



Adas Torah Journal of Torah Ideas

Nitzachon

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Adas Torah

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Editors' Preface

We are pleased to present you with the newest issue of our *kehilla's* beloved *Nitzachon* Torah Journal, featuring more than twenty serious Torah articles from the *rabbanim*, professionals, business men and women, students, mothers and fathers of our *kehilla*. We are often asked, "Are you surprised that over time, the articles keep coming in, and so many people continue to be excited about writing for, and reading *Nitzachon*?" To which we simply respond, "Nope." When a *kehilla* is growing in learning, more and more of its members have a strong desire to share more and more of their Torah with their friends and family. So here it is – enjoy.

Michael Kleinman

Yaakov Siegel

Yaakov Rich

In honor of Adas Torah,
the 11th issue of *Nitzachon*
and the Torah it spreads

**With special thanks to
Rabbi and Mrs. Revah**

Wishing everyone a
chag kasher v'sameach



*Joey and Tracey Goldstein and
Family*

Dedicated in Loving Memory of

Jacob Siegel

יעקב בן צבי הלוי

Rose Siegel

שרה ראסא בת רפאל

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Jamie Lehmann

חיים מנחם בן ר' מנשה רפאל ושרה



Yitzchok and Barbara Lehmann
Siegel and Family

In appreciation to Rabbi & Rebbetzen Revah: Your warmth and care envelopes the whole LA community. Rabbi, your weekly *Divrei Torah* are always meticulously prepared and are deeply inspiring and empowering; the community see in you both a true *malchus*, devoted to Torah and the *klal*. So many the world over, look up to you, for what you bring to the entire community and city.

In honor of President Rich for your tremendous leadership and humility; the founders of the shul, and the generous supporters that made the Adas vision a reality; Zev Weinstein, the shul treasurer and our beloved CFO at Doctorpedia, who has become over the years a dear and truly inspiring friend with such refined *middos*.

We are truly grateful for Rabbi Wagshul and all the amazingly committed staff at the word-class Shabbos morning children's program; the holy *tzibur* whom, in the center of all the glitz and glamor of LA, flood the shul with *anivus*, *Talmud Torah*, *chesed*, heartfelt *tefila*, and beautiful holy children,

bringing the city such *brocho*; the dedicated *gabbaim*; the editors of *Nitzachon* for this wonderful publication with impressive Torah ideas; the melodious *shlichei tzibur* that bring tears of joy on shabbos morning; the friendly security team and the people that keep the shul ticking smoothly;

Steve's profound weekly Torah notes; the fabulous *cholent* maker; the stupendous weekly whisky donator; the weekly announcements that ensure smiles, laughter and raised eyebrows all round; the peculiarly complicated front door code - since when is the number of Forefathers and Matriarchs so challenging?! Many a time I've been locked out!

And we are thankful for so much more. We have had four wonderful and blessed years growing with the Adas Torah community, and thank you for the beautiful memories and formative experiences. May we all *be"H* continue to grow to the greatest heights, and may the words of Torah continue to be so sweet, that each of our families are *zocheh* that our children and grandchildren will be *yod'ei Shmecha*, and may we all *be"H* have the health and strength to be *mekabel pnei Mashiach tzidkeinu bim'heira*.



Avi (Jeremy) & Deborah Wosner

Much appreciation and gratitude to
Frank and Kerri Lee



*Rachel, Noam, Caroline, Gavriel
and Asher*

In memory of

משה ע"ה ולאה ע"ה פינקלשטיין
ישראל איסר ע"ה וחיה אסתר ע"ה גוטליב
עובדיה ע"ה ועליזה ע"ה סילבר
By their grandchildren and great-grandchildren



*Dalia, Evan, Leah and Hadassah
Silver*

In memory of
עליזה בת אברהם משה
Elaine Bienenfeld Silver

עובדיה בן צבי יצחק

Walter Silver

By their children



Sharon and Morris Silver

ראש וראשון



Rabbi Dovid Revah

Rabbi Daniel Danishefsky

Rabbi Shlomo Einhorn

Guest Contributors

The Sugya of Yiush

RABBI DOVID REVAH



Our *kehilla* is presently learning the second *perek* of *Maseches Bava Metzia*, *Perek Eilu Metzios*, which discusses the *halachos* of finding an *aveida*, a lost object. I would like to begin with a *halachic* question and use it to delve into the first major topic of the *perek*, the *sugyah* of *yiush*.

My child is getting restless at shul. My shul neighbor keeps a stash of candy in his shtender. I am sure that he would allow me to take some of his candy to offer my child, but he is not here this Shabbos. May I take candy without permission?

Let's look at the first *sugya* in the *perek* and we will see how it relates to this question.

If one finds a lost object, the Torah requires one to find the owner and return it to him. Not returning it would be a violation of the negative prohibition of *lo suchal l'hisalem* (*Devarim* 22:3) and the mitzva of *hashev t'shivem*. (*Devarim* 22:1)¹ Keeping it would also be a violation of *lo sigzol* (*Vayikra* 19:13).

But not every lost object has to be returned. The opening *mishna* in *Perek Eilu Metzios* tells us that in many cases one who finds a lost object may keep it. The *halacha* is that if the owner was *meya'esh*, he has given up hope of ever getting the object back, the finder can keep the *aveida*.² Rashi explains that being *meya'esh* causes the *aveida* to

1 The *rishonim* argue about exactly when each mitzva applies. According to Rashi (*Bava Metzia* 26b) leaving the item on the ground would only violate *lo suchal l'hisalem* and not *hashev t'shivem*. According to the Ran (*Bava Metzia* 30a) this would also violate *hashev t'shivem*.

2 Although we are required to return lost objects, the Torah does permit one to keep a lost object if the owner has given up hope of recovering it. The *rishonim* offer two sources for this *halacha*. Rashi (*Bava Metzia* 66a d"h *motza aveida*) says that the source is from the *pasuk* of *asher tovad mimenu* (*Devarim* 22:3) which the *gemara* (*Bava Metzia* 22b) explains to mean that we are allowed to keep lost objects that were washed away in a major flood. He understands that the basis of that *din* is that the owner will clearly be *meya'esh*, and by the Torah telling us that one can keep something lost in a flood, it is telling us a more general rule, that any time the

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

become *hefker*, ownerless, so anyone who finds it can now keep it.³

In a *halachically* abiding society, one who loses an object will not be *meya'esh* since he knows that the finder will be obligated to seek him out and return it. However, the *mishnayos* and *gemara* bring several scenarios when one can assume that the owner was *meya'esh*, and in these cases, the finder would be allowed to keep the object. The most prevalent example is the topic of the first *mishna*, an object without something special that could be identified by the owner, a *siman*. Let us say one found a Bic pen. Since this object is generic, there is no way of finding the owner, and even if I would find someone who claims to have lost a Bic pen, there is no way of knowing that this particular pen is the one he lost. Because there is very little chance that the item will be returned, the owner will give up hope when he finds out that the item was lost and the finder can keep the pen⁴.

owner is *meya'esh*, the *aveida* becomes permitted. *Tosafos* in *Bava Kama* disagrees and understands that *pasuk* as independent of *yiush*. *Tosafos* says that the source for the *heter* of *yiush* is from the examples the Torah gives of objects that must be returned. The examples are objects that generally have *simanim*, which will allow the finder to connect with the owner. This would indicate that an object which does not have a *siman*, which we assume the owner would be *meya'esh* over, does not have to be returned.

3 Although Rashi says the object is *hefker*, he does not mean that *yiush* is synonymous with *hefker*. *Yiush* and *hefker* are different. *Hefker* is when one willingly removes his ownership from an item. By declaring, or perhaps thinking it *hefker*, one is actively removing the item from his possession. This is true of something that you would want to discard. But an *aveida* is something you want to keep, and it is unlikely that you would consciously remove it from your ownership. *Yiush* is a passive feeling of hopelessness. The Torah says that if you lose something and do not retain any hope of getting it back, you relinquish your ownership. Rashi means that the result of *yiush* is *hefker*, that the item becomes ownerless, but the act of *yiush* is not making something *hefker*. (However, the *Nesivos Hamishpat* says that even the result of *yiush* is different than *hefker*. *Hefker* becomes ownerless, whereas an *aveida* after *yiush* still belongs to the original owner until someone else picks it up. According to the *Nesivos*, *yiush* can be retracted since the item still belongs to the owner, but one cannot retract an act of *hefker*).

This idea will allow us to understand a difficulty in the first *gemara* of the *perek*. The *mishna* lists items which, when found, can be kept. The first item is scattered grain seeds. The *gemara* explains that, unlike the other cases of the *mishna*, this is not referring to a case of seeds which were dropped and lost, but to seeds that were deliberately left behind since it would be too time consuming to gather them. This presents a difficulty. Why would this case be included in a list of lost objects, which utilize the *heter* of *yiush*? If I knowingly leave something behind it would seem to be an act of *hefker*. But Rashi on the *mishna* explains that in fact this is an act of *yiush*. It is *yiush* and not *hefker*, because I actually would want the seeds, but it is impossible to collect them in a realistic way. In a sense, although they are right in front of me, they would be considered a "lost object" since they are not practically retrievable. If someone would have spare time and would pick up the seeds on my behalf, I would be very appreciative. But since I don't see an efficient way of getting the seeds, I am *meya'esh*, and it is similar to the other cases of the *mishna*.

4 Other examples are: An object lost in a non-Jewish area since the owner will not expect the finder to return it; an object lost in a very public place, since people come from all over, and it is very difficult for the owner

But what if there was no *yiush* by the time the item was found, but there was *yiush* subsequently? For example, one finds a watch with a *siman*. He follows the *halacha* and advertises that he found a watch, but no one claims it. Eventually, it is clear that the owner, who for whatever reason did not see the advertisement, will be *meya'esh*. Even so, the *gemara* tells us that one has an obligation to return the item and he cannot keep it for himself. *Yiush* only works if the owner was *meya'esh* before the object was found⁵.

Based on this, if one finds an object which does not have a *siman*, he cannot necessarily keep it. He would first have to be sure that the owner has become aware that he has lost the item. Only once the owner is aware that he has lost the item, can we assume that he will be *meya'esh*. The *gemara* discusses how the finder can know if the owner is aware that he lost the item. The *gemara* says that if one finds anything valuable, you can assume the owner will know that he lost it because someone who carries a valuable item checks constantly to ensure that the item is still safe, and we can assume that he found out that he lost it before it was found. So if one found a hundred dollar bill, he can assume the owner knows about his loss and was *meya'esh*.

But what if the item found was not valuable, like a Bic pen, which one cannot assume that the owner became aware of his loss? In that case, what would allow the finder to keep it? The *gemara* brings a *machlokes*. Abbaye says that the finder cannot keep the item since he is unsure if there has been *yiush*.⁶ Rava disagrees, and allows one to keep the item, because although as of yet the owner may not have been *meya'esh*, we know that when the owner finds out he lost the item he will be *meya'esh* and it is only a matter of time until he finds out. This is called *yiush shelo mida'as*,

and finder to meet up; an object that may have a *siman* but been there for a long period of time and by now the owner has given up hope. (However, in these cases if one knows who the owner is, there would be a mitzva *lifnim mishuras hadin* to give it back.)

5 The *rishonim* give different reasons why *yiush* would not help after the item was found. *Tosafos* in *Bava Kama* says that once you become obligated to return it, that obligation stays. Ramban says that when you pick up a lost item you are now holding it as a *shomer* for the owner and the item is no longer considered "lost", although the owner does not realize it is being safely held on his behalf. Ramban says that *yiush* is not effective on an item which is not lost. For example, if you think you lost your watch and you are *meya'esh*, but really your watch is at home, the Ramban says that your *yiush* will not permit to the finder to keep the watch.

6 What should he do with the item? According to Rabbi Akiva Eiger, there is no point in picking it up since there is no way of ever getting it back to the owner. The best thing would be to leave it there. Since there is no practical way of giving it back, he would not violate *lo suchal l'hisaleh*. However, if he does pick it up, he becomes obligated to watch it and he may no longer put it back down. Others disagree with Rabbi Akiva Eiger and require one to pick it up.

giving up hope without being aware. Rava does not require a conscious *yiush*. As long as we are sure that there is going to be *yiush* when the owner is made aware of the true state of his item, we can already consider there to be *yiush* now, and the finder can keep the item.

The *halacha* follows Abbaye. Therefore, if one finds a non-valuable item, he cannot keep the item since he is unsure if there has been a *yiush* at the time the item was found.

At the end of the *sugya*, the *gemara* brings an anecdote.

אמימר ומר זוטרא ורב אשי איקלעו לבוסתנא דמרי בר איסק. אייתו אריסיה תמרי ורימוני ושדא קמיהו. אמימר אכל ורב אשי אכלי מר זוטרא לא אכיל

Ameimar, Mar Zutra and Rav Ashi went to visit the garden of Mari bar Isak. Marei was not home and while they were waiting for him to arrive, the sharecropper offered the visitors some dates and pomegranates. Ameimar and Mar Zutra ate the fruit, but Rav Ashi did not.

Tosafos questions the basis for Ameimar and Mar Zutra to eat the fruit. Although it is very likely that Mari would be very happy to offer fruits to his distinguished guests, the fact is that he did not know that his guests were coming and did not consciously give them permission. This situation is similar to the above discussion of *yiush shelo midaas*.⁷ We are confident that when Mari will come home, he will want to offer refreshments to his guests (which the *gemara* says in fact happened), but as of now he was unaware. According to Rava, the guests should be permitted to eat the fruit. We can already consider that there is permission, since when Mari is fully aware of the situation, he will grant permission. But according to Abbaye, we can't work with what a person would think until he is consciously aware and thinking. Until then it would be stealing to partake of the fruit. *Tosafos* questions how the two rabbis partook of the fruit, since the *halacha* follows Abbaye? *Tosafos* answers that they assumed that the sharecropper, who had an ownership stake in the field, was offering fruit from his own portion, and not from Mari's half.

Coming back to our original question of taking candy without permission – according to *Tosafos*, the *halacha* would be that it is forbidden. However, the *Shach* (*Choshen Mishpat* 358:1) disagrees. He says that Ameimar and Mar Zutra ate the fruit knowing that it belonged to Mari, and even Abbaye would permit it, even if the

⁷ From the *gemara* it is clear that the discussion of *yiush shelo mida'as* is not limited to a lost object but is applied in many other areas of *halacha* as well.

owner is not yet aware of the situation. He says that there is a difference between this case and the case of *yiush shelo mida'as*. I would like to explain and elaborate on the answer of the *Shach*.

Let's try to understand the position of Rava that *yiush shelo mida'as* works. Why should we consider there to be *yiush* if the owner is not consciously being *meya'esh*? A possible explanation could be that since we are sure what the owner's thought process would be in such a situation, it is considered as if that thought has already been programmed and stored in his mind. Everyone who loses an item without a *siman* gives up hope since there is no realistic way to get it back. Therefore, it is as if I already decided and registered my decision that if I ever lose an item with no *siman*, I am being *meya'esh*. Abbayeï would disagree. He would hold that there is no such thing as a preprogrammed thought, and one has to consciously think that one is *meya'esh* for there to be *yiush*.

However, there are several difficulties with this explanation.

1. The *gemara* discusses the *halacha* of an object lost by a minor (for example, if something was found in an elementary school). The *gemara* says that the *yiush* of a child does not work because *halachically* a minor does not have *da'as*, the maturity of thought to make lasting decisions. Just like a child lacks *da'as* to transfer ownership of an item, so too, he lacks *da'as* to effect a *yiush*. However, it is clear from the *gemara* that according to Rava, if a child lost something, the finder can keep it because there is *yiush shelo mida'as*. Since when he becomes an adult, he will be *meya'esh*, there is already *yiush* today. This cannot be explained with preprogrammed *da'as*. If the conscious *da'as* of a minor is not acceptable, certainly his preregistered *da'as* could not be better.
2. The *gemara* says that even Abbayeï agrees that if one finds something that was washed away in a flood, he can keep it, even if the owner is not yet be aware that his item was lost. Many *rishonim* explain that this is not because of *yiush*, but rather because there is an automatic relinquishment of ownership in such a case. But Rashi and the Rambam explain that this is because the owner will be *meya'esh*, but in this case everyone agrees that the *yiush* helps, even though the owner is not yet aware of his loss. If Abbayeï generally rules that preprogrammed *da'as* does not work, why is this case any different?
3. The *poskim* discuss a case of someone who lost something and will probably never find out that he lost it. Or someone thinks that his item has a *siman* and he is not being *meya'esh*, but in reality, the item does not have a *siman*, and had the owner known that it does not have a *siman*, he would be *meya'esh*. Is there *yiush shelo*

mida'as? On the one hand, if the owner would know the true status of his object, he would be *meya'esh*. But in this case, the owner has a misconception and he will never actually be *meya'esh*. Although Rav Akiva Eiger writes that there would be *yiush shelo mida'as*, *Tosafos* says that even Rava will agree that there would not be *yiush* in this case. Only if he will eventually be *meya'esh* can we consider that there is *yiush* today. If *yiush* is just a preprogrammed *da'as* of what I would think in a given situation, why is it necessary to eventually come to the realization of *yiush*?

It seems that the issue of *yiush shelo mida'as* is not a question whether preprogrammed *da'as* could work. Therefore, the *Shach* says that even Abbaye can agree that preprogrammed *da'as* works and that is why everyone would agree that the fruits of Mari would be allowed to be eaten.⁸ But specifically for *yiush*, preprogrammed *da'as* would not work.

The *Shach* explains that there is a difference between a *yiush* and other preprogrammed *da'as*. Let us take the example of distinguished guests coming to my house. Certainly, I would want my housekeeper to offer them food and drink. Therefore, although I am not aware that I have any guests, I can consider that there is already a *da'as* that if I ever have guests, I would like them to be offered something. This in *halacha* is called an *umdana*, an assumption what you would think in such a situation. It would be considered as if there is *da'as* already present and would work even according to Abbaye. But an *umdana* would not work for *yiush* because when someone loses something, the natural state of a person is to hope that he will find it. Only after he is forced to see reality, does he reluctantly concede that the item will probably never come back and he loses hope. He is in a sense *meya'esh* against his will. Therefore, we cannot say that there is a stored *da'as* that if I ever lose something I want to be *meya'esh*. It is not true. I must be forced to be *meya'esh*, and I only do that when

8 Another proof that Abbaye agrees that *da'as* can work even if you are not consciously aware can be demonstrated from a *gemara* in the beginning of the third *perek* in *Bava Metzia*. The *mishna* discusses a case of a *shomer*, someone who accepted to watch someone's item. The item was stolen and the *shomer* agreed to compensate the owner. The *mishna* tells us that in return for the compensation, the owner agrees that if the thief is ever caught and will be punished by paying *kefel*, a fine of double the value of the item, the *shomer* will receive the *kefel*. The *gemara* questions what makes this agreement binding, and explains that there is an understanding that if the item is stolen and the *shomer* agrees to pay, the owner will transfer ownership to the *shomer* immediately prior to the animal being stolen. This agreement is assumed to be in place by all *shomrim*. The *Nesivos* writes that very few people are aware of this complicated *gemara* in *Bava Metzia* and actually think to put this agreement in place. How can we assume that every *shomer* transaction will be done under these terms? The *Nesivos* says that there is an *umdana*. Had you been aware that this agreement would be mutually beneficial, you would certainly agree to it. Therefore we can already attribute to you a *da'as* even according to Abbaye.

I actually experience the reality that the item is not coming back.

Both Abbaye and Rava agree that if someone wants something, we can utilize preprogrammed *da'as*. That is why they both would agree that the guests would be allowed to eat from the fruit. But this *da'as* does not help for *yiush*. If so, how does *yiush shelo mida'as* work according to Rava? Rava is not claiming that there is any *da'as* present today, but rather that since we can predict that he will have such a *da'as* in the future, we can already attribute such a position to him today. An *umdana* is a *da'as* that is already here today, just on a subconscious level. *Yiush shelo mida'as* is *da'as* that is not here today, but will be here in the future. Rava says that we can use that future *da'as* already today.

This explains how *yiush shelo mida'as* can work even for a *katan*. Obviously we cannot maintain a *katan* has a preprogrammed *da'as* if he cannot have *da'as* at all. But we do know that he will mature and at that point be able to be *meya'esh*. Rava would say that we can use that *da'as* already today.

This also explains why even Abbaye may agree in the case of the floods. When one loses something, his immediate reaction may be an attempt to hope that somehow it may be found and traced back to him. He then forces himself accept the reality that the likelihood is that this will never happen. But if someone drops something in the ocean, he does not have to force himself to realize that it is gone. It is immediate obvious that it is lost for good. Therefore, this *yiush* which does not require one to force himself to reach such a conclusion may already be considered an *umdana* and even Abbaye may agree that it would work.⁹

This will also explain why we only take into consideration the *da'as* that you will eventually realize, and not the *da'as* that one would think had one known the reality of the situation. Since *yiush shelo mida'as* is using the *da'as* which you will reach in the future today, we can only use *da'as* that you will eventually be aware of. Therefore, if you will never find out that you lost the item, even Rava would say that the finder cannot keep it.

According to the *Tosafos*, since my friend does not know that I want his candy, I

⁹ To illustrate the point, the *Terumas Hakrei* says that if a person loses something without a *siman* and says that he is not *meya'esh*, the finder may not keep it. However, if one loses something in the ocean and claims that he is not *meya'esh*, the finder may keep it because *batla da'atei*, we assume that the owner is *meya'esh* and is not being truthful when he says that he is not. We see that it is possible not to be *meya'esh* when you lose something without a *siman* and a small minority of people will retain hope. Even the majority who are *meya'esh* may have to force themselves to do so. However, with something lost in the ocean it is impossible to not be *meya'esh*. It stands to reason that *yiush* would come to the person immediately without reluctance.

cannot take the candy. Only if we accept the opinion of Rava, that *yiush shelo mida'as* works, would I be able to say that I have permission from my friend without his actual knowing about the situation. Since the *halacha* follows Abbaye that *yiush shelo mida'as* is not *yiush* I cannot take my friends item without explicit permission. However according to the *Shach*, if I am sure my friend would willingly let me have the candy, I would be allowed to take it. This would be using an *umdana* which even Abbaye agrees with. Ordinarily in such a question one would be *machmir* since it is a *safek de'oraisa* of *gezeila*, but the *Shach* says that the custom is to allow using it.

The Moon, the Sun, and *Klal Yisrael*

RABBI DANIEL DANISHEFSKY



Based on a shiur from Rav Moshe Shapiro z"l

The special time during the year that we read the *parshiyos* of *galus* and *geula* of *Mitzrayim* is known as *Shovavim*. (שובבים is an acronym for the first six *parshiyos* of *Sefer Shemos*). The *Magen Avraham* (*Siman* 685) cites the *minhag* to fast on every Thursday during this time. He adds that in a leap year there is a custom to add an additional two weeks to this period, thus including the *parshiyos* of *Teruma* and *Tetzave*. Others have the custom to add the *parshiyos* of *Vayakel* and *Pekudei*.

What is *Shovavim* all about? What is the origin of this *minhag* to fast? Fasting is generally associated with *teshuva*. Why is this a time for *teshuva*? Perhaps this can be understood as follows. During this period, we read the *parshiyos* of *galus* and *geulas* *Mitzrayim*. We were enslaved, and submerged in the *tuma* of *Mitzrayim*. Hashem redeemed us, elevated us, and took us out of *Mitzrayim*. As we read these *parshiyos*, we attempt to cleanse ourselves of any lingering traces of the *tuma* of *Mitzrayim*. Hence, it is a time of *teshuva*. In a similar vein, there is a widespread custom to review the laws of *taharas hamishpacha* during the *Shovavim* period, in order to increase the sanctity of our homes.

Sefer Shemos delineates the *galus* and ensuing *geula*. It continues with *Kabbalas HaTorah* and concludes with the construction of the *Mishkan*. *Kabbalas HaTorah* was the purpose of *Yetzias Mitzrayim*, making its placement in the *sefer* very logical. The inclusion of the *Mishkan* in *Sefer Shemos* though, begs for an explanation. In his introduction to the *sefer*, the Ramban explains that the completion of the *geula* was the building of the *Mishkan*, and the resulting presence of the *Shechina* in the midst of *Klal Yisrael*. It was only then that *Bnei Yisrael* returned to the spiritual level of their forefathers who lived with the *Shechina* “above their tents.”¹ As such, the building of

¹ Based on the language of the Ramban in his introduction to *Sefer Shemos*

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the *Mishkan* was the completion and culmination of our *geula* from *Mitzrayim*. For this reason, the *sefer* includes the construction of the *Mishkan*.

With this perspective, the ending *parshiyos* would appear to be a part of the *galus/geula* process, and the time of their reading ought to be included in the *Shovavim* period. Why do we omit these *parshiyos* from the *Shovavim* period? The answer is obvious. We aren't living with a *Mishkan*. As such, we can't really relate to this part of the *geula*. While we have *Yetzias Mitzrayim* and *Kabbalas HaTorah*, we still await this vital component of *Mishkan*. As such, it is specifically during the weeks that we read the *parshiyos* discussing our bondage in *Mitzrayim* and our salvation, followed by *Kabbalas HaTorah*, that we endeavor to purify ourselves from everything that relates to *Mitzrayim*, thus strengthening our connection with these events. We understand the omission of the *parshiyos* of the *Mishkan* from the *Shovavim minhag*, as the *Mishkan* is currently beyond our reach, delegated to our yearning. While this is clear, we now have a problem. What is the reason for the inclusion of the *parshiyos* of the *Mishkan* during a leap year? We still don't have a *Mishkan*. Can we better relate to it during a leap year?

החודש הזה לכם ראש חדשים ראשון הוא לכם לחדשי השנה.

This month shall be for you the beginning of the months, it shall be for you the first of the months of the year. (Shemos 12:2)

This is how the Torah introduces the imminent *geula*. This *pasuk* contains the mitzvah of *kiddush hachodesh*. We are commanded to sanctify the new month in *Beis Din*. Additionally, this *pasuk* contains the mitzva of *ibur hashana*, the mitzva of the leap year. In order to reconcile the lunar cycle and the solar year, with their eleven-day discrepancy, *Beis Din* must add an extra month every few years.² Without the extra month, the lunar year would fall out of sync with the solar year. The question is glaring. Why were these *mitzvos* the first to be transmitted to *Bnei Yisrael* at this momentous time? Wouldn't we expect something more fundamental (perhaps *Shabbos* or *emuna*)? Seemingly, these *mitzvos* are laying the framework for the *Klal Yisrael* that was being created. How so?

Klal Yisrael has a multifaceted relationship with the moon. The Jewish calendar and life cycle are based on the lunar cycle. *Rosh Chodesh*, *chagim*, *yahrzeits*, and the age of maturity for children are all based on the moon. Our years are defined by the lunar months. Furthermore, our purpose and function closely resemble that of the

² Seven times every nineteen years.

moon. The moon projects the light of the sun. It is charged with the task of reflecting the light of the sun where it doesn't shine directly. *Klal Yisrael* must project the light of Hashem into an otherwise spiritually devoid world. We are enjoined to mirror the *midos* of Hashem in our conduct.³ The *gemara in Megilla* 18a tells us that Hashem called Yaakov Avinu by His name *Kel*. Yaakov Avinu was the ultimate reflection of the attributes of Hashem in this physical world.

The moon experiences birth, growth, decline, and then rebirth. The destiny of the Jewish people follows that of the moon. The *Zohar* (2:84b) tells us that the fifteen generations from Avraham Avinu until Shlomo Hamelech correspond with the first fifteen days in the lunar cycle, days of birth and growth, climaxing with a "full moon" during his reign. At that time, we had the potential to continue to flourish and reach our ultimate destiny. However, as a result of sin, we went into fifteen generations of decline, ending with the *churban* during the reign of Tzidkiyahu, when the moon became concealed. We still await our ultimate rebirth.

וללבנה אמר שתתחדש עשרת תפארת לעמוסי בטן שהם עתידים להתחדש כמותה.
(נוסח ברכת קידוש לבנה)

To the moon He said that it should renew itself as a crown of splendor for those borne from the womb, those who are destined to renew themselves like it.

The *gemara in Chullin* 60a says that the moon was diminished from its original stature as a result of its complaint during the time of creation. However, every new moon has the potential to grow and return to its previous glory. The *simcha* of Rosh Chodesh is the rebirth of the moon with boundless potential to realize, together with *Klal Yisrael*, our destined glory. We hope and *daven* that this will be the month. The Rama (*Siman* 426) says that *Malchus Bais Dovid* is compared to the moon, hence during *kiddush levana* the *minhag* is to say *Dovid Melech Yisrael Chai V'Kayam*. From the *chidush* of the moon, we are assured of the ultimate destiny of the kingdom of Dovid Hamelech. The *gemara in Chullin* 60b says that the *korban* brought on Rosh Chodesh atones for the diminishing of the moon, indicating the responsibility that *Klal Yisrael* has for the still diminished moon.⁴

The nations of the world follow the solar calendar. The sun represents the world of *teva*, nature, and the unchanging continuity of the natural world. The sun is

³ Based on the mitzva of "v'halachta b'drachav" in *Devarim* 28:9

⁴ *Teshuvos Ksav Sofer OC* 34 in the name of his father the Chasam Sofer

constant, ever present, and predictable. As Shlomo Hamelech wrote in *Koheles* 1:9, “*ein kol chadash tachas hashemesh*,” under the sun, in the world of the sun, there isn’t anything new. The sun doesn’t have months. Months belong only to the moon, they are called *chodesh*, the same as *chadash*. The sun has years. The word for year is *shana*, relating to the word *yashan*, old and aged.

Klal Yisrael lives with the lunar cycle, focusing on the month. Yet, we are commanded to synthesize this with the solar year. Why would this be? We relate to the moon; our calendar is a lunar one. How can we combine moon and sun, dynamic and static, *chodesh* and *shana*? Perhaps we can gain insight from the words of the Ramban in the end of *Parshas Bo*.

ומן הנסים הגדולים המפורסמים אדם מודה בנסים הנסתרים שהם יסוד התורה כולה שאין לאדם חלק בתורת משה רבינו עד שיאמין שכל דברינו ומקרינו כולם נסים אין בהם טבע ומנהגו של עולם בין ברבים בין ביחיד אלא אם יעשה המצות יצליחנו שכרו ואם יעבור עליהן יכריחנו ענשו הכל בגזרת עליון.

Through the great manifest miracles, a person acknowledges the hidden miracles which are the foundation of the entire Torah. For a person has no share in the Torah of Moshe our teacher unless he believes that all our affairs and experiences are miracles, there is no nature and “the ordinary course of the world” in them, whether regarding the community or the individual. Rather if one observes the commandments his reward will bring him success, and if he transgresses them his punishment will destroy him.
(Ramban on Shemos 13:16)

At the time of *Yetzias Mitzrayim* we learned of Hashem’s capacity to perform miracles and override the laws of nature. The plagues demonstrated His boundless power. We must internalize this. However, if that is all that we walk away with, we have missed the point. The message of *Yetzias Mitzrayim* goes far beyond. We mustn’t leave *Yetzias Mitzrayim* in the supernatural. Rather it must permeate and reframe our perception of seemingly natural events. Through it, we must recognize the *Yad Hashem* in our “naturally” occurring events. What seems to be “the ordinary course of the world” is merely a cleverly hidden form of *hashgachas Hashem*. This understanding is the ultimate *tachlis* of *Yetzias Mitzrayim*. Ramban clearly writes that without this we can’t have a part in *Toras Moshe*. We saw the *Yad Hashem* in the supernatural and given the charge to recognize Him in the natural. Living in our “diminished” world, this is a formidable challenge.

Klal Yisrael embodies and lives with the lunar cycle, that of *chiddush* and

constant change, where the *Yad* of Hashem is most evident. The *gemara* in *Sanhedrin* 41a says that we encounter the *Shechina* when we bless the new moon. However, these months must come together to constitute a year, in sync with the solar cycle, *tachas hashemesh*. Our lunar months must exist alongside and within the solar year, synthesizing *chiddush* and continuity, recognizing the *Yad Hashem* throughout.

Now we appreciate why these *mitzvos* are the introduction to the *geula*. Hashem taught us that the *tachlis* and message of the *geula* is the complete harmony of the moon and the sun, with the ability to perceive of the *Yad Hashem* in both equally. While in our world there is a discrepancy in between the lunar and solar calendars, correctable only with the leap year, the *Shelah* (*Torah Sheb'ksav Sefer Shemos*) tells us that the perfected state of the world would have the lunar and solar calendars lining up evenly, without the need to reconcile them with the added month of the leap year.

Parenthetically, with this perspective, we can understand the addition of Purim to the cycle of *Moadim*. The Ramban exhorts us to extrapolate the true reality of seemingly random events from the miracles in *Mitzrayim* and to apply the lessons of the ten plagues to our understanding of our daily existence. Hashem performed miracles in Egypt and is also running every aspect of our “mundane” lives. This is a formidable challenge. Purim serves as a bridge. Rav Dessler (*Michtav M'Eliyahu* II) writes of “the revealed within the hidden and the hidden within the hidden.” Most of the time the *Yad Hashem* is hidden within the hidden. Sometimes we are privileged to have it revealed within the hidden. Namely, we can see the *Yad Hashem* revealed even in the absence of open miracles. Natural events coming together in a way that was so clearly orchestrated. Purim was miracles that occurred within the framework of *teva*. The jump from there to living with the *Yad Hashem*, even within complete *hester*, is a smaller one.

This harmony of miracle and nature was manifest in the *Mishkan* and then in the *Mikdash*. These were places of constant miracles, alongside and within a world of *teva*. The *mishna* in *Avos* 5:4 tells us of the ten miracles that occurred daily, for hundreds of years. These miracles appeared and happened with the regularity and predictability of nature.

The *Mishkan* was a microcosm of the entire world, in its real and perfected state. On Shabbos we desist from performing any actions done in the building of the *Mishkan*, to observe Hashem's day of rest at the time of creation. The *gemara* in *Brachos* 55a tells us that Betzalel knew how to create *Shamayim* and *Aretz*, and with this knowledge, he built the *Mishkan*. Through the *Mishkan* we perceived the world in its real untainted state, where miracle and nature are one, blending in perfect

harmony.

Let's return to the original question. Why do we add additional *parshiyos* to the *Shovavim* practice during a leap year? We live without a *Mishkan*. We are thus unable to relate to the full completion of the *geula*, with the complete harmony of *teva* and *nes*. Hence, the *Shovavim minhag* of *taanis* and *tefila* extends only through the first six *parshiyos*. What happens during a leap year? Now we can suggest an answer. During the leap year, we attempt to reconcile the two realities, seeing the moon and the sun as one totality, recognizing and experiencing their true oneness. We engage simultaneously in both *mitzvos*, *kiddush hachodesh* together with *ibur hashana*. *Nes* and *teva* become two sides of the same coin. This is a glimpse into the real world, that of the *Mishkan*. This year, we can relate even to the completion and culmination of the *geula*, that of the *Mishkan*, read in the concluding *parshiyos* of *Sefer Shemos*. Therefore, we extend the period of fasting and repentance to include the weeks of the *parshiyos* of the *Mishkan*.

The Nature of *Sippur Yetzias Mitzrayim*

RABBI SHLOMO EINHORN



The Daily Requirement to Recall the Exodus

In a famous exclusion, the Rambam omits the mitzva to remember Egypt each and every day from his list of the six hundred and thirteen *mitzvos*. Why?¹ Reb Chaim Brisker explains that the Rambam must have left it out because it's not a mitzva that is applicable for all time. How is it not a mitzva for all time? The *gemara* in *Brachos* (12b) cites a dispute between Ben Zoma and the *Chachamim* as to whether the *pasuk kol yemei chayecha* expands the daily requirement to include the night or perhaps to include the days of *Mashiach*. We *pasken* like Ben Zoma and therefore *kol yemei chayecha* instructs to remember Egypt at night as well, and not the days of *Mashiach*. Since the exodus from Egypt will not be remembered in the future, the Rambam didn't count it in his list of *mitzvos*, since he holds in his introductory principles that any mitzva with a shelf life is excluded from the six hundred and thirteen.²

Continuing on to the next *amud* in *Brachos*, the *Talmud* brings a *marshal* of a person who is walking on the road and encounters a wolf. He is miraculously saved and tells everybody about this story. Some time later he encounters a lion and again he is miraculously saved. This then becomes his new story. Next he encounters a snake and again he is saved. The snake story, being that it is most recent, usurps them all. And it's only that story that he tells.

This analogy clearly explains Ben Zoma. Ben Zoma felt *kol yemei chayecha* **did**

1 Due to this question, the *Tzlach* claims that according to the Rambam the mitzva of remembering Egypt is rabbinic.

2 Rav Hershel Schachter will often present the position of the *Minchas Chinuch* that the Rambam didn't list it as a mitzva because it's not derived from *p'shuto shel mikra*.

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not allow for the possibility of recalling Egypt in the days of *Mashiach*. Why not? Because in the end of days we will focus on the final redemption and forget the past.³

Recounting the Exodus on Pesach Night

According to this presentation of Reb Chaim we have a problem. The Rambam **did in fact** count the mitzva of *sippur Yetzias Mitzrayim* on the night of Pesach. According to the logic we mentioned above, shouldn't that mitzva have been left out as well?

Rav Yitzchak Hutner (*Pachad Yitzchak*, Pesach, 24) answers this question based on another well-known Rambam. The Rambam (*Chametz u'Matza* 7:6) says that in each and every generation one is obligated to demonstrate to themselves as though they are leaving **now** from Egypt. This means that Pesach night is not a commemoration of some past redemption (like the analogy of the wolf), but rather it is happening now in real time – it is the current redemption.

Women and Sippur

The *achronim* have already explained that the exemption of women on positive time-bound *mitzvos* is only said when the time **directly** causes the mitzva's occurrence. But, if time "x" triggers event "y," and that in turn generates our positive mitzva, then the exemption of *zman grama* for women would not apply.

One famous example is taught by Rav Yerucham Fishel Perlow in his explanation of the Ramban's position on *Sefiras Ha'omer*. The Ramban holds that women are obligated in *Sefiras Ha'omer*. However, asks Rav Perlow, isn't it a positive time-bound mitzva? He answers that the 16th of Nissan generates the responsibility to bring the *korban ha'omer*. The bringing of the *omer*, then, incidentally kicks off a requirement to count the *omer*.

Another example along similar lines is mentioned by the *Turei Even* (*Megilla* 20b) on the mitzva of *bikkurim*:

The *mishna* lists women among those who are *mayvi'im v'ainam korin*, obligated to bring *bikkurim*, but exempt from reading the *parsha* of *viduy bikkurim* because they cannot refer to "*adama asher na'sata li*", the land which they received, as the land of *Eretz Yisrael* was apportioned to men and not women. The *Turei Even* asks why women should be obligated to bring *bikkurim*; isn't it a *mitzvas aseh she'hazman grama*, a time-bound mitzva? *Bikkurim* require *tenufa*, being waved like a *korban*, and the act of

3 This approach of Reb Chaim is a big novelty. He is essentially calling this mitzva a *hora'as sha'ah*. Is this really a *hora'as sha'ah*? We generally assume *hora'as sha'ah* is, for example, when Jews had to knock on Egyptians door to ask for *matanos*. Once in history. Or "pick up your stick and split the sea." Or "bring *korbanos* for inauguration."

tenufa could only be done during the day and not at night? Moreover, *bikkurim* could only be brought from Shavuos up until Chanuka, but not throughout the year?

The second half of the question raised by the *Turei Even*, that *bikkurim* are *zman grama* because they are only brought between Shavuos and Chanuka, fits with our approach. *Zman grama* is a limitation only when a direct obligation applies due to the time frame. The *bikkurim* obligation applies 24/7. However, in order to fulfill that obligation you would need a certain type of good fruit. The time span of Shavuos to Chanuka is when these appropriate fruits are available.

Similarly, with regard to *sippur Yetzias Mitzrayim*, we can understand why women are obligated. It's not some time on the calendar (15th of Nissan) which causes the obligation to speak about the Exodus, but rather since on this night it's as though you are in **currently** leaving Egypt, that feeling of presence generates the requirement of *sippur*.

Calling This Into Question

Perhaps there is a distinction between *bikkurim* and *sippur*. With regards to *bikkurim* the time (Shavuos) [Point A] kicked off something (good fruits) [Point B] which **incidentally** triggers [Point C] the mitzva of *bikkurim*. With regards to *sippur*, if women aren't obligated to feel as though they just left Egypt, then it follows that they would be exempt from *sippur*. Without a requirement on Point A, feeling as though they just left Egypt, there's no way to get to Point B. This means the whole premise is very time-related.

However, from the fact that this distinction is not made shows us that Point A, feeling as though they just left Egypt, isn't a requirement, but rather simply reflects the reality for men and women. And therefore since that is the reality, they are obligated in *sippur*.

Pesach



Dr. Daniel Wohlgelernter

Adiv Pachter

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Shibud Mitzrayim: The Greatest Lessons From Jewish History You Never Learned

DR. DANIEL WOHLGELERNTER



Why were *B'nei Yisrael* subjected to servitude and suffering in *Mitzrayim* ?
The destructions of the first and second *Batei Mikdash* and the resultant two exiles are explicitly attributed to specific transgressions:

מקדש ראשון מפני מה חרב? מפני שלשה דברים שהיו בו: עבודה זרה, וגלוי עריות, ושפיכות דמים... אבל מקדש שני, שהיו עוסקים בתורה ובמצוות וגמילות חסדים מפני מה חרב? מפני שהייתה בו שנאת חנם. (יומא ט:)

Why was the First Temple destroyed? Because of three iniquitous things that occurred there: idolatry, immorality, and bloodshed... But the Second Temple, when people occupied themselves with Torah, mitzvos, and acts of kindness, why was it destroyed? Because of the baseless hatred that existed there.

