall neither cut yourselves nor make any baldness between your eyes for the dead. (Devarim 14:1)

While the simple reading of these *pesukim* implies that these are two distinct prohibitions, a specific one for *kohanim* and a general one for all people, Rashi, on both *pesukim*, brings the relevant rulings of Chazal that merge both of the prohibitions together by way of a *gezeira shava* (*karcha-karcha*). This allows the application of laws from one case to the other. Solidifying this idea, the Rambam explicitly writes (*Sefer Hamitzvos*, Negative Mitzvos, end of #170) that one shouldn't think that these are two separate prohibitions, since if that were the case, a *kohen* who violated the law would be punished with two sets of lashes, one for being a regular person and one for

⁸ This example is taken from Rabbi Cooperman's *Peshuto Shel Mikra* Section 1, Chapter 11.

being a *kohen*. Rather, a *kohen* is only punished with one set of lashes, like a *yisrael*.

Why then the repetition? If indeed there is only one prohibition for shaving one's head both for *kohanim* and for everyone else, why did the Torah document the ruling in two different locations, directed at two different audiences and formulated in two different ways? Addressing this problem using a similar tool as presented above, the *Netziv* writes:

ביארנו שם הפרש במפורש בין ישראל לכהן. אבל כ"ז אינו אלא לענין עונשי שמים
אבל לדין בא הקבלה להשוות ישראל לכהן בדינים אלו.

We explained earlier (Vayikra 19:28) the distinctions [with regards to the prohibition of shaving] between a Yisrael and a kohen [that the prohibition is more clearly explained with regards to the kohen]. But all that is only related to punishments from Heaven, but with respect to the regular law, the Tradition came and equated the prohibitions for both the yisrael and the kohen. (Haamek Davar, Vayikra 19:28)

And explaining the concept in more detail, the *Netziv* writes:

...דבמקום המפורש בתורה העונש בידי שמים חמור ממה שנלמד בקבלה בג"ש
וכדומה.

...since where a prohibition is more literally explicit in the Torah, the punishment by Heaven is more stringent than in a case where the prohibition was extrapolated by a tradition, a gezeira shava or the like. (Vayikra 19:27)

According to the *Netziv*, even though with respect to the regular courts, the punishment for shaving (as a mourning practice) is identical both for a *kohen* and a *Yisrael*, since the Torah was more explicit in its ruling directed towards *kohanim*, the respective prohibition in the Heavenly court is more severe. While the *midrash* interprets the law to be applied in the *beis din shel matta*, the *peshuto shel mikra* reveals the law in its ideal sense, as applied in the *beis din shel ma'ala*.

Approach #2: Two Options in the Torah

After refuting the opinion of Ben Zuta the Karaite, the *Ibn Ezra* concludes his comments on *ayin tachas ayin* with a strong statement about the primacy of *Torah Sheba'al Peh* with regards to the Torah's interpretation, followed by a terse comment regarding *ayin tachas ayin* itself:

והכלל לא נוכל לפרש על דרך מצות התורה פירש שלם אם לא נסמך על דברי חז"ל.

כי כאשר קבלנו התורה מן האבות כן קבלנו תורה שבעל פה אין הפרש ביניהם. והנה יהיה פל' עין תחת עין. ראוי להיותו עינו תחת עינו אם לא יתן כפרו.

And the rule is, we cannot explain the commandments of the Torah with a complete interpretation if we don't rely on the words of Chazal. Since just as we received the [Written] Torah from from our fathers, so too did we receive the Oral Torah - there is no difference between them. And the explanation of ayin tachas ayin is: It would be fitting to exact an eye for an eye if [the offender] were not to pay his ransom.

On the surface, it seems that like the *Seforno*, the *Ibn Ezra* also understands *ayin tachas ayin* as an ideal (*raui*), even if never applied. The *Ibn Ezra*, however, adds a unique comment: *im lo yiten kaparaso*. The basis for this comment actually appears in the *gemara* in *Bava Kama* (83b):

הרי הוא אומר "לא תקחו כופר לנפש רוצח אשר הוא רשע למות." לנפש רוצח אי אתה לוקח כופר אבל אתה לוקח כופר לראשי אברים שאין חוזרין.

The verse states: "And you shall not take ransom for the life of a murderer, who is guilty of death, for he shall die" (Bamidbar 35:31). [This indicates that] it is only for the life of a murderer that you shall not take ransom; but you shall take ransom for one who severed another's extremities, [which is analogous to the death of a limb], as severed limbs do not regenerate.

While this *gemara* seems to be the direct basis for the *Ibn Ezra's* comment, it actually functions very differently. The *gemara* tries to harmonize both seemingly conflicting *pesukim* in order to extract the one conclusive ruling that applies in the case of bodily injury, that being monetary compensation. After making the logical inference in the *pasuk* in *Bamidbar* (*kofer*), the *gemara* must reinterpret the conflicting *pasuk* in *Shemos* (*ayin tachas ayin*). Nowhere does the *gemara* see these *pesukim* as two standalone rulings. Nowhere does it indicate that there is any legitimacy to the literal reading of *ayin tachas ayin*. The *Ibn Ezra*, however, formulates the idea that these are in fact two distinct, and in a way alternative, rulings, that don't need to be harmonized in any way. In theory, one who is guilty of cutting off another's arm has two legal options to choose from; either to have his own arm cut off or to pay money in return. According to the *Ibn Ezra*, we would never actually cut off the person's arm, since we are allowed to collect ransom in its place.