It is therefore surprising that the Torah did not tell us the reason for the exile and the enslavement of the Jews in Egypt. What sin did the Israelites commit to be punished so severely? According to the *midrash*, Moshe Rabbeinu was baffled:

היה משה מהרהר בלבו ואומר "מה חטאו ישראל שנשתעבדו מכל האומות?"
Moshe would contemplate in his heart and ask, "What sins did Yisrael commit to be the one nation of all the nations to be subjugated?" (Shemos Rabba 1, quoted in Rashi on Shemos 4:12)

Whatever the explanation, one should note that the Torah does not specifically enlighten us.

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Avraham's Sins as a Cause for the Exile in Mitzrayim

אמר רבי אבהו אמר רבי אלעזר: מפני מה נענש אברהם אבינו ונשתעבדו בניו למצרים מאתים ועשר שנים? מפני שעשה אנגרייא בתלמידי חכמים, שנאמר: "וירק את חניכיו ילידי ביתו". ושמואל אמר: מפני שהפריז על מדותיו של הקב"ה [רש"י: שהגדיל לישאל על מדותיו של הקב"ה, שאמר "במה אדע"], שנאמר: "במה אדע כי אירשנה". ורבי יוחנן אמר: שהפריש בני אדם מלהיכנס תחת כנפי השכינה, שנאמר: "תן לי הנפש והרכוש קח לך" [ולא היה לו לעשות כן שהיה לו לגיירם].

Rabbi Abahu said in the name of Rabbi Elazar: "Why was Avraham punished and his sons enslaved in Egypt for 210 years? Because he conscripted Torah scholars to aid him in the war against the four kings." And Shmuel said: "Because he questioned G-d's promise that his children would inherit the Land of Israel."¹ Rabbi Yohanan said: "because he did not exploit the opportunity to take the prisoners and teach them the ways of Hashem." (Nedarim 32a)

Three opinions are presented which attempt to answer the question of what sin was responsible for the subjugation in *Mitzrayim*. The common thread is the attribution of sin to Avraham Avinu, for which his descendants were exiled to Egypt, and this was foreshadowed in the *Bris Bein Habesarim* when the Creator informs Avraham of the eventual servitude of his sons:

...ידע תדע כיגר יהיה זרעך בארץ לא להם ועבדום וענו אתם ארבע מאות שנה.
... Know with certainty that your offspring shall be sojourners in a land not their own, and they will be enslaved and oppressed for 400 years.
 (Bereishis 15:13)

Each of these sages conveys a message that was important to him. Rabbi Abahu's goal was apparently to strengthen the support of scholars and justify their exemption from the burden of taxes and the army, in order to be free to study Torah.² In the eyes of Shmuel, it was important to emphasize that the promises of God cannot be doubted, and Rabbi Yohanan's words can be understood against the background of the favorable position of some of *Chazal* regarding conversion.

Ramban also sees Avraham's actions as the reason for the exile of Egypt, but he

¹ Shmuel's opinion is not accepted by most commentators (see, for example, Rashi, Ibn Ezra and Ramban).

² Mirroring the statement of Rabbi Nechunya ben Hakaneh that those who accept the yoke of Torah are freed from the yoke of *derech eretz*, working (*Avos* 3:5).

finds his sin in another matter:

דע כי אברהם אבינו חטא חטא גדול בשגגה, שהביא אשתו הצדקת במכשול עון מפני פחדו פן יהרגוהו, והיה לו לבטוח באלהיו שיציל אותו ואת אשתו... ועל המעשה הזה נגזר על זרעו הגלות בארץ מצרים ביד פרעה.

Know that Avraham unwittingly committed a great sin, for he brought his righteous wife to a potential pitfall of transgression because of his fear that the Egyptians would kill him. Instead, he should have had confidence in God to save him and his wife... And it was on account of this act that exile in the land of Egypt, under Pharaoh's hand, was decreed upon his descendants. (Ramban, Bereishis 12:10)

The words of Ramban were questioned by Rabbi Samson Raphael Hirsch. In his opinion, Avraham could not have known that he would be saved by Heaven, and he acted according to the principle of “one does not rely on a miracle.” Abarbanel does not accept the above interpretations, according to which it follows that the sons of Avraham were punished for no fault of their own, whereas Avraham himself was not punished at all, and in his words:

ואמנם מה שאמרה תורה “פוקד עון אבות על בנים” הוא לבד בחטא עבודה זרה וכשאוחזים מעשה אבותיהם בידיהם, לא על צד העונש שיענשו בנים בעוון אביהם שלא נכשלו הם בו.

When the Torah says “He remembers the iniquity of the fathers upon the children” this refers only to the sin of idolatry and only when the children replicate the idolatrous acts of the fathers. (Bereishis 15:1)

Therefore, Abarbanel attributes the sin to Yaakov's sons, and sees the sale of Yosef as the act that led to the exile in Egypt:

לפי שבמצרים חטאו, שמכרוהו להיות עבד שם, היה ראוי שילקו במצרים ויהיו עבדים שמה, הם ובניהם וזרעם, שנים רבות.

Given that they sinned in Egypt, as they sold Yosef to be a slave there, it was fitting that they should be punished in Egypt and be slaves in that land, and their sons and their descendants for many years. (ibid.)

This reason is mentioned, as well, in *Pirkei d'Rebbe Eliezer* (perek 37), and there the words are associated with the reproach of the prophet Amos to Israel “for their sale of a saint for silver” (2:6), and this accusation is interpreted as the sale of Yosef. However, it is not clear why this explanation is preferable to the explanations of the

Sages (i.e., Rabbi Abahu, Shmuel, Rabbi Yohanan), since, even according to this interpretation, the sons are punished for the sins of their forefathers.

The Sins of the Children of Israel During Their Stay in Egypt as the Cause of the Exile and the Servitude.

According to another approach, the reason for the exile of Egypt is connected to the desire of the people of Israel to assimilate with gentiles. There were three different sins in this context:

1. The prophet *Yechezkel* describes the sins of *Bnei Yisrael* during their stay in Egypt, and from his words it appears that before the appearance of Moshe Rabbeinu they were guilty of idolatry. This sin explains the cause and length of the bondage:

ואמר אלהם איש שקוצי עיניו השליכו ובגלולי מצרים אל־תטמאו אני יהוה אלהיכם. וימררבי ולא אבו לשמע אלי איש את־שקוצי עיניהם לא השליכו ואת־גלולי מצרים לא עזבו ואמר לשפך חמתי עליהם לכלות אפי בהם בתוך ארץ מצרים. ואעש למען שמי לבלתי החל לעיני הגוים אשר־המה בתוכם אשר נודעתי אליהם לעיניהם להוציאם מארץ מצרים. ואוציאם מארץ מצרים ואבאם אל־המדבר.

I also said to them: Cast away, every one of you, the detestable things that you are drawn to, and do not defile yourselves with the fetishes of Egypt; I the Lord am your God. But they defied Me and refused to listen to Me. They did not cast away the detestable things they were drawn to, nor did they give up the fetishes of Egypt. Then I resolved to pour out My fury upon them, to vent all My anger upon them there, in the land of Egypt. But I acted for the sake of My name, that it might not be profaned in the sight of the nations among whom they were. For it was before their eyes that I had made Myself known to Israel to bring them out of the land of Egypt. I brought them out of the land of Egypt and I led them into the wilderness. (Yechezkel 20:7-10)

God proclaims through *Yechezkel* that he saved *Bnei Yisrael* from the bondage of Egypt, even though they were not worthy of this salvation in view of their devotion to idolatry.

2. In the *Midrash* it is written:

כשמת יוסף הפרו ברית מילה, אמרו נהיה כמצרים ... וכיוון שעשו כך, הפך הקב"ה אהבה שהיו המצריים אוהבים אותם לשנאה.

When Joseph died, Bnei Yisrael abandoned circumcision, saying that "let us be like the Egyptians" ... and since they acted in this way, HKBH

transformed the affection that the Egyptians had for them to hatred.
(Shemos Rabba 1:8)

Similarly, the *Yalkut Shimoni* indicates that the Jews frequented the Egyptian theatres and chariot race coliseums:

‘ותמלא הארץ אותם’, שנתמלאו בתי תיאטראות ובתי קרקסאות מהן.
“And they filled the land.” that the theatres and coliseums were filled with them. (Yalkut Shimoni 162)

This *midrash* views the enslavement in Egypt as the response of God to the desire of *Bnei Yisrael* to assimilate.³

3. The *midrash* learns from Moshe’s words, “אכן נודע הדבר,” “Indeed it is known,” that there was a moral flaw in the children of Israel in Egypt. After witnessing two Hebrew men fighting, Moshe intervened as the peacemaker, but was challenged and threatened by these miscreants. Moshe contemplated the situation and said, “I was at a loss to understand what sin Israel committed to suffer such harsh subjugation. Now, I see that they are deserving of such punishment.”⁴

According to these explanations, the purpose of the bondage was to punish and isolate the children of Israel and thereby prevent them from assimilating in Egypt and adopting the perversions of Egyptian culture and idolatry. According to the *midrash*, despite the difficulties of enslavement and the great miracles that accompanied the redemption, only a small part of the people was prepared to leave Egypt and be part of the Jewish people on its land. Thus Rashi attests:

למה הביא עליהם חשך, שהיו בישראל באותו הדור רשעים, ולא היו רוצים לצאת, ומתו בשלשת ימי אפלה כדי שלא יראו מצרים במפלתם ויאמרו אף הן לוקים כמונו.
Why did Hashem bring the plague of darkness upon them? There were in Israel in that generation wicked assimilationists who did not want to leave Egypt; therefore, they died in the three days of darkness so that the Egyptians would not be able to observe their downfall. (Shemos 10:22)

Rashi continues:

חמושים: אחד מחמשה יצאו, וארבעה חלקים מתו בשלשת ימי אפילה.
Only one-fifth of the Jews left Egypt; the other four-fifths died during the

3 The *Meshech Chochma* (Vayikra 26:44) uses this idea to explain that the curses of the *tochacha* are due to the Jewish people’s desire to be like the nations of the world.

4 *Shemos Rabba* quoted in Rashi on *Shemos* 2:14

three days of darkness. (Shemos 13:18)

The Egyptian Exile as a Means of Educating the People

While the two previous approaches assumed that the exile of Egypt was a punishment, and therefore the sin that preceded it should be sought, another *midrash* expresses the view that the exile of Egypt was not a punishment for sin, but rather an educational process. The purpose of the servitude and suffering was to subjugate Israel's hearts so that they would be worthy of receiving the Torah and the land; in other words, the enslavement of Israel in Egypt was a manifestation of *yissurim shel ahava*, afflictions of love.⁵

The *Malbim* emphasizes the need for this process of purification:

היה צריך שירדו תחילה לכור הברזל לצרפם שם בכור עוני... והיה גלות מצרים
הכנה אל ירושת הארץ. (מלבי"ם על תהלים קה:טז)

*[Bnei Yisrael] needed to go down to the smelting pot to purify them in the
pot of affliction...and the Egyptian exile was a preparation for receiving the
land. (Tehillim 105:16)*

Our long stay in *Mitzrayim* was our spiritual “boot camp”, preparing us not only for *Kabolas Hatorah* and settling the Promised Land, but also for being able to have the fortitude to maintain our beliefs and our adherence to *mitzvos*, notwithstanding the extreme difficulties and obstacles we might encounter later in our history. *Mitzrayim* is called the “*Kur Habarzel*,” the iron crucible, in which the spirit and essence of our nation was forged. We arrived in Egypt as a family of seventy souls and there we were molded into a nation.

Shibud Mitzrayim was not a punishment, it was an education. In the great and prolonged suffering, we were subjected to whatever horrors and tragedies Hashem's destiny had in store for our nation. We hit rock bottom. Then we learned that not only were we able to survive but even to thrive – a lesson we must never forget.

⁵ Quoted by Abarbanel (*Bereishis* 15) in the name of Rav Chasdai Crescas in the name of the Ran.

Living a Life of Purpose and Direction

ADIV PACHTER



ויצא יעקב מבאר שבע וילך חרנה.

And Yaakov left from Be'er Sheva, and went to Charan. (Bereishis 28:10)

Many *meforshim* comment on this *pasuk*. The *pasuk* could have simply said that Yaakov left Be'er Sheva. Why did it feel the necessity to specify where Yaakov was going?

The *Shir Maon*, the grandson of the Chasam Sofer, explains that there are certain people who leave their house but do not have a specific mission; they are not focused on their destination. Where they end up is of no significance to them. However, Yaakov was not such a person. He was focused, and when he left Be'er Sheva he had a specific goal and mission to reach his destination of Charan. Rivka advised Yaakov to get up and flee from Eisav, and to go to Lavan who was in Charan. Furthermore, Yitzchak instructed Yaakov to take a wife from the daughters of Lavan. Yaakov was determined to carry out these directives. In specifying that Yaakov left Be'er Sheva and went to Charan, the Torah is teaching us the importance of having purpose and direction in our life.

Rashi actually phrases the question a bit differently. The Torah could have just relayed that Yaakov was going to Charan. Why did it feel the need to specify that Yaakov left Be'er Sheva? The simple *pshat* of the *pasuk* is that when a *tzadik* leaves a city, it makes a *roshem*; the loss is palpable.

I heard from Rabbi Revah that the *Be'er Mayim Chaim* has a different twist on this *pasuk*. When a *tzadik* is in a city, he should make a mark; others should learn from his example and remember how high they raised the bar as the epitome of conduct. Once this mark is made, we should all strive to model our behavior and lives after his behavior. When the *tzadik* leaves the town, you should remember the heights that

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were reached so we can strive to attain them ourselves.

On Pesach, as we begin the Seder, we make the following proclamation:

כל דכפין ייתי ויכל, כל דצריך ייתי ויפסח.

Whoever is hungry – let him come and eat. Whoever is needy – let him come and celebrate Pesach.

The Alexander Rebbe comments on this part of the Hagada in his *Sefer Yismach Yisrael*. He explains that this line is describing two different types of people. The first is a “*kafoof*” and the second is a “*disrich*.”

Hashem created man with *Chomer* and *Tzura*, and the goal of life is to have the *Tzura* prevail over the *Chomer*. When man sins, the *Chomer* is strengthened, which is against Hashem’s Will. When the *Baal HaHagada* says “*Kol Dichfin*,” he is alluding to the word “*kafoof*,” which means bent. When someone allows the *Chomer* to prevail over the *Tzura*, he allows his *taavos* [desires] to rule his behavior, and he falls prey to a life of sin. Such a person is called a *kafoof*, as his *Tzura* is bent over, and the *Chomer* hovers above the *Tzura*. When it says “*Yesei V’Yeychol*,” the *Baal HaHagada* is saying that a “*kafoof*” does not take advantage of the holiness of eating and food. One example of allowing the physical to overrule one’s essence is the lack of sanctifying one’s eating habits and misuse of food. Food is meant to strengthen the body to empower the soul to cleave to Hashem; not to fulfill one’s physical, mundane desires.

However, we are never to lose hope. If we find ourselves in the first category of a *kafoof* and we want to overcome it, Hashem provides the channels and paths to achieve closeness to Him.

Another type of person is a “*disrich*.” Such a person feels a sense that he is lacking (“*disrich*”) in his *Avodas Hashem* and he has a burning desire to become close to Hashem; he needs (“*disrich*”) to attain a closer connection. The *Baal HaHagada* explains that the way that a “*disrich*” fills his void is through “*Yifsach*,” the vehicle of *Peh-Sach*, which is *tefilla*. We need to strive to use of mouths for holiness; *achila de’kedusha* and immersing ourselves in *tefilla* to connect to Hashem.

Rav Menachem Mendel of Kosov, in his *Sefer Ahavas Shalom*, says that Yaakov has the same letters as the word *Yibaka*, which comes from:

אז יבקע כשחר אורך...

Then your light will burst out like the dawn... (Yeshaya 58:8)

The *Ahavas Shalom* explains that when someone internalizes the lessons of Yaakov and attains true humility (Yaakov is the example of humility because his name

comes from the word *eikev*, which means heel), then he has the capability for his *tefillos* to “*livkoa rekiyim*”; to pierce the heavenly skies and reach Hashem.

May we all be *zoche* to attain true humility, follow in the footsteps of our ancestors who laid the groundwork and model for us to live lives of holiness and closeness to Hashem, and for us to always know that through *tefilla*, Hashem is in our very midst.

Kashrus on Pesach

EVAN SILVER



The laws of *kashrus* are complex and can vary by the situation. While most observant Jews are familiar with the basic *halachos* of *kashrus*, the underlying *halachic* concepts are not as widely known and understood. In general, there are some leniencies that we can rely on from milk to meat, but not from *issur* to *heter* (forbidden to permitted) and there are other leniencies that might apply from *issur* to *heter* the rest of the year, but not on Pesach. While everyone is familiar with some of the cumbersome ramifications of these differences, it is important to understand the concepts that cause these differences.

Bitul - Nullification

During the year there is a general rule, known as *bitul*, that a taste can be nullified. This means that if a drop of non-kosher food fell into a kosher pot (or milk into meat) and it did not give off flavor, one can eat what was cooking in the pot. According to the *Shulchan Aruch*, one can have a non-Jew taste test the pot to see if the food that fell in gives off a flavor. *Sefardim* follow this opinion, while *Ashkenazim* follow the Rama, who says not to rely on the tasting of a non-Jew, but rather to require a ratio of 60 to 1 of the food in the pot to whatever fell in (*Shulchan Aruch* YD 98:1). Since one is unlikely to have a proper non-Jewish taste tester and most *kashrus* organizations want to be universally accepted, the Rama's opinion has become the more common practice. There are several exceptions to the rule of allowing the flavor to be nullified. Something that is only *assur* (forbidden) temporarily cannot be nullified; e.g. food cooked on Shabbos that will be permitted after Shabbos or something that can be *kashered* like a metal utensil (ibid 102). This stringency also applies to *chametz* on Pesach (OC 447:1). If the *chametz* was mixed in before Pesach, then in a case of liquid food into liquid food (as opposed to dry foods), we would allow the *bitul* to work because at the time of mixing, the *chametz* was still *mutar*. A practical ramification is that if one buys regular milk for Pesach, it needs to be purchased before Pesach, allowing any small ingredients to become *batel*. Whereas, any milk purchased on

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Pesach would need to be completely kosher for Pesach. Another way a taste can be nullified is if it gives off a bad flavor, known as *nosen taam l'fgam*. This is part of the debate regarding the issue of sherry cask scotch;¹ do we consider the wine to be giving off a positive or negative flavor? In addition to food that gives off a negative flavor, we consider all flavor after 24 hours to be *pagum*. For example, if one accidentally used a clean dairy pot that has not been used in 24 hours to cook meat, known as *aino ben yomo*, technically that meat is permitted (YD 103:5).² This only works on a clean pot, where the only issue is flavor, but if the pot has actual remnants of meat, it would make the dairy *assur*. This leniency, relying on a nullified taste, also would not work on Pesach and of course cannot be used on purpose.

Nat Bar Nat - Weakened Flavors

Another major leniency is the idea of *nosen tam bar nosen tam* (*nat bar nat*) which is a secondary infusion of flavor. If one cooked pasta in a clean meat pan, the pasta is only secondary meat because the meat flavor went from the original meat food into the pot, and then into the pasta. The *Shulchan Aruch* rules for *Sephardim* that one can even put cheese on the pasta. *Ashkenazim* would be allowed to eat the pasta on a dairy plate (YD 95:1). While this may help with many situation from meat to dairy in a regular kosher kitchen, it only works from *heter* to *heter*. It would not apply in a situation of *issur* (forbidden) to *heter* (permitted) such as non-kosher to kosher or *chametz* to Pesach. Once food is cooked in a forbidden pot, the food is forbidden. There is no opportunity for a secondary flavor to apply.

Mechanism of Transfer

The laws of transferring flavors on Pesach stay the same as they would the rest of the year. The first main principle is that heat is needed to transfer flavor. If cold meat touched cold dairy, the food would just need to be washed off at the place of contact (YD 91:1). One could also use a non-kosher utensil for cold dry food (YD 91:2). If one put matza on a clean cold *chametz* plate, technically there would be no transfer of flavor. This is not something we rely on and we require all utensils to be kosher for Pesach even if they would only be used for cold. Similarly, the rest of the year we would not start using meat plates for cold dairy food. Another principle is that there needs to be a liquid medium, so if two hot pots touched and they were completely dry on the outside, there would be no transfer of flavor (YD 92:8). This would also

1 Scotch aged in old wine barrels

2 But please consult a Rav

apply to putting a hot pot down on a counter top. We are strict to only use the proper countertop because we are concerned that if we allow it for dry we might do it in a case of wet out of habit or because we may not realize something is wet. Generally, if one dropped cheese or a dairy pot on a meat surface, we can rely on the fact that it is probably cold, dry, or no hot meat touched that spot in the past 24 hours. Since we are used to these leniencies the rest of the year, we are strict with *kashrus* on Pesach, so we don't accidentally eat something that fell on the counter on Pesach. For this reason, among others, we are very careful to make sure all of our surfaces are kosher for Pesach.

A Unique Leniency for Pesach

While it seems on Pesach we are generally stricter, there is one major exception. The Rama rules for *Ashkenazim* (OC 453:1) that the custom is not to eat *kitniyos* (e.g. rice) on Pesach. We don't eat foods that were usually stored with *chametz* grains. We are worried about either confusing *kitniyos* with *chametz* or the two being accidentally mixed together. However, *kitniyos* are nullified in a majority (as opposed to 60:1), which we generally would not allow during the year (*ibid*). Rav Ovadia Yosef (*Teshuvos Yehave Daas* 5:32) allows for *Ashkenazim* to eat in *Sefardi* house on Pesach citing this leniency of the Rama. This does not allow the *Ashkenazi* person to eat identifiable *kitniyos*, but only to eat items that may have been cooked with *kitniyos*. For example, one might be able to eat potatoes in a *cholent* but not the beans.³ Similarly, while Rav Ovadia Yosef is usually *machmir* to require *Sefardim* to eat *Chalakh Beit Yosef* meat,⁴ he is lenient to allow *Sefardim* to eat meat in an *Ashkenaz* home that is only regular *glatt*. (*Yalkut Yosef* on *Yoreh Deah* chapter 35-48:6)⁵ The idea of having different opinions yet still eating in each other's houses is not new. Beis Hillel and Beis Shamai disagreed on *yibbum*⁶ issues to the point that if you followed the view of one, you would be creating a *mamzer*⁷ according to the other. They also had different views on impurity of utensils. Yet, they still married each other's daughters and used each other's utensils (*Yevamos* 13b). They would not do something they held was completely forbidden,

3 This is theoretical as there are various opinion on whether the potatoes would even be permitted.

4 The difference is that *Chalakh Beit Yosef* is stricter than *glatt* for which *sirchos* (adhesions) would be problematic.

5 The reason is a *sfek sfeka* (double doubt) The first doubt is that maybe the Rama is correct and the second doubt is that maybe this piece of *glatt* meat did not have any problematic *sirchos*.

6 The requirement to marry a deceased brother's widow, who did not have children

7 A regular Jew is forbidden to marry a *mamzer*

but they respected each other enough to notify them that something might not be up to the other person's standard.

In a previous *Nitzachon* article, I explain how *kashrus* prevents assimilation and intermarriage. However, it is also important that it does not prevent *achdus* (unity), amongst *Klal Yisrael*. We must be able to eat in each other's homes. This may require us to rely on different opinions in certain areas in order to eat in a friend's home, but it also requires all of us to maintain proper standard of *kashrus* and be honest if something might not be up to someone else's standard. It is impossible to properly observe any *halacha* without learning all the laws behind it, but hopefully this review of the underlying concepts will give us all more insight and in turn promote *achdus* in *Klal Yisrael*.

Achieving Liberation Through Limitation

ARIELLA AZIZI



In the dead of night, every Jewish family, with their sack of flatbreads strapped to their backs, assembled as the people herded out of Egypt. Silently and stealthily, everyone congregated and together, they headed towards the border. Moses' plea to the Pharaoh had finally proven effective as the group of former slaves began to hum joyous tunes. The air of peace was palpable among the once enslaved nation.

Suddenly, the deafening sound of horses' hooves silenced the slaves' songs of hope. The royal cavalry advanced from afar as the indecisive Pharaoh had once again changed his mind and decided to reclaim his servants. Fear gripped the tender Jewish nation as they rushed to escape the land of their tormentors. Alas, they were confronted by a vast ocean facing them on one side and a threatening force approaching them on the other. Every man could hear the racing heart of his brother, synchronized with the sinister clapping hooves. With nowhere to turn, the helpless Jews cried out to the Almighty in utter desperation. In a miraculous event, God split the sea, allowing the Jews to cross to safety. When the Egyptian forces pursued the Jews in the sea, the Egyptians drowned, each according to his degree of evil. With their tormentors behind them, the newfound Jewish nation rejoiced in collective song as they were finally liberated from years of torturous bondage.

Every year we recount our redemption from Egypt by celebrating Pesach. We abstain from eating leavened bread and instead, we eat matza in order to recognize this miraculous historical event. This all seems strange, doesn't it? As we approach the holiday of Pesach, we must ask ourselves: Why, on the holiday when we celebrate our freedom, do we restrict ourselves to "the bread of our affliction?" Shouldn't the symbol of our freedom be expressed by the ability to feast on any delicacy rather than just matza?

In a lecture by Shmuel Reichman, he delineates the difference between restriction under slavery as compared to that of freedom. He conveys the idea that limitation is

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a key piece in both slavery and freedom. The distinguishing factor between the two is that while slavery entails forceful limitation, true freedom is characterized by one's ability to limit oneself rather than being controlled by physical impulses and desires. Rabbi Yehonasan Geffen, a maggid shiur in the Jerusalem Kollel, writes:

The Maharal [who] explains that a person is enslaved, in an existential sense, when he is attached to things that are external to his essence [....] In contrast, a free person is one who recognizes that his true essence is his soul, and accordingly, he is in no danger of becoming bound by his possessions.¹

The external powers mentioned by the the Maharal may range from physical items to one's own emotions. This idea may be illustrated further by an idea shared by the Vilna Gaon. In classical society, the person of greatest status was the ruler, the king. According to the Vilna Gaon, such a title is not only restricted to one who wears a crown and bears a scepter. Rather, the Vilna Gaon uses the Hebrew word for king, *melech*, as an acronym for one who is truly befitting of such a high status in society: A *melech* is one who allows his *moach*, brain, to reign over his *lev*, heart, which then dictates his *kaved*, liver or physical behavior. This teaches that true power is the ability to reverse the natural order of being controlled by base physical tendencies, and instead, labor to live a life dictated by logic. This idea is mirrored by the *mishna* in *Avos* 4:1 that states, “*eizehu gibor, hakovesh es yitzro*,” “who is mighty? One who conquers his inclination.” Thus, the greatest exhibition of strength is found in one who displays willpower. Such a person allows the mind to free him from the shackles of his base inclinations.

If we were to live our lives solely based on the dictates of our bodies, we would snooze our alarms at 7 AM, capitulating to our exhaustion, rather than admitting to our duty to wake up for work. One may argue that submitting to the logical approach of forcing oneself out of bed would be limiting oneself and the amount of sleep one has the opportunity to enjoy. However, one who recognizes the benefit of waking up early, despite the discomfort involved, exemplifies a more sophisticated understanding of what freedom truly is. Such a person frees himself from his most base, animalistic tendency, allowing himself to rise to an accomplishment of greater significance.

Rabbi Geffen synthesizes these ideas further in citing the Maharal who, “[E]xplains how matza relates to these concepts. Matza is the combination of water and flour in its most basic form. If the dough is left to rise then it becomes chametz, which represents an addition to the pure essence of the

¹ www.hidabroot.com/article/193150/Matzah---The-Bread-of-Freedom-and-of-poverty

matza. In this sense, matza is symbolic of the concept of freedom; that is, being free of anything external to one's essence. Chametz, in contrast, is created when the yeast rises, and adds to the raw combination of water and flour. In this way, chametz represents additions to one's pure essence."

Thus, as a fledgling nation, the foundation of the Jewish people had to be based on simplicity, which would allow them true freedom and genuine connection to Hashem. Today, we strive to emulate the original Jews who found contentment with nothing more than simple awareness of their Jewish identity which fueled their intense tenacity to forge a close bond with Hashem.

So what is the ideal way to reach this pious level by which one allows his logic to override his natural inclinations? The answer to this question is contained in Ramchal's classic work *Mesillas Yesharim*, where he explains that withdrawal from physical indulgence, or *prishus*, precedes true holiness, or *kedusha*. This level of *kedusha* is what Ramchal describes as the fusion between the dichotomous realms of the physical and spiritual. Shmuel Reichman mirrors this idea in saying, "You need to...transcend the physical so you can come back down and use the physical." Temporary self-imposed physical restriction is the greatest means by which we can access true mental liberation.

This self-restraint is what ultimately makes us Hashem's people. This is understood by the verses in *kiddush* whereby, after mentioning the remembrance of Exodus, we recall that Hashem has sanctified us. In juxtaposing the two, we draw a causal relationship where freedom from Egypt is linked to Hashem making us *kadosh*. Every week, we say *kiddush* over wine to show that we are elevating such a physical drink which has tremendous potential for *kedusha* and likewise, the opposite. In Ruchi Koval's *Conversations with God*, she writes (page 131):

We declare on Shabbat that the entire world and everything in it is yours, and that we use it all week and step back on Shabbat— to remember what it's all about and use it for a higher purpose.

If we understand Ramchal's definition of *kedusha*, where one links the mundane to the holy, then this order of *kiddush* expresses the profound idea that it is through our ability to uplift the physical that we are deemed worthy of redemption and of being called Hashem's nation.

We must know, however, that the physical and spiritual realms are not meant to remain permanently separate. Dr. Judith Mishell quotes Rabbi Shamshon Raphael Hirsch who expresses this idea in saying, "The Torah does not forbid the gratification of any legitimate and natural desire...On the contrary, it purifies and sanctifies even

our lower natural instincts and desires by using them with wise limitation for the purposes designated by the Creator.” If we observe our daily lives, we may find countless physical engagements which could theoretically deter our pursuit of holiness. For example, eating and drinking are basic human needs and, therefore, they may be mistaken as mundane. However, as Jews, it is specifically these mundane practices that we seek to engage, and purify in the process. God is not limited to the heavens. Rather, He resides here on earth with us as well. As we say in *davening*, “Holy, holy, holy is Hashem, Master of Legions, the whole world is filled with His glory.” Here, the statement of Hashem’s holiness is validated by the fact that his Holy Spirit extends beyond the heavens to the physical sphere. This belief is contrary to other religions that claim that the greatest expression of holiness is attained through permanent abstinence. The gentile approach to holiness limits the exercise of one’s willpower. For if an ascetic or a celibate were to come into contact with the physical, they would be entrapped by it. Jewish holiness, however, is the exact opposite. As Rabbi David Aaron states, true holiness is where one may confidently proclaim, “I’m so above it [physical engagements] that I can be in it without being trapped by it.” True freedom, therefore, is expressed by proper use and elevation of the physical.

Our physical attributes are meant to be utilized in service of Hashem rather than in selfish service of our desires. The *Shulchan Aruch* expresses this idea in writing:

שאפילו דברים של רשות כגון האכילה והשתיה וההליכה והשיבה והקימה והתשמיש והשיחה וכל צרכי גופך יהיו כולם לעבודת בוראך או לדבר הגורם עבודתו שאפילו היה צמא ורעב אם אכל ושתה להנאתו אינו משובח אלא יתכוין שיאכל וישתה כפי חיותו לעבוד את בוראו... צריך שתהיה כוונתו לעבודת הבורא או לדבר המביא לעבודתו כללו של דבר חייב אדם לשום ענינו ולבו על דרכיו ולשקול כל מעשיו במאזני שכלו וכשרואה דבר שיביא לידי עבודת הבורא ית' יעשהו ואם לא לא יעשהו ומי שנוהג כן עובד את בוראו תמיד. (אורח חיים סימן רלא)

Even things that are permitted, such as eating, drinking, walking, sitting, standing, marital relations, talking and other physical actions should all be for the service of your Creator, or for some means to an end to His service. If one is hungry or thirsty and eats or drinks to get bodily pleasure, that is not praiseworthy, but rather one should intend to eat or drink for sustenance to serve the Creator... One's intentions should be for the service of the Creator or to lead to service of the Creator. The general rule is that you are obligated to focus your eyes and heart on where you are headed, and weigh all your actions in your mind, and if something will lead you to the service

of Hashem, you should do it, and if it won't, you shouldn't do it, and one who acts in that way is constantly serving his Creator. (Orach Chaim 231)

The fact that a *halacha sefer* expresses this seemingly kabalistic idea proves that it is not some extra practice reserved only for the very pious. Rather, this is expected of even the average man, for in reality, every Jew contains his own unique spark of *kedusha* which he must strive to actualize. Furthermore, it is the 'average Jew' who experiences the greatest opportunity to become *kadosh* for he is constantly immersed in the physical world.

With regards to food, Naomi Ross addresses this concept in a soberingly forthright manner in saying, "The food we eat may have a *hechsher*, but do our habits and behaviors reflect a kosher attitude towards food?" In other words, have we, in our attempt to fulfill Hashem's *mitzvos* with various delicacies, lost sight of the proper manner to treat food? Ross suggests that the antidote to this issue is,

'Mindfulness' and eating in a more spiritually aware state... [as] The Ramban in Parshat Kedoshim famously explains 'kedoshim tehi'yu,' to be holy in all of our ways, as a general mitzvah to prevent one from becoming a naval b'reshut haTorah.'

This process of uplifting the physical, if done properly, carries the potential to transform the mundane into the transcendent, the table into the altar.

On Pesach, we express our royalty by exercising self-control. Only once we commit to eight days of *prishus* will we be able to attain true *kedusha*. This is true freedom, true *cherus*. Dr. Judith Mishell clearly expresses this idea in writing that while the secular world believes that freedom is defined as a lack of limitations, the Torah view is that, "Freedom means being led by the rider, not by the horse, that is, by the soul, not the body." With this lesson in mind, perhaps we can actually enjoy the matza this Pesach instead of just waiting longingly for the time when we can finally eat challa again. May this Pesach be an incredible experience where separation will ultimately breed true connection, true *kedusha*, as we gain the title of Hashem's holy nation.

Sefiras Ha'omer



Rabbi Donny Kellerman

Why Don't We Count Two *Sefiros*?

RABBI DONNY KELLERMAN



The Torah says that the 15th day of Nissan is the first day of Pesach, followed by Chol Hamoed starting on the 16th day of Nissan. However, Jews living in the diaspora, including Los Angeles, will keep two days of Yom Tov. We will refrain from doing *melacha* and perform two *sedarim*. Historically, when the new month was determined by visual confirmation of a new moon by witnesses in *Eretz Yisrael*, the announcement of the first of Nissan would occasionally not reach far-flung Jewish communities in time for Pesach, and so these communities would treat both the 15th and 16th as days of Yom Tov. Even now, when we no longer establish a new month through eyewitness testimony and have a set calendar, we maintain the custom of keeping two days of Yom Tov (*Beitza* 4a).

In addition to performing a second *seder* on the second night of Yom Tov, we also begin another mitzva, *sefiras haomer*, as the *pasuk* states:

וספרתם לכם ממחרת השבת מיום הביאכם את־עמר התנופה שבע שבתות תמימת
תהיינה.

And you shall count, after the Shabbos, from the day you bring the Omer waving offering, seven complete weeks they shall be. (Vayikra 23:15)

We begin counting forty-nine days after the first day of Yom Tov until we reach Shavuot, the fiftieth day. But, as we explained above, we also treat the 16th of Nissan as the first day of Pesach, as our ancestors did. It should then stand to reason that we should also begin another count after the second day of Yom Tov, in addition to the first count, which would be a day ahead in the count. Why don't we count two *sefiros*?

The Kovner Rav, Rav Avrohom Dovber Kahana-Shapiro zt"l, in his *Sefer Dvar Avraham* (1:34), answers that it is impossible to count two *sefiros* due to doubt. To say "today is the second day of the *Omer* and today is the third day of the *Omer*" is not counting at all. The definition of counting is to know and be aware of whatever quantity you are counting. If you don't know how many days you have counted, you

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aren't counting. The whole idea, he reasons, of counting with a *safek* is a paradox.¹

According to the *Dvar Avraham*, Jews in the Diaspora in the time when the new month was determined by witnesses not only didn't count two *sefiros*, they didn't count at all! We, who have a predetermined calendar, are able to count because we are certain of the first day of Yom Tov. The Diaspora Jews, who had a doubt as to when the first day of Yom Tov would be, could not count at all.

This answer, however, doesn't seem to be accepted by the *Baal Hamaor* and *Ran*, as the *Dvar Avraham* acknowledges. The *Baal Hamaor*, a *rishon* whose opinion is cited in the *Ran* in the end of *Meseches Pesachim*, also asks why we do not count two *sefiros*, and does not answer that such a count would not be a valid count, as the *Dvar Avraham* answers. This implies that he believes it would be a valid count. The *Dvar Avraham* concedes this point and concludes that if a person is in doubt, for example, if it is the fourth or fifth day of the *Omer*, he should count both, but without a *bracha*.²

The *Baal Hamaor* answers that if one were to count two counts, the second count would conclude with number forty-nine on the first night of Shavuot. The counting that night, which implies that tonight is not Yom Tov but rather *erev* Yom Tov, would be considered a lack of respect for the mitzva *d'oraysa* of Yom Tov, the first night of Shavuot.

The assumption that a second count would extend until Shavuot is seemingly difficult. When the new month was determined by witnesses, news of the actual first day of Nissan would certainly have reached the Jews of the Diaspora by Shavuot, over two months after Rosh Chodesh Nissan. Therefore, our ancestors likely never counted two *sefiros* all the way until Shavuot since their doubt of when to begin the count would have been long resolved. If so, we, who have a set calendar and would only perform two counts due to the fact that our ancestors did, have no reason to count the second count on the first night of Shavuot since our ancestors never did themselves.

The *Sefer Imrei Dovid* (2:20 os 1), cited in *Sefer Sefiras Haomer*, answers this question based on a *Teshuvos Chasam Sofer* YD 250 which explains that even though our ancestors never kept two days of Shavuot due to uncertainty, since they would have already learned of the proper date of Rosh Chodesh Nissan, we do so in order to strengthen the observance of the second day of Yom Tov on all other *Yomim Tovim*.

1 See similar answers in *Avnei Nezer* YD 248:3 and *Shaarei Yosher* I *Shaar Hasfeikos* 5:63

2 See *Teshuvos Betzel Hachachma* 5:100 who attempts to resolve the explanation of the *Dvar Avraham* within the opinion of the *Baal Hamaor*.

Similarly, reasons the *Imrei Dovid*, if we were to only count two *sefiros* for part of the count and then stop the second count, this would lessen the importance of the second count in people's eyes. Therefore, it would be necessary to count the entire second count in order to ensure its observance.

Perhaps the observation that Jews likely never kept two days of Shavuot due to uncertainty, as mentioned in the Chasam Sofer above, could suggest another explanation for why we do not count two *sefiros*. If our ancestors always learned of the new month before Shavuot and stopped counting two *sefiros*, they never completed both counts. One of the counts would have been stopped whenever they learned the true day of Rosh Chodesh Nissan. The day on which they stopped counting two counts would certainly have differed year to year depending upon when they heard the news of the new month. Therefore, if we were to institute a second count based on the practice of our ancestors, how would we institute it? When would the count end? Even if we were to pick the most common day when our ancestors stopped the second count, if such a day exists, it would be strange to institute half of a *sefira*. Perhaps *Chazal* reasoned that it is not logical to institute such a practice based on our ancestors' count which necessarily was never completed.³

May we all see the redemption and be granted the opportunity to bring the *Korban Pesach*, *Omer* and *Shtei Halechem* in *Yerushalayim* speedily in our days.

³ This approach is suggested as an alternative to the *Baal Hamaor*, who seemed to hold that it would be appropriate for there to be a second count.

Shavuos



Ziba Weingarten

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Shavuos: The Power of Silence

ZIBA WEINGARTEN



When Hashem gave us the Torah the whole world was quiet. The people did not talk. The babies did not cry. The birds did not chirp. The fish did not splash. The ducks did not quack. The roosters did not crow. The wind did not swish. The leaves did not rustle, and the ocean did not crash. And then in this quiet, quiet world Hashem gave us the Torah because He loves us.

The above is an excerpt from one of my favorite kids' books, *When the World Was Quiet*, by Phyllis Nutkis, which I read over and over to my kids. It illustrates the magnitude and power of Matan Torah through the silence of the world.

There is immense power in silence. Silence allows for us to enrich our lives, so they become more meaningful, peaceful, and beautiful. Silence allows for the communication of the heart. Silence allows us to hear and absorb information and wisdom. Silence allows for deep introspection and meditation. Finally, silence prevents us from reacting to the negative energy and commotion of people and situations we encounter, thus elevating who we are internally, spiritually and emotionally.

1. Silence is a form of the most powerful communication of love.

Shlomo Hamelech says in *Mishlei* 27:19, "One heart feels to another just like water reflects the image of a human face." To use another interpretation: "Just like water, face answers to face the heart of man to man."