According to this interpretation, the *peshto shel mikra* of *ayin tachas ayin* is literally (and *halachically*) "an eye for an eye". However, since the Torah has the alternative ruling of *kofer*, the initial ruling is never actually implemented.

Approach #2 - Additional Example: Infinite Slavery⁹

Regarding a Jewish slave who chooses to stay with his master after the six standard years, the *pasuk* in *Shemos* (21:6) says “*v’avado le’olam*,” he shall work for him “forever”. Referring to the same case, the *pasuk* in *Vayikra* (25:40) however states “*ad shnas hayovel yaavod imach*,” that he shall work for him until the Yovel year. As was shown above, when two such *pesukim* conflict, Chazal’s goal was to harmonize them, and sure enough Rashi on the *pasuk* in *Shemos* is quick to notify the reader that “*le’olam*,” forever, in this case means “until the Yovel year.” While this method works for the determination of the practical *halacha*, why the discrepancy, why write *le’olam* and have to resort to the “*le’olam=yovel*” definition?

Addressing this problem, the *Meshech Chochma* writes:

יש לעיין בעבד עברי שנמכר בזמן שהיובל נוהג, ובתוך שש בטלו היובלות כמו בשעה שהגלה עשרת השבטים שלא היו כל יושביה עליה - כיון שאין עבד עברי נוהג אלא בזמן שיובל נוהג - מי פקע עבדותו או דלמא נשאר עבד כמו שדה אחוזה וא"כ הרי הנרצע שאינו יוצא בגרעון כסף ויוצא רק ביובל אם היה יובל הוי אפקעתא דרחמנא ואם לא היה יובל, שנבטל היובל נשאר עבד לעולם כל חיי האדון, ומדויק הכתוב “ועבדו לעולם” לפי פשוטו שהוא עובד אותו לעולם רק אם יהיה יובל מפקיע, והבן. One should analyze [the case of] a Jewish slave who is sold at the time when the Yovels were in function, and during his six year term the Yovels were nullified (as occurred at the time of the exile of the ten tribes after which the majority of the Jews didn’t live in the land - and Jewish slaves only function when the Yovels are in function). [In this case] is his slavery terminated, or does he remain a slave just like ancestral land [does not return, since there is no Yovel to activate its return]? And if so, regarding the “pierced” slave who is not released through ransom, but rather only during the Yovel year, if there were a Yovel he would be released, but if [as in the case we mentioned] the Yovels were nullified [due to external factors], he would remain a slave forever (as long as his master is alive). [And based on this] the text of the *pasuk* “*va’avado le’olam*” is extremely accurate according to the “*pshat*” for [indeed] the slave would work forever if it were not for the fact that the Yovel ended his term.

According to the *Meshech Chochma*, even though Chazal created the standard *halacha* based on the combination of the two rulings found in the Torah (*le’olam* and *Yovel*), the *halacha* as presented by the *peshuto shel mikra* still has a function. When

⁹ This example also appears in Rabbi Cooperman’s *Peshuto Shel Mikra* Section 1, Chapter 4.

the Torah first taught the ruling of a “pierced” slave (in *Shemos*), it had not yet taught the laws of *Shemitta* and *Yovel* (which are taught in *Vayikra*). Therefore, the *pasuk* in *Shemos* clearly presents what the *halacha* truly is if it were not for an external factor; in this case, *Yovel*.^{10 11}

Approach #3: The Essence and Foundation of a *Halacha*

Based on what was presented until now, it seems that on some level there was always an ideal to carry out the literal law of *ayin tachas ayin*, but either we weren’t able to because of our lack of precision (*Seferno* in Approach #1), or because of an additional conflicting law which inhibited its applicability (*Ibn Ezra* in Approach #2). In this section, however, we will show that even though we don’t apply the law literally, the concept of *ayin tachas ayin* forms a foundation for many of the practical *halachos* that relate to bodily injury, even though they are applied in the form of monetary compensation.

The Rambam writes:

זה שנאמר בתורה “כאשר יתן מום באדם כן ינתן בו” אינו לחבל בזה כמו שחבל בחברו אלא שהוא ראוי לחסרו איבר או לחבל בו כאשר עשה, ולפיכך משלם נזקו. והרי הוא אומר “ולא תקחו כפר לנפש רצח”? לרצח בלבד הוא שאין בו כפר אבל לחסרון איברים או לחבלות יש בו כפר.

When the Torah says: “If a man disfigures a person, as he has done so shall it be done to him”, it does not mean to inflict injury on this man as he did on the other, but that the offender fittingly deserves to be deprived of a limb or wounded in the same manner as he did, and must therefore indemnify the

10 While Chazal in general don’t place much significance on the location of the *pasuk* in the Torah on which a *halacha* is based, on the level of the *peshuto shel mikra* it plays an extremely important role. Using their many hermeneutical techniques, Chazal are able to connect often disparate *pesukim* together and generally merge all the sections that talk about a specific topic into one unit. Those interested in *peshuto shel mikra*, however, try to determine why specific rulings were formulated the way they were specifically in the location that they appear. See Rabbi Cooperman’s *Peshuto Shel Mikra* section Section 2, Chapter 7.

11 While both these examples are brought by Rabbi Cooperman as examples of the *Shtei Dinim* or “Alternative Rulings” approach, I don’t think the *lex talionis* case works completely. According to Rabbi Cooperman, the *peshuto shel mikra*, though it may not teach a mainstream *halacha*, nevertheless always comes to teach something with a practical implication - be it a *halacha lesha’a*, *din shamayim* or even a *sod*. In our case of *ayin tachas ayin*, however, the *Ibn Ezra*’s claim seems purely theoretical since we’d never exact the literal law.

In a series of articles in *Hamayan* (17:3, 17:4, 18:3), Professor David Henshke also developed a similar approach to *peshuto shel mikra* (based on a cryptic comment by the Gra in *Aderes Eliyahu*, *Mishpatim*, also cited by Rabbi Cooperman in Section 1, Chapter 10, Footnote 19). While this is not the place to explain his method, unlike Rabbi Cooperman, he doesn’t require the *peshuto shel mikra* to have any practical implications. Since the *Ibn Ezra*’s comment seems completely mechanistic, while I don’t think it fits with Rabbi Cooperman’s world of *peshuto shel mikra*, it works quite well with Professor Henshke’s approach. (Thanks to Yaakov Rich for pointing out these articles.)

damage he caused. However, the Torah says: “You shall accept no ransom for the life of a murderer”, implying that only for a murderer no ransom is accepted, but compensation is taken for the loss of limbs or for injuries sustained. (Hilchos Chovel Umazik 1:3)

While this comment of the Rambam seems quite similar to that of the *Ibn Ezra*’s above, the simple question to ask is why did the Rambam - in his most practical work - feel it was necessary to outline a point which we showed was purely theoretical? As we will see, however, according to the Rambam, this idea forms the basis for the laws of bodily injury and will help explain two often misunderstood rulings of his.

A) Rambam Hilchos Chovel Umazik 4:9

החובל בחברו ביום הכפורים אפלו במזיד חייב בתשלומין. אף על פי שעבר עברה שהוא חייב עליה מלקות. והלא כל המחייב מלקות ותשלומין לוקה ואינו משלם שאין אדם לוקה ומשלם? כך הם הדברים בכל חוץ מחובל בחברו שהוא משלם שהרי בפרוש רבתה תורה חובל בחברו לתשלומין שנאמר “רק שבתו יתן.”

Someone who injures his friend on Yom Kippur [for which someone is generally liable for kares, and lashes if he was warned] - is responsible to pay for the damages. Even though he violated a law for which he should receive lashes. But is it not the case that anyone who is punished both with lashes and monetary compensation receives the lashes but is not required to pay? Such is the case in all cases except bodily injury, for he also pays since the Torah explicitly included the case of bodily injury for payment, as it says “but he must pay for his idleness.”

The Rambam claims that while in general we would apply the rule of *lokeh v'aino meshaleim*, that only applies in the case where a regular *tashlumin* coincides with lashes. In our case, however, the *peshto shel mikra* defined the status of the payment (*ayin tachas ayin*), and as explained by the *Ibn Ezra* and the Rambam, the offender actually deserves to be injured in return. That being the case, even though the *halacha* applied the law of *ayin tachas ayin* by way of monetary compensation, the foundation and essence of that compensation is not in the *halachic* category of *mamon* or *tashlumin*. In theory, the Yom Kippur offender should both receive lashes and lose a limb in return, since these punishments are not cancelled out by one another. Therefore, even though in our case the compensation is made with money, since it is coming as an expression of the actual law of *ayin tachas ayin* (as defined by the *peshto shel mikra*), the offender receives lashes and “pays” the appropriate compensation.¹²

¹² While this explanation nicely explains the Rambam’s ruling, it is not clear to me how it fits in with the reason

B) Rambam *Hilchos Chovel Umazik* 5:6-7

אבל אם לא היו שם עדים כלל הוא אומר חבלת בי והודה מעצמו פטור מן הנזק
ומן הצער וחיב בשבת ובבשת וברפוי על פי עצמו...ולמה משלם אדם שלשה דברים
אלו על פי עצמו? שהשבת והרפוי ממון הוא ולא קנס...

...But if there weren't witnesses there and the offender admits himself
[that he caused the harm], he is exempt from paying the *nezek* and *tza'ar*
payments, but is still required for the remaining three, based on his own
testimony...And why must the person pay the three payments based on his
own testimony? Since the *sheves* and *ripui* payments are [categorized] as
mamon and not *k'nas*...

In general we apply the rule of *modeh b'knas pattur*, that one who personally admits that he is responsible for an action for which he would be required to pay a penalty is exempt from having to pay. In our case, the Rambam separates *nezek* and *tza'ar* from the other three injury payments and rules that in the case of a person who admits his responsibility, he is exempt from paying these two payments. While the Rambam explicitly states that *sheves* and *ripui* are considered *mamon*, he doesn't explain in which category *nezek* and *tza'ar* belong, and why they are not required to be paid in this case.¹³

Unhappy with the ruling of the Rambam, the Ra'avad (ad loc.) argues that the offender in our case should pay for all five payments. More significantly, the *Magid Mishna* (ad loc.) has a lengthy comment in which he collects various comments from across *Shas* that seem to categorize *nezek* and *tza'ar* as *mamon*. Unable to resolve the issue, he ends his comment by saying it needs further analysis.