After returning from a long trip, Rabbi Lawrence Kellerman would be greatly excited to speak with his wife and tell her about all that had taken place during his travels. Anxiously waiting to see his wife, he would knock softly on the door. Once she would open the door, surprisingly, no conversation occurred—no questions were asked. They would only look at one other, and after a while, they would softly

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peak, whispering.

Silence is one of the most powerful and effective forms of communication of the heart. A communication from one heart to another. A communication of love and endearment.

It's a great sign of closeness and intimacy when you don't have to say anything and can merely communicate through the heart.

I was explaining the power of silence to my kids at our Shabbos dinner table, and we decided to just look at each other and stay silent. It created a most beautiful and meaningful communication between my kids and me, and they understood exactly what I was thinking about and communicating with them as I gazed at them and smiled.

When I used to go on dates, I used to be so uncomfortable with the whole concept of silence, until I finally understood that it is the lack of closeness that makes you feel you have to keep saying something. With someone you are close with, silence in itself is a form of intimate communication.

The famous, mysterious Mona Lisa painting, which is marveled upon worldwide, is all about nonverbal communication through her coy smile and dreamy eyes.

2. Silence allows for the absorption of wisdom.

רבי עקיבא אומר... סיג לחכמה, שתיקה. (פרקי אבות ג:יג)

The vehicle for wisdom is silence. (Pirkei Avos 3:13)

ברב דברים לא יחדל פשע וחשך שפתיו משכיל. (משלי י:יט)

With much talking there is no limit to iniquity, but closing one's lips makes a person wise. (Mishlei 10:19)

Silence is a prerequisite for gaining wisdom.

When Hashem spoke to Moshe, there were pauses in the conversation so Moshe could absorb, understand, and reflect on what he was being told. So too, when we read from the Sefer Torah, there are continuous breaks so that we can absorb what we are reading. The Torah was given on *Har Sinai* because the mountain was nearby, silent. It didn't speak up. Moshe Rabbeinu, our great leader, was a stutterer. It doesn't seem to fit the image of a leader, but that is what Hashem was looking for—the humble and simple. The more humble a person, the less that person speaks, and the more he is able to receive.

Rabbi Yitzchak Fangur shares the story of a farmer who lost his watch in his barn. He looked all over for it, but he couldn't find it. A group of kids played outside his barn.

He called them over and told them whoever found his watch would get a prize. The kids turned the whole barn over, yet they didn't find the watch. In disappointment, the farmer gave up his search. One boy asked the farmer, "Do you mind if I go in and look?" The boy went in the barn, and two minutes later emerged holding the watch. The farmer, shocked, asked him, "How did you find it?" The boy told him, "I was very quiet, waiting to hear the 'tick-tock' of the watch, and just followed the sound."

When silent, we are able to hear. Silence increases the power of hearing and gaining wisdom from listening.

3. Silence allows us to delve deep inside ourselves, get to know who we are, and discover where we'd like to go. It allows for deep introspection and growth.

I was recently introduced to the broadcastings of Esther Hicks, an empowering, inspirational speaker. She focuses on being silent every morning to focus on all the positive in our lives, which will lead us to keep focusing on the positive throughout the day, hence energizing us with vitality and powerful joy all day. This is in alignment with how, as Jews, we wake up and first express praise to Hashem through *Modeh Ani*, *Birchas Hashachar*, and the whole of the *Shacharis* prayer.

Rabbi Zev Leff notes this about silence:

Noise lets us ignore our most difficult struggle and our most precious possession: our true and profound selves. Very often, it is painful to face one's true inner core. It is hard to be absolutely honest with oneself. We fool ourselves, and the noise and distractions of life help us in this effort. Constant external stimuli and occurrences allow us to avoid dealing with our inner being.

Think about it. When we're alone in the car, do we immediately reach for the radio? When we have a spare moment, do we reach for our phones and open up Facebook, WhatsApp, emails, texts, or some other sort of media? We are so afraid of silence—so fearful of the opportunity to be with ourselves and delve into our inner worlds.

When I put my kids to sleep, it is the best time for me to relax in the rocking chair, take out my phone, and casually scroll through it. Recently, however, I decided that it is such a valuable time for utter complete silence, when no one is after me to just meditate on Hashem, my life, where I am going, what my plans for the next day and year are, and other introspective thoughts. It is the most meaningful time for me to merely think and be.

Rabbi Zev Leff continues with:

Genuine spiritual heights can only be attained through introspection which only comes by the medium of silence. Silence allows us to remove all of the external and physical distractions in our lives and lets us focus upon the essence of our being, the soul.

The next time we're alone, let's resist the urge to put on the radio or pick up our gadgets for whatever reason. Instead, let's take advantage of the quiet time and think deeply about our lives.

We could ask ourselves questions like:

- What am I grateful for?
- What are the numerous ways I've been blessed, focusing on all the positive in my life?
- What makes me happy?
- How can I bring happiness, joy, and appreciation to my family and the people surrounding me?
- What are my goals in life? Am I on the path to fulfilling them?
- Do I feel Hashem in my life?
- How strong is my *Emunah*?
- Am I a *Kiddush Hashem*?

Setting specific times to be alone with ourselves and our thoughts will help us probe our inner world. It is at these times that we pierce our deeper selves and grow in immense ways.

The *Chazon Ish* says: "Give yourself time throughout the day, 5–10 minutes to be silent and contemplate within and find the truth within, this way you'll find the answers to all the questions."

Until now, I have been speaking about the positive effects of silence as communication of the heart, a source of gaining wisdom, as well as a time of deep introspection. Now, I would like to talk about silence in regards to the negative remarks of others.

The *Bartenura* explains that there is greatness in hearing one's disgrace and yet keeping silent: "*Shomea Cherpaso Vishtok*." This explains that silence has the power to promote self-control, to be in control of our speech, thoughts, actions, and reactions.

In the *mishna* in *Avos* it says "All my days I've been among the elders, and I haven't found anything good for the body other than silence."

How do we achieve this, though?

How does one hear about one's disgrace and yet keep silent? I'd like to answer the question with a few stories.

I remember when I was younger and much more sensitive to people's negative remarks that I went to see Rabbi Hollander, who presented me with a *mashal* that has constantly stayed with me. I retell it to my kids every time they have issues with people who hurt them with their words.

Rabbi Hollander very calmly and empathetically explained with the greatest of clarity:

If you are in a park, street, or forest and a dog starts barking at you, do you bark back? No, you just say it's a dog barking, and you move away. So, too, if someone is barking at you, don't bark back at them—you just move away.

If someone is insulting you, trying to degrade you and put you down, you should view them as a barking dog and move away. By keeping silent, you keep your own dignity and don't bring yourself down to the level of a barking dog. Just like the barking of a dog has no meaning and significance, so do the words of the person trying to hurt you. They are just barks not to be taken seriously, paid attention to, or analyzed.

The *Bartenura* answers the question of how one keeps silent when being disgraced by relaying the following story:

Once there was a Rav who was sitting and learning. In came a bachur and started cursing him for no reason. The Rav kept quiet and continued learning. The boy saw that it didn't affect the Rav, so he continued cursing. The Rav kept quiet. At some point, the boy saw that nothing worked—he wasn't getting the Rav to grow angry, so he asked the Rav if he could hear him. The Rav responded that he heard perfectly. So, the boy asked how come he wasn't getting angry. The Rav responded, "Say someone gives you a gift, and you refuse to accept it. Where does that gift remain? It stays with the person who wanted to give it to you. You," says the Rav to the boy, "wanted to gift me with 'valuable gifts,' and I refused to accept them, so they remain with you."

Research shows when victims of bullies argue and try to defend themselves, bullies are encouraged to tease more; however, when victims ignore bullies and respond kindly to them, the bullies become quite shocked and eventually go away. When you don't react, bullies just don't know how to continue.

It's not a matter of what people say and do; it's a matter of how we react to their words and actions—of whether we accept those words and actions through

responding and getting angry, or if we stay in control by not responding and knowing our own worth.

Rabbi Yitzchak Fangur explains with the following story:

A child was walking on the street with his mother and saw a bald man. The child said, "Look! There's a bald man." The mom angrily responded, "Shah! Maybe he'll hear you!" to which the child questioned, "What? Doesn't he know he's bald?"

When we think about it, if this bald person (or any other person, for that matter, with a certain issue) hears someone comment to him about his baldness, why should he get offended? He knows he is like that. This person doesn't hide because of this issue. He walks on the street. He knows that people see him. Why does he care if others comment or tell him about this issue? The point is that if we are internally secure about who we are, then nothing anyone says should really bother us. When we are confidently aligned with our essence, we cannot so easily get offended.

Rabbi Fangur continues with another story:

He once got a phone call from a lady who told him that she had a fight with her mother-in-law and was pushed by her husband to apologize. When she did apologize, her mother-in-law did not even acknowledge or appreciate it. On top of it all, her sister-in-law involved herself, calling the lady "immature." The lady said she rose to the challenge, called her mother-in-law, and apologized, as to avoid uncomfortable situations with her husband. Furthermore, since the lady was pregnant, she wanted their relationship to proceed smoothly.

Rabbi Fangur's response to the lady was:

All of us undergo insults and disgraces, and it hurts the most when it comes from the people closest to us. Firstly, you need to give up. Give up on your mother-in-law, your sister-in-law. Accept the fact that your mother-in-law won't change. The older a person is, the less flexible. She's older than you; she looks at you as a child. She will not accept anything you say.

Rabbi Fangur concluded by telling her:

Since you're at an advanced stage of your pregnancy, giving birth is miraculous, and there is possibility for complications. Perhaps Hashem has given you this pain with your mother-in-law as a kappara now in order to save you from a much greater pain later on.

He explained to her that there's nothing that makes your soul [*nefesh*] purer than the following three things:

1. Hearing your disgrace
2. Keeping silent
3. Forgiving

Any kind of pain that we feel (whether physical or emotional) is a relatively small pain that comes to prevent an even greater pain. The way to deal with pain is a moment of silence. Someone who has been insulted and keeps silent gets atonement [*kappara*] for his sins. Therefore, if someone manages to keep silent when being insulted or disgraced, he is prevented from being showered by something much worse.

One of my greatest role models in life always explains that when people insult, degrade, hurt, or ignore you—whatever the scenario—you should keep silent and review the following three concepts:

1. It must be that this person is in great pain or distress, which is why they speak or act like this; therefore, I pray for them to be comforted and find salvation to not be in this state anymore.

2. This person is a puppet of Hashem being sent just for me to overcome something within myself. If not through this person, I would be confronted by someone or something else. In *Shmuel Beis*, when David Hamelech was running away from Avshalom, Shimi started throwing stones at David and cursing him. Avishai saw this and was alarmed, and then angrily asked David HaMelech, “Why is this dog cursing you?” to which David answered, “This is all from Hashem. Why are you getting angry?”

3. Focus on the prayer at the end of *Shemone Esrei*, “*Elokai Nezor*.”

Elokai my God, guard my tongue from evil, and my lips from speaking deceitfully. Let my soul be silent to those who curse me, let my soul be dust to all. Open my heart to Your Torah, and let my soul eagerly pursue Your commandments. As for all those who plot evil against me, hasten to annul their counsel and frustrate their design. Let them be as chaff before the wind; let the angel of Hashem thrust them away. That Your beloved ones may be delivered, help with Your right hand and answer me.

The above are some of the most powerful and calming lessons when it comes to dealing with difficult people. By keeping silent at moments of being attacked, degraded, or insulted, we actually elevate who we are as a person and raise our self-worth.

Silence enriches our lives in most meaningful and powerful ways.

Silence allows for communication with the heart, acquirement of wisdom, and for deep introspection, as well as for maintaining our class and composure under all circumstances by ignoring the negative attitudes of those who try to insult us.

I'd like to conclude with the following story that Rabbi Harrary relays from Rabbi Etiel Goldwicht regarding Shavuos. The story is about Sam, a young soldier sent off to battle in World War II:

Sam says a tearful goodbye to his wife and little girl and heads out to war, not knowing if or when he will ever return. After a few months, he heard his name being called by his commander—"Sam, you got a letter." He ran over, opened the envelope, and recognized his wife's handwriting. He rushes to a little quiet corner and reads the letter, which reads, "Sam, I miss you so much. It is so hard not having you be with us, but I am trying to manage as best as I can. Our precious daughter took her first steps, and I can't wait to show you photos. I love you so much and miss you so much." The soldier finished reading the letter, carefully folded it up and put it in his chest pocket, next to his heart.

Every night, when all his comrades were asleep and total silence filled the barracks, he took out a flashlight under his blanket and opened the letter. He read it again and again, holding it close to his body. Why? He already knew what it says.

He read the letter again because every time he read it, he connected back home, back with his loved ones. He ached to be with them, and this letter was what connected him to them.

On Shavuos, Hashem sent us the most precious letter, the Torah, our eternal bond and special connection to Him. We read the letter over and over again, delving into its *kedusha*, wisdom, and ultimate connection to Hashem. Shavuos is truly a time of silence—of standing in awe and amazement at Hashem's world and His greatest gift to us, the Torah.

When Hashem gave us the Torah the whole world was quiet. The people did not talk. The babies did not cry. The birds did not chirp. The fish did not splash. The ducks did not quack. The roosters did not crow. The wind did not swish. The leaves did not rustle, and the ocean did not crash. And then in his quiet, quiet world Hashem gave us the Torah, because He loves us.

Facing Yourself: Where You Are And Where You Want To Be

SARAH PACHTER



According to surveys,¹ women look in the mirror an average of 71 times a day! Surprised? Think about it. In the bathroom, at work, at the gym—and who isn't guilty of sneaking a peak at a storefront window? The mirror is just a reflective piece of glass that shows us an image of ourselves, yet we obsessively gaze at and scrutinize our face, eyes, and imperfections. Is this pure vanity? Or could there be something deeper behind the concept of reflections?

The *luchos*, tablets, were inscribed with the Ten Commandments and were reflective. One side holds the wording of laws pertaining to interpersonal relationships between man and his fellow man. The other side of the tablets held the laws between man and God. Each side reflected the other in the sense that the laws corresponded with each other.

If the tablets were so holy and written by God Himself, why would Moshe break them? We are so used to the storyline that we never stop to question that seeming absurdity. Moshe's role was to teach the Jewish people and pass the Torah on for generations to come. Shattering the tablets seems antithetical to his role, and actually a disgrace to Hashem's honor.

Today, we have tremendous respect for our *Sifrei Torah* and holy books. If one were to accidentally drop a *Chumash* or a *Siddur*, we immediately pick it up and offer a kiss to its cover. If one were to accidentally drop a *Sefer Torah*, the community fasts for forty days!

Yet, right after breaking the tablets, rather than expressing remorse, Moshe asks God to see His face (*Shemos* 33:18). On the surface, this request seems quite brazen,

¹ www.dailymail.co.uk/news/article-491741/British-women-look-mirror-71-times-day-survey-reveals.html

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especially considering no one sees Hashem's face. Why would Moshe think that God would reveal His greatest glory, particularly after breaking the item that represents Judaism at its core?

An analysis of the burning bush reveals a rather strange encounter.

וירא ה' כי סר לראות ויקרא אליו אלקים מתוך הסנה ויאמר משה משה ויאמר הנני.
(שמות ג:ד)

When Hashem saw that Moshe turned to look, He called to him from the bush "Moshe, Moshe," and Moshe answered "here I am."

God then asks Moshe to lead the Jews out of Egypt, and rather than acquiescing, Moshe supplies every excuse to deflect that role. He offers his brother, Aaron, as a leader, and even uses his speech impediment as a way of declining. Hashem insists, and ultimately wins, for Moshe is chosen. Directly after this encounter, Moshe hid his face, and was afraid to gaze towards God (*Shemos* 3:6).

At first glance, It seems these two 'face' experiences should be reversed. Not only is Moshe's reaction seemingly strange, but Hashem's punishments seem reversed as well.

God did not punish Moshe for breaking the *luchos*. Yet, He punished him severely when he hit a different stone in the desert. Striking the rock was done in order to provide water for the hydration-starved Jewish people. One might argue that providing water for the Jewish people in the desert could have been considered *pikuach nefesh*, saving the life of another, a mitzva that even Shabbos is allowed to be desecrated for. Ultimately though, God determines that hitting the rock will prohibit Moshe from entering the land of Israel (*Bamidbar* 20:8).

How could hitting a rock, which did not encompass Hashem's name, garnish a severe punishment, while breaking the *luchos* seems to elicit zero reaction?

In order to determine this, we must examine Moshe's intentions involving shattering the *luchos*.

Imagine a king is engaged to be wed. A date has been set, and the formal contract is written up. He leaves town before the wedding with the assumption that upon his return they will have the formal ceremony. When he arrives home, he discovers that his soon-to-be wife had been involved in illicit behavior. Outraged, the king declares a severe punishment for this woman. His advisor comes running towards him and says, "Please don't be upset!! It's not technically adultery because you are not officially married yet. I will rip up the contract and you can start anew!"

Similarly, Sinai was our "wedding" to God. Hashem saw the Jews committing

idolatry when we should have been preparing to receive the Torah, our formal wedding. Hashem was outraged, and wanted to destroy us. Moshe begs Him to abandon this idea by pleading, “Wait! don’t harm them! I’m breaking the *luchos* (marriage contract). You are not yet married yet, so technically they did nothing wrong.”

But the reason for Moshe’s destruction of the *luchos* goes deeper.

When God saw that the Jews were worshipping the Golden Calf, He became angry and wanted to destroy the Jewish people and rebuild a new nation solely from Moshe. Moshe does something outrageous in response. He broke the tablets, essentially saying, “Look, you can’t start a new nation from me, I’m just like them. I’m also sinning. The Jewish nation and I are one.” His love for the Jewish people was so strong that he was willing to give up both his physical and spiritual life so that we may have ours. This is what a true leader is.

What a transformation! When God originally calls upon Moshe by the burning bush, Moshe doesn’t think he’s capable of leading us out of Egypt, and preferred not to get involved. Years later, he is so connected to the Jewish people that he is willing to do anything for them.

This is not the only transformation that occurs within Moshe.

During the time of the Temple, the *keruvim*, two cherubic sculptures, stood atop the ark. When Hashem was pleased with the Jewish people, the formations faced one other. When Hashem was displeased, the *kohanim* would push back the curtains, and the angels would be faced away from one another.

These *keruvim* were an easy indication of Hashem’s love towards us. Today, we don’t have the *keruvim*. How do we know Hashem loves us and is pleased with us?

If we love Hashem, and we face Him, He faces us. But what is the indicator of our love toward Hashem? The best barometer is when we love His children, for we must love each other. By looking at each other, we see the face of Hashem.

At first, it appears that Moshe might not love us to his fullest capacity. He doesn’t want to get involved in our issues, and therefore hides his face from Hashem at the burning bush. But after a lifetime of leading us, he’s actually crazy about us! In our faces, he saw the face of Hashem. That’s why he asked God to see His face. When the *keruvim* faced each other, God loved us. When Moshe loved us, he could face Hashem.

The *Tiferes Yisrael* (*Kidushin* 4:14) shares a story of Moshe Rabeinu. After *Yetzias Mitzrayim*, the entire world had heard of Moshe and the miracle at the *Yam Suf*. News had reached so far as the king of Arabistan. This king hired the best artist to find

Moshe, paint his portrait, and bring it back to him. When the artist returned with the portrait, the king summoned the best physiognomists (a person capable of judging character from facial features) to assist him. The experts were asked to judge Moshe's face to determine the inner workings of the man himself. The king was curious about his habits, traits, and proclivities, as a means to derive the source of his miraculous powers.

The physiognomists explained that the face of Moshe indicated the character traits of cruelty, anger, and arrogance.

The king was confused, and was sure that the experts were incorrect. Debates erupted between the painter and the advisors, each claiming the other was wrong.

The king set out to see for himself, and traveled to the camps of Israel to determine if the painter or sages were wrong. Inwardly, the king was convinced that the artist had inaccurately portrayed Moshe's face.

Upon seeing Moshe in the flesh, he realized that the artist was perfectly accurate. He explained to Moshe, "My personal physiognomists are worthless. For they told me that you are a man who seeks power, and angers easily."

Moshe responded that in fact both the artists and the sages were highly skilled and correct in their determinations. Moshe explained that he was born with all those negative traits and worked tirelessly his whole life to overcome his inclinations. Moshe explained that he forced himself to deny his evil inclinations, until more positive qualities were second nature to him.

He described that this transition was his greatest pride. Moshe was able to face God and be proud because he changed his nature and reached his potential.

Looking back at the incident at the burning bush, the Torah even indicates that Moshe would reach his potential by repeating his name twice. There are only three times that a person's name is repeated in such a manner.²

Anytime the Torah repeats someone's name in such a way, it is a reference to the dual image of every person. There is the earthly, physical image, and there is also an image in *Shamayim* of who we are supposed to become at the end of our days. The question we must ask ourselves is: Do these images match? Do they reflect one another the way a mirror would reflect an object, or are they disappointingly different?

When the Torah duplicates the language, it indicates that the two images match.

There is a famous story of the *Netziv*, a famous commentator on the Torah, that illustrates this concept beautifully. When the *Netziv* was young, he had difficulty

² *Shemos*: 3:1, 4:18

in school. One evening, he overheard his parents speaking with dismay over what would become of him. They agreed he would have to be trained as a shoemaker, a lowly profession at the time, rather than a scholar.

That night, the *Netziv* dreamt that he had passed away, and in *Olam Haba* Hashem asked him, “Where were your books? Where are your commentaries?”

The *Netziv* responded, “What do you mean? Here are my shoes. I made a *parnasa*, I gave much *tzedaka*, but I was no scholar.”

Hashem replied in dismay, “No! You were supposed to be the *Netziv*, a great scholar. Look at all these *sefarim*, they were supposed to be yours.”

This dream shook the *Netziv* to his core, causing him to awaken spiritually and fulfill his mission on Earth.

We all have a purpose, and no one else can achieve what we are supposed to. Only our *neshama* has the power to do what we need to do, and the choice to match our two images is ours alone.

Just like Moshe, and just like the *Netziv*, we all have an image of who we are supposed to become. Are we meeting our potential? Are we fulfilling our dreams, or our purpose? Moshe did, and we can, too. Perhaps this is what is meant that every person has the potential to be like Moshe Rabeinu. Certainly no one else will achieve prophecy and bring down the Torah. Yet, we can all become our best selves, bridging the gap between our higher and lower images.

A student of mine, Deborah, shared an incredibly deep story about mirrors and potential. Her sister had become religious, while Deborah was still on a growing path. Deborah was doing certain activities and dressing in ways that her religious sister did not approve of.

One day, Deborah’s sister approached her and said, “Deborah, this isn’t you. Do me a favor, look into the mirror. Just face yourself and look into your eyes, and ask yourself if you are happy.”

At this point, Deborah described that she was only half listening to her sister, and that it had little impact on her—or so she thought. One night she was out with friends, all decked out, sitting in the passenger seat of a vehicle, dressed in an immodest way. She opened up her pocket mirror to take a look at herself. It started as total vanity, double-checking to see that she looked great. She studied at her makeup-covered eyes, and suddenly, the surrounding conversation turned into muffled background noise. Deborah was looking into her own face for the first time—really looking “face to face.” She thought to herself, “This isn’t who I am, and this isn’t who I want to be. This isn’t you, Deborah.”

An experience with a mirror was her turning point. A simple pocket mirror helped her face herself, causing her to see where she was and realizing where she wanted to be.

The face tells the world everything about a person. *Panim*, the Hebrew word for face, shares its roots with *penimius*, one's inner self. A person's exterior face indicates what is going on inside—reflecting it back on the outside. Faces and reflections are important, both physically and spiritually.

This concept of “Moshe Moshe” and the two images matching is a spiritual idea. But everything in the spiritual world has a physical representation. Reflection is the physical representation of this concept. Seventy-one times a day, Hashem reminds us through our reflection that there is an image in *Shamayim* of who we are meant to be. Seventy-one times a day, we have the opportunity to face ourselves and change.

Moshe did it—can we?

One Hundred and Twenty Days

DR. IZZY KOROBKIN



An idea not typically presented in regard to Shavuot is its connection to the *yemei teshuva* and Yom Kippur. One point to consider is that Shavuot's *Matan Torah* is limited to the first set of *luchos*. The second and lasting *luchos* were given on Yom Kippur. Many commentaries explore the differences between each set of *luchos*. For example, *Pri Tzadik* writes that on Shavuot we received the *Torah Shebichsav* and on Yom Kippur we received the *Torah Shebaal Peh*. Shavuot is still *Zman Matan Toraseinu* but it is only the beginning. The giving of the *luchos* of Shavuot extends into the *yemei teshuva* and culminates with Yom Kippur.

Rav Yosef Dov Soloveitchik presents a different approach.¹ He begins with the *gemara* in *Taanis* (30b):

א"ר שמעון ב"ג לא היו ימים טובים לישראל כחמשה עשר באב וכיור"כ. בשלמא יום הכפורים משום דאית ביה סליחה ומחילה יום שניתנו בו לוחות האחרונות.

Said Rabbi Shimon ben Gamliel: There were no greater joyous days to the Jewish people than the fifteenth of Av and Yom Kippur. Yom Kippur [being joyous] is understandable, as it is a day of forgiveness and atonement, and the day on which the second luchos were given.

The *gemara* says that Yom Kippur is a joyous day because (1) it's a day of forgiveness and (2) the last (second) *luchos* were given.

The two reasons Yom Kippur is a happy day are typically seen as distinct. Rav Soloveitchik posits that the answers are actually directly connected, based on an essay by the *Beis Halevi*. The *Beis Halevi* writes that the first *luchos* contained the entire written and oral law. The second *luchos*, however, contained only the written Torah, and from that point the oral law was given *baal peh* and could no longer be written. With the first

¹ Essay by Rav Yosef Dov Soloveitchik *zt"l*, as heard in an audio shiur by Rav Isaac Bernstein *zt"l* sent to me by Rav Doniel Witkin.

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luchos given on Shavuos, *Bnei Yisrael* were charged with safeguarding the Torah just as an *aron kodesh* protects the *sefer Torah* within. In *halacha*, an *aron* is categorically labeled *tashmishei kedusha*, an item used as an accessory to *kedusha*, whose sanctity can be transferred to other objects. As *tashmishei kedusha*, *Bnei Yisrael* were associated with Torah, but remained a distinct entity. When the second *luchos* were given and only contained the written Torah, where was the oral law written? The *Beis Halevi* answers that the oral law is written on each and every Jew. At the *Matan Torah* of Shavuos, the Jewish people became *tashmishei kedusha*, an accessory to *kedusha*, like an *aron* to a *sefer Torah*. At the *Matan Torah* of Yom Kippur, when the Jewish people were charged with the task of orally transmitting the *Torah Shebaal Peh*, they were then elevated to the category of *kedusha* itself, like the parchment on which the Torah is written.

The implication of this distinction holds the connection between Shavuos and Yom Kippur. While an object of *tashmishei kedusha* can lose its holiness depending on its relationship to the item of *kedusha*, an item of *kedusha* itself is unchanging. After the first *luchos*, the Jewish people sinned with the *Eigel Hazahav*. They deconstructed their status as *tashmishei kedusha* because they no longer held the Torah, i.e. once they removed themselves from the *kedusha* (Torah), they forfeited their status as *tashmishei kedusha*. With the second *luchos*, when *Bnei Yisrael* became the transmitters of *Torah Shebaal Peh*, they attained intrinsically the level of *kedusha* corresponding to that of the Torah itself. From this point onward, *Bnei Yisrael* could do *teshuva* properly, since even when they sin the innate *kedusha* is untouched.

Rav Soloveitchik uses this idea of the *Beis Halevi* to frame the *gemara* in *Taanis*. Yom Kippur is a day of forgiveness because the second *luchos* were given. Before the second *luchos*, when *Bnei Yisrael* were *tashmishei kedusha*, a sin would result in the loss of that *kedusha*, as follows the *halacha* of *tashmishei kedusha*. *Teshuva* could not repair the *kedusha* lost by the *maase eigel* because the *kedusha* was distinct from *Bnei Yisrael*. Once the final *luchos* were given, Yom Kippur and *teshuva* itself became a working reality. *Teshuva* can remove the blemish of sin and reveal the underlying *kedusha*. The reason Yom Kippur is a day of forgiveness is because it is the day the second *luchos* were given. If not for the second *luchos* and the subsequent transformation of *Bnei Yisrael*, Yom Kippur could not be a day of forgiveness.

Perhaps Shavuos is the last Yom Tov before the *yemei teshuva* because it highlights the vehicle in which we prepare for *teshuva*. The *Nefesh Hachaim* (*Shaar 4*), explains that Torah and *teshuva* are in essence the same. Torah is the channel for *teshuva*:

כי תשמע בקול יהוה אלהיך לשמר מצותיו וחקתיו הכתובה בספר התורה הזה כי תשוב אליהוה אלהיך בכל לבבך ובכל נפשך.

If you shall hearken to the voice of the Hashem your God, to keep His commandments and His statutes which are written in this book of the law; if you turn unto Hashem your God with all your heart, and with all your soul.
(Devarim 30:10)

In the context of *teshuva*, the Torah instructs us to learn Torah in our search to come close to Hashem. The *bracha* in *shemona esrei* titled *teshuva* begins “*hashivenu avinu l’sorasecha*.” The path to *teshuva* is accomplished through Torah learning. The Torah is our guide to return to Hashem. On Shavuot we celebrate Torah and Hashem’s gift through which we come close to Him.

Ones Sheina

The *gemara* in *Brachos* (4b) highlights the importance of instituting Torah study into our daily lives. The *gemara* says that the time for *krias shema* is all night, but the Sages made a fence for this by instituting that it should be said before *chatzos*.

כדתניא חכמים עשו סייג לדבריהם כדי שלא יהא אדם בא מן השדה בערב ואומר
אלך לביתי ואוכל קימעה ואשתה קימעה ואישן קימעה ואחר כך אקרא קריאת
שמע ואתפלל וחוטפתו שינה ונמצא ישן כל הלילה אבל אדם בא מן השדה בערב
נכנס לבית הכנסת אם רגיל לקרות קורא ואם רגיל לשנות שונה וקורא קריאת שמע
ומתפלל ואוכל פתו ומברך וכל העובר על דברי חכמים חייב מיתה.

As we learned in a braisa: The Sages made a fence for their enactment, so that a man should not come from the field in the evening and say, “I will go to my home, eat a little, drink a little, sleep a little, then after that I will read the Shema and pray,” then sleep will overtake him and he will find himself to have slept through the night. Rather, a man should come from the field in the evening, enter the beis knesses, and study as he is accustomed to - whether that be studying the Torah of the Mishna, then read the Shema and pray. Then he will eat his meal and say the accompanying bracha. And one who violates the works of the Sages is liable to death.

The sages understood human nature. A person shouldn’t come home from work at night to eat, drink, and rest because sleep can cause a person to miss *krias shema* and *talmud Torah*. Rather a person should go from work to the shul and learn Torah and *daven*. Only afterwards can a person attend to his physical needs like eating. The *gemara* immediately following this brings up the idea of “*ones sheina*,” that one must be exceedingly careful not to miss *krias shema* in the evenings as the lure of sleep is very powerful (prompting the *braisa* to mention that one is liable to death for not

heeding the words of the Sages). On the level of *drush*, though, we can interpret “*ones sheina*” in another way.

The Rambam’s popularized theme of *teshuva* (*Hilchos Teshuva* 3:4) is “*uru yeshainim mishimaschem*” - the call of *teshuva* is to wake up from sleep, the same sleep that the *gemara* in *Brachos* warns could prevent us from *mitzvas krias shema* and *talmud Torah*. As Rashi comments on *Shir Hashirim* 5:2:

אני ישנה ולבי ער קול דודי דופק: כשהייתי שלוח ושקטה בבית ראשון, נואשתי מעבד הקדוש ברוך הוא כישנה ונרדמת.

I am asleep but my heart is awake; hark, my beloved knocks: When I was confident and calm in the first Beis Hamikdash, I despaired of worshipping the Holy One, Blessed Is He, as one who slumbers and falls fast asleep.

Rashi teaches that the sleep referred to is not a physical sleep but a lack of spiritual awareness of our purpose as Hashem’s chosen people.

This can explain our unusual *minhag* on Shavuos to stay up all night learning Torah. We want to show ourselves that we don’t let sleep take control, to train ourselves to be bigger than our physicality. The tools fostered on Shavuos allow us to enter into Elul properly, to transition from the status of the first *luchos* to the second *luchos*. A person shouldn’t arrive at Yom Kippur and claim “*ones shaina*,” sleep overtook me. Shavuos is the opportunity to wake up and begin implementing Torah into our everyday routine.

The Lubavitcher Rebbe has a beautiful approach to *Bnei Yisrael’s* sleeping the night before *Matan Torah*. When we sleep, the soul leaves the body, ascends to Heaven, and learns Torah with the angels and other souls there. Sleep is a sublime spiritual experience. (Similarly, Rambam describes prophecy as visions received during sleep or slumber.) *Bnei Yisrael* wanted to experience *Matan Torah* in a sleep state because they viewed this spiritual high as the ideal way to accept the Torah. However, the Rebbe continues, the Torah wasn’t given to people so that we can become spiritual beings without physicality. *Lo nitna Torah l’malachei hashares*, the Torah was not given to the ministering angels. Rather, the purpose of the Torah is to learn it and by doing so refine our physical existence. We stay up on Shavuos to rectify *Bnei Yisrael’s* mistake. We stay up at night to show Hashem that although we could easily go to sleep, we fight our physical desire in the service of Hashem and the Torah.

Shavuos is the beginning of the giving of the Torah. There are 120 days from Shavuos to Yom Kippur for making Torah a priority. Our directive is to inspire Torah learning in our lives and thereby prepare for the second giving of the Torah on Yom Kippur.

Was Moshe's Camping Spot at Har Sinai a Lucky Guess or Divinely Required?

ZEV AND DANIEL WIESEL



ויאמר ה' אלימשה פסל־לך שני־לחת אבנים כראשנים וכתבתי עליהלחת את־
הדברים אשר היו עליהלחת הראשנים אשר שברת.

The Lord said to Moses: "Carve two tablets of stone like the first, and I will inscribe upon the tablets the words that were on the first tablets, which you shattered. (Shemos 34:1)

פסל לך. הראהו מחצב סנפירינן מתוך אהלו ואמר לו הפסלת יהיה שלך; משם
נתעשר משה הרבה.

Hashem showed him a quarry of sapphire from within his tent and said, "the leftover stone is yours to keep." From this (extra sapphire) Moshe became very wealthy. (Rashi ibid.)

After Moshe destroyed the first set of *luchos* following the sin of the Golden Calf in the desert, he davened to Hashem on behalf of the Jewish people. Moshe was successful, and Hashem commanded him to create a second set of *luchos*. Rashi on that *pasuk* quotes from the *Midrash Tanchuma* that Hashem showed Moshe a quarry of sapphire for his use to carve the second set of *luchos* and told him that he could keep any extra sapphire. Moshe became very wealthy because of all the precious stone in the quarry that he did not use in carving the *luchos*. Ibn Ezra explains further that "*p'sal lecha*" should be read as "for your benefit." (Note the

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translation of the *pasuk* above ignores the word “*lecha*” entirely.)

Rashi only quotes a portion of the *midrash*. The *Midrash Tanchuma* and *Vayikra Rabba* further expound that this is the source for the *pasuk* “*Birchas Hashem hi ta’ashir*” (*Mishlei* 10:22) that the blessing of Hashem enriches a person. The rest of the *midrash* also fits quite well with Ibn Ezra’s explanation, because Moshe’s wealth came from a commanded action that was “*lecha*” just as Avraham’s wealth and stature came from Hashem’s command of “*lech lecha*.”

However, the next Rashi on that *pasuk* brings another *Midrash Tanchuma* that actually seems to contradict the first Rashi:

פסל לך. אתה שברת הראשונות, אתה פסל לך אחרות.

[Hashem told Moshe,] “You broke the first set, it is your responsibility to carve a new set.”

The idea that Hashem gave Moshe the stone from which to carve the new *luchos*, and then let him keep the extra material, does not fit with the idea that it was Moshe’s responsibility to replace the *luchos* that he broke. According to this understanding, Moshe already owned the sapphire needed to carve a new set of *luchos* and Hashem commanded him to use his own wealth to replace what was lost.

אמר רבי חמא ברבי חנינא, לא העשיר משה אלא מפסולתן של לוחות, שנאמר פסל לך שני לוחות אבנים כראשונים (שמות לז, א) פסולתן שלך יהא. אמר רבי יוסי ברבי חנינא, לא ניתנה תורה אלא למשה ולזרעו, שנאמר כתב לך (שמות לז, כז) פסל לך (שם, א) מה פסולתן שלך אף כתבן שלך. משה נהג בה טובת עין ונתנה לישראל ועליו הכתוב אומר טוב עין הוא יבורך וגו’ (משלי כב, ט) (נדרים לח.)

Rabbi Chama explains in *Meseches Nedarim* that Moshe became wealthy from the extra stone that wasn’t part of the second set of *luchos*, in a similar vein to the *Midrash Tanchuma*. Rabbi Yosi expands the idea of the leftover material of the *luchos* belonging solely to Moshe and says that the writing on the *luchos* (i.e., the Torah itself) also belonged to Moshe and his family. The *gemara* asks a somewhat obvious question on this; Hashem commanded Moshe to teach *Bnei Yisrael* the *mitzvos* on many occasions throughout the Torah, so how can Rabbi Yosi claim that Hashem gave the Torah only to Moshe and his children? The *gemara* answers that Rabbi Yosi was referring to Moshe’s *pilpul*, his personal expositions, on the Torah. Moshe was required to give the Torah to *Bnei Yisrael*, but he gave his *pilpul* on his own.

Why does the *gemara* go to such great lengths to explain how Moshe became wealthy? Is there a purpose or a need for Moshe to have been wealthy? Perhaps a quote from Rabbi Yochanan later in the *gemara* can provide an insight:

אמר רבי יוחנן אין הקב"ה משרה שכינתו אלא על גבור ועשיר וחכם ועניו.
Rabbi Yochanan says that Hashem will only rest His Shechina on a strong, wealthy and wise person.

According to Rabbi Yochanan, Moshe needed to be (independently) wealthy to maintain his unprecedentedly close relationship with Hashem. Without such wealth, Moshe would not have been the *navi* he was and the direct recipient of the Torah from Hashem.

There are still two questions remaining:

First, there are many examples throughout Jewish history of *nevi'im* and leaders who were not wealthy. How can Rabbi Yochanan say that the *Shechina* does not rest on a poor person? Second, Rabbi Yochanan brings the *pasuk* of "*p'sal lecha*" as a proof-text that Moshe was wealthy and the *Shechina* therefore rested on him. However, Moshe only carved the second set of *luchos* after speaking directly with Hashem before *Yetzias Mitzrayim*, receiving the *Aseres Hadibros* directly from Hashem on *Har Sinai*, and spending forty days learning the Torah. All of these direct interactions with Hashem came before Moshe became wealthy!

It is possible to answer these questions by explaining Rabbi Yochanan slightly differently. Rabbi Yochanan never meant that a poor person cannot become a *navi* or leader. Generally, there was no need for independently wealthy leaders of *Bnei Yisrael*. Rabbi Yochanan's statement may be specific to Moshe, who was not simply a leader but rather the primary teacher of Torah to all of *Bnei Yisrael* from *Har Sinai* to this day. Moshe could not have become the leader and *navi* that he was if he wasn't strong, wealthy and wise. Moshe needed to lead a nation of slaves out of *Mitzrayim*, lead the nation in battle, and serve as a conduit of direct communication between Hashem and *Bnei Yisrael*. Moshe needed a higher level of *Shechina* resting upon him in order for Moshe's teachings to take permanent root.

To answer our first question, Moshe needed to be wealthy because the recipient and disseminator of Torah *miSinai* needed to attain a higher level of *Shechina*. Rabbi Yochanan explains that this higher level of *Shechina* requires independent wealth, obtained directly from Hashem and not any other person.

Our second question was, if Moshe needed to be wealthy how could his wealth only come after speaking directly with Hashem before *Yetzias Mitzrayim*, receiving the *Aseres Hadibros* directly from Hashem on *Har Sinai*, and spending forty days learning the Torah? The answer is that Moshe only needed to be wealthy in order to disseminate the Torah to *Bnei Yisrael*. Once Moshe broke the first set of *luchos*, the

second set of *luchos* became the source of Moshe's teachings of Torah. Before *Bnei Yisrael* received the second set of *luchos* and the Torah, Moshe needed the extra, higher level of *Shechina* and the wealth required to attain it.

The only issue left open with this explanation is the following "what if" hypothetical: What if Moshe had never destroyed the first set of *luchos*, and the source of Moshe's teachings was actually the first set of *luchos*? How could Moshe have successfully, and permanently (as described earlier), taught Torah to *Bnei Yisrael* without the independent wealth that came from the leftover stone from carving the second set of *luchos*? We look forward to hearing from our readers with any suggestions.

Tisha B'av



Rabbi Zvi Schindel

Eli Snyder

“Shall I Compare Thee to a Summer’s Day...” Celebrating a ‘*Seudas Purim*’ on Tisha B’Av *Shenidche*

RABBI ZVI SCHINDEL



The catastrophic consequences of *churban Bayis Sheni* continue to impact our daily *halachic* routine. With its destruction, entire expanses of Torah–Biblical and Rabbinic–mainly found within *Sidrei Zeraim*, *Kodshim*, and *Taharos* remain absent from practical fulfillment.