Basing himself solely on the *peshuto shel mikra*, Rabbi Cooperman proposes the following solution which works, in his words, *k'min chomer*. Both *nezek* and *tza'ar* payments are derived from *pesukim* which on the level of *peshuto shel mikra* imply actual retaliation - *ayin tachas ayin* and *chabura tachas chabura*, respectively. *Sheves* and *ripui*, on the other hand, are derived from *pesukim* which on the level of *peshuto shel mikra* imply a more standard monetary compensation, "*rak shivto yiten, verapo yerape*," "but he must pay for his idleness and his cure." More directly put, *sheves* and *ripui*, loss of work and medical expenses, are required payments in order to compensate for the

provided by the Rambam himself at the end of the *halacha*:

שהרי בפרוש רבתה תורה חובל בחברו לתשלומין שנאמר רק שבתו יתן.

13 At the end of *Halacha* 7 the Rambam addressed the status of *boshes*. It has been left out since it doesn't relate to the discussion related to the *peshuto shel mikra*.

loss that was caused to the injured party, and since this is a standard *mamon* payment, even if the offender admits to it himself, he is required to pay. According to the Torah, however, *nezek* and *tza'ar* are presented as punishments that should be afflicted on the offender for his wrongdoing. Even though these “punishments” are exacted in the form of money, they nevertheless retain their status of “punishments” or “*kenas*” and we therefore apply the rule of *modeh b'kenas pattur*, and the self admitting offender is exempt from these two payments.¹⁴

As an aside, in the discussion of *ayin tachas ayin*, the *gemara* in *Bava Kama* (84a) brings a statement of Rabbi Eliezer from a *braisa* that seems to imply that we still exact the literal retaliation punishment. Since it is unlikely that Rabbi Eliezer would argue with such a fortified tradition of *mamon*, the *gemara* interprets his ruling by saying that his intention was to show that instead of determining the price of the lost limb based on the victim's limb (as would seem logical since we are coming to compensate the victim for his limb), we determine it based off the offender's limb. While this might seem counterintuitive, it actually makes a lot of sense in light of what we have shown above based on the *peshuto shel mikra*. Since the payment is actually just the *halachic* expression of the literal *lex talionis* (whereby the offender would lose his limb), it is logical that the value of the monetary compensation should be based on the value his own limb. Though the *halacha* is not in accordance with Rabbi Eliezer, it is clear that his opinion is grounded in that understanding that the *peshuto shel mikra* serves as the true foundation of the *halacha*.

Approach #3 Additional Example: *Basar B'Chalav*¹⁵

Twice in *Shemos* (23:19, 34:26) the Torah states:

ראשית בכורי אדמתך תביא בית ה' אלהיך לא־תבשל גדי בחלב אמו.
*The choice first fruits of your soil you shall bring to the house of the Lord
 your God. You shall not boil a kid in its mother's milk.*

14 Henshke (*Hamayan* 17:4) brings this solution - though formulated a little differently - in the name of Rav Moshe Mordechai Epstein (*Levush Mordechai*, *Bava Kama* #26) and Rav Yitzchak Yaakov Rabinovitz of Ponevezh (brought in the *Chemdas Daniel*, *Zevachim* 71a). According to them, since the payment of the value of the limb is just a substitute for the person's actual limb, in this case the admitting party doesn't take on the status of “*hoda'as ba'al din*”. The idea of “*hoda'as ba'al din*” applies when the action about which the person is testifying *halachically* generates the *chiyuv* of a payment (for example loss of work or medical expenses); that is the category of *chiyuv mamon*. In this case, however, the fundamental law of *ayin tachas ayin* is the physical retribution, and the payment component is generated by *beis din* instituting a *kofer* (rather than a direct *halachic* consequence of the action), and therefore the admitting party doesn't take on the status of “*hoda'as ba'al din*” for this specific case since it is fundamentally a case of *onesh* rather than *chiyuv mamon*.

15 This example is taken from Rabbi Cooperman's *Peshuto Shel Mikra* Section 2, Chapter 10

While Chazal (*Chullin* 116a) famously derived the three prohibitions relating to *basar bechalav* based on the Torah's thrice repeated law (the "how" question), there are two glaring "why" questions on the level of the *peshuto shel mikra*. Why did the Torah twice couple this prohibition with the seemingly unrelated mitzva of *bikkurim*, and more significantly, why didn't it simply include it as part of the "prohibited foods" section in *Vayikra* 11? Addressing this question, the *Seforno* (to 23:19) writes:

לא תעשה כמו אלה הפעולות להרבות הפירות כמחשבת עובדי עבודה זרה, אלא ראשית בכורי אדמתך תביא, כאמרו "וראשית כל בכורי כל, וכל תרומת כל וגו', להניח ברכה אל ביתך".

Do not practice these procedures which the idolaters believe are apt to improve the earth's productivity. But, on the contrary [if you really want to attract God's blessing on your agricultural endeavours] you will bring your first fruits to God [as a present] as it says [Yechezkel 44:30] "all the choice first fruits of every kind, and all the gifts of every kind, of all your contributions, shall go to the priests...that a blessing may rest upon your home."

Basing himself on the Rambam (*Guide* 3:48), the *Seforno* writes that the prohibition of *basar b'chalav* is a result of the *avoda zara* practice of cooking a kid in its mother's milk as a method to bring down God's blessing on one's crops. The Torah therefore comes and teaches that if we want to bring down God's blessing, don't do as the idolaters do (boiling a kid in its mother's milk), rather perform the mitzva of *bikkurim* (the purpose of which, as explained, is to bring a blessing on one's home).¹⁶

According to this, even though Chazal expanded the laws and applications of *basar b'chalav* beyond the limited case mentioned in the *pasuk*, it is the *peshuto shel mikra* which defines the foundation of the prohibition. As above, understanding the foundation of the law can help explain some difficulties related to the law's details.

A) The prohibition of *basar b'chalav* applies to cooking, eating and even deriving any benefit from it (*Chullin* 116a). There is no law of deriving benefit from any other prohibited food. The prohibition of deriving benefit is, however, quite commonplace in the laws of *avoda zara* where the Torah states (*Devarim* 12:2) '*avod toveidun*', and Chazal (*Avoda Zara* 45b) learned from here the requirement to completely uproot *avoda zara*.

B) Apart from cases related to *avoda zara*, Chazal generally didn't couple decrees

¹⁶ While the *Seforno* seems quite confident with this explanation, at the end of his comment however, the Rambam honestly states: "This I consider as the best reason for the prohibition, but as far as I have seen the books on Sabaeen rites, nothing is mentioned of this custom."

together, *ein gozrin gzeira l'gzeira*. In the laws of *basar b'chalav*, however, there are two sets of coupled *gezeiros* which form the basis of the applied laws of *basar b'chalav*. First, while the Torah prohibited it with the *basar* of a pure domestic animal, Chazal expanded this first to include pure wild animals and then even to birds. Second, while the Torah prohibited cooking the *basar* in *chalav*, Chazal expanded it to eating the foods together (even if not cooked together), and even to eating milk after meat.

While the prohibition of deriving benefit and the coupled decrees may seem strange when looking at the laws of *basar b'chalav* as simply another food-related *halacha*, this is because, according to the *peshuto shel mikra*, the roots of the laws of *basar b'chalav* are grounded in the laws of *avoda zara*, not in those of “prohibited foods.” With that understanding in mind, these two points are completely logical derivations of the Torah law.

Conclusion

As we have shown, according to Rabbi Cooperman's analysis, one single *pasuk* has the ability to serve as the basis for three unique approaches to *peshuto shel mikra*, each with its own nuances and implications. According to the *Seforno*, *ayin tachas ayin* reflects an ideal *halacha* which we humans are incapable of implementing justly; however even so, the *peshuto shel mikra* stretches beyond its natural boundaries and creates laws related to *dinei kapara*. This idea of an ideal *halacha*, or one related to *dinei shamayim*, was also applied by the *Netziv*, who showed that on the level of *dinei shamayim* the prohibition of a *kohen* shaving his head as a sign of mourning was more severe than that of *Yisrael*, based on the more explicit prohibition (on the level of *peshuto shel mikra*) directed towards the *kohen*.

While the *Ibn Ezra*'s view seemed similar to that of the *Seforno*'s, we showed that the *Ibn Ezra* introduced the idea of having two alternative laws on the level of *peshuto shel mikra* which both exist on their own, while only one is actually implemented on a practical level. This method was applied with a practical implication by the *Meshech Chochma* in the case of a pierced slave who could actually end up remaining a slave “forever” if the *Yovel* cycle were cancelled during the slave's term of service.

Finally, we concluded with the method that I feel is the most fundamental, that of the *peshuto shel mikra* serving as the true framework of the law, and from which the applied *halacha* stems. This understanding helped explain two difficult laws in the Rambam, one related to *lokeh v'aino meshalem*, and the other related to *modeh b'knas pattur*. In addition we showed how the *peshuto shel mikra* grounded the prohibition of *basar b'chalav* in the laws of *avoda zara*, which helped explain some

of the extreme safeguards that were applied to *basar b'chalav*, but were not applied to other prohibited foods.

Once again we have shown that even after having exhausted all the *drashos* and *kabalos* from a *pasuk*, *ain mikra yotzei midei peshuto* - there is still much to learn from the *pshat* of the *pasuk*.

Pikuach Nefesh on Shabbos

EVAN SILVER



Without constantly studying *hilchos Shabbos*, it is impossible to keep Shabbos properly. One who violates Shabbos due to failure to know the *halacha* is considered to have violated Shabbos *b'shogeg* (negligence), which requires a sin offering (*Shabbos* 68) in the times of *Beis Hamikdash*. The laws of *pikuach nefesh* (saving a life) are particularly important to know because one often does not have time to look up the answer or ask a rav. The challenge is that being *machmir* (strict) is not an option here like other situations. Without proper knowledge, one ends up being *meikel* (lenient) in Shabbos observance or *meikel* in saving a life. It is nearly impossible to memorize every potential case; therefore it is important to have a firm understanding of the major concepts, so one can determine what can and cannot be done should an emergency arise.¹

The basis for pushing aside Shabbos to save a life is discussed in the *gemara* in *Yoma* (85b), quoting various *pesukim* that demonstrate why one should violate Shabbos to save a life. One suggestion is the *pasuk* in *Shemos* 31:16:

שמרו בני ישראל את השבת לעשות את השבת לדרתם ברית עולם.