As Rav Soloveitchik demonstrated time and again,¹ when studied comprehensively and viewed panoramically, *Hilchos Bein HaMetzarim*, known as the laws of the “Three Weeks,” are a scaffolding of contrived actions and laddered *issurim* intended to produce an authentic emotional connection to an *aveilus yeshana u’derrabbim* (*Yevamos* 43b), unique to Tisha B’Av. The inverted structure of this mourning period accelerates from limiting joys and comforts impacting areas of luxury and convenience, to quickly gaining in severity towards the denial of basic necessities, and culminating in the temporary deprivation of essentials for survival. This rush of *meniyas simcha* functions as an experiential reproduction of *nihugei aveilus*, which are instinctual and natural to *aveilus chadasha*, both emotionally and intellectually.

The Jewish calendar interlaces days of jubilation and tribulation with almost schizophrenic determination. This duality, intentionally, appears in variegated form throughout the year. Consider Rosh Hashana’s split personality as a full-fledged *Yom Tov*, replete with the attendant *chiyuvei simcha*, but dressed as a *Yom HaDin*; the fear and trembling which surround Yom Kippur with its simultaneous pairing with the

1 “Avelut Yeshanah and Avelut Hadashah: Historical and Individual Mourning,” *Out of the Whirlwind*, 9-30.

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15th of Av as one of the happiest and most anticipated days of the year (*Mishna Ta'anis* 4:8); the felicitous nature of Purim and its curious, but obvious, placement after Ta'anis Esther; Pesach's frenetic transition "*me-avdus l'cheirus, me-yagon l'simcha, u'me-evel l'yom tov*;" the subsequent *Yemei HaSefira* and its culmination with the celebration of *Ma'amad Har Sinai* on Shavuot (whose reception was also accompanied with awe and trepidation).² The peaks and valleys a committed Jew is expected to travel cyclically could leave one in a dazed and confused identity crisis from one week to the next, even within the self-same day.

Celebrating a 'Yom Tov' on Tisha B'av *Shenidche*

Toward the end of *Chayei Adam*, *Hilchos Megilla*, Klal 155, Rav Avraham Danzig records a harrowing story of salvation experienced by his family and townspeople in the winter of 1803 [5564]. A great fire erupted in his courtyard, spreading throughout his home and neighboring homes. He explains in detail the beams, walls, and ceilings collapsing all around, his daughter escaping within an inch of her life. No member of his immediate household escaped without severe injury, and many who resided in adjacent homes and courtyards perished.

Nevertheless, Rav Danzig viewed the incident as part of *chasdei Hashem*, accepting the 16th of Kislev each subsequent year as a day "*l'ma'an saper niflaos Hashem*"³ for the survivors, though for many others that day was one of mourning and fasting. The 16th of Kislev was then established as a day of *seuda* and *yom tov* for the Danzigs and their descendants, thanking Hashem for His wondrous acts of kindness. Additionally, Rav Danzig instituted for his family a day of fasting and mourning one-day prior on the 15th of Kislev as a day of *teshuva* and reflection.⁴

Consistent with this approach, the *Chayei Adam* codifies *l'halacha*:

מי שאירע לו נס וכ"ש בני עיר יכולין לתקן בהסכמה וקללה עליהם ועל הבאים
אחריהם לעשות אותו יום לפורים... ונ"ל דאותה סעודה שעושין בשביל הנס הוא
סעודת מצוה.

Whomever experiences a miracle, all the more so if a community experiences a miraculous event, are able to accept upon themselves and their descendants that day as a 'Yom Purim.' And in my opinion the seuda prepared because of that miracle is a seudas mitzva. (Chayei Adam 155:41)

2 "Kivshan ha-esh," "kolos v'lapidim" and azharos for onshim chamuros, "o' sakol yisakel, o' yaro yiyareh," et al.

3 Tehillim 111:4: "Zecher assa l'niflaosav"

4 See *Mishna Berura* 218:32

As a poof-text, the *Chayei Adam* quotes the *Yam Shel Shlomo*:

כל סעודה שאדם עושה שלא כדרך מריעות ושמחה. אלא כדי ליתן שבח למקום, או לפרסם המצוה, או לפרסם הנס, קרוי סעודת מצוה.

Any seuda whose function is to offer praise and thanks to HaKadosh Baruch Hu [whether communal or personal] has the legal status of a seudas mitzva. (*Yam Shel Shlomo Bava Kama 7:37*)

The *Yam Shel Shlomo* is specifically discussing different permutations of the status of a *seudas mitzva* obligated by *simcha*. These would include a *bris mila*, *pidyon haben*, and a *siyum masechta*, among others. The *Chayei Adam* extrapolates this position to include any seuda “she-osin l’zecher niflaos Hashem” within the *Yam Shel Shlomo*’s understanding, thereby creating a personal ‘Yom L’Purim,’ necessitating a *seudas mitzva b’oso hayom*.

What emerges from the *Chayei Adam* is the following theoretical [and practical] scenario: Assume Rav Danzig’s personal tragedy occurred on the Tenth of Av. In a year where Tisha B’Av falls on Shabbos, it is automatically postponed [*nidche*] and relocated to *Yom Rishon* (Sunday). Though Tisha B’Av *Shenidche* acts as the *kiyum yom evel v’yom ta’anis*,⁵ it is not the calendar day established to mourn *Churban Bayis Rishon v’Sheni*. Consequently, it produces *halachic* leniencies. The father and designated *kohen* for a *pidyon haben bizmano*⁶ wouldn’t be obligated to complete their fasts; nor would the father, *mohel*, and *sandek* of a *bris mila*.⁷

Had that terrible fire ironically occurred on the Tenth of Av, not only would the Danzig family [even many generations later] end their fasts early, they would be preparing the home for a *seudas mitzva*! They would literally transition ‘*me-evel l’yom tov*’ by celebrating a *Seudas Purim* on Tisha B’Av.

To be sure, not all agree. The *Pri Chadash* notably posits such a seuda can only rise to the status of a *seudas reshus*. The *Chayei Adam* offers two proofs to counter the view of the *Pri Chadash*:

1. The *Yam Shel Shlomo* was only published and printed after the *Pri Chadash* lived. So compelling does the *Chayei Adam* find the view of the *Yam Shel Shlomo* that, perforce, had the *Pri Chadash* learned it “*b’yamav*” he would

5 See Rav Soloveitchik’s analysis of this phenomenon in *Sefer Shiurei HaRav: Al Inyanei Aveilus u’Tisha B’Av, Simanim 26 and 33*.

6 *Chayei Adam, Hilchos Tisha B’Av She-chal B’Echad B’Shabbos, Klal 136, Os 7*

7 *Shulchan Aruch, 558:9*. In practice, we try to avoid situations where even the *ba’alei hasimcha* would break their fasts on Tisha B’Av *She-Nidche*.

certainly have agreed a “*seuda l’zecher niflaos Hashem*” is indeed categorized as a *seudas mitzva*, not a *seudas reshut*.

2. The *Mordechai* (*Maseches Ta’anis* Os 630) quotes Rabbeinu Yavetz who wouldn’t complete his fast on Tisha’a B’Av *Shenidche* when he was a *ba’al b’ris*. This accords with the view in *Ta’anis* 12a of Rabbi Elazar Bar Tzadok that *Megillas Ta’anis* was only nullified for a “*yom tov al kol Yisrael*,” not a “*yachid bizman hamitzva*,” classified as a “*yom tov shelo*.”⁸

A Single Unit Completing the Whole

It’s no coincidence that the *Chayei Adam*, immediately following the nightmarish story of the fire and subsequent salvation, expounds *Tehillim perek* 100 which describes the meaning of the *korban toda* and the emotional response a *ma’amin* is supposed to internalize upon receiving “*nifla’os Hashem*.” The individual who offered a *korban toda* experienced the sublime recognition of *Yad Hashem b’olamo*, its sheltering warmth and nurturing sustenance. The requirement to eat the 36 loaves of bread from the *korban toda* forced the beneficiary to invite family and friends to the *seuda*, effectively transforming a private occurrence into a public event. Rav Danzig viewed his individual escape from death’s grip as an opportunity to serve *Klal Yisrael* as a *moreh hora’a l’doros*, with the *sefer Chayei Adam* forming a part of his *korban toda*.

As individuals Jews, we must realize our placement and setting within the dramatic unfolding of Jewish history. Ultimately, our personal experiences and subjective processing of events become eclipsed by *HaKadosh Baruch Hu’s* determination. Are our movements synchronized with the march of *Klal Yisrael*? Do we ebb and flow to the same rhythm?

On a personal level, these and other considerations led our family to become part of the *toshavei Eretz Yisrael*. For others it may shift where one learns and chooses to educate one’s children, which *kehilla* to join, and which priorities precede others. The dynamic between a *yachid* and the *rabbim* is one not easily navigated, with multifaceted and intertwining variables, intimately personal and highly charged. At day’s end, whether to celebrate a *Seudas Purim* or mourn a Tisha B’Av *Shenidche* may just amount to one’s perspective in life.

8 The opposite consideration, where one’s personal *aveilus* contrasts with a communal obligation in *simcha*, namely *aveilus d’yachid* on a Yom Tov, yields the rule of *asi asseh d’rabim v’dachi asseh d’yachid*. See *Tosafos*, *Moed Katan* 14b. This consideration is complicated when an individual’s *aveilus* coincides with Yom Tov *Sheini* where we, perhaps, have a clash between an individual *mitzva d’oraisa* and a communal *mitzva d’rabbanan*.

Trust the Process ...

ELI SNYDER



Over the three NBA seasons stretching from 2013 – 2016, the Philadelphia 76ers were, by the numbers, a very bad basketball team. With a combined record of 47 wins and 199 losses, the Sixers set and broke records in futility, including 28 consecutive losses spanning two seasons, breaking their own record of 26 losses they had set a season earlier. Their 10-72 record to complete the 2015-16 season was the second worst in NBA history. Was it poor management? Poor coaching? A string of devastating injuries to their better players? No. In fact, this stretch of futility was completely intentional and by design. Then General Manager, Sam Hinkie, realized that in the NBA, an average team can be mired in mediocrity in perpetuity but just a few star players can transform a team into a perennial contender. As in any professional sports league pursuing parity among its teams, the NBA allowed the worst teams to select higher in the draft and so Hinkie made the bold move to make his team as bad as possible. Many were justifiably upset at this approach; losing on purpose is against the spirit of competition and unfair to the fans. However, many Sixers fans embraced Hinkie's approach, dubbed "The Process," knowing that losing big now should translate to winning big later. The rallying cry of his believers was, "Trust the Process," immortalized on t-shirts,¹ posters and hashtags. Sam Hinkie was eventually pushed out by the league for his brazen tactics but his efforts are ostensibly finally proving to bear fruit.

During the period of the Three Weeks, culminating in Tisha B'Av, we commemorate and acknowledge the tragedies and destruction that the Jewish people endured throughout the millennia. On a macroscopic scale, we recognize the general ruined state of the Universe itself, ever present since Adam and Chava ate from that fateful tree. The *mishna* in *Ta'anis* 4:6 states, "*Mishenichnas Av m'maatin b'simcha*, when you enter Av, you reduce your happiness." This is in clear contrast to the month

¹ One of which I own

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that houses our beloved Purim, where we know, “*Mishenichnas Adar, marbin b’simcha*, entering Adar, your happiness increases.” It is obvious from these statements that Tisha B’Av and Purim are quite different in regards to *simcha*.² Beyond the common translation as “happiness,” what is the deeper understanding of *simcha* and how can that inform our Tisha B’Av and Purim experience?

Dovid HaMelech writes:

עבדו את־יהוה בשמחה באו לפניו ברננה.

Serve Hashem with happiness; come before Him with joyful song.
(Tehillim 100:2)

Simcha is integral in the service of God. Rebbe Nachman of Breslov goes further, “*Mitzvah gedolah lihiyos b’simcha tamid*, It is a great mitzva to be in a perpetual state of happiness.” However, Shlomo HaMelech points out that the pursuit of happiness is *hevel*, vanity:

אמרתי אני בלבי לכה־נא אנסכה בשמחה וראה בשוב והנה גס־הוא הבל. לשחוק
אמרתי מהולל ולשמחה מה־זה עשה.

*I said to myself, “Come, I will treat you to happiness. Taste its goodness!”
That too, I found, was futile. Of revelry I said, “It’s mad!” Of happiness,
“What good is that?”* (Koheles 2:1-2)

The *gemara* in *Shabbos* 30b notes that Shlomo HaMelech is specifically referring to *simcha* that is not tied to Divine service. Perhaps one can say further, that *Koheles* is criticizing happiness as an ends unto itself. *Simcha* is a framework to guide the highest forms of action. It is both a means and a byproduct of an elevated life. There are certainly a great number of *mitzvos* tied to Tisha B’Av; why then is *simcha* so hard to achieve in Av?

The *Zohar* notes that the letters of “*b’simcha*” are the same as “*machshava*,” thought. True *simcha* comes from the perception of direction and purpose; that there is a Divine hand guiding us on the personal, national and universal level. Depression

2 Tisha B’Av is not the only *mo’ed* that contrasts thematically with Purim. Purim in a fascinating way has many counter-thematic holidays. For example, the concept of *Ahavas Hashem* on Purim vs *Yiraas Hashem* on Yom Kippur (see “Fire & Wine: The Continuing Story of Nadav v’Avihu” in *Nitzachon* 4:2). The *neis nistar*, hidden miracle, of Purim vs the conspicuous miracle, *neis nigleh*, of Pesach. Receiving the Torah by “force” on Shavuot vs voluntarily on Purim. The physical response to spiritual threat on Chanuka vs the spiritual response to physical threat on Purim. The earthly *Malchus* of Achashveirosh on Purim vs the celestial *Malchus* of Hashem on Rosh Hashanah. It’s astonishing that a single day, oft-neglected and/or misrepresented, can be so multi-faceted and rich with meaning.

is not simply an experience of unhappiness, it is a feeling of being lost, alone, without purpose. Of course this is the natural effect of internalizing the experience of the Three Weeks. The endless string of tragedies the Jews have experienced, and continue to experience, very much engender that feeling of abandonment by God, that we are all alone in this harsh world. It is profoundly difficult to “Trust the Process” when you recount the terrors of the *Churban*, the Crusades, the Spanish Inquisition, the Holocaust. Perhaps Tisha B’Av is not even a time to try. Purim, however, operates differently. The *mo’ed* begins with Taanis Esther, another fast day where we commemorate an attempt to eradicate the Jews from existence but then, *v’nahafochu*, it instantly gets turned on its head and we celebrate with full gusto. Tisha B’Av offers no such salvation. While Taanis Esther flows seamlessly into Purim, Tisha B’Av does not end a positive note. In fact, several *minhagim* of the Three Weeks continue until *chatzos* of the next day. The situation is not instantly reversed, nothing has been solved.

There is a line in *Forrest Gump*, spoken by the eponymous hero, that resonates in this regard, “I don’t know if we each have a destiny, or if we’re all just floating around accidental-like on a, a breeze, but I, I think maybe it’s both. Maybe both are happening at the same time.” Regarding the famous rivalry between Beis Hillel and Beis Shammai,³ the *gemara* in *Eiruvim* 13b states, “*eilu v’eilu divrei Elokim chayim*, both are the words of the Living God,” which is a principle we must embrace in numerous contexts. Purim is teaching it will get better; things may look bleak but there is a Divine direction. Trust the process. Of course this is a very important tool for coping with tragedy and a common refrain for one comforting another. However, Tisha B’Av is allowing us to embrace the pain. To accept and absorb the outward randomness of the world. This coping mechanism is no less valuable and just as important to emphasize when comforting another. *Simcha* levels are down, the underlying *machshava* might be buried too deep right now. For those few years, the 76ers were unwatchable. While in the back of our minds we can remind ourselves,

כי את אשר יאהב ה' יוכיח וכאב את־בן ירצה.

Hashem rebukes those he loves, and like a father, He mollifies His child.
(Mishlei 3:12)

The front of our minds can simply just feel pain. Bookended by the *Eitz HaDa’as* and our ultimate redemption, the universe itself is in a state of Tisha B’Av. Purim offers

³ See “Beis Shammai, Beis Hillel and the loss of the *Beis HaMikdash*” in *Nitzachon* 3:1.

that glimmer of hope but even Purim is only a micro-redemption. One explanation why we do not say Hallel on Purim is that even after defeating Haman, the Jews were still under the rule of Achashveirosh, and we did not have full autonomy. Even when we are *marbin b'simcha*, it is not 100%; there is still a little Tisha B'Av in there. Balancing this dichotomy of “Trust the Process” on the one hand and “Embrace the Burn” on the other, we are able to soldier on through the difficult times in our lives, helping achieve internal perfection which in turn can collectively culminate into a macrocosmic perfection of the unfinished world⁴ that Hashem bestowed upon us.

⁴ See “Who am I?” in *Nitzachon* 5:1.

Machlokes L'shem Shamayim



Rabbi Yaakov Siegel

Daniel Nagel

Shushing Is Necessary

RABBI YAAKOV SIEGEL



There is a strong tradition that dates back hundreds of years to put up signs in shul that say “*assur lidaber bisha’as hatefila*” – it is forbidden to speak at the time of davening, or “*shtika yafa bisha’as hatefila*” – silence is beautiful during davening. The reason for this tradition is that there is an even stronger tradition for congregants to ignore the signs and talk during davening. The question becomes how should a shul – both its leadership and congregants – react to the people talking. On one hand, if they are breaking the rules, the talkers should be asked to quiet down or leave – no different than in a library or theater where talking is not allowed. On the other hand, asking a grown person to be quiet – or worse, “shushing” them – is terribly embarrassing, and doing so would seem to violate the *issur of malbin p’nai chaverio birabim*, embarrassing one’s friend publicly. In this discussion we will explore the *Shulchan Aruch* and numerous *poskim* who do cite an obligation to “shush” talkers, we will analyze the limitations of the prohibition of *malbin p’nai chaverio birabim*, and I believe we will prove that if necessary, it is appropriate, and even a mitzva, to “shush” those who talk during davening.

Just Look at the *Shulchan Aruch* – This Should be a Slam Dunk

The *Shulchan Aruch* (OC 124:7) discusses “shushing” talkers in the context of *chazaras hashatz*, the *chazan*’s repetition of *shmoneh esrei*:

לא ישיח שיחת חולין בשעה ששליח ציבור חוזר התפלה, ואם שח, הוא חוטא וגדול
עונו מנשוא, וגוערים בו.

One may not have any ordinary conversations when the chazan is repeating the prayers, and if he speaks, his sin is too great to bear, and we “shush”¹ him.

1 In the context of our discussion, I will translate “*go’arim bo*” as “we shush him.” A more precise translation could be “we yell at him.” Nearly all translations and usages of this word imply yelling, rebuke, and often

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While the *Shulchan Aruch* is speaking specifically about *chazaras hashatz*, it is clear from the *poskim* that we will quote below, that the rule of *go'arim bo* – we² “shush” the talkers – applies at anytime during davening or *krias hatorah*.

Yes, But Do You Want to Embarrass Your Fellow Jew?

The obvious question is what happened to the prohibition of *malbin pinei chaverio birabim*? The *Mishna* says in *Avos* (3:11):

רבי אלעזר המודעי אומר...המלבין פני חברו ברבים...אף על פי שיש בידו תורה ומעשים טובים, אין לו חלק לעולם הבא.

Rabbi Elazar Hamodai says, one who embarrasses his friend publicly, even

embarrassing the person. *Metzudas Tzion* to *Yirmiyahu* 29:27 translates “*Vayig'ar*” as “*inyan tzi'akas nizifa*” meaning screaming rebuke. *Ibn Ezra* to *Bereishis* 37:10 says that when *gi'ara* is followed by *beis* such as “*Vayig'ar bo aviv*” it means *derech kalon* - embarrassing the person. Rav Chaim Yehoshua Kosovsky, in his *Otzar Lashon Hatalmud*, counts sixteen times that the root word *gi'ara* is used in *Shas*, and defines its meaning as “*tze'aka b'iyum pachad u'vinizifa*” – yelling with intimidation, fear, and rebuke.

The *Shulchan Aruch* uses the phrase “*go'arin bo*” three times. The first is in our context, in which it is hard to detect if the *Shulchan Aruch* might have a different definition of *go'arin* (although there is no reason to suspect that he would). The next is in *Yoreh Deah* 340:9 regarding one who lost a relative, *lo aleinu*, and does an incomplete *kriah*. The *Shulchan Aruch* says “*lo yatza vigo'arin bo*.” Not much can be learned from this context either. The third example is more telling. In *Even Ha'ezer* 71:1 regarding a father's obligation to feed his young children, the *Shulchan Aruch* says, “*v'im lo ratzta, go'arin bo umachlimin oso ifotzrin oso*” – and if he does not want to, we yell at him, embarrass him, and pressure him. From this context it does seem that the *Shulchan Aruch* uses the same classical definition of *go'arin bo*, meaning yelling and embarrassing the person.

The Rema uses the phrase *go'arin bo* a handful of times as well, including OC 142:1 regarding a *ba'al koreh* who makes a mistake, which some have suggested means rebuke the *ba'al koreh* later on in private. Even if this were the correct reading, the Rema's usage is less helpful to understanding the *Shulchan Aruch's* meaning than the *Shulchan Aruch's* own usage of the phrase. Nonetheless, a careful reading of the Rema's sources in *Beis Yosef* 142:2 and *Trumas Hadeshen* (*K'svavim U'psakim* 181) will show that the Rema understands *go'arin bo* in the same way the *Shulchan Aruch* does. The *Trumas Hadeshen* says,

ראיתי כמה פעמים לפני רבותי ושאר גדולים שטעו הקוראים בדקדוקי טעמים וגם בפתח וקמץ סגול וצרי אע"פ שגערו בו קצת מכל מקום לא החזיר מהן:

I have seen numerous times before my rabbis and other Torah giants that the people reading the Torah made mistakes with the trop or with a komatz and patach or segol and tzeirei. And even though [these great rabbis] rebuked them a little bit, they did not make them go back.

It seems obvious that the rabbis rebuked the *baalei koreh* at the time they made the mistake, as the *Trumas Hadeshen* says they did *go'arin before* he says they did not make the *ba'al koreh* go back. Additionally, since the technical definition of *go'arin* means to yell, or a yelling rebuke, it should be obvious that in general, a rebuke of *go'arin* takes place at the time of the infraction, even if it is in public. If a person is giving *tochacha* in private, there is no need for *ge'arah* - to yell, as the Rambam describes in *Deos* 6:7 that private *tochacha* is done calmly and softly, as we will discuss later on.

2 The language of “*go'arin bo* – we shush” is ambiguous as to who does the “shushing”. This will be discussed in depth below.

if he possesses Torah and good deeds, has no share in the world to come.

Similarly, the *gemara* says in *Sotah* (10a) and *Brachos* (43b):

נוח לו לאדם שיפיל עצמו לתוך כבשן האש ואל ילבין פני חבירו ברבים.
It is better for a person to be thrown into a fiery kiln, rather than to embarrass his friend publicly.

And even though the aforementioned *mishna* and *gemaras* are phrased in an aggadic style, this prohibition of *malbin pinei chaverio birabim* is quoted as *halacha* by the Rambam (*Deos* 6:8), *Sefer Hachinuch* (240), and *Chafetz Chaim* (*P'sicha* 14), among others.

So if one must give up their life to avoid embarrassing another Jew, isn't it obvious that one must also give up a little quiet during davening?

To begin to answer this question, we need to understand the reasons for the *Shulchan Aruch's* dramatic directive of *go'arin bo*, to "shush" a person talking during davening. There appear to be two approaches in the *poskim*.

Go'arin Bo to Prevent the Harm the Talkers are Doing to Others

The first approach comes from the *Vavei He'amudim*³ which is widely quoted by the *poskim* (including *Elya Rabba* 124:12, *Mishna Brura* 124:27, *Yechaveh Da'at* 3:16, et al.):

כל איש ואשה שיושב בבית הכנסת אף שלא בשעת התפלה שאין לדבר שום שיחה בטלה. ומכ"ש בשעת התפלה או קריאת התורה שלא לדבר דבר של חולין ובעו"ה עד מתי יהיה זה לנו למוקש שבכל עיר ועיר אין יכולין למחות להעם ונעשה להם כהיתר בעו"ה וי להם וי לנשמותיהם. ואיך יעלה תפלותיהם למעלה והיא מלוכלכת במיני חטאים ואין קטיגור נעשה סניגור. על כן מן הראוי שכל קהלה וקהלה מקום אשר דבר המלך מלכו של עולם ודתו מגיע יעמדו אנשים על זה אשר ישגיחו באיומים רבים על המדברים ויביישו אותם ברבים. ובזה נראה כבוד י"י בארץ וכל העם ישמעו וייראו ולא יזידון עוד. (ווי העמודים פרק י אות ד)

Every man and woman that sits in a shul, even not at the time of davening, should not speak any idle speech. And certainly at the time of davening or Torah reading, one should not speak non-holy words. And with our many sins, how much longer shall this be for us a snare, that in every city it is

³ *Vavei He'amudim* was written by Rav Sheftel Horowitz (1592-1660), the son of the *Shela*"*h*. Rav Sheftel Horowitz served as Rov in Prague, Frankfurt AM, Posen, and Vienna, and published his father's *Shnei Luchos Habris* after his father's *petirah*. Out of humility, Rav Sheftel published his magnum opus, *Vavei He'amudim*, as part of his father's *Shnei Luchos Habris* under the title "Introduction of the Author's Son," even though it is not actually an introduction.

impossible to protest against all the people [who talk during davening], and it has become for them as if it were permissible. Woe to them and woe to their souls. And how could [the congregation's⁴] prayers ascend to heaven when they are soiled with these types of sins? As we know, the prosecutor cannot also be the defender. Therefore, every congregation that the words of Hashem reaches, should appoint people in charge of supervising and severely intimidating those who speak, and they should embarrass them publicly. And with this, the glory of Hashem will appear, and everyone will hear and be afraid, and will no longer sin wantonly.

According to the *Vavei He'amudim* and the coterie of *poskim* who quote him, the reason that one should "shush," even aggressively and embarrassingly, those who are speaking during davening, is that they are harming even the non-talkers by preventing the community's *tefilos* from ascending to *shamayim* and being answered.

Furthermore, *Elya Rabba* (*ibid.*) quotes the *Kol Bo* (11:8:4) who describes much greater risks associated with talking during davening:

כתב הכלבו אוי להם למדברים דברים בטלים או שחוק בשעת התפלה, כי ראינו בעווננו כמה בתי כנסיות שנחרבו על שנהגו בהם קלות ראש.

The Kol Bo writes, "woe upon those who speak idle words or joke around at the time of davening, for we have seen – because of our sins – many shuls that have been destroyed because people were frivolous in them."

In fact, the *Toldos Yaakov Yosef* (Rav Yaakov Yosef of Ostroh 1738-1791) writes (*Morah Mikdash* p. 5) that the *Tosafos Yom Tov*, Rav Yom-Tov Lipmann Heller, who was the Chief Rabbi of Krakow during the Khmelnytsky massacres of 1648-1649, fasted and davened to Hashem to find out the reason for the terrible massacres in which tens of thousands of Jews were murdered. It was told to the *Tosafos Yom Tov* in a dream that these massacres came about because of the sin of speaking non-holy words in shuls and *batei midrashos*. Based on this, the *Tosafos Yom Tov* composed a *misheberach* to bless all those who do not talk during davening. (This *misheberach* is recited in many shuls today.)

4 Theoretically one could read the *Vavei He'amudim* to mean that talking during davening prevent the *tefilos* of only the talkers from ascending to *shamayim*, having no impact on the efficacy of the non-talkers' *tefilos*. I do not think this is the correct reading, as if it were, it would be a non-sequitur to say "therefore every congregation should appoint supervisors..." See also *Olilos Efraim* (4:2:504) who says that the reason that the Jewish people's *tefilos* for the ultimate *ge'ulah* have not been answered is because of the talking that goes on in shul. He too holds that the talking of some people prevent the *tefilos* of the whole *tzibur* from being answered.

The *poskim* say that talking during davening could *lo aleinu* prevent the shul's *tefilos* from ascending to *shamayim*, or worse, *chas vishalom*. But at a much less dramatic level, talking disturbs others who are davening, and can make it more difficult for them to daven with *kavana*. And to prevent the harm being done to others, *go'arin bo*, we “shush” talkers.

But how can we do that – what happened to the *issur* of *malbin p'nei chaveiro birabim*?

“Stop, Thief!”

Imagine a person is walking out of shul after *ma'ariv* on a weekday evening, and a fellow Jew picks his pocket, steals his wallet and starts running away. Could the victim yell “stop, thief!” to try to stop the thief from making his getaway? Or, if that doesn't work, could the victim take the thief to a *din torah* and have the *beis din* compel the thief to return the wallet? Intuitively, we know the answer to these questions is yes, but why? Yelling “stop, thief” will embarrass the thief publicly in front of the whole shul, and taking him to a *din torah* will embarrass the thief publicly in front of the city's *dayanim*. If a person is obligated to give up his life to prevent embarrassing a fellow Jew publicly, shouldn't he certainly be obligated to give up his wallet?

The *poskim*⁵ say that it is obvious that there is no prohibition to be *malbin p'nei chaveiro* in order to prevent that person from causing a loss to others.⁶ But there are limitations. *Chafetz Chaim* (10:2-4) presents numerous conditions which all must be

5 See *Chafetz Chaim* (10:1), Rav Elchonon Wasserman's *Kovetz He'aros* (70), and Rav Shlomo Zalman Auerbach in *Minchas Shlomo* (2:133). *Chafetz Chaim* writes extensively (*Klal* 4 and *Klal* 10) about how it is permitted to say *lashon hara* to prevent a Jew from stealing from or harming another Jew, even though that would involve transgressing numerous otherwise prohibited *issurim*, such as *ona'as devarim* – verbal abuse, *lashon hara* – slander, etc.

6 One could ask that the *heter* of *malbin p'nei chaveiro* to prevent someone from causing you harm seems to be in conflict with the very source of the prohibition of *malbin p'nei chaveiro* in *Sotah* (10a) and *Brachos* (43b) – Tamar and Yehuda. In that story (*Bereishis* 38, as explained by *Sotah* 10a), when Yehuda is told that Tamar conceived through a promiscuous relationship, he *paskens* that she is liable to be put to death by fire. As she is about to be killed she asks, “does anyone know whose seal and cloak this is?” rather than saying, “I'm pregnant from Yehuda – not from a promiscuous relationship,” to avoid embarrassing Yehuda. The *gemara* learns from Tamar that it is better to be thrown in a fiery kiln rather than embarrass her friend publicly. But if *malbin p'nei chaveiro* is allowed to prevent someone from harming you, why couldn't Tamar embarrass Yehuda to prevent him from carrying out her execution? To this Rav Shlomo Zalman Auerbach answers (*Minchas Shlomo* 1:7:4) that we can't look at this story as Yehuda harming Tamar, because Tamar is the one who initiated the harm. She seduced Yehuda hoping to conceive, knowing ultimately that Yehuda (the *dayan* according to the *gemara*) would have to order her execution. She can't embarrass Yehuda by yelling “stop thief” as it were, if she purposefully enticed Yehuda to pick her pocket.

met in order to embarrass another Jew⁷ to prevent harm, three of which are relevant to “shushing” people talking in shul:

1. You are unable to prevent the harm without embarrassing the person.
2. Your intention is *lito'eles* – to prevent the harm, and not because of a dislike for the person.
3. You do not embarrass the person more than necessary.

So based on this approach, if talking during davening distracts the *kavana* of other people davening in the shul, or makes the shul a place that is not a serious *makom tefila*, then those talking can and should be “shushed,” but only following these conditions. We will explain shortly how these conditions impact practical situations in our shuls.

Go'arin Bo as the Obligation of Giving Tochacha – Rebuke

There is a very different approach found in the *poskim* to explain why *go'arin bo*, we “shush” someone who talks during davening. In *Shu"t Shevet Halevi* (10:13), Rav Shmuel Halevy Vosner explains the *Shulchan Aruch's* direction to “shush” someone who talks during davening as follows:

אין הדין משתנה ממשמעותו הפשוט דגוערים בו בנזיפה, אבל י"ל דלא גרע משאר עבירות דאורייתא ודרבנן, שכ' הרמב"ם פ"ו מדעות ה"ז הרואה חבירו שחטא וכו' מצוה להחזירו למוטב ולהודיעו שהוא חוטא על עצמו וכו', וצריך להוכיחו בינו לבין עצמו, וידבר לו בנחת ובלשון רכה וכו' ופעם שנית ושלישית וכו' עד שיכיהו החוטא, וברמב"ם שם הל' ח' ולא ידבר לו קשות עד שיכלימו וכו' אבל בדברי שמים אם לא חזר בו מכלימין אותו ברבים, ומחרפין וכו'. וכן בנ"ד, בודאי הדרך לעשות כן אלא אם לא מקבל בשום פנים אז גוערים בו, ובודאי ישנם מקרים שא"א להעמיד דת על תלה כעין נ"ד וכל ערום יעשה בחכמה, ואם ראה שגורם עי"ז פגיעה בדרכי התורה, ולא יכול לעשות כהלכה, בשום פנים יקבל שכר על הפרישה, והכל לפי ראות חכם וירא שמים.

The halacha has not changed from its simple meaning that we yell at him harshly. But this is no different than any other Torah or Rabbinic commandment, like the Rambam says in Hilchos Deos, one who sees their friend sin... it is a mitzva... to rebuke him privately and speak with him softly... and he should not speak harshly and embarrass him... But for matters between man and God, if he does not return from his sins, we embarrass him publicly. So for our discussion [of talking during davening],

7 For someone who purposely talks during davening because they do not believe in the tenets of Judaism, and are therefore happy to disturb davening, *Chafetz Chaim* (4:1) says that none of these conditions are required.

certainly one should do like the Rambam instructed. If he refuses to accept the rebuke, then we “shush” him. And certainly there are times that one will not be able to fulfill this properly, so every clever person should act wisely. And if he sees that he will cause damage to the ways of the Torah, and will not be able to follow the law, nonetheless one [who does not rebuke the talker], will receive reward for not acting. And all should be based on the eyes of a wise and God-fearing man.

Rav Vosner understands the *Shulchan Aruch*’s *go’arin bo* – its direction to “shush” the talkers – as part of the mitzva of *tochacha*, giving rebuke, and therefore its rules should follow the rules of *tochacha* as defined by the Rambam in *Hilchos Deos*. At first glance, one might be tempted to think that Rav Vosner is simply ruling that one may not “shush” a person talking during davening if it will embarrass him. However, Rav Vosner assumes the reader’s understanding of the Rambam, and if we properly understand the Rambam’s approach to *tochacha*, we will see that Rav Vosner actually endorses “shushing” even if it would embarrass the person being “shushed”.

Would the Rambam Allow Embarrassing a Talker?

If we take a close look at the Rambam’s approach to rebuking or embarrassing a sinner – quoted above by Rav Vosner – we will see that it appears to be riddled with contradictions.

First, in *Hilchos Deos* 6:7-8, the Rambam writes:

הרואה חברו שחטא או שהלך בדרך לא טובה מצוה להחזירו למוטב ולהודיעו שהוא חוטא על עצמו במעשיו הרעים שנאמר (ויקרא יט יז) “הוכח תוכיח את עמיתך”. המוכיח את חברו, בין בדברים שבינו לבינו, בין בדברים שבינו לבין המקום, צריך להוכיחו בינו לבין עצמו. וידבר לו בנחת ובלשון רכה ויודיעו שאינו אומר לו אלא לטובתו להביאו לחיי העולם הבא. אם קבל ממנו מוטב ואם לאו יוכיחנו פעם שניה ושלישית. וכן תמיד חייב אדם להוכיחו עד שיכהו החוטא ויאמר לו איני שומע... המוכיח את חברו תחלה לא ידבר לו קשות עד שיכלימו שנאמר (ויקרא יט יז) “ולא תשא עליו חטא”... מכאן שאסור לאדם להכלים את ישראל וכל שכן ברבים.

One who sees his friend sin or go in the wrong direction, it is a mitzva to return him to the good and to inform him that he sinned against himself with his bad ways, as it says “surely rebuke your neighbor”. One who rebukes his friend - whether regarding issues between the two of them, or regarding issues between him and Hashem – he must rebuke him privately. He should speak to him softly and let him know that the one rebuking

is only doing so for the benefit of the sinner to bring him to Olam Haba. If the sinner accepts, then good, but if not then he should rebuke him a second and third time. Always, a person is obligated to rebuke until the sinner hits him and says "I'm not listening" ... One who rebukes his friend, at first should not speak harshly and embarrass him as it says (Vayikra 19:16), "do not bear upon him a sin" ... from here we learn that it is prohibited to embarrass a fellow Jew, and certainly not publically.

The Rambam seems to be saying that the purpose of the mitzva of *tochacha* is to help your fellow Jew improve; to "help him for his good to bring him to *Olam Haba*." It is obvious then, that it would be counter-productive to publicly embarrass the sinner while offering rebuke, and if the sinner refuses to listen, there would be no reason to continue. But in 6:8, the Rambam seems to completely contradict this approach:

במה דברים אמורים בדברים שבין אדם לחברו. אבל בדברי שמים אם לא חזר בו בסתר מכלימין אותו ברבים ומפרסמים חטאו ומחרפים אותו בפניו ומבזין ומקללין אותו עד שיחזר למוטב כמו שעשו כל הנביאים בישראל:

And when do we say this [that one should not embarrass his friend while rebuking him]? This is regarding issues between a person and his friend. But for issues regarding heaven, if he refuses to change when rebuked privately, we embarrass him publicly and publicize his sin and curse him to his face and degrade him and curse him until he returns to good, just like the prophets did for Israel.

There are numerous questions that can be asked about this Rambam:

1. If the purpose of the mitzva of *tochacha* is to help your friend improve, and public humiliation is counter-productive to that goal, why would you ever publicly humiliate a sinner?
2. Why would you need to begin by giving *tochacha* quietly, and only if the sinner doesn't listen, do you embarrass him publicly?
3. Perhaps the most glaring question: What happened to the *issur* of *malbin p'nei chaverio*? In 6:7, the Rambam presents the prohibition of embarrassing a Jew, and learns it from *lo sisa alav chet* - that even when giving *tochacha*, the Torah says you may not embarrass a Jew. Yet in the very next *halacha*, 6:8, the Rambam says that for sins *bein adam lamakom* - which is many if not most of the *aveiros* that people do - one is obligated to embarrass the sinner! Hasn't the Rambam contradicted himself from one *halacha* to the next?

4. Why would there be a difference between *bein adam lichaverio* and *bein adam lamakom*? Both categories are *mitzvos Hashem* – shouldn't the goals and rules of *tochacha* be the same for both?

Rav Eliezer Chazan, a great Turkish *talmid chacham* (1790-1823) in his *Amudei He'arazim* (37:4)⁸ answers these questions based on the *Yereim*. In *Sefer Yereim* (*siman* 37), Rav Eliezer of Metz (one of the *Ba'alei Hatosafos* who was twenty years older than the Rambam) also presents the *halacha* that one must start *tochacha* in a way that does not embarrass the sinner to avoid *malbin pinei chaveiro*, but if that fails and the only way to stop his sinning is embarrassing him, then:

אבל אם לא תוכל להפרישו מן האיסור אלא אם כן תביישנו יש לך רשות לביישו ולהוכיחו כי אין חכמה ואין תבונה לנגד ה'. כל מקום שיש בו חלול ה' אין חולקים כבוד לרב.

But if you are not able to stop him from sinning without embarrassing him, then you have permission to embarrass him and rebuke him, because "there is no wisdom and no counsel and no insight that can prevail against Hashem." And anywhere there is chillul Hashem one does not give honor even to one's rabbi.

In other words, the obligation to rebuke a sinner contains two goals. The first is to help the sinner improve, and the second is to prevent the *chillul Hashem* that

8 I have a close family relationship with this *sefer*. My grandfather, Rav Menashe Raphael Lehmann *zt"l*, was a collector and publisher of rare *sefarim*, and was also active in business in Africa, Israeli politics, and the archaeological field of Egyptology. For all of the above reasons, from 1977-1980 Menachem Begin sent my grandfather on numerous diplomatic and academic trips to Egypt together with other rabbis, academics, and diplomats, as part of the trust-building that would ultimately culminate in the Camp David Accords. My grandfather spent most of his time in Egypt frantically trying to salvage as much of the Torah and historical legacies as possible from and for the dwindling Egyptian Jewish communities of Cairo and Alexandria. As part of his efforts, he met with the community of refugees from Alexandria living in Paris. One of the leaders of the community, Dr. Yaakov Chassun, showed him an old manuscript from Alexandria, which he had believed to be an Egyptian commentary on the Rambam. My grandfather immediately recognized that it was actually a very rare commentary on the *Sefer Yereim* of Rav Eliezer of Metz, full of deep *lomdus*, *chidushim*, and important *piskei halacha*. After learning much of the manuscript, my grandfather realized that this was the only manuscript ever written of *Amudei He'arazim* by Rav Eliezer Chazan, which is quoted by many of the Sephardi *poskim* of Israel from Rav Chazan's time. Rav Eliezer Chazan was the son of Rav Yosef Refael Chazan (1741-1820), the Rov of Izmir, Turkey and author of *Shu"t Chikrei Lev*, who moved with his family to Yerushalayim and became the *Rishon Litzion*, the leading Sephardic Rabbi in Israel. His son, Rav Eliezer, was a great *ga'on*, who tragically died at the age of 33. Rav Eliezer Chazan had but one copy of his magnum opus, *Amudei He'arazim*, which he bequeathed to his son, who later became the Rov of Alexandria and brought the manuscript with him. My grandfather's Manfred and Anne Lehmann Foundation published the *sefer* for the first time in 1980, with the help of scholars from Rav Yaakov Hillel's Ahavat Shalom.

is generated when a community allows its members to sin unprotested. And while ideally one should try to accomplish both goals, if the *mochiach*, the one rebuking the sinner, is unable to help the sinner want to improve, he must resort even to embarrassing the sinner to accomplish the second goal of preventing *chilul Hashem*. And preventing the *chilul Hashem* caused by public sin, says the *Yereim*, overrides the prohibition of *malbin pinei chaveiro*.⁹

Rav Eliezer Chazan suggests that the Rambam follows the approach of the *Sefer Yereim*. One must avoid embarrassing a fellow Jew when giving *tochacha*, but if that cannot be done, one must even embarrass him to prevent the *chilul Hashem* of public uncontested *aveiros*.¹⁰

Rav Chazan further explains why the Rambam presents different rules for *bein*

9 There is a *Sefer Chasidim* (413) that is sometimes quoted as disagreeing with the *Yereim* (and perhaps the Rambam), saying that if an offender won't be receptive to the rebuke, it is better not to rebuke. This is based on the first line of that *Sefer Chasidim*, where he says, "*mi sheyodea shelo yikablu divarav ein lihocheach*" – one who knows that his words will not be accepted should not rebuke. At the end of the paragraph, however, the *Sefer Chasidim* elaborates: "*im yochichenu yisni'enu... v'gam yinkom ad sheyavo liyidei ra yoser, ein lihochicho*" – if he rebukes [the sinner], he will hate him and also take revenge against him until it comes to more evil, don't rebuke him. In other words, the point when you stop rebuking is not if the sinner won't take the words to heart. The point when you stop is if more *aveiros* come from the rebuke rather than fewer. It seems clear, according to the *Sefer Chasidim*, that if the rebuke will be effective in reducing the amount of *averia* (and *chilul Hashem*) by giving his rebuke, he must rebuke even if will not convince or win over the heart of the sinner. This is entirely consistent with the position of the *Yereim* and Rambam.

10 The *Magen Avraham* (608:3) seems to follow this approach. The *achronim* give other explanations for why the Rambam would rule that if a person doesn't accept *tochacha*, you still yell at him and try to force him to stop the *averia*. Each approach will have slightly different applications in *halacha*.

The *Maharam Shick* (OC 303) says that the two reasons to rebuke a person are the obligation of "*hocheach tochiach*" to rebuke, and the concept of *kol yisrael areivim zeh bazeh* (*Sanhedrin* 43b and *Sotah* 37b); that at *Har Gerizim* and *Har Eival* the Jews accepted upon themselves to guarantee all other Jews' performance of the *mitzvos*. The *Maharam Shick* says that for this reason, one should always start *tochacha* quietly and privately in a way that the sinner would not feel threatened or embarrassed. If the sinner refuses to change, then it becomes impossible to fulfill the the *mitzvah* of *tochacha*. Nonetheless, one still has the obligations that come from *arvus*, the responsibility that every Jew has to guarantee that each Jew is following the *mitzvos* of Hashem. If one has the ability to prevent a sin by publicly shaming the sinner, the mandate of *arvus* would require him to do this. The *Chafetz Chaim* (4:7) seems to say that the Rambam holds that you would embarrass a person only if the person regularly violates a prohibition that everyone knows is forbidden, because he is not included in the prohibition of embarrassing a fellow Jew. Everyone else, however, you would not be allowed to embarrass. According to Rav Chazan, you would only embarrass a person to get him to stop a public *aveira*. According to the *Maharam Shick*, you would embarrass a person to get him to stop any *aveira*. According to the *Chafetz Chaim*, you would embarrass a person to get him to stop an *aveira* that everyone knows is prohibited (or if it's a person who does other *aveiros* that everyone knows is prohibited.) So according to all of these *achronim* you would embarrass a person who is talking in shul and disrupting davening, if necessary.

adam lichaveiro and bein adam lamakom. He says that in fact there is an obligation to embarrass a person to prevent the *chilul Hashem* that comes from one who does *aveiros bein adam lichaveiro* and refuses to listen to rebuke, but that is not what the Rambam is talking about. The *aveiros bein adam lichaveiro* that the Rambam is discussing are really just situations in which a person is being rude, though he's not actually doing an *aveira*. But if the person is actually doing an *aveira bein adam lichaveiro*, then one would be obligated to embarrass him publicly, just like for an *aveira bein adam lamakom*.¹¹

From this, it emerges that according to the Rambam too, one should “shush” someone talking during davening, provided that it is done correctly. First, a person should ask him to be quiet in a way that would not embarrass him, and if that doesn't work, a person should ask him to be quiet even in a way that would embarrass him.

But Why Does it Seem that We Only Give *Tochacha* for Talking During Davening?

Based Rav Eliezer Chazan's explanation of the Rambam, it should follow that any time a person sees a fellow Jew doing an *aveira* in public, he would be obligated to rebuke the sinner even to the point of embarrassing him. In our society, that is definitely not done, so why should “shushing” talkers in shul be any different?

In general, when it comes to most *mitzvos*, the *poskim*¹² advise serious caution and forethought prior giving *tochacha* for two main reasons. First, if the sinner will not listen to the *tochacha*, then the *gemara* says in *Beitza* 30a, *mutav sheyihu shogigin v'al yihu mezidin*, it is better not to say anything so that he will only be performing the sin out of ignorance, and not out of defiance. Second, if when a person gives *tochacha*, he embarrasses or angers the sinner, it might lead him to do more *aveiros* and create more *chilul Hashem* either by lashing out at the one giving *tochacha*, or perhaps by doing more of the sins that he is being rebuked for. Or worse – the embarrassed sinner might start *machlokes* and unrest within the community.

When it comes to talking during davening, the first caution surely does not apply, as nearly everyone knows that it is forbidden to talk during davening, and almost every rabbi has spoken publicly about this prohibition numerous times, so one cannot say *mutav sheyihu shogigin*. The second reason for caution, however, may

11 See *Minchas Chinuch* (240:1) who gives a similar answer.

12 See for example *Sefer Chasidim* (413), *Magen Avraham* (608:3), *T'shuvos K'sav Sofer* (O"H 47 and 57), *Mishna Brura* (608:6), et. al.

apply. If embarrassing the person will not stop his behavior, and potentially push the person toward doing more *chillul Hashem* – either by lashing out in a prohibited way at the one “shushing” by starting a fight in the shul – either during davening or later on – or if the person is shaky in his commitment to *mitzvos* and the embarrassment might push him away from observance, then one should not embarrass him. If the talker cannot be convinced to stop, and embarrassing him will not reduce the amount of *chillul Hashem*, then there’s no reason to “shush”, and one would be prohibited from embarrassing the talker. This is surely what Rav Vosner means by, “and if he sees that he will cause damage to the ways of the Torah, and will not be able to follow the law, nonetheless one [who does not rebuke the talker], will receive reward for not acting.”

But because of the public nature of the shul, *averios* done there *chas vishalom*, such as talking during a time or about a matter that is prohibited, generate a greater *chillul Hashem* than many *aveiros* done elsewhere. The shul, in many cities, is one of few places where the community comes together en masse forming one visible community unit. If someone comes to our shul on Shabbos morning and sees a community unit that is davening seriously, they could likely say to themselves, “this is a community that takes its *avodas Hashem* [service of God] seriously.” *V’eyn licha kiddush Hashem gadol mizeh* – there is no greater *kiddush Hashem* than that. But if, *chas vishalom*, someone comes to our shul and sees people talking at times that are prohibited, or speaking about anything other than *Torah*, *tefilla*, or *chesed*, they might say to themselves, “this is a community that treats *avodas Hashem* as a joke.” *V’eyn licha chillul Hashem gadol mizeh* – there is no greater *chillul Hashem* than that, and one can only fear for how much more difficult it becomes for individuals and families to grow in their commitment to Torah if they feel that their community treats *avodas Hashem* as a joke, *rachmana litzlan*. So even though we are often hesitant to give *tochacha*, because of the pronounced *chilul Hashem* that could come from talking in shul, “shushing” can be necessary, provided that the “shushing” itself doesn’t create more *chilul Hashem*.

Similarities and Differences Between the Two Approaches

To recap, we have discussed two reasons why the *halacha* is *goa’rin bo* - to “shush” - even if it means embarrassing the person talking. The approach of the *Vavei Amudim* (followed by many *poskim*) is that talking harms the other *mispalelim*, either by preventing their *tefilos* from being answered, or by disturbing their *kavana*; and one can embarrass someone if necessary to prevent him from harming a fellow Jew. Rav Vosner presents a different approach, that *go’arin bo* is a directive to perform the

mitzva of *tochacha*, to try to stop a person from sinning, which if can't be done calmly in a way that wins his heart, must even be done harshly to prevent *chilul Hashem*.

In most cases, both the *Vavei Amudim* and Rav Vosner would agree about how and when “shushing” talkers would be recommended. First, encourage people not to talk in a way that does not embarrass them,¹³ and if that doesn't work, “shush” them even in a way that would embarrass them.

One case where the two approaches diverge could be if a conversation in shul is limited to one or two people and is not bothering anyone, as it is possible that those who follow the approach of the *Vavei Amudim*, would not recommend “shushing” them. While neither the *Vavei Amudim* nor the *poskim* who quote him are explicit about this, if nearly the entire shul is davening quietly, and the shul feels like a serious *makom tefila*, it is hard to imagine that a single quiet conversation would prevent the whole shul's *tefilos* from ascending to *shamayim*. And if the conversation is not bothering anyone's *kavana* or harming anyone's *kabbalas hatefilos*, there would be no reason to embarrass the talkers. But, according to Rav Vosner, since the “shushing” is to stop the sinning, it doesn't matter whether the talking is bothering anyone or not – the obligation of *tochacha* should require the talkers to be “shushed.”

Because of the severity of the prohibition of *malbin pinei chaveiro*, it would make sense to be “*meikil*” for the *Vavei Amudim* and only “shush” if a conversation is bothering *mispaelim* or making the shul feel like it's not a serious *makom tefilla*.

Guidelines for “Shushing”

Based on our *halachic* analysis, I would like to suggest the following guidelines for “shushing” talkers in shul:

- 1. The Rov's role:** The shul Rov should speak about the importance of not talking during davening – regularly – based on the needs of the community. For a quiet shul, it might be once a year, and for a noisier shul more often. This is the least confrontational way to remind the *mispaelim* about the importance of not speaking during davening.
- 2. Soft encouragement from a friend:** If an individual struggles either to remember or to follow the Rov's encouragement not to talk during davening, the person's Rov, Rebbi, or close personal friend should speak to him, privately and not during

13 In the *Vavei Amudim*'s approach, being sure that the embarrassment is necessary was one of the *Chafetz Chaim*'s pre-conditions to embarrass a person to prevent harm, discussed above. In Rav Vosner's approach, trying first in a non-embarrassing way is consistent with the Rambam and *Yereim*'s primary goal of *tochacha* - to inspire a person to improve - which can usually only be achieved if you do not embarrass the person.

davening, to remind him of the importance of not talking during davening. The person who is speaking to the talker should think carefully (and seek advice if necessary) about how to encourage him in a way that he will be receptive.

3. **Who should “shush?”** Every shul should appoint people who are authorized to ensure quiet and decorum in the shul.¹⁴ In my opinion, the Rov or leadership of the shul should appoint people with the *midos* to perform this task effectively – but it should not be the Rov himself, as it is critically important to minimize any potential confrontations between the Rov and his *ba'al habatim*. It should be made very public by the Rov who these authorized people are, and what their expected role is. If they need to “shush” someone, it is important that it comes across as community policy, not a personal attack. As mentioned above, one of the *Chafetz Chaim's* criteria for allowing embarrassing a person to prevent him from harming another is that the person doing the embarrassing must have *kavana lito'eles*, intention to help the situation, and not be acting upon animosity toward the talker. This is critically important in determining who does the “shushing.” Often “shushers” won’t “shush” their friends, but will “shush” people they don’t really like that much. This is wrong, as it is less likely that that one will have *kavana lito'eles* if he is “shushing” someone he doesn’t like. Also, according to *Chafetz Chaim* (10:3), the “shushers” should not be people who talk during davening themselves. If they themselves are talkers, it’s unlikely that their “shushing” would be with a *kavana litoeles*.
4. **Blanket “shushing”:**¹⁵ If there is talking during davening that disturbs other people or makes the shul feel like it is not a serious *makom tefilla*, the appointed people should first do a “blanket shush” rather than a “targeted shush.” A “blanket shush” is a softer and longer “shush” with no eye contact, that implies, “it is generally a bit noisy in here,” rather than the “targeted shush”, that implies, “hey you – be quiet.”
5. **Targeted “shushing”:** If the “blanket shush” does not work, then the appointees must, depending on the part of davening and what will be least confrontational, either walk over to the talker and quietly ask him to be quiet, or do a “targeted

14 As quoted above from *Vavei He'amudim* (end of Ch. 10), *Elya Rabba* 124:12, *Mishna Brura* 124:27, *Yechaveh Da'at* 3:16, *et al.*

15 As comical as it sounds, there are different types of “shushes” which have different degrees of embarrassment to the person being “shushed”. It is worthwhile for us to get into the weeds of “shush”-style analysis for a few moments in order to minimize embarrassment as much as possible.

shush” where the talker knows they he specifically is being asked to quiet down.

6. **We might need *you* to do some “shushing”:** If a shul does not have people appointed to ensure quiet and decorum in the shul, then the obligation to “shush” would fall on anybody, provided – and these are two important conditions – that they have the temperament to “shush” without causing unnecessary embarrassment, and have *kavana lito’eles*, the intention to help the shul, not to hurt the person talking, *chas vishalom*. *U’vimakom she’ein anashim*, if no one steps up to help quiet down the shul, *hishtadel lihyos ish*, you are obligated to do it.
7. **When not to “shush”:** Under any of three conditions, talkers should not be “shushed,” if there is a concern that the “shushing” may embarrass the talkers:
 - If the conversation is not bothering others, and it does not take away from a shul feeling like a serious *makom tefilla*.
 - If it won’t be effective. If the talkers will continue to talk regardless of the aggressiveness of the “shushing,” then there’s no point in embarrassing the talkers. Of course, since the shul has the authority to expel someone who is disruptive, this should rarely be relevant.
 - If “shushing” a person would start a serious fight, either during davening or afterwards, or if the confrontation would cause other public *aveiros* resulting in a *chilul Hashem*.

All You Need is Love

In conclusion, it is challenging for a shul to strike the right balance of seriousness and tolerance, care for the *kedusha* of one’s relationship with Hashem and care for the *kedusha* of another Jew’s feelings. But all you need is love. The more one genuinely loves the other Jews in the room, the less he will talk during davening in a way that disturbs them. The more one genuinely loves the other Jews in the room, the less he will rebuke them in a way that offends them. The more one genuinely loves the other Jews in the room, the less he will be offended if he is given *tochacha*, and the more open he will be to improvement. *Kamayim hapanim lapanim, kein lev ha’adam la’adam*.

Shushing is Nefarious

DANIEL NAGEL



I was once *davening shacharis* at a local shul and I was saying the words of *pesukei d'zimra* out loud. Suddenly the person on my right shushed me very loudly. He was having trouble hearing the *chazan* because of my davening. Immediately I felt the eyes of many people in the room turn to see what was going. I felt my face get hot and I averted my eyes from looking up because I didn't want to look at anybody who was staring at me. At the same time, I felt anger and hatred rise inside of me against the person who shushed me. My mind started to race with angry questions. Who does he think he is? Why is making such a big deal about this? Couldn't he have done this in a different way?

Shushing in shul is one of those topics that gets people very animated and agitated. In this article, we will argue that notwithstanding the potential¹ good intentions² of the shusher to uphold the proper decorum in shul³ or stop the talker

1 In this article, we will assume that the shusher has good intentions. It should be noted that there is another subset of shushers who have other intentions. "*L'toeles*" (loosely translated for a good reason, purpose, and with measure) is a critical criterion in the *sugya* of *tochacha*. Any other motivation that arises when giving *tochacha* is inappropriate and frowned upon.

2 See blogsite www.shulpolitics.com post by Mark Frankel titled Is Shushing Worse than Talking in Shul dated October 25, 2018 which lists three reasons shushers shush: "eliminating something that is disturbing or distracting to us, preventing the talker from committing a transgression, helping the shul to have proper decorum."

3 Sincere attempts for proper decorum include shushing talkers as well as parents whose children are disturbing the service. See article by Dr. Evan Stein, father of an autistic child, The Pain of Shushing: Parenting, Synagogue, and Inclusion dated October 25, 2018 (www.jewishweek.com). In a moment of frustration, Dr. Stein writes, "Over the years, we tried bringing Joshua into the sanctuary, but he has a very hard time sitting still and being quiet. He fidgets, rocks and talks to himself. And so, we were shushed and felt shamed... Shushing is chastising, an accusation... They [shushers] are shushing me, the parent! When they shush, they say, 'Can't you control your son? Can't you DO SOMETHING?'. Shushing makes parents who are trying to raise children in our shul feel shame."

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from sinning, there is no place for shushing during *davening* because it causes public embarrassment and is an ineffective practice.

Public Embarrassment

The *mishna* in *Pirkei Avos* has very harsh words regarding someone who embarrasses another person in public.

רבי אלעזר המודעי אומר... המלבין פני חברו ברבים... אף על פי שיש בידו תורה ומעשים טובים, אין לו חלק לעולם הבא.
Rabbi Elazar of Modi'in says... one who embarrasses the face of another in public... even though he has Torah knowledge and good deeds, he has no share in the world to come. (Avos 3:11)

Even if the talker is being disruptive to the *davening* service and the shusher is upholding the shul decorum by publicly shushing and shaming the talker, the shusher, according to the *mishna*, appears to forfeit his *olam habba*.

But the *Shulchan Aruch* says that I Should Shush Him!

Many people like to point to *Shulchan Aruch, Orach Chaim* 124:7 as the justification for shushing talkers during *davening*.

לא ישיח שיחת חולין בשעה שש"צ חוזר התפלה ואם שח הוא חוטא וגדול עונו מנשוא וגוערים בו.
A person should not engage in idle speech during the repetition of the silent Shemona Esrei.⁴ If he talks, it is a grave sin and his sin is too great to bear, and we should rebuke him.⁵

4 Note that the *Shulchan Aruch* limits its description of talking during *davening* as grave sin to only talking during the repetition of *Shemona Esrei*. Obviously talking during other parts of *davening* is problematic as well, but given the severity of the prohibition of embarrassing someone publicly, we should tread carefully when suggesting a practice like shushing. Even those who believe shushing should be encouraged (which this article does not), perhaps it's only at select places in *davening*.

5 The exact definition of "*go'arin bo*" is unclear. We have translated it here as "rebuke" him. Others have suggested that the correct translation is "embarrass him". If we look in the other places the *Shulchan Aruch* uses the words "*go'arin bo*," we can understand from context that it is difficult to translate as "embarrass him." In *Yoreh Deah* 340:9 the *Shulchan Aruch* says that if a mourner fails to tear *kriya* properly (for death of mother and father one should rend the all his garments until he bares his chest) he has not fulfilled his obligation "*v'goarim bo*." It seems very unlikely that in this case the *Shulchan Aruch* is telling us to embarrass the mourner. It clearly means we should rebuke the mourner and tell him that he is doing it incorrectly. Embarrassing him has no place in the discussion. In *Even Ha'ezer* 71:1, the *Shulchan Aruch* says that a father must support his children and if he doesn't want to "*go'arin bo, u'machlimin oso, u'potzrin oso*." Everyone agrees "*machlimin*" means to embarrass

A precursory read of this *halacha* may seem to support the shusher's position, but an important question needs to be asked. When does the rebuke take place?⁶ Is it in the heat of the moment when the greatest public embarrassment can occur, or only after *davening* is over, in private and not in front of the entire community?

From the context of the *siman*, it is not clear whether the rebuke is to take place during *davening* or after. Perhaps we can find other places where the word *go'arin bo* is used and learn from context the implication.

Proof That “Go'arin Bo” Refers To She’lo B’shas Ma’aseh (After Davening)

In *Shulchan Aruch, Orach Chayim* 142:1, the Rema codifies the following *halacha* regarding a *ba'al koreh* who makes a mistake:

קרא וטעה אפי' בדקדוק אות אחת מחזירין אותו: הגה וכן דין החזן הקורא ודוקא
שנוי שמשנתה ע"י זה הענין אבל אם טעה בנגינת הטעם או בניקוד אין מחזירין אותו
אבל גוערין בו.

Shulchan Aruch: If the ba'al koreh read and made a mistake, even with the pronunciation of one letter, we require him to read it again. Rema: Specifically a change through which the meaning is altered. But if he erred in the melody or vocalization, we do not make him repeat, but rather rebuke him.

In a footnote to his article titled “Correcting the *Ba'al Koreh*: Punctilious Performance or Public Embarrassment,” Rabbi Moshe Rosenberg astutely comments that “*go'arin* means, that after the reading, the Rav or other figure of authority must chastise the reader, and ensure that the error will not recur. *Machazirin* means that a correction must be made on the spot, and, if necessary, the reader who has read on must be sent back.” When the Rema says we rebuke the *ba'al koreh*, it means he is not sent back, and allowed to continue reading. The Rav does not interrupt the *laining* to “rebuke” the *ba'al koreh* but rather speaks with him after he finishes to ensure the mistake doesn't happen again.⁷

him. If “*go'arin bo*” means embarrass him, the *Shulchan Aruch* would be repeating the same thing twice. Rather, “*go'arin bo*” seems to mean rebuke him.

6 The commentators on the *Shulchan Aruch* do not discuss when the *go'arin* should occur. The *Mishna Brura* (142:1) quotes the *Kol Bo* that we have seen shuls destroyed because of the sin of talking during *chazaras ha'shatz* and recommends that appointing prominent men to oversee this issue. Glaringly missing is the discussion of when should these men be approaching the talkers: during *davening* or after *davening*?

7 See *Journal of Halacha and Contemporary Society* Volume LVIII page 18 footnote 32. Rabbi Moshe Rosenberg supports his reading by sourcing *Eshel Avraham* and *Teshuva Afarkasta D'anya II, Orach Chaim* no. 23. He also

We see from *siman* 142:1 (the *halacha* of correcting a *ba'al koreh*) that *go'arin bo* means to chastise afterwards (and not in public); so too, in *siman* 124:7 *go'arin bo* refers to chastising the talker after davening and not in public.⁸ Based on this understanding, the Shulchan Aruch does not in fact promote the practice of shushing during *davening*, but limits the rebuke to after *davening*.

The Fourth Ye'hareg V'al Yavor

Halacha views public embarrassment as such a grave sin that *Tosafos* in *Sota* 10b suggests that embarrassing someone in public is considered a fourth category of transgressions that a person should be required to give up his life instead of violating. The gemara in *Sota*⁹ 10b says

נוח לו לאדם שיפיל עצמו לתוך כבשן האש ואל ילבין פני חבירו ברבים מנלן מתמה.
It is more amenable for a person to throw himself into a fiery furnace if faced with the choice of publicly embarrassing another or remaining silent even if it leads to being burned, and not humiliate another in public. From where do we derive this? From Tamar.

Tosafos asks why this prohibition isn't included in the list of *ye'hareg v'al ya'avor* sins that are discussed in *Pesachim* 25a and answers that the *gemara* there only lists the prohibitions that are explicitly mentioned in the Torah. *Tosafos* implies that a person should give up his life before embarrassing someone in public.¹⁰

quotes a dissenting opinion by Rabbi Jeremy Wieder which he also found in the *Mekor Chaim*. Rabbi Moshe Rosenberg is of the opinion that the *Mekor Chaim* is a minority view.

8 Reading *go'arin bo* this way avoids creating a conflict between this *halacha* and the severe prohibition of embarrassing someone in public. If one would read it as "rebuke the talker in the moment," there would be a very difficult question that would need to be answered. How can *halacha* require you to chastise someone publicly which will embarrass him when embarrassing someone publicly is considered such a grave sin?

9 The same *gemara* is also found in *Brachos* 43b and *Bava Metzia* 59a

10 It is interesting to note that the source of this *halacha* is from the story of Yehuda and Tamar. In that story, Tamar had every right to tell the world about Yehuda's action and protect her life, but risked her life to avoid embarrassing him. This source is a counter-argument to those who justify their public shushing practice by quoting stories of great *rabbanim* who claimed communities were destroyed because of talking in shul. According to *Tosafos*, we must give up our lives if faced with the choice of public embarrassment or death. It appears that shushing in shul, in a way that publicly embarrasses someone, under all circumstances is prohibited, even if the *davening* is being disrupted. This article is not suggesting that talking is permitted or that talking in shul should not be addressed accordingly. It is a very serious matter and deserves a serious, thoughtful approach to resolve it. However, embarrassing someone publicly is a serious matter and should not be breached lightly. It is possible that communities were destroyed because of talking in shul but that is not a *heter* to be *malbin p'nei chavero b'rabim*. It is *ye'ahareg v'al ya'avor*. Resources and thought need to be put into creating a structured

In fact, the whole mitzva of rebuking is only to be done in a way that doesn't lead to embarrassment as Rashi explains on the *pasuk*:

לא תשנא את-אחיק בלבבך הוכח תוכיח את-עמיתך ולא-תשא עליו חטא.
Don't have your brother in your heart, rebuke your fellow and don't harbor sin over him. (Vayikra 19:7)

Rashi explains the juxtaposition between the two parts of the *pasuk* teaching against rebuking in a way that leads to public embarrassment that will carry a sin.

Is Public Embarrassment Permitted to Prevent a Sin?

Many *poskim* discuss¹¹ public embarrassment as a last resort to protect *chillul Hashem* from a public sin that goes undisputed. However, many of them limit the *heter* significantly and only permit it in cases where the public shaming will lead to acceptance of the rebuke.¹² In fact, the *Sefer Chasidim* (*siman* 413) goes as far to say that even in a case of public sin, if the offender won't be receptive to the rebuke, it is better to not rebuke.

אם היה איש אחר שאם יוכיחנו ישנאנו וינקום ממנו אין להוכיחו.
If the man is not a friend that if you rebuke him he will hate you and take revenge against you, don't rebuke him.

As many people have witnessed and experienced themselves, shushing a talker does not work. Rabbi Jack Abramowitz, a self-proclaimed “recovering shusher,”¹³ wrote an article called “The Cycle of the Shush,” published on OU.org on February 8, 2013, describing the Cycle of the Shush.

For the most part, however, when you shush a talker, all you accomplish is creating a confrontation. This also leads to what I call “The Cycle of Shush.” What’s The Cycle of Shush? You see, most people are human. As such, they tend to slip up from time to time. Even those who are generally careful not

program that will reduce talking in a way that does not embarrass someone publicly.

11 See Magen Avraham (608:3) quoting a *Smak*.

12 Hence, we find many public sins occurring that we do not openly rebuke because we unfortunately live in a generation where *tochacha* leads to hatred rather than repentance. Our generation has lost both of art of giving *tochacha* and receiving *tochacha*.

13 Rabbi Jack Abramowitz opens up his article with the following words: “There are two types of congregants: those who talk and those who shush. I’m a shusher. More specifically, I’m a recovering shusher. I’m trying to suppress my urge to shush because, honestly, it can do as much harm as good.” See full article at the following link: <https://www.ou.org/life/inspiration/cycle-shush-jack-abramowitz/>

to talk in shul may make an occasional mistake. Talkers take great pleasure in shushing a shusher. What ends up happening is the shusher shushes the talker, the talker shushes the shusher, and you end up with an endless shush cycle of shushers shushing talkers shushing shushers. (While all this is going on, others are probably still talking.) Not only can shushing be as disturbing as talking, it becomes a game of one-upmanship. The shushers want to “win”¹⁴ so much that they’ve forgotten their original goal: to create an environment conducive to harmonious communal prayer.¹⁵ A shush-war can be many things, but harmonious it ain’t.”

The reality is that shushing doesn’t work. It’s ineffective. It causes hatred and more divisiveness. So what should a shul do? Are we resigned to accepting talking during davening? Do we have no options?

Practical Considerations

The issue with shushers is not their desire to maintain *davening* decorum. Their passion and energy should be applauded but it needs to be refocused to a more productive and less damaging methodology. It is possible to have a quiet *davening* decorum without violating the prohibition of embarrassing people publicly but it

14 This concept of the shusher “winning” is the essence, in my opinion, of why shushing doesn’t work and is ineffective. It creates a dynamic where the talker feels that he has “lost” to the shusher. The shusher is asserting his superiority over the talker (not necessarily consciously) and the talker, instead of focusing on the fact that the shusher is helping him avoid an *aveira* or that the shusher is trying to maintain decorum so others can daven with *kavanna*, feels that the shusher is pointing out to the whole room how he (the shusher) is better than him (the talker). At this point, the talker’s focus turns to showing how the shusher is “not” perfect or superior to him and it becomes a game of egos and winners and losers. This is the psychology of why the public shush is ineffective and creates more hatred and divisiveness. I want to share a personal story that elicits this point. I was once *davening* in a shul (that was not my usual shul) on Friday night, and I sat next to a very good friend of mine who I had not seen all week. During parts of *kabbalos Shabbos* we were talking. A person sitting two rows in front of us whom I didn’t know very well turned around shushed us. I admit that I was acting inappropriately but I could not stop myself from feeling so much anger at this person for his very public shush. Was he so perfect in everything that he did? For years after, whenever I would see this person engage in any activity, I would ascribe bad intentions to it. I thought of him as a “holier than thou person” who thought he was better than everyone else. Whenever this person would *daven* for the *amud*, I would invariably think about the *halacha* in *Shulchan Aruch* that a person cannot *daven* in a *minyan* where he hates the *ba’al tefilla*. It’s that anger, which almost anyone would feel if they were shushed publicly, which makes shushing ineffective and counter-productive.

15 I have observed “cat and mouse games” where the talker takes on the role as the mouse toying with the cat – the shusher. The talker will stop talking for a period of time and the shusher appears to go back to *davening* but immediately springs back into shushing mode when the talker makes another move. This is another manifestation of the “winning/losing” game that is created between the shusher and talker.

takes time, resources, thoughtfulness, and a committed membership. Shushing occurs when the passion for a quiet davening has no structure to channel the energy appropriately. Below I will list a few ideas that shuls can consider implementing.

- Task Force: Identify a *Davening Decorum* Task Force that will study the issue and recommend a program that communicates on a weekly, monthly, and annual basis to the membership and its guests that this shul is a serious place to *daven*.
- Rav's Drasha: The Rav can dedicate time from his *drasha* to speak about the importance of a quiet *davening*.
- Dedicated and Identified People Acting on Behalf of the Community: A dedicated person or persons should be identified by the Rav as the person who is responsible for *davening* decorum. This person's authority should be described as follows: "The Rav has asked Reuven to oversee the *davening* decorum." This is important because Reuven no longer acts out of self-interest but on behalf of the Rav and the *kehilla*. It removes a lot of the ego and shame that creates the "Shush Cycle" described above. These people should be announced both publicly and identified in the weekly newsletter. It should be publicly acknowledged that this role is undesirable and the people that accept the role only do so out of a sense of service to the community and shul (as opposed to power and control).
- Card Methodology: The protocol would involve handing out a card to those who are *talking* (a non-verbal and less public way of making someone aware).
- Annual Davening Decorum Pledge: The membership can be asked to sign a *davening* decorum pledge which is publicized on a big board in the shul's lobby. Participation in the *davening* pledge should be tracked on a percentage basis for the shul to encourage participation. This pledge should be signed by all members of the family and renewed on an annual basis. Imagine walking into a shul one Shabbos morning and in the lobby there is a big poster board congratulating all the families that have agreed to participate in the *davening* decorum pledge. Next to the big poster is a big red thermometer showing that 75% of the shul membership has signed the pledge and there is a near term goal to reach 100% participation. You pick up the shul announcements and in the thank you section you read that Reuven and Shimon are identified as responsible for the *davening* decorum this week. On the back page of the announcements is a one-page summary of the *davening* decorum initiative that shul is undertaking this year, including a *davening* pledge and a no-shushing policy. The Rav announces prior to his *drasha* that *kiddush* is being sponsored next week in honor of the shul reaching its 75% *davening* pledge threshold and encourages the *kehilla* to continue. This

shul has clearly communicated its commitment to a quiet *davening* and that this atmosphere is the desire of the community.¹⁶

All these ideas create a very clear expectation for everyone that is entering the shul. Over time, members that are uncomfortable with this approach to *tefilla* will self-elect to either *daven* elsewhere or reduce/eliminate their talking. Successful execution of the above suggestions is time consuming and require the focus of a dedicated membership and shul leadership but could be very rewarding.

Final Thoughts

Many educators and *rabbanim* have expressed frustration with this generation's connection to *tefilla*. Part of the reason people talk during *davening* revolves around our struggle to connect to *Hashem* through *tefilla*. This is a sad reality which will not be solved through shushing. Equally important to addressing the “*sur mei'ra*” (creating a structure to ensure a quiet *davening* as discussed above) is the need for our community to focus on “*aseh tov*” (creating educational programs, lectures, and symposiums on connecting to Jewish Prayer in 2019.)¹⁷

16 A shul that puts so much emphasis on this should also consider creating a task force that is dedicated to making members or guests feel welcomed and warm. Such an emphasis on *davening* decorum could make a shul feel cold and unwelcoming.

17 As a final referral, I recommend everyone read Chief Rabbi Jonathan Sacks's introduction to *The Koren Siddur* (Lobel Edition) titled Understanding Jewish Prayer which is the most beautiful and insightful essay I've ever read on *tefilla*. It changed my approach to *tefilla* and I've re-read it many times. My favorite quote in the entire essay is the following: “What has prayer achieved? If we have truly prayed, we now know that the world did not materialize by chance... We have climbed the high ladder and have seen... how small some of our worries are. Our emotional landscape has been expanded. We have given voice to a whole range of emotions: thanks, praise, love, awe, guilt, repentance, remembrance, hope. As we leave the synagogue for the world outside, we now know that we are not alone; that God is with us; that we need not fear failure for God forgives, that our hopes are not in vain; that we are here for a purpose and there is work to do.”

Halacha and Machshava



Rabbi David Mahler

Stephen Kirschenbaum

Yoni Tuchman

Henry Manoucheri

David R. Schwarcz

Zac Grodzinski

The Jews In Jest

RABBI DAVID MAHLER



In my first semester of English Composition at YU, I wrote my very first paper and attempted to make a provocative point. I had just seen the movie “Life is Beautiful,” a wonderful film about a young married couple and their child who are taken to a concentration camp during the Holocaust. After they are imprisoned, the father goes to elaborate lengths to keep his son from understanding the truth of their situation. He tells his son that they are competing with others to win an armored tank, and everything from food shortages to tattoos is explained as necessary for participation in the contest. Determined to shelter his son from the horrors of his surroundings, he convinces him that their time in the camp is merely a game. The movie is referred to as a tragicomedy. Awkwardly, one finds oneself often laughing during a Holocaust film.

The thesis of my first college essay was about the power of humor and how even in the most terrifying and horrific conditions, humor can play an impactful role. If humor could help in a concentration camp, it could help anywhere.

In this essay, I’d like to address the topic of humor from a Torah perspective. What is Judaism’s approach to comedy, humor and laughing, and what role can that play in parenting our children?

I will focus exclusively on the positive aspects of using humor in our lives, as the negative role it plays is more clear.¹ Additionally, I will not be discussing *leitzanus*, which is permissible with regards to *avoda zara*, but objectionable otherwise.²

1 See *Pirkei Avos* 3:13 which teaches that frivolity leads to promiscuity and *Maseches Brachos* 31a which teaches that it is prohibited to fill one’s mouth with laughter in this world.

2 In *Mesilas Yesharim* (Chapter 5), Ramchal writes that *leitzanus* is a terrible thing because it minimizes the importance of things we value.

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Rav Shimshon Raphael Hirsch³

As the Jewish people are on the run after escaping Egypt, they are caught between the *Yam Suf* and the advancing Egyptian army less than a week into their journey. *Bnei Yisrael*, understandably scared, incredulously ask Moshe, “*Hamibli ein k’varim b’Mitzraim*, were there no graves in Egypt, that you are bringing us to the desert to die?” Rav Hirsch asserts that this question was asked rhetorically and that it was not a sincere accusation. Rather, he suggests: “This sharp irony, even in a moment of deepest anxiety and despair, is a characteristic trait of the witty vein which is inherent in the Jewish race from their earliest beginnings.” *Bnei Yisrael’s* comment was not one of anger and venom, but rather it was a sort of sarcasm, using humor as a cherished coping mechanism. Humor, Rav Hirsch teaches, is an invaluable method of maintaining one’s sanity in a world replete with tragedy, challenge, struggle, disappointment and agony. It might even be argued that the plethora of Jewish comedians might be a result of the many persecutions our people have faced. One of the ways we continue to go on is with a strong sense of humor.

In our own lives, we must often face hardship and pain straight on. However, a bit of humor, a bit of a “woe is me” attitude, can be very beneficial. From this perspective, the idea that a joke can be crucial to one’s mental health is indisputable. As Rav Hirsch remarks, it has helped the Jewish people for millennia.

Maseches Ta’anis 22a

The *gemara* relates a story about Rav Broka Choza’a who meets Eliyahu HaNavi in a marketplace and asks him to identify people in the marketplace who are destined to be rewarded in the world to come. Eliyahu HaNavi identifies two men in the back of the marketplace who are known to be “*anshei beduchei*” (jokesters/jesters). The reason they will achieve immortality, the *gemara* teaches, is that when they see sad people, they cheer them up, and when they see people fighting, they make peace between them.

From here we see the *chesed* quality of humor. A person can assist others who are down and in need of a bit more happiness in their lives. Some offer assistance through a listening ear or a shoulder to cry on. Others, those blessed with a keen sense of humor, can lift another’s spirits with jokes and humorous comments.

Often the funniest children can be a bit mischievous. They might get in a bit of trouble in school, cracking a joke at an inopportune time or place. However, that child’s amazing skill should never be tempered. They need to learn where and when,

³ *Shemos* 14:11

but realize that this child's skill is a gift *Chazal* endorse. When used appropriately, it has *kedusha* and cathartic powers. Often, laughter is the best medicine.

Maseches Shabbos 30b

After acknowledging that humor offers emotional health to people, another source hints at its practical use, most notably in the area of education and pedagogy. The *gemara* attempts to resolve two statements of *Chazal*, one which seems to say that a student must be very serious and another that learning must be *b'simcha*. One resolution to the contradiction was offered by using the great Rabba as an example. The *gemara* shares an insight into how *shiur* was structured each day. Rabba would begin with a *milsa d'bedichusa* (according to most⁴ a joke or humorous tale) and then start the *shiur* in a serious manner. This *milsa d'bedichusa* would open up the students' hearts to learn. It would help pull them in and make them feel comfortable in the *shiur*. According to Rashi, it would accomplish the goal of opening up their hearts before the serious learning commenced.

A *milsa d'bedichusa* can also be used outside of the pedagogical arena. For instance, part of parenting demands that we have difficult and serious conversations with our children. These conversations can be anxiety causing for both parent and child. Perhaps opening with some sort of *milsa d'bedichusa* would go a long way in terms of putting to ease both parties before a heavier conversation is conducted. Rabba's genius can be used in the classroom, living room and boardroom.

Maseches Avoda Zara 3b

Amazingly, the *gemara* records Hashem's daily schedule. The *gemara* describes what Hashem does during the daytime hours and divides His actions into four three-hour "activities." For the first quarter of the day, Hashem sits and learns Torah. During the next quarter, He judges the world. After *chatzos*, Hashem sustains the entire world and during the last three hours He plays with the *leviasan*. This final activity is obviously the source of much inquiry. In Rav Hershel Schachter's intellectual biography on Rav Soloveitchik,⁵ he cites Rav Soloveitchik as suggesting that the *gemara* is telling us that Hashem "plays" each day for the mitzvah of *v'halachta b'drachav, imatio dei*. The Rav was suggesting that downtime and relaxation are a value. If Hashem does it, we must take the time to do it as well. There is no need to take everything so seriously. In the

⁴ See *Tosafos Yeshanim* (Yoma 9b) who states that the *milsa d'bedichusa* was a comment that was *aggadic* in nature, rather than humorous.

⁵ *Nefesh HaRav*, p. 69

eyes of Rav Soloveitchik, humor is a way of emulating God.

One takeaway from this approach is that humor represents one's ability to take proper perspective on certain matters. Significance is both absolute and relative. It is absolute because certain aspects of our lives are sacred. However, they are relative because important things matter more when other things matter less. If everything is serious and iron-clad in one's home, children will either become confused about what their parents value most, or be raised to believe that fun and playfulness is not a part of a Jewish home.

Dovid HaMelech famously writes in *Tehillim* (126:2) that it will only be in the future when our mouths will be filled with laughter. Though *Chazal* at times looked askance at joking and humor, as we've seen they also clearly see the benefits. May we be blessed with the foresight, intuition and wisdom to pay careful attention to the lessons above so that we may one day soon merit to see the day when *yimalei schok pinu*.

Arka'os and Resolving Disputes in Civil Court

STEPHEN KIRSCHENBAUM



Unlike in many previous generations, Jews no longer live in fully autonomous communities in the Diaspora. As such, the desire to bring court cases to civil courts has grown stronger. This article seeks to discuss when it is necessary for a dispute to be brought before a reputable *Beis Din* and when it is permissible, and even encouraged, for the matter to be resolved in civil court.