The Jewish people shall keep the sabbath, observing the sabbath throughout the ages as a covenant for all time.

The *gemara* learns from here that one should desecrate a single Shabbos so someone can live and keep many future *Shabbosim*. Rav Yehuda said in the name of Shmuel that the source is from the *pasuk* in *Vayikra* 18:5:

¹ If one knows they may have a situation then should consult with their rav in advance, such as if they know that they will be in a hospital for Shabbos. There are numerous books that give examples such as “*Halachos of Refuah on Shabbos*” by Rabbi Bonder, and I strongly encourage everyone have a copy for reference. The goal of this article is to show the complexity of the issues, encourage people to further learn the *halachos*, and provide a summary so *b'shas hadchak* one can make a proper decision when they can't look up what to do.

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וּשְׁמַרְתֶּם אֶת חֻקֵּי וְאֶת מִשְׁפָּטֵי אֲשֶׁר יַעֲשֶׂה אִתְּכֶם הָאָדָם וְחֵי בָהֶם אֲנִי ה'.

You shall keep My laws and My rules, by the pursuit of which man shall live: I am the Lord.

This teaches us that the purpose of the commandments is to live by them and not die by them. From a practical standpoint we rely on both of these *pesukim*, so if there was a situation that would only apply to one, like the person isn't going to live until next Shabbos, we are still *mechalal* Shabbos to save him.

However, not all medical needs are considered the same from a *halachic* perspective. There are several categories, each with its own classification of what is permitted or prohibited. The *Shulchan Aruch* in OC 328 says that one who has a minor ailment cannot break Shabbos, even through a non-Jew. The next category is if one is in so much discomfort they are "*nafal l'mishkav*," which includes one who needs to lie down or is at risk of losing a limb. This category allows one to do things that aren't *melacha*, such as *muktza*, taking medicine, a *d'rabbanan* with a *shinui*,² or *amira la'akum* on a *d'oraisa* (asking a non-Jew to perform a biblical prohibition). The last category is a life-threatening situation. In this case, not only is one allowed to break Shabbos on a biblical level, but one is required to break Shabbos. In many instances we don't ask a child and we don't ask a non-Jew; we do it ourselves. If one is not sure if the situation is life-threatening we treat it as life-threatening. This is often relevant because sometimes there's a situation where one may think it's a risk to a limb or a situation of extreme discomfort that could be life-threatening without immediate treatment. If it was a weekday and you would call the doctor because you fear it may be a life-threatening situation, you should err on the side of caution and do the same on Shabbos.

We see that there are three basic levels of classification. It is important to note that the *Shulchan Aruch* in *siman* 307 separately lists times when one can ask a non-Jew to do a *d'rabbanan*, including being a little sick. This would be a fourth level that exists somewhere between the lowest two levels.

A classic example of needing to do a *d'oraisa* on Shabbos is going to the hospital. While it seems clear that in a life-threatening situation one can drive oneself, or more likely have someone else drive, to the hospital if necessary, the issue is more complex than it appears. No *melacaha* may be done that does not help the sick person, so after pulling right in front of the hospital it would be prohibited to park the car, turn it off, lock it or even close the doors. While the laws which govern what doctors can

² This would be to do something in an unusual way, such as using one's elbow to dial on a phone.

do on Shabbos are complicated, much can be learned from the exceptions given to them. Rav Moshe (*Igros Moshe* OC 4:80) allows Hatzalah members to return home and even turn off their car, so the following week, should they be needed to treat someone, they do not hesitate to answer the call. This does not apply to someone taking their friend, relative or themselves to the hospital. While technically one could drive themselves, from a practical standpoint either every second would matter and one would generally want an ambulance, or if one has a few minutes to spare calling a non-Jewish taxi or Uber would be better.³ If one lives in a more remote location, the need to drive oneself would probably be more relevant.

The follow-up question in this situation is regarding who can come with you if you have to go to the hospital. Rav Moshe (*ibid* 1:122) rules that a pregnant woman can bring her relative in the taxi with her because an extra person in the car does not really add to the melacha. There are two reasons that a relative would be requested at the hospital. Sometimes the patient feels safer with the relative. It is also often better for the patient to have an advocate in the hospital, especially if they are too sick to explain the situation and their medical history. Based on these reasons, most *poskim* will allow the relative to go with the patient, but not to drive themselves. If the relative is not already with the patient, they can violate a *d'rabbanan* and do *amira la'akum* to get there. In this instance, taking a taxi would be permissible. Only those required would be permitted to go, not others what would be there merely for extra company.