Source of the Prohibition

The *Chumash*, in introducing monetary laws, commands, “And these are the laws that you shall present to them.” (*Shemos* 21:1) The *gemara* in *Gittin* 88b interprets “them” as referring to ordained *dayanim* (rabbinical judges), whereas one may not approach “non-Jews or unqualified Jews (laymen)” to adjudicate a case against a fellow Jew. The *gemara* adds that even if the non-Jewish courts judge in accordance with the *halacha*, we nevertheless may not submit our internal disputes to them. The *Tashbetz* 4, *Tur HaShelishi* 6 rules that this prohibition precludes even the use of non-Jewish judges who do not practice idolatry, such as Muslims.

Although the *gemara* delineates two groups of unacceptable judges, non-Jews and Jewish laymen, in the same sentence, The Ramban (*ibid.*) notes a critical distinction between them: “Even though *Chazal* have mentioned these two groups together, there is a significant difference between them. If the two litigants consent to come before unqualified Jews for [monetary] judgment and accept them as judges, it is permissible to do so and these litigants must abide by the unqualified judges’ decision. It is forbidden, however, to be judged by non-Jewish judges under any and

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all circumstances, even if the non-Jewish regulations are identical to our laws.”¹

Nature of the Prohibition

The Rambam (*Mishneh Torah, Hilchos Sanhedrin, 26:7*) and *Shulchan Aruch* (CM 26:1) assert a remarkably harsh condemnation of those who adjudicate their disputes in non-Jewish courts: “Whoever submits a suit for adjudication to non-Jewish judges... is a wicked man. It is as though he reviled, blasphemed, and rebelled against the Torah of Moshe.”

Why do they include such a sharp exhortation in their legal codes? Seemingly, this sheds light on the nature of the prohibition against being judged by non-Jewish courts; by doing so, the litigants implicitly reject the Torah legal code in favor of a foreign legal system. This analysis explains an intriguing ruling in the *Shulchan Aruch* (CM 26:2): “If the non-Jews’ hands are powerful (i.e., if Jews lack political sovereignty or, at the very least, communal autonomy) and [a Jewish plaintiff’s] adversary is a difficult and violent person, such that [the plaintiff] is unable to recover the money in *Beis Din*, the defendant should first be summoned to *Beis Din*. If the defendant refuses to come to *Beis Din*, the plaintiff then receives permission from the *Beis Din* to recover the money through the non-Jewish court system.”

Permission of this type is commonly referred to as a *heter arka’os*, permission to submit the claim to civil court. For instance, Rav Moshe Feinstein discusses how to deal with a dishonest merchant who sold non-kosher meat with a forged *kashrus* certification. Rav Moshe writes that the community should initially sue this merchant in a *Beis Din* (as opposed to a civil court), but they may permit the community to sue him in civil court should they be unable to discontinue his activities.²

The *Klei Chemda*, in his first essay on *Parshas Mishpatim*, asks, if the *halacha* requires sacrificing one’s entire wealth to avoid violating a negative prohibition,³ why may *Beis Din* issue a *heter arka’os*? He answers that submitting a dispute to a non-Jewish court does not transgress anything unless it demonstrates a rejection of the Torah system of justice. Therefore, if one first makes a genuine effort to adjudicate the matter in *Beis Din*, but the other party resists, *Beis Din* may then authorize one to file the claim in non-Jewish court.

¹ As codified in *Shulchan Aruch, Choshen Mishpat, 26:1*

² *Igros Moshe, Choshen Mishpat, 1:8*

³ See Rama, *Orach Chaim, 656*

Israeli Courts

The *halachic* status of the State of Israel's civil courts has generated extensive discussion since the establishment of the State. These courts seldom judge in accordance with *halacha* (with some notable exceptions); instead, they base their rulings primarily on a combination of British, Turkish, and secular Israeli laws.

The *gemara* in *Sanhedrin* 23a permits litigation in Syrian *arka'os* (civil courts) because 'no competent judges resided there.' The judges in this type of court ruled based on life experiences and common sense. Similarly, the Rama (*CM* 8:1, citing *Rashba*) rules that if no viable alternative exists, a community may appoint three well-respected people with sound judgment to serve as judges. As such, former Israeli Supreme Court Justice Menachem Elon (*Ha'Mishpat Ha'Ivri* 1:22, note 80) suggests that the Israeli civil courts possess the same status as these Syrian *arka'os* and their later parallels.

The *Chazon Ish* (*Sanhedrin* 15:4), however, emphatically forbids litigation in Israeli civil courts, asserting they do not share the status of Syrian *arka'os* found in the *gemara*. He explains that Syrian *arka'os* judged entirely based on common sense, whereas Israeli courts implement an organized non-Torah legal system. Thus, Israeli civil courts attain the status of a non-Jewish court system, despite the fact that the judges and law enforcement officials are mostly Jewish. The *Chazon Ish* adds that Israeli courts are worse than non-Jewish courts, for we expect non-Jews to judge by their own laws, whereas we disapprove of Jews "who have abandoned the laws of the Torah for laws of futility." Indeed, Rav Ovadia Yosef (*Yechave Da'as* 4:65) rules that one who presents a case to a secular Israeli court violates both the prohibition against utilizing non-Jewish courts and the prohibition against causing another Jew to sin (*lifnei iver*), since presentation of the case provides Jewish judges with an opportunity to apply secular laws instead of Torah laws.⁴

Most authorities accept the *Chazon Ish*'s position. These *poskim* include Rav Yitzchak Herzog (*HaTorah VeHaMedina* 7:9-10), Rav Eliezer Waldenberg (*Tzitz Eliezer* 12:82), Rav Ovadia Yosef (*Yechave Da'as* 4:65), Rav Tzvi Pesach Frank (cited by Rav Waldenberg and Rav Ovadia), Rav Shmuel Vosner (*Shevet Halevi* 10:263), and Rav Moshe Shternbuch (*Teshuvos Ve'Hanhagos* 1:795). Thus, one should not present a civil case against another Jew to Israeli civil courts for adjudication.

⁴ See, however, *Teshuvos Beis Avi*, 2:144, who questions whether a Jewish civil judge violates any prohibition when he adjudicates a case involving Jewish litigants. However it is worth noting that, unlike Rav Ovadia, Rav Liebes did not live in Israel, so his *teshuva* is addressing the case of a Jewish judge in the American court system. Also see Rav Mordechai Eliyahu (*Techumin* 3:244) who sees Orthodox judges serving in secular court system as potentially serving very positive purposes.

Preliminary Injunctions, Collections, and Filing for Bankruptcy

Despite the severity of the prohibition against using the civil court system, several cases exist where a Jew may possibly turn to the civil court system. The Rambam (*Mishneh Torah, Hilchos Sanhedrin* 26:7) and *Shulchan Aruch* (CM 26:1) frame the prohibition against using non-Jewish courts as a ban on being “judged” by a non-Jewish court. Thus, utilizing civil courts for non-judiciary purposes would appear to be permitted.

Accordingly, Rav Moshe Feinstein (*Igros Moshe, CM* 2:11) permits a Jew to submit a request before a civil judge for the issuance of a preliminary injunction, an order to freeze the status quo of property until verifying its owner. Since a preliminary injunction does not necessitate a formal judgment, seeking this order does not violate *halacha*. Similarly, Rav Mordechai Eliyahu (*Techumin* 3:244) rules that one may utilize civil courts as a means to collect an undisputed debt. Again, no prohibition exists when no judgment is involved. *Teshuvos Maharsham* (2:252 and 3:195) cites Rav Avraham David Wahrman as permitting the use of civil courts to collect an undisputed debt in places where *Batei Din* have no legal authority. Rav Hershel Schachter⁵ rules that one may file for bankruptcy in civil bankruptcy court, equating it conceptually with filing for a civil marriage license. Rav J. David Bleich (*Tradition* 34:3 p. 74) permits probate of an undisputed will in civil court, and Rav Ezra Basri (*Dinei Mamonos* 1:348) rules that *halacha* recognizes a financial custodian appointed by a civil court.

Arbitration Panels

At least two prominent authorities permit individuals to submit disputes to an arbitration panel for resolution. They reason that the arbiters base their rulings on common sense, as opposed to non-Jewish codes of law, so these forums are not characterized as non-Jewish courts. Thus, the Rabbinic Court of Ashdod, then headed by Rav Shlomo Dichovsky, ruled that one may submit a dispute to the Israel Union of Engineers and Architects.⁶ Rav Eliezer Waldenberg (*Tzitz Eliezer* 11:93) also permits bringing disputes to professional arbitration panels, such as the arbiters of the Association of Israel Cooperative Apartments. It is worth noting that Rav Waldenberg’s ruling has added significance because it includes panels that the Israeli government requires, thereby making them even more comparable to actual civil courts.

The above authorities address arbitration in Israel, where the arbiters are mostly Jewish. Outside of Israel, the issue may be somewhat more complex. The

⁵ In lectures and conversations heard by author

⁶ *Piskei Din Batei Din Ha’Rabaniyim* 13:330-335

*Shach*⁷ permits submitting a dispute to an arbitration panel consisting of non-Jews provided they are not bound by non-Jewish laws. However, the *Nesivos* (CM 22:14) disagrees and forbids submitting a dispute to an arbitration panel consisting of non-Jewish members. The *Aruch Hashulchan* (CM 22:8) rules in accordance with his interpretation of the *Shach*, but Rav J. David Bleich (*Bi'Nesivos Ha'Halacha* 2:169) and Rav Hershel Schachter⁸ think that the strict opinion of the *Nesivos* should be followed.⁹

Moreover, some have questioned whether arbitration panels are merely less formal courts or truly panels that are not bound by law. Rav Dr. Dov Bressler, in *The Journal of Halacha and Contemporary Society* (9:115-116), cites the following statement from the Committee on Arbitration of the Association of the Bar of the City of New York: "The arbitrator need not apply substantive principles of law. The arbitrator is not bound by evidentiary rules; he need not give reasons to support his ultimate determination and his award is not subject to judicial review for errors of law or fact. The arbitrator, free from rules of law, may decide solely on the equities of the case."

Accordingly, Rav Bressler concludes, "Individuals who may ordinarily tend to ignore rabbinical courts should therefore be counseled into selecting arbitration rather than a strict judicial hearing." However, it is worth noting that the relationship between law and arbitration depends on the place and context, such that arbitration will not necessarily be completely detached from law. Someone who faces this issue should consult both his or her rabbi and attorney for guidance. Rules and practices are subject to change and variation from one locale to another, so a rabbi and attorney should conduct a prudent examination of the facts before determining the *halacha* in a particular scenario.

Incorporating Civil Law in Contractual Agreements

Some engaged couples in today's Orthodox community sign the Rabbinical Council of America's prenuptial agreement to prevent situations of *igun*. These agreements include a binding arbitration agreement that designates a specific *Beis Din* to adjudicate a divorce settlement, should the need unfortunately arise. Rav Zalman Nechemia Goldberg (*Yeshurun* 11:698) suggests that a couple could sign a prenuptial agreement that would authorize the *Beis Din* to divide the property between husband and wife based on civil community property or equitable distribution principles. Rav

⁷ *Choshen Mishpat* 22:15, as understood by the *Aruch Hashulchan*

⁸ In lectures and conversations heard by author

⁹ See *Halacha Pesuka Al Choshen Mishpat* 22:2.

J. David Bleich¹⁰ opposes this proposal, arguing that it violates the prohibition against using the civil legal system, because the *Beis Din* will ultimately replace *halacha* with non-Torah laws. Even if the bride and groom wish to apply civil principles, Rav Bleich asserts their desire is irrelevant, for they may not stipulate conditions that contravene *halacha* (*masne al ma she'kasuv ba'Torah*.)

Defending Rav Zalman Nechemia's proposal, Rav Mordechai Willig¹¹ notes that to be considered a non-Torah system, the *Beis Din* would need to rule based on civil law as is codified on the day of the hearing before the *Beis Din*. Here, however, the agreement authorizes the *Beis Din* to employ the community property or equitable distribution principles as of the signing of the agreement. Thus, the parties are not submitting their case to a non-Torah legal system, but are merely structuring a settlement in the event of divorce. Rav Willig and Rav Zalman Nechemia understand that the *Taz*, cited by Rav Bleich, objects only to accepting whatever the civil laws will be at the time of adjudication, for that truly replaces *halacha* with a new source of law. However, where both sides spell out at the time of the agreement how they wish to divide their property in the event of divorce, they have the right to make arrangements as they see fit (*davar she'bi'mamon kayam*), as long as they do not blindly submit to the authority of the civil court or civil laws. Indeed, the Rabbinical Council of America's Beth Din of America follows Rav Willig and Rav Zalman Nechemia's view.¹² Moreover, the argument may be asserted that following this view encourages couples who might otherwise file in civil courts to adjudicate in *Beis Din* instead.

Suing a Non-Jew in Civil Court

Rav Menashe Klein contends that a Jew should not sue even a non-Jew in civil court. Some *poskim* share his position, but *poskim* generally continue to debate this matter.¹³ One point that Rav Bleich addresses is suing a Jew with insurance coverage in civil court to collect payment from the insurance company. Rav Bleich concludes:

Since it is readily perceived that the cause of action is really against a non-Jewish insurance company that will not appear before a Beis Din, it would appear that judicial proceedings in such circumstances do not constitute aggrandizement of a non-halachic legal system and hence such suits are not forbidden.

¹⁰ *Tradition* 34:3 and *Bi'Nesivos Ha'Halacha* 2:169-172; based on the *Taz*, *Choshen Mishpat*, 26:3 and other sources

¹¹ In lecture heard by author

¹² Rules and Procedures 3(d) and 3(e)

¹³ See Rav J. David Bleich's essay in *Tradition*, pp. 80-83.

Serving as a Lawyer or Juror

Rav Ovadia Yosef (*Yechave Da'as* 4:65) distinguishes between representing the plaintiff in Israeli civil court, which he prohibits, and representing the defendant, which he sometimes permits. Rav Ovadia argues that the plaintiff's attorney actively endorses a non-Torah legal system by helping a Jew utilize it, in violation of *halacha*, to collect money. The defendant, on the other hand, does not necessarily wish to appear in secular court; he might prefer to follow the *halachic* requirement to submit the dispute to a *Beis Din*. Rav Ovadia thus permits representing a defendant who sought to have a *Beis Din* adjudicate his case, equating such a situation with "saving a victim from his robber."

Rav Menashe Klein (*Mishneh Halachos* 4:213) prohibits serving on a jury, especially when the case includes a Jewish litigant, because performing jury duty glorifies and promotes a non-Torah legal system.

Rav Hershel Schachter strongly disagrees with this ruling. He explains that the *halacha* requires non-Jews to establish a legal system, so a Jew does nothing wrong by participating as a juror in civil courts, unless both litigants are Jewish (in which case facilitating their trial supports a sin). Regarding capital trials, Rav Schachter argues that every government has the right to punish criminals within reason. For example, if a Jew commits murder, a non-Jewish government may rightfully prosecute him. Accordingly, Jewish jurors may vote to convict a Jewish defendant if solid evidence convinces them that he in fact committed murder.¹⁴ Rav Yitzchak Isaac Liebes (*Beis Avi* 2:144) also permits a Jew to serve jury duty in both civil and capital cases. By the same token, it is important that Jews not attempt to purposefully exempt or relieve themselves dishonestly from jury duty by fabricating excuses. This type of dishonest behavior can lead to public *Chilul Hashem* (desecration of God's name).¹⁵

Criminal Law

Chazal condemn *mesira*, turning a Jew over to non-Jewish authorities, as a terrible sin.¹⁶ Accordingly, we might expect *halachic* authorities to criticize providing assistance to the government in the apprehension of Jewish criminals. Nevertheless, many authorities distinguish between just and unjust situations. Following the same line of reasoning as his ruling on capital jury duty, Rav Hershel Schachter explains:

¹⁴ In conversations and lectures heard by author

¹⁵ See *Teshuvos Melameid LeHo'il* 1:42

¹⁶ See the *gemara* in *Rosh HaShana* 17a, Rashi s.v. *ve'ha'mesuros*

A 'moser' is one who aides a pirate, a crooked government official, or a tyrant-king to obtain money illegally from his fellow Jew. Even if the Jew has actually done something wrong, but if the secular government or ruler would exact a punishment far beyond that which the crime should require, then it is likewise forbidden to report him. If, however, the government is entitled to its taxes, or is permitted to punish criminals as offenders, there is no problem of mesira in telling the government information needed for them to collect their taxes or to apprehend their man. One critical point should however be added: There is no problem of mesira in informing the government of a Jewish criminal, even if they penalize the criminal with a punishment more severe than the Torah requires, because even a non-Jewish government is authorized to punish and penalize above and beyond the law, shelo min ha'din, for the purpose of maintaining law and order. However, this only applies in the situation when the Jewish offender or criminal has at least violated some Torah law. But if he did absolutely nothing wrong in the eyes of the Torah, then giving him over to the government would constitute a violation of mesira. (The Journal of Halacha and Contemporary Society 1:118)

Indeed, Rav Schachter applied this approach in a case relayed to the author. An Orthodox woman serving as an assistant district attorney (ADA) in an American city was assigned a matter prosecuting an Orthodox man accused of severe child abuse. She asked a rabbi if *halacha* permitted her to do so, and this rabbi consulted Rav Schachter. Rav Schachter responded that she may prosecute him,¹⁷ as *Batei Din* today lack any jurisdiction in criminal matters, and so the accused would go unpunished and repeat his heinous crime undeterred. It is likewise true that the Beth Din of America does not adjudicate criminal cases.

Rav Yitzchak Herzog (*Techuka LeYisrael Al Pi HaTorah* 1:173) notes that rabbis in Israel have acknowledged their current inability to punish criminals, and they consequently chose to relinquish responsibility for criminal matters as well.

Conclusion

It is fundamentally prohibited for two Jewish litigants to present their case to a civil court for adjudication. Nevertheless, one should consult a competent rav and lawyer in questionable situations, as this prohibition has many exceptions. In Israel,

¹⁷ Based on Rashi, *Gittin* 9b, s.v. *kesheirin* and s.v. *chutz*, and *Teshuvos Maharam Shik*, *Choshen Mishpat* 50

the prohibition against civil courts is further complicated by the fact that the judges are mostly Jewish and are thus themselves bound by *halacha*. Rav Yaakov Ariel summarizes the present state of Israeli courts:

One of the most painful problems for those who believe that there is a place for Torah in the State of Israel is the law status accorded to Jewish civil law.... Israel, the Jewish state, should have traditional Jewish civil law as the law of the land. Just as it is inconceivable to have a Jewish state whose official language is not Hebrew or that does not follow the Jewish calendar, so too the State of Israel should not adopt foreign civil codes. No Jew, despite his identification with the positive aspects of the State of Israel, should tolerate the current situation regarding civil law. The love of the State of Israel should cause every Jew to long for the day when halachic civil law will be returned to its original great status.... Just as the Religious Zionist community educates its community in state religious schools, so too we must settle our monetary disputes in the state rabbinical courts. (Techumin 1:319-320)

Recently, however, there has been increased use of *Batei Din* instead of civil courts for dispute resolution in both Israel and the United States. *Batei Din* are slowly regaining their proper place within the Jewish community. We hope that Jews resolve their differences by themselves or via mediation. However, in the unfortunate event that they are unable to do so, the *halacha* should be respected and the dispute presented before a reputable *Beis Din* for adjudication rather than seeking resolution of the issue in civil court.

Playing Ball on Shabbos and Yom Tov

YONI TUCHMAN



Do your kids play ball on Shabbos?¹ Do they get together to play handball against the garage door on Shabbos afternoon? Do they throw around a football on the lawn (or in the Shul parking lot)?

When I was a kid growing up on Long Island, we used to have Shabbos afternoon “groups” over at the Young Israel. When we were little, we would play “red rover,” wiling away summer afternoons calling each other over on the grassy knoll outside of the shul. When we got older, we left the grass for the little kids and moved on to play “suicide” or similar games with a tennis ball thrown hard against the tan brick wall on the back side of the shul parking lot. Was that ok?

Fast forward (*too* fast and *too* forward for my taste) to today and my own kids and their friends like to play handball in the backyard or toss a football back and forth across the lawn. Sometimes they play “horse” or pick-up basketball. Is that ok?

They like when I play with them too. Can I? Should I?

Do these activities violate any *halachos* of Shabbos? Do they violate the “spirit” of Shabbos? Alternatively, should they be condoned as harmless fun? Might they be considered legitimate forms of *oneg Shabbos*? Does it matter how old the child is, and does it matter if the child is already an adult?

¹ The issues that arise and that are discussed by *poskim* in relation to playing ball on Shabbos apply equally to Yom Tov. See *Beis Yosef* (*Orach Chaim* 308) and *Magen Avraham* and *Aruch HaShulchan* (there) who disapprovingly cite a minority view that playing ball may be treated more strictly on Shabbos than on Yom Tov. The one difference is that an *eruv* would be required for one to play ball outside on Shabbos but not on Yom Tov. Unless otherwise noted, references to Shabbos or Yom Tov individually throughout this article should be understood to refer to both Shabbos and Yom Tov collectively.

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Playing Ball as *Simchas Yom Tov* / *Oneg Shabbos*

The earliest source in *halachic* literature discussing playing ball on Shabbos or Yom Tov is a *Tosafos* in *Beitza*.² There, the *rishonim* discuss whether the permissibility of carrying in a public place without an *eruv* on Yom Tov is limited to carrying for a mitzva purpose (e.g., carrying a baby to his *bris*) or includes carrying for a non-mitzva purpose as well.³ The discussion revolves around a technical question of how far we may extend the permissibility of doing certain food-related *melachos* on Yom Tov for non-food related purposes (*mitoch she'hutra litzorech ochel nefesh, hutra nami shelo li'tsorech ochel nefesh*). There are three opinions in the *rishonim*:

- **Strict:** Rabbeinu Chananel is of the view that *mitoch* only permits carrying for a mitzva purpose (i.e., carrying a baby to his *bris*).
- **Lenient:** Rashi holds the opposite view, that *mitoch* permits carrying for any or no purpose whatsoever.
- **Moderate:** *Tosafos* holds that *mitoch* permits one to carry without an *eruv* on Yom Tov even for a non-mitzva purpose, provided that there is some nominal Yom Tov related benefit (*tzorech Yom Tov ktzas*).

To prove that – unlike the strict view of Rabbeinu Chananel – one may carry on Yom Tov even without a mitzvah purpose, *Tosafos* points to the common practice of playing ball in the street on Yom Tov, which is clearly not a mitzva, and yet commonly done. It must be, then, *Tosafos* concludes, that carrying is permitted on Yom Tov even if not for a mitzva-related purpose. Playing ball, in *Tosafos*' estimation, is activity akin to a “*tiyul*” – taking a Yom Tov afternoon stroll.

It emerges from *Tosafos* that much the same way that taking a leisurely walk on Yom Tov afternoon is a pleasant activity in keeping with the holiness of the day (*tzorech Yom Tov ktzas*) so too is playing ball in the street.

This is also the view of another *rishon*, the *Machzor Vitry*, who appears to go even a step further, quoting approvingly of the view of his teacher that playing ball on

2 *Beitza* 12a s.v. *hachi garsinan*. Some versions attribute this view to Rabbeinu Tam.

The Mishna and Talmud already discuss playing ball close to 1,000 years before *Tosafos*, but not in the context of *hilchos* Shabbos or Yom Tov. See, for example, *Sanhedrin* 77b, discussing liability for one who kills while playing ball. Rashi (*eilu hamisachakin b'kadur shehargu*) explains: “this refers to a game in which one player would throw a ball against a wall, and his opponent would catch the ball [on the rebound] and then try to hit the thrower with it. The thrower would throw the ball against the wall with force so that he could run far away before his opponent caught the ball, and the *tanna* is teaching us that if the thrower intended to kill his friend and threw with sufficient force to kill, then the thrower is liable [for capital punishment].” When we played this game growing up in Oceanside, we called it suicide, which one can only conjecture might have been a loose derivation of the original homicide.

3 See *Nitzachon* 5:1, *Lord of the Flies: Killing Flies on Yom Tov and the Limits of Ochel Nefesh*.

Yom Tov is permitted as an expression of the joy of Yom Tov itself, “*mipnei simchas Yom Tov*.”⁴

Citing *Tosafos*, the Rama (*Orach Chaim*, 518:1) writes explicitly that one may play ball in the street on Yom Tov even without an *eruv*.

The Maharshal's Plea and Rabbi Kluger's Rejoinder

The view that playing ball is a valid expression of *simcha* and *oneg*⁵ is not universal. The *Maharshal*, a contemporary of the Rama, strenuously objects.⁶ He argues that (i) the fact that *Tosafos* cites a common practice does not mean that he endorses it, and (ii) the statement of *Tosafos* is not brought down in the *Rosh* or in the *Tur* and therefore carries little *halachic* weight.⁷ Writes the *Maharshal*:

It is a wonder to permit playing on Yom Tov with a ball, which is not a Yom Tov-related necessity whatsoever, but is rather child's play for those who are not yet obligated to observe mitzvos, but for adults it would appear to be inappropriate (minhag rah) because it is not even comparable to taking a stroll but is rather frivolity (kalos rosh).

Note that *Tosafos*, the *Machzor Vitry* and the Rama – all of whom permit playing ball on Yom Tov – do not distinguish between adults (older than bar mitzva) and children (under bar mitzva). In their view, all are welcome to play ball on Shabbos and Yom Tov. The *Maharshal*, however, who is sharply critical, only disapproves of those above bar mitzva playing ball on Yom Tov. Both sides would agree that one may allow small children to play ball on Yom Tov (even without an *eruv*) and on Shabbos (with an *eruv*).⁸

In response to the *Maharshal*, Rabbi Shlomo Kruger, (*Teshuvos HaElef Lecha Shlomo*, *Orach Chaim*, 1:339) some three centuries later, notes that there are numerous

4 Rabbi Simcha ben Samuel of Vitry, a student of Rashi (France, 11-12 centuries); *Machzor Vitry*, *Hilchos Pesach*, Ch. 74.

5 While *Tosafos* and the *Machzor Vitry* speak of *simchas Yom Tov*, the same would be true with respect to *oneg Shabbos*. See Rabbi Shlomo Kluger discussed below.

6 *Yam Shel Shlomo*, *Beitza* 1:34. Although a contemporary, and often critic, of the Rama, the *Maharshal* here is critiquing the view of *Tosafos*, not the Rama. The *Maharshal* was an *acharon* who did not hesitate to express views contrary to *rishonim*.

7 One wonders how *Tosafos* can be read as *not* endorsing the permissibility of ball playing on Yom Tov given that he explicitly compares it to taking a stroll and cites the practice as proof that one may carry on Yom Tov without an *eruv* for purposes of *tzorech Yom Tov ktsas*.

8 See *Mishna Berura* and *Be'er Heiteiv* (*Orach Chaim*, 518:1) who confirm that even according to the *Maharshal*, one need not stop children from playing ball on Shabbos (with an *eruv*) or Yom Tov (even without an *eruv*).

activities that may be forbidden for one person but permissible for another on Yom Tov or Shabbos. For example, is running on Shabbos permitted? It all depends on who is running and why they are running. The *mishna* (*Shabbos*, 147a) states: “One may anoint with oil and massage [light] but not hard (*lo misam’lin*).” Rashi explains a “hard massage” to mean shaking one’s body with force, and writes that it is prohibited because of *uvda dichol* (it is not “*shabbosdik*”). Rambam, (*Hilchos Shabbos*, 21:28) on the other hand, explains that “hard massage” refers to strenuous movement that causes one to break a sweat, and writes that the reason for the prohibition is that it is akin to taking medicine on Shabbos. The *Shulchan Aruch* (*Orach Chaim*, 327:2; 328:42) appears to *paskin* stringently like both Rashi and the Rambam, prohibiting both “strenuous” exercise even if it does not lead one to sweat, and also any exercise that would lead one to sweat. But what if one runs for fun because he or she enjoys running? The *Shulchan Aruch* (*Orach Chaim*, 301:2) writes that those who enjoy running and do so for fun, and those who are running to an enjoyable event, may do so on Shabbos, even *l’chatchila*, since that is their *oneg Shabbos*. In this instance, then, one’s subjective sense of enjoyment defines what constitutes appropriate *oneg Shabbos*, notwithstanding the standard rules that would otherwise serve to prohibit the exact same activity. So too, writes Rabbi Kluger, with playing ball on Shabbos or Yom Tov. Like running, playing ball is an activity that might very well be an inappropriate violation of *kavod Shabbos*, where, for instance, one plays competitively or for exercise. But when one plays for fun, it is a perfectly valid expression of *oneg Shabbos*. It all depends on what one enjoys – “*for that which is dependent on enjoyment is defined by the perspective of the person deriving the enjoyment.*”

Excavating the Maharshal

When one takes a step back to consider the view of the *Maharshal*, his passionate tone and defensive form of argumentation (he does not offer affirmative evidence or cite to authority that playing ball on Shabbos or Yom Tov is *prohibited*, but rather asserts that the contrary view is not adequately supported and he challenges the *appropriateness* of the behavior) one gets the impression that the “*machlokes*” here is not so much based on a “*halachic*” disagreement of whether the laws of Shabbos and Yom Tov forbid or permit a given behavior, but instead derives from a disagreement in *hashkafa*; what are the expectations for growth and religious sophistication that we should expect, and therefore demand, of *bnei Torah* in a Torah society.

To be sure, there are numerous potential “real” *halachic* risks that could arise from ball playing on Shabbos – principally:

1. Playing ball on Shabbos (not Yom Tov) in a public domain, and even in a *karmalis*, without an *eruv* would be forbidden.⁹
2. Playing ball on unpaved ground could lead to a violation of plowing (*charisha*), which includes creating or filling uneven surfaces in the ground. For this reason, the *Shulchan Aruch* and many others prohibit playing rolling games with nuts or fruit on unpaved ground,¹⁰ and the *Mishna Berura* warns against playing games (such as soccer) in open fields.¹¹
3. Playing ball in non-Shabbos attire (e.g., changing into gym clothes) may constitute a violation of *kavod Shabbos*.¹²
4. According to some early *poskim*, balls are by definition *muktza* and should not be handled on Shabbos or Yom Tov. This would not apply to balls that we play with today.¹³
5. A “sore loser” should not play ball (or any other game) competitively on Shabbos if by losing he or she would become upset.¹⁴

9 *Mishna Berura*, *Orach Chaim*, 308:45.

10 *Orach Chaim*, 338: 5; *Shibolei HaLeket*, 121

11 *Orach Chaim*, 308:45. *Shemiras Shabbos Kehilchisa*, 16:6.

12 The Talmud (*Shabbos* 113a) interprets a *pasuk* in *Yeshayahu* (58:13) “*Ve’chibadeto*” – “You shall honor it” – to mean that one must honor the Shabbos by wearing special clothes: “your clothing on Shabbat shall not be the same as your clothing during the week.” See *Shulchan Aruch* (*Orach Chaim* 262:2)

13 The *Shulchan Aruch* writes that balls are *muktza* (*Orach Chaim* 308:45). The Rama disagrees. The *Mishna Berura* suggests that their disagreement hinges on whether a play-thing can ever have the status of a *kli*. In order not to be *muktza*, an object must have the status of *kli* and must then also have a permitted purpose on Shabbos. According to the *Shulchan Aruch*, a ball cannot have a *kli* designation because something that is designated merely for play cannot be considered a *kli*. However, according to the Rama, it is possible to imbue something with the status of a *kli* by virtue of having made and designated it for the specific purpose of a play-thing.

This dispute between the Mechaber and the Rama echoes a debate that took place between the *Shibolei HaLeket* (Zedekia ben Abraham Anav, Rome 1210 – 1280) and his brother, Rabbi Yehuda, 300 years earlier. The *Shibolei HaLeket* (chapter 121) quotes his brother as holding that balls are not *muktza* because they are designated for play and therefore have the status of a usable *kli* (*kli shemilachto l’heter*), but the *Shibolei HaLeket* disagrees, holding that designating something for mere play is not considered a real designation and a ball would therefore not be deemed a *kli* at all, but would rather have the *halachic* status of a rock or a stick (*muktza machmas gufo*). Importantly, this debate is largely irrelevant today. Rabbi Y.M. Rubin (*Orchos Shabbos*, 19:52, footnote 76) as well as Rabbi Avigdor Nebenzahl (*Beis Hillel*, v. 20, p.130) among others, write in the name of Rabbi Shlomo Zalman Auerbach that the stringent view of the *Shulchan Aruch* (and the *Shibolei HaLeket*) may have applied to the types of “balls” that were played in Tzfas in the 16th Century, for example – essentially round-ish rocks and pieces of wood that one found and decided to use as a ball. Today’s balls, which are manufactured specifically to be used for play, would certainly have the status of a *kli* and would therefore not be *muktza* even according to the *Shulchan Aruch* (and the *Shibolei HaLeket*).

14 Rabbi Moshe Feinstein (*Iggeros Moshe*, *Yoreh De’ah* 3:15:2), writing in the context of playing chess on

6. A minority of *poskim* have expressed concern that playing ball may generate excessive noise, potentially violating a restriction on noise making on Shabbos (*hashma'as kol*).¹⁵
7. A minority of *poskim* have expressed concern that playing ball with equipment (e.g., tennis rackets) could lead one to fix broken equipment (similar to the prohibition on playing instruments on Shabbos, *shema yitaken klei shir*).¹⁶
8. A minority of *poskim* have worried that ball playing in certain circumstances could be viewed similarly to doing business on Shabbos.¹⁷

But the *Maharshal* does not raise any of these concerns. Rather, he is concerned with how *bnei Torah* spend their Shabbos afternoons. His concern is not with the letter of the law but with the spirit of the day. Though he does not mention it, the *Maharshal* appears plainly to be worried about the Tur Shimon effect.

What Happened at Tur Shimon?

The *Talmud Yerushalmi* (*Taanis*, 4:5) relates that a city in *Eretz Yisrael* called Tur Shimon¹⁸ was destroyed and suggests, according to one opinion, that the root of its destruction lay in its Shabbos afternoon ballgames.¹⁹ But what is so terrible

Shabbos.

15 *Shiboei HaLeket*, *ibid.*; *Sefer HaAgur*, ch.521. Note, however, that according to most *rishonim*, the rabbinic prohibition of *hashma'as kol* only applies to making noise for musical purposes (e.g., clapping, etc.), which is also the view of the *Shulchan Aruch* (*Orach Chaim*, 338).

16 *Teshuvos* of Rabbi Moshe Provinshalo (Italy, 1500s), ch. 53. I did not find this concern recorded among more mainstream *poskim*. *Shemiras Shabbos Kehilchisa* (16:8) rules against playing with balls that are required to be blown up and tied, but that would appear to be out of a concern for tying (*kosher*) and would not apply to our basketballs, footballs and the like, which are filled with air but are not tied shut. Pumping a ball on Shabbos would only be problematic if the ball had not previously been pumped. See *Orchos Shabbos*, 8:68.

17 *Shiboei HaLeket*, *ibid.* This appears to refer to games that were played for a cash prize, or where bets were placed on who would win, with food being used as a stand-in for cash until after Shabbos, when the food would be redeemed.

18 The site has been tentatively identified by archaeologist Boaz Zissu with *Khirbet Sammunieh* in Nahal Sorek. Zissu, who conducted an archaeological survey of the site during the years 1992–1997 for the Israel Antiquities Authority, thought the town to date back to Simon the Hasmonaean in the 2nd century BCE, who was known for building fortresses, and after whom the mountain is thought to have been named (lit. “Mount Simon”). The fortress continued to be inhabited until the Bar Kokhba revolt under Hadrian, when it was destroyed. See https://en.wikipedia.org/wiki/Tur_Shimon.

19 Our text of the *Yerushalmi* does not mention playing ball on Shabbos, rather, the problem with Tur Shimon was that they played ball, period. According to this version of the *Yerushalmi*, the issue was apparently one of *bitul Torah*. See *Sefer Harokeach*, *hilchos Shabbos* ch. 55.

with playing ball on Shabbos, much less that it should lead to the destruction of a city? After all, as we have seen, while ball playing, depending on the circumstances, could potentially involve possible *halachic* risks, it is fundamentally permitted, and might legitimately be seen as a valid expression of oneg Shabbos! Compounding the problem, the *Yerushalmi* testifies that the doomed residents of the city were extraordinarily charitable, setting aside 300 portions of food for the poor every *erev Shabbos*, yet still, their ball playing on Shabbos did them in.

Two answers are given: (1) the Vilna Gaon suggests that the people of Tur Shimon played ball without an *eruv*, thus publicly and repeatedly violating the *melacha d'oraisa* of carrying on Shabbos.²⁰ (2) Rabbi Avraham Chaim Naeh suggests that the issue was much more subtle.²¹ He writes:

The people of Tur Shimon made ball playing a permanent part of the holy Shabbos day and wasted their holy time with games, for even those who permit playing ball on Shabbos do so only on a impermanent basis (b'akrai)... how terrible it would be to make it permanent to waste holy time with frivolous games... there is no greater denigration of the honor of the holy Shabbos than this. For Shabbos and Yom Tov were given to the Jews in order to engage in Torah study, for all week they are busy with work.

Writing 300 years after the *Maharshal's* epic plea for the sanctity of Shabbos, in Rabbi Naeh one hears the unattributed cry of the *Maharshal*. Their unified concern is not with this *halacha* or that, it is with the erosion of the sanctity of the day. It is with the destruction of the charitable city of Tur Shimon.

Conclusion: So what's the bottom line?

So where does all of this leave us? One might reasonably draw the following conclusions from a review of the rabbinic literature involving playing ball on Shabbos

But the *Pnei Moshe* (ad loc) explains that the ball playing was on Shabbos, which is consistent with our text of *Midrash Eicha Rabasi* (2:4), relating that Tur Shimon was destroyed because its inhabitants played ball on Shabbos. This *Yerushalmi* is cited by the *Shibolei HaLeket* (ibid), the *Aruch HaShulchan* (*Orach Chaim* 308:70) and others.

Interestingly, the *Matte Moshe* (an early *acharon*, ch. 477), appears to synthesize the two readings of the *Yerushalmi*, writing that Tur Shimon was destroyed because of *bitul Torah*, and therefore, while it is fine to play ball on Shabbos and Yom Tov, one should make sure not to play during the rabbi's *drasha* (*d'lischok b'kadur shelo b'zman beis hamidrash, mutar*).

The *Yerushalmi* suggests rampant promiscuity as a second possible cause of the city's destruction.

²⁰ *Be'ur HaGra* (*Orach Chaim*, 308:45)

²¹ Note 16 in his *Badei HaShulchan* footnotes to his *Ktzos HaShulchan*, 110:10.

and Yom Tov:

1. Children are permitted to play ball on Shabbos and Yom Tov according to all opinions.
2. According to the letter of the law in the Ashkenazi tradition, adults are equally permitted to play ball for fun on Shabbos and Yom Tov.
3. In either case – whether the players are kids or adults – care must be taken to avoid playing in a way that would lead to a secondary violation that could result from playing ball. This primarily means:
 - On Shabbos, playing only within an *eruv*;
 - Not playing games that involve rolling balls over unpaved earth (e.g., soccer), which could lead to a problem of *charisha*; and
 - Not changing into gym clothes.

But at the same time, there is a clear tension among the *poskim* when it comes to adults playing ball for fun on Shabbos and Yom Tov. On the one hand, the *Maharshal* and Rabbi Naeh rail against the practice as a grave violation of *kavod Shabbos* and *Yom Tov*, while, on the other hand, the Rama and Rabbi Kluger don't seem the slightest bit concerned, rooted in the view of *Tosafos* who sees it as a valid expression of *simchas Yom Tov* (and, as explained by Rabbi Kluger, of *oneg Shabbos* as well).²²

And this tension might inform how we approach ball playing among our kids, especially our pre-teens and teenagers. For the fact that ball playing is absolutely permitted does not mean that we should not also be directing our children toward loftier Shabbos afternoon pursuits.²³ And, at the same time, while we may prefer that

²² The strict view of the *Maharshal* is cited by the *Magen Avraham*, the *Taz* and the *Mishna Berura* (*Orach Chaim*, 518).

The first Lubavitcher Rebbe in *Shulchan Aruch HaRav*, as well as the *Aruch HaShulchan* (*Orach Chaim* 308) both write that the accepted practice is to be lenient, though the *Aruch HaShulchan* hedges by also referencing the case of Tur Shimon.

I have heard it said that the first Chief Rabbi of Israel, Rabbi Avraham Yitzchak HaCohen Kook (Jerusalem, 1865 – 1935), was lenient in regard to organized soccer games on Shabbos. In reality, he was staunchly opposed, citing approvingly of the *Maharshal* and writing with such passion on the subject that he makes the *Maharshal* sound moderate. See *Teshuvos Orach Mishpat* (*Orach Chaim* 152).

²³ The challenge presented by long Shabbos afternoons is not new. In fact, it motivated the author of the *Sefer Hachinuch* (published anonymously in 13th-century Spain) to compile that masterpiece, writing in his introduction:

“With what would it be pleasing to serve in front of the mighty ones, as they have already clarified all the things for us? [i.e., what can I add given that the Rif, Rambam and Ramban have already written so much?] Would it not be in ordering the six hundred and thirteen commandments according to the [weekly readings]? *Perhaps the youths will be more stimulated in them from this; they will put their hearts into them on Shabbos and holidays; and*

our kids spend their Shabbos afternoons in the *beis midrash*, we must not forget that playing ball for fun on Shabbos and Yom Tov has continuously been accepted since the days of the *rishonim*.

Some of our children will be drawn to the *beis midrash* on their own, out of a desire to please or to impress, to emulate or to achieve, while others will prefer to play ball with their friends. And for the latter type, the question will invariably arise: At what age in the development of our children's religious development should we put our foot down and tell them that, yes, while playing ball on Shabbos is undoubtedly permitted, it is not the best use of their precious Shabbos time and should be discouraged? To this question, Rabbi Hershel Schachter is reported to have answered: Never. Rabbi Schachter counseled instead that as a child grows up in a Torah home and with parents who model mature and elevated *oneg Shabbos* and *simchas Yom Tov*, the child will eventually, when he is ready, stop playing ball on his own.²⁴

Said differently, perhaps an appropriate synthesis of the "theses" of *Tosafos* and the Rama (permitting ball playing on Shabbos and Yom Tov) and the "antitheses" of the *Maharshal* and Rabbi Naeh (casting ball playing on Shabbos and Yom Tov as a violation of *kavod Shabbos*) would be to aim not to *forbid* ball playing at any age, or even to *redirect* or *encourage* our children toward loftier pursuits, but to *inspire* our children by modeling sophisticated *oneg Shabbos* and *simchas Yom Tov* ourselves.

After all, there is nothing about playing ball per se that it should have merited such a rich discussion in rabbinic literature. The *Maharshal* inveighed against it not because it is worse than playing any other game, such as chess or checkers (or legos), but simply because, unlike those other games, *Tosafos* wrote that ball playing on Yom Tov is permitted, against which the *Maharshal* felt duty-bound to protest. There is an infinite continuum of possible uses for our time on Shabbos and Yom Tov afternoon. Playing ball is just one point along that continuum that happens to have garnered significant rabbinic attention by virtue of *Tosafos* in *Beitza* having approved of it in

return from going crazy in the plaza of the cities, 'to the light of the living light.' The delicate children will ask, 'one to his neighbor,' 'How many are the commandments of this Shabbos,' and the land will be full of 'knowledge and foresight.'" Or, as more recently expressed by Rabbi Saul J. Berman (*Edah Journal*, 1:1): "From earliest times the Jewish people apparently had great difficulty in utilizing the holy time of Shabbat in a manner consistent with God's purposes for that day. The fact that Ezra introduced a special reading of the Torah for Shabbat afternoon... [is itself an indication] of the struggle. The unfortunately common practice of taking long naps on Shabbat is just one further indication that many people are totally baffled by the question of how to use time in a spiritually uplifting fashion."

24 <https://www.yutorah.org/sidebar/lecture.cfm/760648/rabbi-aryeh-lebowitz/ten-minute-halacha-playing-ball-on-shabbos/>

the context of a technical debate concerning the limits of *mitoch*. It is unlikely that the *Maharshal* would have felt differently about any other “children’s games.” In fact, more contemporary *poskim* have taken much the same view toward playing chess as the *Maharshal* took toward playing ball, admitting that it is technically permissible yet insisting that because it is not the highest and best use of our limited holy time it ought to be discouraged.²⁵

So perhaps an apt rejoinder to the question of what age should we tell our kids to stop playing ball on Shabbos would be “at whatever age we tell them to stop playing chess on Shabbos.” And Rabbi Schachter’s advice of “never” would appear to remain equally applicable in both cases. For if there is a problem with playing ball on Shabbos and Yom Tov,²⁶ it appears quite clear that the problem would not be with the *act* of playing ball but would rather be with the ball player’s impoverished sense of *oneg Shabbos* and *simchas Yom Tov*, which is something that can be corrected only by inspiration, not instruction.²⁷

Hashem should give us blessing to inculcate within our children a sophisticated and rich sense of *oneg* and *simcha* and to inspire them to always strive to use their time for the highest and best uses.²⁸

25 See, for example, *Shemiras Shabbos Ke-Hilkhasa* (16:34) who dismisses all arguments to forbid chess on Shabbos while at the same time (16:1) exhorting adults to spend the day in spiritual pleasure, and Rabbi Moshe Feinstein (*Iggeros Moshe, Yoreh De'ah* 3:15:2), who rules that chess is not technically forbidden but should be avoided because of “*ve-dabeir davar*” (i.e., playing chess is not in the spirit of Shabbos). Interestingly, even some of the technical objections to playing ball outlined above have also been raised in the context of playing chess, including the concern of making music by knocking the chess pieces together or on the chessboard, and the concern that playing chess could be similar to conducting business (see *Shulchan Aruch, Orach Chaim* 338:5).

26 Putting aside concerns of secondary violations enumerated above which can be easily solved.

27 See Rabbi Yechiel Michel ha-Levi Epstein (Lithuania, 1829 – 1908), *Aruch HaShulchan (Orach Chaim, 518:8)*, who dismisses the *Maharshal*, writing that the *Maharshal*’s objection to ball playing by adults is not valid, since, for those with a lowly sense (*da’ato ha’shefeila*), playing ball on Yom Tov is in fact their enjoyment.

28 Inspiring our kids to learn Torah on Shabbos afternoon may very well initially take the form of playing ball with them on Shabbos afternoon, as convincingly argued by *mechanech* Rabbi Moshe Don Kestenbaum: “When I play ball with my younger children I feel I am doing more for their ultimate spiritual growth than when I learn with them. Why? Because I know that them having a good time with their father and becoming closer to me will foster a relationship where they will want to follow my path in life – a life of Torah. However, if I learn with them and they are not excited about it just yet, then we have not bonded in the same way.” *The Heart of Parenting*, p. 66.

The Five Star Family and Home Experience

HENRY MANOUCHERI



A few weeks ago I was sitting in my regular Friday morning *parsha* class studying the construction of the *Aron* and the composition of the *keruvim* with the face of the two babies smiling at each other, and an idea hit me really hard.

Apparently the *Aron* was made of magnificent gold on the outside coupled by the same beautiful gold on the inside. *Chazal* describe this idea that what's inside a person (the *p'nimius*) has to match the outside of him (the *chitzonius*). If you observe one acting quite kindly and generously in public in front of people, he has to act the same way when he is inside his home. Many individuals portray a magnificent and impressive persona while out in public. Others love and admire and revere them. However, in the privacy of their own homes during the course of their own daily life they could be screaming at their wives and children or walking around with a sour face. Why?

What happened to that fabulous display of charm and popularity outside the home? Where did it go? Why wasn't that feeling and behavior carried in the home where scores of other strangers were not looking in? This dichotomy greatly disturbed me as the day progressed and Shabbos set in.

The thought was in my consciousness throughout the night on Shabbos. I somehow was perplexed and uncomfortable as to how such a thing can happen. It troubled me that us as human beings, and religious Jews, could not be consistent in our behavior and honest with ourselves.

That Shabbos morning as I was ready to start my pre-davening (morning prayer) ritual, I strangely decided to read the last chapter of the Four Seasons Book.

Isadore Sharp, a traditional Jew, single-handedly created the best in class five-star

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legendary hotel chains called the famous “Four Seasons Hotels”. He currently, at 88 years of age, is still the Chairman and CEO of the company. The company currently manages over 140 hotels worldwide in over 40 countries. If you have ever stayed in one of their hotels anywhere in the world you will have experienced the same unique and legendary customer service with well-maintained and magnificent properties.

In the last chapter of his book about the hotel chain, he outlines the following sections: Our Goals, Our Beliefs, Our Principles. That awesome Shabbos morning I read this one page manifesto and it hit me really hard. The principles were as follows:

1. Who are we?
2. How do we behave?
3. What do we believe?
4. How do we succeed?

These simple yet beautiful ideas made me question myself. I asked myself where these values existed in the lexicon of our family and way of life. It dawned on me as to why not adopt these values in our own home life, and our daily business activities. We all love five star experiences in the world of luxury and affluence. However, the concept of exceptional human behavior that revolves around *derech eretz* is a central theme to “observant Jewish living.”

In *Parshas Vayikra* a number of noteworthy ideas appear in the *meforshim* as they explain the procedure of *korbanos* in the *parsha*. Each *korban* has special procedures with deep symbolism to bring its giver closer to Hashem, in a personal way. Similarly, in our personal interactions, in order for a personal relationship to endure we need to make a special effort to create our own special personal touch. We can easily give compliments, yet we need to personalize them to our loved ones. The more tailored they are to the ones receiving our compliments, the more potent and effective they become. If we treat our spouses, children, family members, fellow workers, clients, employees like strangers, but not familiar objects, we will deliver that personal touch.

When we travel and vacation in five star hotels we are treated with special *kavod* (respect) and called by Mr. & Mrs. so and so. Why not do away with these very same familiarities that give us the license to treat the ones closest to us like they do not matter? Imagine the simple power of a hearty good morning, a beautiful cheek to cheek smile? Why not open the door to the car every time our wives and children get in the vehicle? Imagine how much they will receive a feeling of *chashivus* (importance) and how much self-esteem we create in our own kids by doing so.

As you delve into the *pesukim* in *Parshas Vayikra* you can conclude that a “*talmid chochom*” without *derech eretz* can turn himself into a *neveila*. The late Rosh Yeshiva

of the Baltimore Yeshiva Ner Israel, HaRav Yaakov Weinberg zt"l was quoted by his close *talmidim* to say that the only time one can stop *derech erez* is when one is trying to save a life. The best gift you can give your wife is to be a "*mensch*." It is that simple! *Parshas Vayikra* is full of the language of endearment.

In conclusion, let us build together our own family mission statement and do our best to live by it every day. Yes, I agree it is not easy to be consistent, but for sure it can be done. The following family mission statement is a good sample that we can personalize in our own homes.

Who We Are: We have chosen to specialize in building a magnificent marriage and a beautiful family by providing exceptional experiences of exceptional quality in our homes. Our objective is to be recognized in our respective communities that we manage the finest children wherever they may go. We create family principles of enduring value that will last for many generations. We support them with deeply embedded ethics of Torah and our personal service. Doing so allows us to satisfy the needs and tastes of our discriminating family members and to maintain our position as true family leaders.

How we behave: We demonstrate our true Torah beliefs meaningfully in the way we treat each other and by the examples we set for one another. In all of our interactions with our family members, clients, associates and colleagues, we seek to deal with others as we would have them deal with us.

What we believe: Our greatest asset and the way to our success is our family, and those closest to our sphere of positive influence. We believe each of us need a sense of dignity, pride and satisfaction in what we do. Because satisfying our family and loved ones depends on the united efforts of many. We are most effective when we work together, collectively and respecting each other's contributions and importance.

How we succeed: We succeed when every decision is based on a clear understanding and belief in what we do when we couple the conviction with a sound family plan. We expect to achieve great pleasure and lasting positive memories to ensure the prosperity and well-being of the family, and to offer long-term love and care to those most important to us.

Let us together set up a day to chart our lives and embrace our own set of enduring values in concert with the beautiful *Torah Hakedosha*.

To Inform Or Not To Inform, That Is The Question?

DAVID R. SCHWARCZ



There has been a recent spate of criminal investigations and prosecutions in the American Jewish Communities. Business partners, friends and family members in our community have faced the unenviable demand by the United States Government or State Government(s) to inform on fellow Jews, either by testifying before grand juries, providing documents implicating fellow Jews, or acting as a confidential informant by participating in “sting operations,” inducing fellow Jews to state on ‘tape’ that they plan to conspire to or actually commit a crime.

The Federal and State investigators and prosecutors have requested from observant attorneys to assist in criminal investigations of their clients by producing incriminating documents or providing testimony regarding alleged criminal conduct. Further complicating matters is the fact that the observant client who is subject to the investigation may agree to act as a confidential informant (“CI”) in order to receive a more favorable sentence and thereby implicate unsuspecting observant Jews to unknowingly participate in a government sting operation. These CI’s employ questionable means to induce innocent people to commit financial crimes in order to receive a reduction in their sentence.

The primary goal of this article is to inform the reader about the current trends in Jewish law concerning informants, *mesira*, and recommendations about how these individuals should be regarded. This article is not a *halachic* decision or *p’sak*, nor should any final ruling and decisions be derived from this article. This article is strictly a survey of the current general trends in Jewish law. The reader is advised to seek advice from a competent, certified and widely recognized *halachic* authority.

The following topics shall be covered in this article:

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1. Jewish Law Regarding Informing: An Overview
2. Informing on People When Government is Putatively Committed to Procedural Justice: Five Opinions of Contemporary Decisors:
 - The View of the Rabbi Eliezer Yehuda Waldenberg: No Prohibition to Inform when Government is Just
 - The View of Rabbi Ezra Batzri: There Are No Just Legal Systems and No Just Prisons
 - The View of Rabbi Yitzchak Shmelkes: Informing as a Tort in a Just Government
 - The View of Rabbi Shmuel Vosner: Informing is Permitted when Jewish Law Recognizes Secular Law as Valid
 - The View of Rabbis Feinstein and Breisch: The Prohibition is Unchanged by a Just Government
3. Hypotheticals and Conclusion

I. Introduction

This article addresses the question of whether and when Jewish law permits, prohibits or mandates that a person inform governmental authorities that a Jew actually violated or conspired to violate a Federal or State law. In particular, this article will focus on the application of the classical rules of informing (*mesira*) in accordance with United States Jurisprudence which accords a defendant due process.¹

This article is divided into three sections. The first section summarizes the general principles of *mesira* derived from the Code of Jewish Law and current recognized decisors of Jewish law (*viz.* “*poskim*”). The second section explores the various positions taken by modern decisors in regard to the prohibition to inform in countries where the criminal justice system is deemed fair and just. The conclusion presents a hypothetical that concerns informing in a just society and highlights opposing positions issued by modern decisors.

The following two points are provided to clarify the pertinent Jewish law. The term “*mesira*” or “*moser*” is not accurately translated as “informing” or “informant”.² Jewish law discusses three different problems: (a) informing a robber that a person has money or some other item of value; (b) informing an abusive government of the same, and (c) informing the government that someone has violated its laws. It is well

1 See United States Constitution the Fifth and Fourteenth Amendment which provides for due process.

2 The term “*mesira*” and “*malshin*” are variously translated as “informing”.

known that Jews lived in countries where the governments were unjust (or unjust towards Jews) or members of the government were corrupt. Given the corruption of these governments, informing on a fellow Jew may inevitably cause the accused Jew to be unjustly incarcerated or receive the death penalty.

In direct response to this injustice, our Talmudic Sages enacted rabbinic decrees prohibiting the act of informing.⁵ In contrast to the foregoing, this article analyses the application of the laws of *mesira*, informants, in a society where the government is considered just and on the whole metes out punishment in a just and seemingly reasonable way.

It is important to note this article does not explore informing on violent criminals, sexual predators or people whose conduct endangers minors or adults. Even in unjust societies, under Jewish law one may report the alleged perpetrators to secular authorities, if there are no other available means to prevent clear and apparent future criminals acts. This article analyzes the issues of *mesira*, informing on non-violent criminals where the alleged criminal acts range from garden-variety white-collar crimes including without limitation cat-burglars, tax evasion to zoning violations and prescription drug abusers. This article specifically excludes the treatment of informing on serial killers, armed robbers, sexual predators or muggers.

II. Classical Jewish Law and Informing: An Overview³

Even though Jewish law expects people to observe the law of the land, and even imposes that obligation as a religious duty,⁴ the Talmud recounts in a number of places that it is prohibited to inform on Jews to the secular government, even when the act in question violates both secular and Jewish law. While there are a number of exceptions to this prohibition (which are explained further in this section), Jewish law prohibits such informing absent specific circumstances. Even if secular government were to incorporate substantive Jewish law into secular law and punish violations of what is, in effect, Jewish law, Jews would still be prohibited from cooperating with such a system.⁵ Indeed, classical Jewish law treats a person who repeatedly informs on others as a pursuer (a *rodef*) who may be killed without due process in order to

3 Sections III and IV are excerpted and summarized from Rabbi Michael J. Broyde's article "Informing on Others for Violating American Law: A Jewish Law View," - *Jewish Law - Examining Halacha, Jewish Issues and Secular Law*, January 2008.

4 See *Shulchan Aruch, Choshen Mishpat* 369:8

5 See *Bava Kamma* 116b-117a where a Talmudic sage actually killed one who was going off to inform on another person.

prevent the informant from 'snitching'.

The prohibition of informing derives from three different Talmudic incidents, whereby the informant conspires to extort money or property from his fellow Jew by informing the authorities that the defendant allegedly committed a crime, thus allowing a third party to unjustly seize the named defendant's money or property. This act of '*mesira*' is prohibited and is an actionable conduct. One of the Talmudic incidents declares that the act of informing causes one to be classified as a pursuer (*rodef*), whose life may be taken to prevent the informer from committing future acts.

The reason for the rabbinic decree positing that an informer (*moser*) is a life-threatening pursuer (*rodef*) is simply stated by Rabbenu Asher.

*One who runs to inform so that Jewish money is given to a bandit (anas) is analogized to one who is running after a person to kill him. This holding is based on (Yeshayahu 51:20) 'your children lie in a swoon at the corner of every street, like an antelope caught in a net.' Just like when an antelope is caught in a net, the hunter has no mercy towards it, so too the money of a Jew, once it falls into the hands of bandits, the bandits have no mercy on the Jew. **They take some money today, and tomorrow all of it, and in the end, they capture and kill him, since perhaps he has more money. Thus, an informer is like a pursuer to kill someone, and the victim may be saved at the cost of the life of the pursued.** (Teshuvos HaRosh 17:1)*

According to Rabbenu Asher, what makes informing worse than any other act which improperly damages another Jew is that informing puts a person in danger of life and limb, even when the initial act of informing is over a small money matter. Once one is enmeshed with these types of people, one never can tell what will happen and even death can result. Thus, one who informs is like a pursuer who might kill.

Mordechai states the matter differently. He writes:

*Even though as a general matter we do not push into a pit [to kill] any tort-feasor, even a thief or an armed robber, **the reason an informer is different is that the pagans gain and the Jews lose through this conduct; this is disgusting and one who regularly trains himself to engage in such informing to pagans, his status is worse than other tort-feasors.** (Mordechai, Bava Kamma 117a)*

According to Mordechai, informing is different from any other act, which damages another because the Rabbis decreed that a person who regularly involves himself in ensuring that Jews lose and gentiles improperly gain is engaging in an evil

activity and forfeits his normal rights as a Jew.

A thorough review of the rules related to informing is intricate and beyond the scope of this article. The following are the eight general *halachic* rules from the *Shulchan Aruch Choshen Mishpat*:

1. It is prohibited to inform on a fellow Jew to a gentile, whether the act of informing is about monetary matters or physical security (388:9). One may not inform on a Jew, even if the Jew transgresses Torah precepts and has bad character traits (*ibid.*).
2. One who informs is liable to pay damages if his act of informing damages another (388:2, *Sema* 5 and *Shach* 13). As a general rule one is not liable for torts done to another by a third party; informing is an exception to this rule (388:2).
3. Even without the order of a Jewish law court, one may kill a person who has certainly set out to inform on another, prior to their act of informing, as informing poses a danger to the one who is informed upon (388:10). Once a person informs, one may not kill the informer as punishment for the sin, and one may not steal from an informer (unless taking his property will stop him from informing) (*ibid.*). One who regularly informs may be killed without warning (388:11, 13, 14).
4. One who troubles the community through misconduct may be informed upon; so too one who engages in conduct that endangers members of the community may be informed upon (388:12). One who hits other people, or otherwise engages in acts of violence against people, may be informed upon (*Rema*, 388:7, *Shach* 45).
5. When a Jew owes money to a gentile, and the Jew is seeking to improperly avoid payment of the money to the gentile, and another Jew informs the gentile of this fact who then collects the money rightfully owed to him, that is not called informing, as the Jew who is informed upon only has to pay that which he ought to pay, anyway (388:12). Payment of taxes to the government is exactly such a debt (*Shach* 388:2 and *Pischei Choshen* volume 5, chapter 4:15, note 44).
6. A Jew who is threatened with physical harm unless he informs on another is not called an informer if he delivers information, and he is not liable for the damage causes (388:2-3). There is a dispute as to whether such conduct is

proper or simply immune from liability.⁶

7. There is a dispute about whether a Jew who is threatened with economic harm unless he illicitly informs on another is called an informer or not and whether such conduct is permitted or not (388:2-3).
8. Many authorities rule that no liability is present if one informs on another to save one's own property without any gratuitous intent to hurt the other person.

Indeed, these rules would prohibit a person from reporting a Jew's illicit conduct to governmental authorities unless the informer is under duress to inform, or the criminal is violent or threatening of the community, or according to some decisors, the informer provides such information to protect his own property. (In cases of desecration of God's name, informing is also sometimes permitted.) These rules, by their simple direct application, would prevent a person from informing on his neighbor who is cheating on his taxes (since the government imprisons such people, and does not merely retake the money owed), violating non-safety related zoning law, stealing cable television from the cable company, and a host of other violations of American law. Informing on a serial killer, mugger, assaulter, child abuser, or any other violent criminal would be permitted.

III. Five Opinions of Contemporary Decisors Regarding Informing To Government Authorities in a Justice System Where Citizens Have Due Process of Law

The following four assumptions are presented about the United States Federal and States criminal justice system:

1. The United States of America, among other countries today, are just and proper governments that do not, as a general rule, sentence defendants beyond the legal guidelines. The United States is a democratic government based on the Constitution and accordingly, is not deemed a functionally 'corrupt government'.⁷
2. United States laws, rules and regulations do not discriminate based on race, color or religion and are not generally motivated by anti-Semitism.

⁶ Compare *Sema* 338:13 and *Taz* 388:3, where *Taz* asserts that the conduct is without sin. *Shulchan Aruch, Choshen Mishpat* 388:2

⁷ The Center for the Study of Corruption which annually publishes a measure of corruption in all major countries lists the United States in the top 25 countries where "abuse of public office for private gain" is not commonplace.

3. As a matter of U.S. Federal and State Law, litigants cannot be compelled to submit to the jurisdiction of a Jewish court (a *beis din*).
4. As a matter of U.S. law, Jewish courts are not authorized to adjudicate criminal matters, child custody cases, grant equity relief including restraining orders and enforcement of these orders.

It is noteworthy that if any of the foregoing assumptions is rebutted then the ruling regarding the legality of 'informing' under the prevailing Jewish law will consequently be impacted.

It should be further noted that under the U.S. criminal or civil law a citizen is not obligated to report violators of the law.⁸ Unlike Jewish law, if one did not cause the violation or have some other special relationship either to the victim or the criminal, one bears no legal obligation to intervene to prevent the commission of the crime or notify law enforcement. One need not report one's neighbor for tax fraud, notify the authorities of a crime, or attempt to rescue a drowning person. Thus, a person does not have a duty to report a criminal act to the authorities, unless a citizen commits a crime by bearing false testimony in any legal proceeding or government investigation (18 USC §1001).

The following five different *halachic* answers have been presented with regard to whether the prohibition against informing applies in a just society:

1. The rules of informing are not dependent on whether the government is 'just' or 'unjust'. In accordance with *halacha*, informing is permitted in cases of harm to others or any one of the exceptions permitting informing mentioned above.
2. An informer is not a pursuer anymore, but informing is still a tort, and one who informs on another without cause is liable for the damages caused thereby
3. Government entities like the United States Bureau of Prisons that operate and oversee the Federal prisons systematically discriminate against inmates and currently report a rising death rate due to murder, suicide and fatal diseases that are not properly treated. In fact, the number of inmates who died in state prisons and local jails in the United States increased for the third year in a row in 2013, according to a report from the federal Bureau of Justice Statistics. The total number of inmate deaths in 2013 was 4,446, the highest since the agency began tracking it in 2007. The previous year,

⁸ Second Restatement of Torts §314 (1965).

there were 131 fewer deaths in state prisons and local jails. Thus, the rules of informing have not changed and one may not inform against a fellow Jew who will be incarcerated in a hostile and life threatening circumstance.

4. There is no prohibition of informing to foreign governments who are charged with enforcing laws that Jewish authorities recognize as valid under “the law of the land is the law” or according to the obligation under Noachide Law to establish a proper system of law (*dinim*).
5. There is no prohibition of informing when government conduct is governed by law and order generally. The Talmudic Sages prohibited informing to bandits and unjust governments only.

A. The View of the Rabbi Eliezer Yehuda Waldenberg: No Prohibition to Inform when Government is Just

The view that the prohibition of informing does not apply to a government that protects property rights and is generally governed by law and order is first articulated in the writings of Rabbi Yechiel Michel Epstein, in his *Aruch Hashulchan*, as follows:

*As is widely known, in times of old in places far away, no person had any assurance in the safety of his life or money because of the pirates and bandits, even if they took upon themselves the form of government. It is known that this is true nowadays in some places in Africa where the government itself is grounded in theft and robbery. One should remind people of the kingdoms in Europe and particularly our ruler the Czar and his predecessors, and the kings of England, who spread their influence over many lands in order that people should have confidence in the security of their body and money. The wealthy do not have to hide themselves so that others will not loot or kill them. **On all of this [the presence of looting and killing] hinges the rules of informing [mesira] and slandering [malshin] in the Talmud and later authorities, as I will explain infra: These rules apply only to one who informs on another to bandits and so endangers that person's money and life, as these bandits chase after the person's body and money, and thus one may use deadly force to save oneself.***

The question of whether Rabbi Epstein actually intended what he wrote or authored the foregoing to satisfy the censor(s) is still a disputed matter.⁹ Notwithstanding, Rabbi Eliezer Waldenberg unconditionally adopts the view of the

⁹ See Rabbi J. David Bleich, “Extradition,” *Techumim* 8:397-303

Aruch Hashulchan. In the course of discussing whether one may inform on a teacher who is molesting children, Rabbi Waldenberg emphasizes:

Even in the understanding of the secular court system it appears that there is a difference between primitive and enlightened governments, as is noted by the Aruch Hashulchan in Choshen Mishpat 388:7 where it states that "every issue related to informing found in the Talmud and poskim deals with those far away places where no one was secure in his money or body because of the bandits and pirates, even those who had authority, as we know nowadays in places like Africa" such is not the case in Europe, as the Aruch Hashulchan notes. ... I write this as a notation of general importance in the matter of the laws of informing. (Tzitz Eliezer 19:52)

The *halachic* predicate for this view is that the repeated use of the term bandit (*anas*) throughout the many *halachic* texts dealing with informing is to be understood literally, that it is only prohibited to inform on people to bandits. The various rules which prohibit the act of informing are limited to cases where the recipient of the information are unethical or unjust individuals or governments.

Significantly, the *Tur* supports this legal position by maintaining that:

One who delivers another's money into the hands of a bandit, whether the bandit is a Jew or Gentile, must pay damages that he caused, since he caused a loss of money. (Tur, Choshen Mishpat 381:2)

Indeed, Rabbenu Asher quoted above maintains that the basis for the proscription of informing to authorities is based on the fact that is likely that defendant will be subjected to unjust torture, or a life threatening situation in prison.

Rabbi Yosef Shalom Elyashiv explicitly adopts the Rosh's analytic framework in response to the following question:

The Office of Religious Affairs in our location has been robbed of collected money on more than one occasion. All of the indications point to one of the workers, but all of our efforts have not resulted in an admission to the crime. Is it is proper to refer this matter to the secular authorities for prosecution? The matter could be serious, as we suspect that the person is the head of a large family, and this person is connected to Torah activities; it is possible that there will be a desecration of God's name. On the other hand, public money is missing, and who knows what else is gone.

Rabbi Elyashiv replied:

See Responsa Panim Me'eros 2:155 dealing with our matter of one who

*found an open chest, and much was stolen from it. There is reasonable grounds to believe that one of his workers did this act of theft. Is it permissible to inform on this worker to the secular authorities? He proves from Bava Basra 117 and Bava Metzia 25 that there is a religious duty on the judge adjudicating the matter to punish based on the knowledge that he has, when his knowledge is correct. He then quotes from the incident with Rabbi Heshel and the view of the Shach but he concludes “nonetheless I [the author of the Panim Me’eros] say that is it improper to report him to secular authorities, as our Talmud sages recount ‘they treat him like a caught animal’ and one must be afraid that they will kill him.” From this it is clear that such is not applicable in our [Rabbi Elyashiv’s] times. **By the halacha it would be proper to report him to the police.** But, you ponder the possibility that this will lead to a desecration of God’s name, and it is not in my ability to evaluate this, since I do not know the facts.¹⁰*

This view posits that when fear of death or torture is functionally gone, the rabbinic decree prohibiting informing does not apply. This is true according to these authorities even when the government has no right (according to Jewish law) to enforce this particular law on its Jewish citizens or is punishing them in a manner inconsistent with Jewish law. Based on this approach, one may inform in a society where the government convicts innocent people because allegedly the system as a whole is just and fair. Even non-violent criminals or people who violate regulatory statutes (such as zoning laws) may be referred to the authorities according to this opinion. Moreover, where there is no prohibition to inform, the informer is not liable for any damages caused by the disclosure of the information to the respective authorities.

B. The View of Rabbi Ezra Batzri: There Are No Just Legal Systems and No Just Prisons

Rabbi Ezra Batzri, in his modern multi-volume treaties on Jewish commercial law, *Dinei Mamonus*, responds to the view discussed in the *Aruch Hashulchan* above. After stating the view that informing is prohibited, he notes the following:

Do not be surprised by the rules in this chapter, and think that they are inapplicable nowadays since governments are enlightened and democratic, a beacon for people to travel. This should be thought true only by the very

¹⁰ Rabbi Sinai Adler, *Davar Sinai* 45-46 (Jerusalem 5760)

*naive, as even in democracies, in truth when there is a matter that involves the government, the matter is treated as out of the normal protocol as happens when matters relate to security of the state. **All rules of informing are applicable even currently.** Anyone who knows and understands and sees not only what is externally visible, and what previously was, will see that only the external appearance has changed; the outside has changed, but the central characteristic [of government] has not changed. **Even if they bring all matters to court, it is clear that, through interrogation and the police, government can destroy people and in many places they do, in fact, destroy people.** (Dinei Mamonus 4:2:5n at page 86)*

Rabbi Batzri posits that even when the external justice system seems to work, nonetheless the executive and judicial systems is so deeply fraught with exceptions, and extra-judicial misconduct, and coerced confessions, that one must assume injustice will occur and thus informing on a fellow Jew remains generally prohibited.

Rabbi Yaakov Yeshaya Blau, author of the multi-volume *Pischei Choshen*, raises a related point as a possibility. Even if the justice system works up until the point of incarceration:

*Nonetheless the punishment of imprisonment is analogous to endangering a person's life by informing on them in a way that endangers their life, **since imprisonment poses a possibility of life threatening conditions.** (Pischei Choshen 7:4, Note 1)*

Rabbi Blau proposes the possibility that even if a justice system works only to incarcerate people who are deserving of incarceration, jail is a most unpleasant place to be, with physical duress exactly of the type the Talmud contemplated, and accordingly informing on a person in a way that may subject the defendant to a harsh prison sentence.¹¹ Evaluating this type of claim is very difficult, but Rabbi Blau's observation has a certain amount of merit in this matter. One well-known commentator on prisons in America observed:

Prisons, never safe places, are growing increasingly dangerous to inmates. The most recent Department of Justice research shows that 14% of all prison inmates, and 20% of those under the age of 25, have been assaulted

¹¹ According to the Rashba 1:1105 and *Pischei Choshen* Vol. 5 Ch. 12 par. 5, prison has the status of an indeterminate sentence ("ma sh'ayn lo kitzva"). Subjecting a defendant to a harsh prison whereby he may be harassed and molested by inmates and guards is unlawful.

*while in prison.*¹²

According to Rabbi Blau, it is in prison where *halacha* now fears that the observations of the *Rosh* are correct; people are abused and tortured without any basis in law.

Based on Rabbis Batzri and Blau's joint position, *mesira* should be broken down into the following three categories:

a) Threats of Violent Acts: When a person being informed upon is an individual who is violent, or threatens violence, or induces harm to others or endangers the welfare of the community, such a person may be informed upon, as Jewish law recognizes the need to remove these people from the community, even if these people might be harmed by the brutal prison system.

b) Non-violent Criminal Acts (i.e. White collar crimes such as intentionally bouncing checks, or recreational personal drug use): As illustrated above, because of the harsh environment of the prisons, Jewish law mandates that one may not directly or indirectly inform on these perpetrators to the authorities or refer this matter for prosecution because the punishment imposed by the court is inconsistent with Jewish law.

c) Infractions and Administrative Violations: Cases such as parking violations, building code violations, unintentional environmental damage, and the like, which are not punishable by prison would be permissible. Rabbi Batzri observes that prisons are (sadly enough and to the shame of our society) treacherous places with tortious conditions incapable of punishing people justly. This has a powerful practical logic to it and seems factually persuasive. Indeed, the United States Bureau of Prisons is rife with corruption where racism, corruption, murder, suicides, assault and battery are commonplace. Accordingly, Jewish law should not countenance the imposition of jail time on white collar offenders who were convicted based on an informant's testimony and as a result will certainly face life threatening situations on a daily basis.

C. The View of Rabbi Yitzchak Shmelkes: Informing as a Tort in a Just Government

Rabbi Yitzchak Shmelkes advances a novel approach to the question of informing in a just society by asserting the following:

12 See "Tender" Jan. 2019 listing the "11 Most Dangerous Jails In The US." Included in the top 10 was Mans Central Jail and Twin Towers Facility in downtown Los Angeles.

*As you wrote on the central matter of one who informs about monetary matters, **such a person does not have the status of a pursuer, as there is no fear, nowadays that such informing will lead to danger to life**, and certainly such a person is not ineligible to serve as a witness according to Torah law.... (Beis Yitzchak Yoreh Deah, 49(12))*

According to Rabbi Shmelkes, one must make a factual determination as to whether informing can lead to life threatening conditions. If it can, then informing leads to one being classified as a pursuer; otherwise, such conduct is a generic tort and while damages have to be paid, one is not considered a pursuer (*rodef*) because of such conduct. One might not even be deemed a “sinner” but merely a tortfeasor.

A similar such view is seemingly endorsed by Rabbi Yaakov Yeshaya Blau:

In the writings of many decisors we have seen that they found some merit (lamdu zechus) on the kings and governments of their time so that the rules of informing did not apply. But it is widely known that in these kinds of works the hand of the censor is present. In circumstances they wrote (or left out) matters out of fear of the censor or the government, or at the least because of hatred of the Jews (eiva), and it is thus hard to learn from these sources. Nonetheless, in my humble opinion, there is an acceptable aspect of this view [that informing does not apply in just society] since the essence of the prohibition to inform even on monetary matters is ‘lest they come to kill you.’ It is clear that in a country where the government is just, even though informing is clearly prohibited, nonetheless there is no fear that they will kill you. Thus an informer is no different from any other damager of the property of another, and none of the strictures concerning informing which can result in physical duress apply... (Pischei Choshen, 5:4, note 1)

To understand this view, one must accept that there are really at least two distinctly different components to the rules of informing: the tort component of damaging another, and the sin of endangering the life of another through informing. In a society where, in fact, there is no danger of life and limb through informing to the governmental authorities, the informer loses his status as a pursuer, according to the view of Rabbi Shmelkes.

Indeed, although Rabbi Shmelkes does not state so explicitly, when only the tort prohibition is present, the only reason informing is prohibited is because one is **improperly** damaging the property of another. Absent the danger, both economic and physical, informing becomes merely a tort. It is an unusual tort according to Jewish

law in that the causation is indirect, but that would be the essence of the remaining Rabbinic decree that informing on another improperly creates liability according to Jewish law. In fact, the *halacha* is more complex in that once informing is treated like any other form of damages, it becomes permissible to engage in informing any time damaging another is permissible.¹³

D. The View of Rabbi Shmuel Vosner: Informing is Permitted when Jewish Law Recognizes Secular Law as Valid

Another view relates to the prohibition of informing about a criminal act that is not illegal or prohibited under Jewish law. Consider, for example, Rabbi Shmuel Vosner's discussion of whether one may work as a tax auditor for the government. In the matter of one who works in the tax offices, and when he sees one who defrauds the government he has to report him to the courts. That person wants to know if he is in the status of an informer or "the law of the land is the law [and is thus proper]."

*It is clear that according to the halacha, taxes, without dispute or controversy, are covered by the obligation to obey the law of the land.... On the question of informing to the government, it is clear from the incident discussed in Bava Metzia 83b with Rabbi Eliezer, who informed upon a person to the government, that this conduct was permitted because of loyalty to the government; even though they said to him "how long will you hand over God's nation to be killed?" that is because this matter relates to the danger to the life of a Jew. So too, that which Eliyahu recounts to Rabbi Yishmael [that he should cease informing] is applicable, but the technical halacha appears that this matter has a benefit to the government.... See also Rama [Choshen Mishpat] 388:11 who notes that if one wishes to flee to avoid paying a gentile what he actually owes him, and another reveals this information, the latter person lacks the status of an informer. Even though that Rama concludes "nonetheless, bad was done, as it is analogous to returning the a lost object to a pagan," that is limited to returning the lost object to an individual pagan. However, **that which is relevant to the government and its designee, there is no sin** [either of informing or returning lost objects improperly]. Nonetheless, ab initio it is better not to accept an appointment to engage in such activity, since it entails informing*

13 Shulchan Aruch, Choshen Mishpat 338:10-12.

on one even in a permissible way, which is not the conduct of the righteous, as is noted in the Yerushalmi in Teruma 8:4.... Furthermore this case is not analogous to other cases as those cases involve danger to life when the gentiles are informed; this case is different because punishment imposed on the violator nowadays never involves mortal danger. (Shevet Halevi, Yoreh Deah 58)

In this view, informing is a violation of *halacha* only when Jewish law does not recognize the inherent validity of the right of the secular government to enforce its actions through the law of the land. Whether the conduct one is reporting violates autonomous Jewish law (absent secular law) is completely irrelevant to this mode of analysis. Whether the person is punished in a matter consistent with Jewish law or not also does not matter, because Jewish law only prohibits informing when secular law is invalid under Jewish law.

Based on Rabbi Wosner's position, the prohibition to inform is inversely related to the obligation to obey the law of the land. There are three principal perspectives regarding the law of the land is the law:

1. Rabbi Joseph Karo (*Shulchan Aruch*, CM 369:6,11) rules that secular law is binding under Jewish law only to the extent that it directly affects the government's financial interests. Thus, secular laws imposing taxes or tolls would be valid under Jewish law.
2. Rabbi Moshe Isserles (Rama, CM 369:11) agrees that secular laws directly affecting the governments financial interests are binding, but adds that secular laws are enacted for the benefit of the people of the community as a whole are also, as a general matter, effective under Jewish law.
3. Rabbi Shabtai HaKohen (*Shach*, CM 73:79) disagrees with Rabbi Isserles in one respect. He believes that even if secular laws are enacted for the benefit of the community, they are not valid under Jewish law if they are specifically contrary to indigenous Jewish law obligations.

There is substantial debate among Jewish law authorities as to which of the foregoing approaches to follow. Nevertheless, most modern authorities agree that, at least outside of the State of Israel, Rabbi Isserles view should be adopted and accordingly such is the view all four American deans of Jewish law of the previous generation: Rabbi Moses Feinstein (*Iggros Moshe*, CM 2:62), Rabbi Eliyahu Yosef Henkin (*Teshuvos Ibra* 2:176), Rabbi Joseph B. Soloveitchik (*Nefesh HaRav* 267-69), and Rabbi Yoel Teitelbaum (*Divrei Yoel* 1:147). In this view, almost all applications of

secular law are valid under Jewish law.¹⁴

Based on this approach, that informing is only prohibited where Jewish law rules that one need not obey secular law, one could cogently argue that informing is actually permitted in any situation in which the person on whom one is informing has actually violated secular law that Jewish law deems valid, and the informant has financial gain, or abatement of the tort.¹⁵ So too, in a situation where silence would lead to a desecration of God's name and informing would lead to a sanctification, informing would be permitted.¹⁶

E. The View of Rabbis Feinstein and Breisch: The Prohibition is Unchanged by a Just Government

The view of Rabbi Briesch (explicitly) and Rabbi Moshe Feinstein (implicitly) is that the rules relating to informing are unrelated to the status of the government as just or unjust, proper or improper. In three distinctly different *responsa*, Rabbi Feinstein (*Iggros Moshe*, CM 2:29) appears to posit that the prohibition of informing remains identical in a just society. In 1961, Rabbi Feinstein answered a question concerning whether the communal rabbinate may report to the police a person who had been selling non-kosher food mislabeled as kosher, if this person, instead, is willing to consent to a *din torah* by the rabbis themselves. Rabbi Feinstein wrote:

I received your letter with regard to an evildoer who came into a kosher factory and forged the kosher symbol, placed it on non-kosher items, which he sold to Jews as kosher. The question is can one inform on him to the secular authorities who will judge him severely with either a fine or prison, or must the rabbis judge him according to Jewish law? In my opinion, even though his sin is great, and he shows no repentance, nonetheless so long as we cannot say that the Jewish judges cannot judge him, one may not turn the matter over to the secular authorities.... In addition, since it is certain that the secular authorities will adjudicate the matter through incarceration or a fine inconsistent with Jewish law, one must be fearful of the prohibition of informing, as it is prohibited to inform on a Jew to the secular authorities, whether through danger to his body or his money, even if he be a sinner. (Iggros Moshe, CM 1:8)

14 Shmuel Shilo, *Dina De'malkhuta Dina* at page 157.

15 *Shulchan Aruch* 266:1.