However, what happens if a patient is discharged on Shabbos? The assumption is that someone does not go from a life-threatening situation to healthy so quickly, therefore we must consider what *halachic* category they would fall into when making arrangements to return home. This situation would place them in the middle category, allowing someone in the hospital to call the patient a taxi to take them and whoever is required to assist the patient home. Rav Moshe (*ibid* 1:121) says a doctor cannot drive to the hospital on Shabbos if they know this will be required of them before Shabbos begins. The doctor would be required to find lodging within walking distance or stay at the hospital. In this instance, a doctor would have to forego fulfilling the *mitzvos* of Shabbos, like *kiddush* and shul. Based on this, if the relative wants to leave, they would have to walk and follow all the laws of Shabbos, even if it means staying in the hospital for the rest of Shabbos. Another common scenario would be a trauma to a limb, such as a broken arm or a severe cut requiring stitches. Assuming one knows for sure there is no possible risk to life, they would be allowed to walk to an urgent care and get

³ *Ibid.* 307

treated by a non-Jew. If one cannot walk, one could also call a non-Jewish taxi and have the driver open and close the doors. If someone is so sick they need to lay down, one could walk to the pharmacy and purchase medicine. People are often unsure if they should call Hatzalah on Shabbos, and the answer is that when in doubt, call (within reason, especially at 2 am) because until you know for certain it's not *pikuach nefesh*, we treat it as *pikuach nefesh*.

The laws of *refua* on Shabbos are complicated, and often a decision needs to be made in a split second. Every case can be put in one of four categories, as outlined in the *Shulchan Aruch*. Once put in the proper category, one can decide how best to proceed within the laws of Shabbos. The hope is, however, that when we study these laws, we only study *l'shma* and never find ourselves in the situation where we would need to use them.

Chinuch for the Mitzva of Tefillin: When Should a Boy Begin to Wear Tefillin?

ZEV AND DANIEL WIESEL



Once Jewish children reach the age of maturity, they are obligated to fulfill all the *mitzvos*. The *gemara* establishes that girls generally reach maturity at age twelve and boys at age thirteen, hence the ages for *Bar* and *Bas Mitzva*. However, children learn how to perform *mitzvos* many years prior to then. We teach our children to make *brachos*, young boys begin to wear *tzitzis* at the age of three, and the many laws of *hilchos Shabbos* are a part of our children's education long before they are actually obligated to fulfill these *mitzvos*.

Based on this, a boy should begin to wear *tefillin* as early as possible. However, that is not the prevalent *minhag*. Many boys only begin to wear *tefillin* at or near the age of *Bar Mitzva*. Why did the *minhag* develop for a boy to wait until relatively close to *Bar Mitzva* before wearing *tefillin*?

The *mitzva d'oraysa* of *chinuch*, educating children in the practice of *mitzvos*, is found in the Torah in the context of *Talmud Torah*, teaching children Torah.

ולמדתם אתם את-בניכם לדבר בם בשבתך בביתך ובלכתך בדרך ובשכבך ובקומך.
*And teach them to your children, reciting them when you stay at home
and when you are away, when you lie down and when you get up.*
(Devarim 11:19)

This well-known *pasuk* recited twice daily in *krias shma* is understood to obligate a father to teach his son Torah, as Rashi on the *pasuk* explains:

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משעה שהבן יודע לדבר למדהו תורה צוה לנו משה שיהא זה למוד דבורו מכאן אמרו כשהתינוק מתחיל לדבר אביו מסיח עמו בלשון הקדש ומלמדו תורה ואם לא עשה כן הרי הוא כאלו קוברו שנאמר ולמדתם אותם את בניכם לדבר בם וגו'.

From the moment when your son knows how to speak, teach him the text (Devarim 33:4) "Moshe commanded us the Torah as a possession of the congregation of Yaakov" — so that this should be the means of teaching him to speak (Sukka 42a). From this they (the Rabbis) derived their teaching: When the babe begins to speak, his father should speak with him in the Holy Tongue, and should instruct him in the Torah. If he does not do this, it is as though he buries him, as it is said here, "And ye shall teach them unto your children to speak of them, etc."

The first discussion in the *gemara* of *chinuch* applying to other mitzvos is regarding whether we are required to stop a child from blowing a shofar on Shabbos. The *gemara* in *Rosh Hashana* 33b states that we are required to stop a "child who has reached the age of education" from blowing a shofar on Shabbos. While we should not encourage them to blow a shofar on Shabbos, there is no need to stop the child has not yet reached this "age of education."

The *gemara* discusses the requirement for a child to sit in a sukkah:

אמר מר כל לרבות את הקטנים והתנן נשים ועבדים וקטנים פטורין מן הסוכה ל"ק כאן בקטן שהגיע לחינוך כאן בקטן שלא הגיע לחינוך קטן שהגיע לחינוך מדרבנן הוא מדרבנן וקרא אסמכתא בעלמא הוא.

"All the homeborn" comes to include the minors capable of performing this mitzva. Didn't we learn in the mishna that women, slaves and minors are exempt from the mitzva of sukkah? This is not difficult. Here, [in the beraisa where it is taught that minors are included,] it is referring to a minor who reached the age of training, whose parents are commanded to train him in the performance of mitzvos and to accustom him to fulfill them. Here, [in the mishna where it stated that the minor is exempt,] it is referring to a minor who did not yet reach the age of training. The obligation of a minor who reached the age of training to perform mitzvos is mid'rabbanan, and therefore it is not derived from a verse. Indeed, the obligation of the minor is mid'rabbanan as part of his training, and the verse is a mere support alluding to that obligation. (Sukka 28b)

Later in *Sukka* the *gemara* cites a *mishna*:

ת"ר קטן היודע לנענע חייב בלולב להתעטף חייב בציצית לשמור תפילין אביו לוקח לו תפילין יודע לדבר אביו לומדו תורה וק"ש.

Once children know how to wave a lulav, they are obligated in the mitzva. Similarly, once a child knows how to wrap himself in a talis, he is obligated in the mitzva of tzitzis. And finally, if a boy knows to "watch" his tefillin, his father is obligated to buy him a pair. (Sukka 42a)

What is the meaning of a boy who "knows how to watch his tefillin?"

קטן היודע לשמור תפילין בטהרה שלא יישן בהם ולא יפיח בהם: הגה ושלא ליכנס בהן לבית הכסא [רש"י פ' לולב הגזול] חייב אביו לקנות לו תפילין לחנכו.

A minor who knows to guard tefillin in purity, such that he will not sleep or flatulate in them. Rema: "and not to enter the bathroom with them," his father is obligated to acquire tefillin for him and train him [in the commandment]. (Shulchan Aruch OC 37:3)

The *Shulchan Aruch* explains that a boy is able to "watch" his tefillin when he can keep his body in a state of physical cleanliness and his mind focused on the tefillin. The Rama adds an additional element, that the boy knows not to bring his tefillin into the bathroom (i.e., an unclean place).

Based on the sources discussed, it would seem that the mitzva of tefillin is similar to other mitzvos, and that a boy should begin to wear tefillin when they are deemed capable of performing the mitzva, even years prior to Bar Mitzva. Rav Ovadia Yosef in both *Yabia Omer* and *Yechave Daas* quotes many Sephardi poskim who allow and even encourage boys to wear tefillin one to two years before Bar Mitzva. Rav Ovadia Yosef also cites Rav Yizchak Palagi of Turkey whose father gave him tefillin when he was 11 years old.

However, the *minhag* in the Ashkenazi community is not to put tefillin on at such a young age. In fact, the Rama quotes the *Baal Ha'itur* who upends the plain understanding of the *mishna* to say that the "boy" referenced in the *mishna* is actually over 13 years old!

הגה וי"א דהאי קטן דוקא שהוא בן י"ג שנים ויום א' [בעל העיטור] וכן נהגו ואין לשנות.

And some say that this "minor" is only if he is 13 years and one day [Baal Ha'itur]. And so is the custom and one should not change from it. (Shulchan Aruch ibid)

The *Bach* has a long discussion in which he argues with the Rama and points

out that the *Baal Ha'itur* is a lone opinion who forces a translation of the words in the *mishna* outside of their plain meaning.

ומשמע ודאי דבקטן ממש קאמר דומיא דלולב וציצית ואפ"ה כיון דידוע לשמור תפילין שלא יכנס בהם לב"ה ושלא יישן בהם ושלא יפיח בהם אביו חייב לחנכו לקנות לו תפילין ומשמע ודאי נמי דמדאורייתא פטור מתפילין אפי' יודע לשמור תפילין...אלא דמדרבנן קתני דחייב לחנכו כדפי'. אבל אם הוא בן י"ג שנה ויום א' הוא בעצמו חייב לקנות לו תפילין כי היכי דחייב בכל מ"ע מן התורה.

It seems clear that we are talking about an actual minor, similar to the laws of a lulav and tzitzis, and still, since he knows how to keep his tefillin clean, to not bring them into the bathroom or flatuate in them, his father is obligated to purchase him a pair, even though certainly he is not obligated m'deoraisa in the mitzva. If he is over 13, he is required himself to buy tefillin, just as he is obligated in all the mitzvos of the Torah. (Bach, OC 33:3:1)

Additionally, many other Ashkenazi *poskim*, such as the *Kitzur Shulchan Aruch*, *Mishna Brurah* and *Aruch Hashulchan* argue with Rama. They still have a limit to how early a boy should begin wearing *tefillin*, and generally do not recommend any earlier than 12 years old. Most Ashkenazi *poskim* recommend between 2-3 months prior to *Bar Mitzva* and *chassidim* generally begin wearing *tefillin* on the day they become *Bar Mitzva*.

Parents generally begin to teach their children how to do *mitzvos* at a young age. However, young boys do not begin to put on *tefillin* until closer to the age of *Bar Mitzva*. As we have seen, Sephardi *poskim* who follow *Shulchan Aruch* will allow boys to wear *tefillin* at 12 years old or even earlier. Although the Rama argues and says that a boy should only begin to wear *tefillin* once he becomes a *Bar Mitzva*, many Ashkenazi *poskim* disagree and allow boys to begin wearing *tefillin* before becoming a *Bar Mitzva*. The general *minhag* for Ashkenazim is anywhere from 1-3 months prior to *Bar Mitzva*. However, many *chassidim* strictly follow the Rama and only begin to wear *tefillin* when they become a *Bar Mitzva*.