16 *Shulchan Aruch*, *Choshen Mishpat* 266:1.

No mention is made of the fact that the secular authorities (in this case, the state of Maryland) will adjudicate the matter fairly (i.e., consistent with its laws) or that prison was the proper penalty according to secular law. Rather, Rabbi Feinstein adopts the view that unless one of the exceptions permitting informing is present, it is prohibited to inform on a person according to Jewish law, as the punishments imposed by secular law violate Jewish law, and thus may not be imposed on a person, lest one violate the prohibition of informing.¹⁷

Indeed, Rabbi Feinstein repeated this position in his discussion of whether one can be a tax auditor for the government. Rabbi Feinstein avers the following:

In the matter of one who wants to be an auditor for the government such that on occasion one will encounter the tax returns of one who has cheated, and he will detect the fraud, [and will thus report it to his superiors] and will be like one who informs the government, and they will punish this person more than he is liable according to Jewish law. It seems logical to me that since anyone who examines tax returns will encounter the fraud, and even if this person declines the job, others will take the job and discover the fraud, one sees from this that the one who commits the fraud suffers no loss whether this person takes the job or not and another is there, and thus the one who cheats loses nothing whether or not this person takes the job and without a loss there is no prohibition. (Igros Moshe, CM 1:92)

Again, Rabbi Feinstein posits that there is no justification to inform on a person given the just American government. Rather, he provides a narrow “technical” explanation for why this particular activity of informing while working for the IRS is not prohibited to this particular person. Rabbi Feinstein would rule that in a case where if any particular person did not inform, then the cheater would **not** be caught, then it would be prohibited to inform.

Indeed, in a responsa entitled “May One Inform on a Thief to the Courts of the Land” Rabbi Feinstein states:

*It is prohibited for us to inform on a person for a matter **where the punishment is unfounded in Jewish law**. In Jewish law, theft is resolved through restitution as measured by an expert, and secular law punishes through imprisonment, unfounded in Jewish law. (Igros Moshe, OC 5:9[110])*

¹⁷ Shulchan Aruch, Choshen Mishpat 388:12.

Although Rabbi Feinstein provides no explicit discussion of whether a just government is of any relevance, Rabbi Feinstein repeatedly focuses on the fact that the punishment imposed by the secular government is contrary to Jewish law in its magnitude or scope, and thus when one Jew causes another to be punished in excess of the punishment directed by Jewish law, that is a prohibited form of damage grounded in the tort of informing, as the punishment is unjust by definition, as Jewish law has a different punishment. Thus, in all of these responsa Rabbi Feinstein posits that the punishment authorized by the secular statute is greater than that permitted by Jewish law, and thus the conduct of informing is prohibited. In cases where the punishment is not greater than that directed by Jewish law, it would appear logical to posit that Rabbi Feinstein would not prohibit informing as (in Rabbi Feinstein's own words) "there would be no damages and when there are no damages, there is no prohibition."

A different rationale is explicitly stated by Rabbi Ya'akov Briesch, who notes that the rules which prohibit informing cover even cases where there is no threat to bodily harm. Rabbi Breach was asked:

Is the prohibition of informing specifically when they are chasing after Jews, and thus if one informs on one's friend they punish him because he is a Jew, but if a gentile did this they would not punish him, then one is called an informer (moser), or it is even nowadays, when they are not pursuing Jews through law, and if a gentile had violated the law they would punish him as what he did is a crime, is that too called informing as defined in Shulchan Aruch, Choshen Mishpat, 388

Rabbi Briesch answers:

One who looks in Shulchan Aruch and other decisors will see explicitly that there is no difference, and even when one who uses secular courts to reclaim his own, the matter is in dispute in Choshen Mishpat 388:5 and the Shach views such a person as an informer. A similar view is found in Brachos 58a concerning . . . [a person who slandered government] and such a person became a pursuer [to destroy the government] and he was killed. Even though it is certain that if a gentile had done the same thing and called the government bitter they would have punished him, still Rav Shelai considered him an informer (moser) and killed him; while it is true that this case is different in that Rav Shelai was certain that they would be punished for mocking the government. Even the money of a Jew, once it falls into the hands of a gentile, they show no mercy on it, as is quoted in

Shulchan Aruch and other decisors, and as a matter of normative halacha this matter does not change.... That which we have seen in recent times [the Holocaust] provides proof to this. (Chelkas Yaakov, CM 5 [new edition], 3:96 [old edition])

Rabbi Briesch maintains that even when there is no illicit harm to one's body, money that is taken contrary to Jewish law precludes one from informing

Under Rabbi Feinstein's or Rabbi Breisch's opinions, the following two categories apply regarding informing regardless of whether informing occurs in a 'just' or 'unjust' secular government:

a) A Violent Defendant: Such a person may be informed upon because Jewish law recognizes the need to remove violent people from the community. Such conduct is not prohibited, given the lack of authority the *beis din* to redress the situation.

b) Non-Violent Cases: Informing is prohibited, and is subject to the rules of informing, as explained herein. In cases where the outcome is identical in secular law and Jewish law, Rabbi Feinstein would aver that there is no problem of informing, as there is no damage.

IV. Hypothetical and Conclusion

This article presented the various positions of the leading decisors of Jewish law regarding *mesira*. The article explained how the prohibition to inform applies to a democracy, with a just system of government that grants freedom to its many different citizens. One group of decisors posit that just governments are exempt from the prohibition of informing, either because the whole prohibition did not apply when government was just, or because governments that operate within the confines of the Jewish law obligations of the "law of the land is the law" are exempt. Another group of decisors posit that the prohibition of informing fully applies even to just governments, as the rabbis did not want Jews assisting in the prosecution of their co-religionists in a manner inconsistent with Jewish law; even if the government itself can engage in this conduct, Jews should assist in the prosecution of these individuals. A third group of decisors posits that the system, even as it appears just, is not, and thus informing is prohibited.

Jewish law and the cited decisors do not address the issue of informing in the capacity of a CI who participates in a FBI or other government 'sting operation' to induce innocent Jews into committing crimes. It is the writer's opinion that even according to decisors that permit informing in a just society voluntarily cooperating in a 'sting operation' would most probably be prohibited under Jewish law because

inducing a fellow into a conspiracy to commit a criminal act violates the *issur d'oraysa* of (*Vayikra* 19:14): "You shall not curse the deaf nor place a stumbling block before the blind; you shall fear your God - I am your Lord." In Hebrew, the sin of placing a stumbling block before a blind person is referred to as *lifnei iver lo sitten michshol* (before the blind do not place a stumbling block), or succinctly as *lifnei iver*.

This verse is somewhat perplexing: Why single out blind people for this law? Was placing stumbling blocks before blind people a prevalent practice in ancient times? Furthermore, there are a large number of laws in the Bible that deal with causing injury to others, blind or not. This may explain why the Talmud felt the need to give the verse a more profound meaning. Thus, the word "blind" is interpreted metaphorically to represent any person or group that is unaware, unsuspecting, ignorant, or morally blind, and individuals are prohibited from taking advantage of them or tempting them to do wrong. It is interesting to note that there is a dispute as to whether the verse should be interpreted literally at all. Apparently, some sages felt that there was no need to have a special law against causing blind people to stumble since there are a sufficient number of laws protecting all individuals from malicious harm (see *Minchas Chinuch*, 232:4).

Since the informer knowingly intends to induce an unsuspecting fellow Jew to commit a criminal act that may subject him to incarceration which is life threatening, such act of informing should be prohibited *mid'oraysa*.

A further issue should be considered as to whether co-defendants in a criminal prosecution may inform on each other in order receive a more favorable sentence. This strategy is at times referred to as a "pile on." Before addressing the substantive issue, a trier of fact must first determine the credibility of such evidence and testimony. Certainly, such evidence must be scrutinized and independently verified to determine its veracity. If such evidence is deemed admissible, then under Jewish law the issue is the evidence admitted to convict the co-defendant or used in sentencing for purposes of allocating culpability including leadership role. According to Rabbi Feinstein and Rabbi Breisch, such informing is prohibited because it will directly cause the co-defendant to receive a harsher sentence, which may place the co-defendant in a life-threatening situation.

According to Rabbi Batzri, the act of informing in this situation is prohibited because it will subject the defendant to jail sentence and thereby place in a life-threatening environment. According those authorities who permit informing when secular law is valid in the eyes of Jewish law, although such conduct is not informing, it is prohibited under the rubric *mashiv avedat akum*, unless being silent leads to

desecration of God's name or informing leads to a sanctification of God's name. In that case informing is mandatory, and would only be permitted when the informer stands concretely to benefit from the arrest, such as if it was one's job to arrest such people. Note, according to Rabbi Feinstein, such informing is prohibited and makes the informer a pursuer (unless this conduct is one's job, and if you did not do it, someone else would or the person violating the law would be detected anyway.)

Conclusion

The application of Talmudic rules to modern life is complex and difficult, and frequently requires that one to ask questions historically yet to be asked. This article poses such a question. How do the rules of informing apply in a just society with an honorable government? There are a variety of answers taken by different decisors. The foundational question being what is the scope of Jewish law's recognition of valid secular criminal legislation when Jews serve as agents of enforcement. One position adopts the view that Jewish law has no prohibition to inform once society has a system of laws and justice, rather than institutional banditry, as government was in the middle ages. The other view states that Jewish law allows cooperation with secular law only when Jewish law recognizes that any particular secular law is valid (and that is contingent on the scope of the rule "the law of the land is the law"). The final view posits that Jewish law does not allow Jews to voluntarily cooperate with secular authorities in the punishing of fellow Jews in situations where the substantive punishment meted out is harsher than that imposed by Jewish law itself. All however agree that the exercise of substantive governmental authority is itself valid in the eyes of Jewish law; the question merely is whether one may cooperate in a society where cooperation is not mandatory.

In the final analysis, the overarching consideration in determining the *halacha* is whether the information provided by the informer or the voluntary participant in a 'sting operation' will cause a fellow Jew to be incarcerated and be faced with a life threatening situation. In light of the recent rise U.S. prisoner death, diseases, assault and suicides, informers should act within the purview of Jewish law and resist the urge to inform circumstances where the convict may face a long and harsh jail sentence.

On the Placement of *Pesukim*: Case Studies in *Peshuto Shel Mikra*

ZAC GRODZINSKI



In my last two *Nitzachon* articles, I introduced the readers to Rabbi Yehuda Cooperman's approach to *peshuto shel mikra*. As stated in those articles, Rabbi Cooperman championed the idea of studying *peshuto shel mikra* rigorously, though—as opposed to classical biblical scholarship—not separated from the teachings of *Chazal*. He often distinguished between the “how” and “why” questions. On the level of *peshuto shel mikra*, he wasn't directly concerned with “how” *Chazal* arrived at their interpretations, be it through a combination of *drashos* and *kabalos*, but was more interested in “why” the *pasuk* reads as it does. The “why” question is especially clear when dealing with cases where the *peshuto shel mikra* directly contradicts the reading of *Chazal*. In my previous articles I addressed a number of these examples (Aharon's Yom Kippur *Avoda*, *Mimacharas HaShabbos*, *Ayin Tachas Ayin* etc.), and presented a number of “functions” that the *peshuto shel mikra* can play above and beyond teaching the traditional *halacha*, from preserving the temporary *halacha* that applied at the time of the Torah's writing (*Nitzachon* 5:2), to exposing the foundations of a *halacha*, or revealing the *dinei shamayim* in certain cases (*Nitzachon* 6:1).

I will present here a number of examples that all address a single “why” question. In the previous articles, the “why” questions were concerned with the disparity between the *peshuto shel mikra* and *Chazal's* seemingly contradictory interpretations. In this article, however, the “why” question stands alone, independent of *Chazal's* interpretations, and asks: *Why* are certain *halachos* written *where* they are written? That is to say, what can the location of a *pasuk* tell us about the content of the *pasuk* itself? This question gains even more strength in cases where the *pasuk* could have been written in seemingly more logical places.

While all of the following examples will focus on the insights gained from the

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location of specific *pesukim*, the types of insights can be roughly divided into two groups: (1) cases in which the location of the *pasuk* provides a deeper meaning or more precise definition of the *pasuk* itself, and (2) cases in which the location of the *pasuk* allows for the creation of new *halachos*. While in general, *Chazal* were not concerned with the location of *pesukim* and were able to apply *halachos* that were derived in one location to many cases, at the end of the article I will bring an example that shows that even *Chazal* took the location of the *pasuk* into account when making (or not making) a *drasha*¹.

Part 1 Example 1: *Shechita B'Tzafon*

Vayikra Ch. 1 describes the procedure of a *korban olah*, beginning with *olos* that come from *bakar*, cattle (vs. 2-9), then from *tzon*, flock (10-13), followed by those from *of*, birds (14-17). One of the key requirements of an *olah*, and *kodshei kodshim* in general, is that it must be slaughtered on the north side of the *mizbeach*—*shechita b'tzafon* (*Zevachim*, Ch. 5). This requirement is first mentioned in *Vayikra* 1:12 in connection with *olas tzon*, and is then applied to other *kodshei kodshim* by way of comparisons within the *pesukim* as well as *drashos* of *Chazal* (see *Zevachim* 48a). While these *drashos* answer *how* the *halacha* is applied, on the level of *peshuto shel mikra* the “*why*” question in this case is apparent: Why did the Torah skip over the first case of the *olah* (*bakar*) and only teach the law of *shechita b'tzafon* in the second parsha of *olah* in connection with *tzon*? It would have made more sense to teach it in the first possible location.

To answer this question, the *Meshech Chochma* brings an interesting *midrash*:

ובאיל הוא אומר “צפונה לפני ה”... שבשעה שהיו ישראל מקריבין תמיד על גבי המזבח וקורין את המקרא הזה “צפונה לפני ה” זוכר הקב”ה עקידת יצחק.

And with regard to the ram it says “on the north side in front of Hashem,” since at the time that the Bnei Yisrael offer up the Korban Tamid on the mizbeach and read the verse “on the north side in front of Hashem”, Hashem remembers Akeidas Yitzchak. (Vayikra Rabba 2:11)

According to the *midrash*, there is a deep connection between an *olas tzon* (in this case the *korban tamid*), its *shechita b'tzafon*, and *Akeidas Yitzchak* (in which a *tzon*, a ram, was offered in Yitzchak’s place), which keeps the episode “*tzafun*”—hidden or guarded by Hashem. Based on another ambiguous statement of *Chazal* regarding

¹ The following examples are taken from Rabbi Cooperman’s *Peshuto Shel Mikra*, Section 2, Chapter 7.

the northern side of the world being “open” (*Bava Basra* 25b), the *Meshech Chochma* explains that this refers to man’s free will being open and available to him in a given situation. This attribute of free will was most apparent in Avraham’s *mesiras nefesh* and willingness to sacrifice Yitzchak to Hashem, and from that time on was ingrained into the fabric of the Jewish people for all generations. It is this aspect that is “*tzafun*” in front of Hashem every time a *tzon* is slaughtered on the north side of the *mizbeach*. With this in mind a number of difficulties can be explained:

A: *Vayikra* 4 describes four cases in which a *Korban Chatas* is brought. In general they are: 1) *Par Kohen Hamashiach*—if a *Kohen Gadol* sins mistakenly, 2) *Par He’elem Davar*—if everyone sins based on an erroneous ruling of the *Sanhedrin*, 3) *Nasi*—if a king sins mistakenly and 4) *Nefesh Achas*—if an individual sins mistakenly. As they are all *kodshei kodshim*, all require *shechita b’tzafon*; however, the Torah only mentions this law with regard to the last two cases (v. 24, 29, 33).

After understanding the basis of the law of *shechita b’tzafon*, which is to recall *Akeidas Yitzchak* and Avraham’s free will (indicated by the “north side”), it makes sense that the Torah doesn’t mention this law explicitly in the first two cases of *korban chatas* which could be offered exclusively with a cow (*bakar*), as opposed to the last two which were a goat or sheep (*tzon*). While *Chazal* were able to apply the *halacha* of *shechita b’tzafon* to all cases (*bakar* and *tzon*), the *peshuto shel mikra* mentions the *halacha* of *shechita b’tzafon* only in connection with those *korbanos* that directly matched the *korban* of the law’s foundation (*Akeidas Yitzchak*), that being *tzon*: *vayikach es ha’ayil*.

This also explains why even when the Torah does explicitly indicate the *halacha* of *shechita b’tzafon*, as it does in the last two cases of the *chatas*, it doesn’t state it directly as done with the *korban olah* (1:11), *v’shchat oso al yerech hamizbeach tzafona*, but rather hinges it on the *korban olah* (4:24, 29, 33), *v’shchat oso bimkom asher yishchat es ha’olah*. In this case, the *peshuto shel mikra* indicates that *shechita b’tzafon* isn’t just a standalone *halacha* but stems from the primary *olas tzon* of *Akeidas Yitzchak*, *vayaaleihu l’olah tachas b’no*.

B: The *gemara* in *Zevachim* (48b) discusses whether a bird brought as an *olah* requires *shechita b’tzafon*. During the discussion, the *gemara* tries to prove that it should require it by way of a *kal vachomer* from *olas tzon*, but then refutes it by saying *ma l’ben tzon sh’ken kava lo kli*, birds can’t be compared to *tzon* since *tzon* require slaughtering with a utensil while birds don’t. *Tosafos* (ad loc.) is troubled with this refutation because he shows that in other places the *gemara* does derive laws of *olas of* from *olas tzon*.

According to the *Meshech Chochma* however, the refutation makes perfect sense. The basis of the *halacha* to slaughter with a *keli*, a knife, is derived in the *gemara* from Avraham himself at *Akeidas Yitzchak* - *Vayishlach Avraham es yado vayikach es hamaacheles* (*Zevachim* 97b). That being the case, when the original *gemara* (ibid. 48b) tried to apply *shechita b'tzafon*, a *halacha* whose basis stems from *Akeidas Yitzchak*, to birds, it was refuted by showing that birds are also missing another “*Akeidas Yitzchak* component”, that being the knife. If the *korban* is already lacking one of the components, it is not logical to apply another.

C: The *gemara* in *Menachos* (55b) shows that even though Nachshon's inaugural *korban* brought on the day following the *Shivas Yemei HaMilu'im* had many of the properties of a regular *korban chatas* (*shechita*, *semicha*, etc.), it did not need *shechita b'tzafon*. Why, however, was only this aspect left out? The *Tosefta* in *Brachos* (4:16) famously states that it was Nachshon who first jumped into the *Yam Suf* before it split. Based on this, the *Meshech Chochma* writes that since Nachshon already used his free will to demonstrate his *mesiras nefesh*, he wasn't required to recall this aspect of Avraham at *Akeidas Yitzchak* by performing *shechita b'tzafon*.²

Even though *shechita b'tzafon* applies to many cases, the Torah chose to write it explicitly in connection with *olas tzon*, the *korban* which directly matches the one that was brought in the primary case of *shechita b'tzafon*, Avraham's free will reaching its climax at *Akeidas Yitzchak*.

Part 1 Example 2: *Shevuas HaShomrim*

Shemos Ch. 22 discusses the laws of a *shomer chinam* (v. 6-8) and a *shomer sachar* (v. 9-12).³ In order to absolve himself of the requirement to pay in a case when the

2 While this is a very creative interpretation, the simple reading of the *gemara* in *Menachos* (55b) doesn't mention *Seir Nachshon* to exclude *only* Nachshon's *korban* from *shechita b'tzafon*, but uses it as an example to refer to all of the *seirei chataos* brought by the *nesi'im* (see Rashi ad loc.).

However, it is possible to say that Nachshon himself didn't have to perform *shechita b'tzafon* because of his preexisting *mesiras nefesh*, as mentioned, but once he brought his initial *korban*, he set the standard for the rest of the *nesi'im*. Therefore, even though all the *nesi'im* didn't have to perform *shechita b'tzafon* (in line with the simple reading of *Menachos* 55b), the basis of this exemption stems from Nachshon's *korban* (in line with the *Meshech Chochma*'s interpretation).

3 It should be noted that the Torah does not explicitly mention which kind of *shomrim* the two paragraphs refer to. *Chazal* (*Bava Metzia* 94b) prove it based on the increased level of liability given in the second paragraph, resulting from the benefit of being paid - thereby referring to a *shomer sachar*. Basing themselves on the *peshto shel mikra*, both the Ramban and the Rashbam point to the fact that in general people are willing to watch *keilim o kesef*, money and dishes, for free, the example given in the first paragraph (therefore referring to a *shomer chinam*), but *chamor o shor o seh*, animals, require more effort to watch and people would generally charge for

item was stolen (for a *shomer chinam*) or an unexpected event occurred (for both *shomrim*), the *shomer* must take an oath that the item was indeed stolen (for a *shomer chinam*) or that an unexpected event indeed occurred (for both *shomrim*). This *shevua*, termed *shevuas hashomrim*, can apply in both the case of the *shomer chinam* and *shomer sachar*. As in the case of *shechita b'tza'fon*, the Torah skipped over the first case (*shomer chinam*) and only taught the law of *Shevuas Hashomrim* in the case of a *shomer sachar*. The *pasuk* reads (22:10):

שבעת יהוה תהיה בין שניהם אם-לא שלח ידו במלאכת רעהו ולקח בעליו ולא ישלם.
An oath before Hashem shall decide between the two of them that the one has not laid hands on the property of the other; the owner must acquiesce, and no payment shall be made.

Based on the *gemara* (Bava Metzia 41) and Rashi's comments to these *pesukim*, the *Netziv* writes the following:

ולמדנו מזה הפשט דעת רש"י, דאם יש עדים שנגנבה ואינה ברשותו אין עליו שבועה שלא פשעתי. ובוזה מיושב אמאי לא כתיב בפרשה ראשונה דשומר חנם "שבועת ה' תהיה בין שניהם", ובשניה יכתוב סתם ונלמוד בג"ש
We learn from this comment of Rashi that if [the shomer chinam] has witnesses that know that the item was stolen and is no longer in his possession, [in this case, the shomer] does not need to take an oath that he was not negligent. And based on this it is clear why the phrase requiring the oath is not written in the first section of shomer chinam, rather is written in the second section [relating to shomer sachar] and is derived through a gezeira shava [to the first section].

According to the *Netziv*, on a Torah level, in a case where the *shomer chinam* brings witnesses that claim the item was stolen, he would not be required to take any oath, not the main oath regarding the robbery nor any of the *gilgul* oaths that state he wasn't negligent and that he guarded the item properly.⁴

From here we can see another reason why the Torah would choose to write a *halacha* in a specific location, when given more than one option. The Torah writes

the service, the example given in the first paragraph (therefore referring to a *shomer chinam*).

4 As Rabbi Cooperman mentions in footnote 16, this discussion is much more complicated than that which is presented here (see the *Netziv*'s complete comment to the *pasuk* as well as the *Harchev Davar* ad loc.). For the purposes of this article however, the above discussion is sufficient and explains the reason for the seemingly "out of place" *halacha*.

the *halacha* in connection to the section in which the *halacha* is *essential*. In our case, while in general, *shevuas hashomrim* applies to both cases of *shomrim* (as taught by *Chazal's gezeira shava*), it is essential to a *shomer sachar* and is always required on a Torah level. It therefore wrote the *halacha* explicitly in connection to the *shomer sachar*.

Part 1 Example 3: *Korban Todah*

Vayikra Chs. 6 and 7 provide a second description of the main five categories of *korbanos* previously introduced in chapters 1-4. After detailing the four kinds of *kodshei kodshim* (*olah, mincha, chatas, asham*), the Torah introduces the *korban shlamim* (7:11), which is generally *kodshei kalim*. However, instead of beginning with the standard case of a voluntary *korban*, the Torah chose to start with the *korban todah*, a unique kind of *shlamim* that was brought as a thanksgiving offering to Hashem for being saved from a serious danger (ocean, desert, jail, or illness; see *Tehillim* 107). Only after describing the *korban todah* does the Torah bring the standard case of a *shlamim*: *v'im neder o nedava zevach korbano*. In such a tightly organized portion of the Torah, why is the parsha of the *korban todah* seemingly out of place? Sensing the issue, the *Sforno* writes (7:11):

ואמר, וזאת תורת זבח השלמים – והודיע שאף על פי שכל השלמים קדשים קלים, מכל מקום יש חלוק ביניהם: שאם הם על אודות הודאה, יהיה עמהם "לחם", בתוכו מין "חמץ"... וכלם נאכלים בזמן קדשי קדשים שהם ליום ולילה. אבל כשהם שלמים פשוטים, שלא לתודה, זמן לשני ימים ולילה אחד.

*And the Torah notes that even though all [individual] shlamims are kodshei kalim, nevertheless there are differences between them, since if it is brought as a thanksgiving offering it must come with bread that includes leavened bread [unlike regular shlamim]...and all of it must be eaten **in the time requirements of kodshei kodshim which is one day and night**, but when the [korban] is a regular shlamim, not for a thanksgiving, the food can be eaten for two days and a night.*

Based on the bolded phrase above in which the *Sforno* specifically links the time period for eating the *korban todah* to that of *kodshei kodshim* (instead of just stating "one day and one night"), Rabbi Cooperman infers that the *korban todah* is actually a composite *korban* with elements of both *kodshei kalim* as well as *kodshei kodshim*. With this in mind, a number of items beautifully fall into place:

1. Even though *shlamim* are brought by individuals voluntarily, the *korban todah* by nature has more of a "requirement" element to it - as the *gemara* in *Brachos* states

- (54b) *arba'a tzrichim l'hodos...* This is similar to *kodshei kodshim* which are all brought as requirements (*korbanos chova*).
2. Only two other *korbanos* require leavened bread like the *korban todah*: *nazir* and the *shtei halechem*, both of which are *korbanos chova*, required *korbanos*, similar to *kodshei kodshim*.
 3. In a discussion of *pigul* and the amounts of time allotted to eat certain *korbanos*, the *gemara* (*Zevachim* 36a) asks: *chatas v'asham minayin*, from where do we know that a *korban chatas* and *asham* can only be eaten for one day and one night?. Following the question, the *gemara* immediately responds *talmud lomar, zevach*, referring to the word *zevach* that appears in our *pasuk* relating to the *korban todah*, "*ub'sar zevach todas shlamav b'yom korbano ye'achel, lo yaniach mimenu ad boker*." The *halacha* regarding the time in which *kodshei kodshim* can be eaten is learned out from a *pasuk* referring to the *korban todah*!

This being the case, it makes perfect sense why the *korban todah* is placed where it is. Even though it is part of the category of *korban shlamim* and has many properties of *kodshei kalim* (who can eat it, where it can be eaten etc.), since it clearly has elements of *kodshei kodshim*, it is mentioned immediately after the main cases of *kodshei kodshim* as if still part of that section, and not part of the main cases of *kodshei kalim*.⁵

Though the concept of *semichus parshios* was utilized by *Chazal* and appears a number of times in *Rashi's* commentary, very often it was used as a tool to teach a moral or aggadic lesson (though there are cases which are *halachic*), for example why the *parsha* of the *Meraglim* was placed after that of *Miriam* (*Rashi* to *Bamidbar* 13:2), or why the *parsha* of a *nazir* was placed after that of *sotah* (*Rashi* to *Bamidbar* 6:2). In the following examples, a similar concept to *semichus parshios* will be used to help explain why certain *pesukim* appear in seemingly strange and unexpected contexts. However, instead of these interpretations yielding moral or aggadic conclusions, I will show that even after *Chazal*, practical *halachic* conclusions can be derived from a location-oriented *peshuto shel mikra* analysis.

Part 2 Example 1: V'Ger Lo Soneh

Shemos Ch. 22 (17-20) reads:

מכשפה לא תחיה. כל שכב עם בהמה מות יומת. זבח לאלהים יחרם בלתי לה' לבדו.

5 While Rabbi Cooperman derived the composite nature of the *korban todah* from a few extra words in the *Sforno*, the *Abarbanel* in his discussion of the *korban todah* already stated this idea explicitly and elaborated at length on its significance.

וגר לא תונה ולא תלחצנו כי גרים הייתם בארץ מצרים.

You shall not allow a sorceress to live. Whoever lies with an animal shall surely be put to death. He who sacrifices to any god, except to Hashem only, shall be utterly destroyed. You shall not wrong an alien, neither shall you oppress him, for you were aliens in the land of Egypt.

While all four *halachos* in this list seem unrelated, the last one regarding verbal abuse to a convert is specifically puzzling in relation to the rest (most noticeably, the first three *aveiros* receive capital punishments, whereas the last one is just a *lav*). Sensing this oddity, the *Meshech Chochma* (comment on 22:17) offers an extremely creative solution. To better understand the explanation however, some background information is required.

The *gemara* in *Sanhedrin* (71b) discusses the *Sheva Mitzvos Bnei Noach* and the details of their punishments if violated. During the discussion, the following question arises: What happens if a non-Jew violated a law which he is bound by as a non-Jew, but then subsequently converted? If the punishment for violating the law as a Jew and as a non-Jew differ, which punishment does he receive? The *gemara* concludes that if the punishment category stays the same or becomes less severe, the convert receives the punishment just as a Jew does. If however, the punishment as a Jew is more severe than that of a non-Jew, the convert is let off the hook completely. In this case the *gemara* reasons:

הואיל ונשתנה דינו נשתנה מיתתו.

Since the ruling scenario changed, his death penalty changes as well [and is removed completely].

Applying this *gemara* to our *pesukim*, we notice the following. In each of the first three *halachos* listed—sorcery, bestiality, and idol worship—the punishment for a Jew who violates them is more severe than that for a non-Jew. Based on the *gemara* above, in each of these cases, a non-Jew who committed one of these acts and then subsequently converted would not be held accountable for the sin.

With this in mind we can now understand the *Meshech Chochma*'s explanation behind the oddly-placed *halacha*. He reasons as follows:

זה שאמר הפסוק אל תונה אותו - בדברים שלא נצטווה עליהן בעודו גוי, ודאי לא יתכן לבעל השכל לגנותו, כמו שלא יגונה האדם בהכרחיותיו כי זהו מפעולות הטבע לא מבחירתו. כן לא יגונה הגר במה שנולד במעי נכריה, ונהפוך הוא, כי בזה יוגדל מעלתו... רק בדברים אשר נצטווה בעודו גוי ועבר עליהן ... ע"ז יוכל להנות בדברים,

לכן סמך לו מכשפה אשר בעודו בן נח הוא בסייף... וכשנתגייר הוא בסקילה אם מכשף, ... בכל אלו אם עבר בן נוח ונתגייר פטור דאישתני דינו ואישתני קטלא.
 [You might think the following]: That which the Torah says “you shall not taunt a convert”, obviously doesn’t refer to things that the non-Jew was not commanded against, for there would be no logic in [that kind of abuse], just as a person wouldn’t make fun of another person’s natural traits since these things are natural and don’t come from a person’s own choice - so too one would not make fun of a convert that he was born as a non-Jew. Completely the opposite - this is his greatest strength [that he came to recognize Hashem on his own!]. ... [But you might think] that regarding things which a non-Jew was warned against - and which he committed, on these you would be allowed to taunt him, therefore the Torah juxtaposed the laws of the sorcerer [and bestiality and idol worship] which if performed as a non-Jew, he is liable to beheading, but when he converts he would be liable to stoning [a more severe punishment]...in all these cases when he converts he would be exempt from any punishment - “since the ruling scenario changed, his death penalty changes as well [and is removed completely]”.

In short, one might think that although one wouldn’t be allowed to taunt a convert about things he did in his past which the Torah doesn’t hold him accountable for (such as eating non-kosher), regarding things which he *was* responsible for as a non-Jew, one *would* be allowed to taunt a convert if he had committed them as a non-Jew. Against this assumption, the Torah placed the law against taunting a convert specifically after three consecutive laws, each with punishments which converts are absolved from if they had committed the sins before they became Jewish. The *halacha* of taunting a convert was placed exactly in this location to indicate that under no circumstances at all may a convert be taunted.^{6,7}

6 According to this, the second half of the *pasuk* (for you were strangers in the Land of Egypt) makes a lot of sense, especially with Chazal’s famous comment of “you also worshiped *avoda zara* while you were in Egypt even before you converted at Har Sinai.” (Yalkut Reuveni, Beshalach) According to Rabbi Cooperman, the Torah’s reason against taunting a convert isn’t supposed to simply evoke an emotional reminder of a Jew’s history as a stranger in a strange land, but reminds the taunter for having committed the same *aveira* about which he is mocking the convert.

7 Rabbi Cooperman uses this example to demonstrate that the “placement of a *pasuk*” can be used not only to provide a deeper meaning, but to actually create a new *halacha* which was not explicitly derived by Chazal. This claim, however, is somewhat questionable. While the *gemara* in Bava Metzia (59b) that discusses the *halacha* of mistreating the *ger* doesn’t specify what a person is not allowed to taunt a convert about (allowing one to think that it might be permissible to taunt a convert about sins he was responsible for as a non-Jew), in many of

Part 2 Example 2: Gezel HaGer and Teruma

In the *parsha* that discusses lying under oath regarding a robbery, the Torah has three *pesukim* (Bamidbar 5:8-10):

ואם אין לאיש גאל להשיב האשם אליו האשם המושב לה' לכהן מלבד איל הכפרים
אשר יכפר בו עליו. וכל תרומה לכל קדשי בני ישראל אשר יקריבו לכהן לו יהיה.
ואיש את קדשיו לו יהיו איש אשר יתן לכהן לו יהיה.

If the man has no kinsman to whom restitution can be made, the amount repaid shall go to Hashem for the priest, in addition to the ram of expiation with which expiation is made on his behalf. So, too, any gift among all the sacred donations that the Israelites offer shall be the priest's. And each shall retain his sacred donations: each priest shall keep what is given to him.

Based on *Chazal*, the first *pasuk* rules that if a person comes to return stolen goods to a convert who has subsequently died leaving no *halachic* relatives (*gezel hager*), the items must be given to a *kohen* who at the time is on the service rotation in the *Beis Hamikdash* (*kohen sheb'oso mishmar*). The second *pasuk* clarifies that the *bikkurim* are to be given to the *kohen*, and the third *pasuk* teaches that the one who gives *teruma* to a *kohen* has the right to choose which *kohen* he gives it to regardless of whether he is serving on the current rotation or not. While these *pesukim* all relate to *kohanim* and their gifts, is there any significance to the juxtaposition and order on the level of the *peshuto shel mikra*?

Again, the *Meshech Chochma* offers a creative *halachically*-oriented solution: In a case where a person is required to give *gezel hager* to the *kohen* on the current rotation, he might have the following idea: Since I'm allowed to give *teruma* to whichever *kohen* I choose (*tovas hana'ah l'baalim*), I'll simply give my *teruma* to the *kohen* in the current rotation and let it count both as my *teruma* requirement as well as my *gezel hager* requirement (*pasuk* 8). Against this the Torah writes *v'kol teruma l'kol kodshei Bnei Yisrael asher yakrivu lakohen lo yihiye*. With a double emphasis on the word *kol*, the Torah teaches that when giving *teruma*, the *complete* gift should be given as *teruma*, rather than only partially as *teruma*. By double counting the gift

the other sources which discuss the topic (*Mechilta* to our *pasuk*, *Gerim* 4:1), it specifically gives the examples of eating non-kosher as well as worshipping *avoda zara*, listing both an act the non-Jew was responsible for committing and another which he was not. While the *Meshech Chochma's* ability to fit his reasoning into the structure of the *peshuto shel mikra* is ingenious, it seems that the prohibition against taunting a convert even about acts which he *had been* warned against was already formulated by *Chazal*, and was not *created* by the *Meshech Chochma*.

towards *teruma* and *gezel hager*, the *kohen* actually loses out on his rightful complete *teruma* portion (*pasuk* 9). Generalizing the law of *Tovas Hana'ah L'Baalim* the Torah concludes *v'ish es kedoshav lo yihyu* (*pasuk* 10).

In the two cases brought above, concerning verbal abuse to a *ger* and giving *gezel hager* to the *kohen*, based on seemingly odd sequences of *pesukim*, the *Meshech Chochma* was able to extract new—albeit rare—*halachos*.

Part 3: *BaErev Tochlu Matzos*

As stated earlier, even though in general *Chazal* were able to make *drashos* on *pesukim* regardless of their location, and were able to apply *halachos* that were learned in one location to numerous other places, it's worth considering a case that shows that even *Chazal*, in some cases, took the location of the *pasuk* into account when choosing to make a *drasha* (or not to).

The *pasuk* in *Shemos* 12:18 reads:

בראשון בארבעה עשר יום לחדש בערב תאכלו מצת.

In the first month, from the fourteenth day of the month at evening, you shall eat unleavened bread

While everyone today understands that this *pasuk* refers to the evening *after* the fourteenth, based on principle that the day follows the night, it would have made more sense to write “on the night of the fifteenth.” The fourteenth at night is when we perform *bedikas chametz*!

This issue becomes even stronger after noticing another similar *pasuk* regarding Yom Kippur (*Vaykira* 23:32), on which *Chazal* raise our exact question. The *pasuk* reads:

שבת שבתון הוא לכם ועניתם את נפשתיכם בתשעה לחדש בערב מערב עד ערב תשבתי שבתכם.

It shall be a sabbath of complete rest for you, and you shall practice self-denial; on the ninth day of the month at evening, from evening to evening, you shall observe this your sabbath.

On this *pasuk*, the *gemara* in *Brachos* (8b) asks:

וכי בתשעה מתענין? והלא בעשרה מתענין! אלא לומר לך כל האוכל ושותה בתשיעי מעלה עליו הכתוב כאילו מתענה תשיעי ועשירי.

But do we fast on the ninth? We fast on the tenth! Rather, the pasuk comes to teach us that anyone who eats and drinks on the ninth [in

preparation for the fast on the tenth], the pasuk considers it as if he fasted on the ninth and the tenth.

Understanding that according to *halacha* the day follows the night, *Chazal* realized that this *pasuk* regarding Yom Kippur seems wrong, since Yom Kippur begins on the tenth at night. *Chazal* therefore interpreted the phrase “on the ninth day in the evening” exactly as written, the beginning of the ninth day, which according to *halacha* is in the evening before. Based on this, *Chazal* were able to make their *drasha* regarding eating on the ninth. Why then did *Chazal* not ask the same question regarding the first night of Pesach? While *Tosafos* (to the *gemara* ad loc.) originally posed this question and provided their own answer, Rav Yaakov Kamenetsky, as part of a more in-depth essay focusing on the concept of the “day” according to *halacha*, offers a radical, but very creative solution (*Emes L’Yaakov*, *Shemos* 12:10).

Based on *midrashim* as well as the *pesukim* themselves, Rav Kamenetsky suggests that before *Matan Torah*, the night followed the day, and only after *Matan Torah* did the *halachic* day begin at night. Using this idea, Rav Kamenetsky is able to answer many questions, both *halachic* and aggadic, one of which pertains to our question: Since the *pasuk* of Yom Kippur was written in the book of *Vayikra*, after *Matan Torah* that is, it makes sense that *Chazal* were troubled by the odd formulation “on the ninth day in the evening” since at that point the day followed the night. The *pasuk* in *Shemos* 12:18, however, was written regarding *Pesach Mitzrayim*, well before *Matan Torah*. At that point in time the night followed the day, and therefore when the *pasuk* writes “on the fourteenth in the evening”, it doesn’t refer to the night of *bedikas chametz*, but refers to the correct night—the first night of Pesach—which was on the fourteenth of the month in the evening following the day of the fourteenth. Sensing no issue, *Chazal* didn’t pose any questions!

From here we can see that not only those *mefarshim* who focused on the *peshuto shel mikra*, but even *Chazal*, were sensitive to the location of *pesukim* when choosing where to make their *drashos*.⁸

8 For an additional example, see Rabbeinu Bachye to *Shemos* 11:2 where the Torah uses the word רֵעַ, “friend,” to refer to an Egyptian, but in *Shemos* 21:35 *Chazal* used the same word רֵעַ to explicitly exclude a non-Jew. In a similar fashion to the example above, Rabbeinu Bachye explains that before *Matan Torah*, when all of the nations still had the potential to accept the Torah, all of humanity were considered brothers and friends to each other. After the nations of the world didn’t accept the Torah, they were excluded from this “brotherhood”, allowing *Chazal* to exclude non-Jews from אֶחָד-רֵעַ *pesukim* (*Shemos* 21:35, *Devarim* 22:3, 23:20).

Conclusion

Building upon my previous *Nitzachon* articles, the case studies discussed in this article open another aspect of Rabbi Yehuda Cooperman's studies in *peshuto shel mikra*. While all the examples were drawn from classical *mefarshim*, Rabbi Cooperman was able to systematize each *parshanut*-method, shedding light both on *what* the Torah says and *how* and *where* it chose to say it. In this article we focused on the "where" and showed that the Torah was very precise in where it placed specific *pesukim* and *parshios*. In certain cases the seemingly odd placement was able to provide a deeper meaning to the *pasuk* or *parsha* itself (*shechita b'tzafon* and *korban todah*), while in other places it was simply placed in the location to which it applied most accurately (*shevuas hashomrim*).

Thanks to his strong familiarity with the *Meshech Chochma*, Rabbi Cooperman was able to point out two unique cases in which Rav Meir Simcha used the sequence and placement of *pesukim* to yield practical *halachic* implications (*veger lo soneh* and *gezel hager*). And while most of the creative examples of *parshanut* were developed after *Chazal*, Rav Yaakov Kamenetsky was able to show that even *Chazal* took the location of a *pasuk* into account when choosing which *drashos* to make (*baerev tochlu matzos*).

It seems not only that *ein mikra yotzei midei peshuto* but also *ein mikra yotzei midei mekomo*!

