



# נִיצְחוֹן

NITZACHON

---

Adas Torah Journal of Torah Ideas

---

לעילוי נשמת אברהם בן יוסף דוד

VOLUME 8:1 • SPRING-SUMMER 5781 • LOS ANGELES

**Nitzachon**

*Adas Torah Journal of Torah Ideas*  
*Volume 8:1 Spring-Summer 5781*

**Adas Torah**

9040 West Pico Boulevard  
Los Angeles, CA 90035  
[www.adastorah.org](http://www.adastorah.org)  
[adastorah@earthlink.net](mailto:adastorah@earthlink.net)  
(310) 228-0963

Rabbi Dovid Revah, *Rav and Mara D'Asra*  
Alan Rich, *President*

**Nitzachon Editorial Team**

Michael Kleinman, *General Editor*  
Yaakov Siegel, *General Editor*  
Yaakov Rich, *General Editor*  
Rob Shur, *Design and Layout*  
[www.rbscreative.com](http://www.rbscreative.com)

ROSH V'RISHON

RABBI DOVID REVAH: *By the Light of the Moon: Perspectives on Rosh Chodesh* ..... p. 17

RABBI DANIEL Z. FELDMAN: **Guest Contributor** *Maintaining the Meaning in Matza* ..... p. 21

RABBI DOVID FENDEL: **Guest Contributor** *Matanos L'Evyonim on Purim* ..... p. 27

SIFSEI YESHEINIM

RABBI MOSES J. FELDMAN ZT"l: *Kegavna: A Mystic Glimpse of the Sabbath* ..... p. 35

PURIM

EVAN SILVER: *Which is the Opposite?* ..... p. 41

MICHAEL W. FELSENTAL: *Trials and Tribulations of Reading Megillas Esther: A Baal Korei's Perspective* ..... p. 47

PESACH

ROBERT MILLMAN: *Canine Kedusha* ..... p. 53

ARIELLA AZIZI: *Pesach: Not Just a Glass of Wine* ..... p. 65

DAVID WINTER: *Freedom: Identifying Good and Its Opposition* ..... p. 71

DR. MICHAEL KLEINMAN: *Avraham's Seder* ..... p. 79

SHAVUOS

RABBI DAVID MAHLER: *Eilu V'Eilu Divrei Elokim Chaim: Multiple Truths and Today's Society* ..... p. 87

DR. IZZY KOROBKIN: *The Steipler's Birchas Hatorah* ..... p. 93

DR. ROY BRAID: *Sleepless in Shavuos: A Study of Krias Shema Al HaMita* ..... p. 97

## MACHLOKES L'SHEM SHAMAYIM

- RABBI YAAKOV SIEGEL: *"Dina D'malchusa Dina" Does Not Mean What You Think It Does*  
..... p. 103
- YAAKOV RICH: *The Obligation to Abide by the Law*  
..... p. 119

## HALACHA AND MACHSHAVA

- RABBI PINCHAS GELB: *This Verse Says Nothing But "Dorsheini"*  
..... p. 141
- ADIV PACHTER: *Torah Gems from Rabbi Elimelech Biderman shlit"a: Lessons in Tefilla*  
..... p. 147
- STEPHEN KIRSCHENBAUM: *Important Contemporary Shailos*  
*Inviting a Non-Observant Jew for a Shabbos or Yom Tov Meal* ..... p. 151  
*Rav Hershel Schachter on Ventilator Triage and COVID-19*..... p. 157  
*Triggering Outdoor Motion Sensors on Shabbos* ..... p. 163  
*Do Walk-In Closets and Porches Require a Mezuzah?* ..... p. 167  
*Electricity and Positive Mitzvos* ..... p. 173
- DONNY FELDMAN: *Examining a Link Between Birchas Hamitzva and Zilzul Mitzva*  
..... p. 181
- ELI SNYDER: *Discretion During Chaos*  
..... p. 189
- DR. JONATHAN NISSANOFF: *Airline, Hotel, Amazon, and Other Internet Price Mistakes: Can We Take Advantage of Those Amazing Opportunities?*  
..... p. 197
- DAVID R. SCHWARCZ: *The Big Reveal: Today's Epic Battle Of Gog And Magog*  
..... p. 207

## TIFERES BANIM

- ELISHA FELDMAN: *Stable Connection: Zooming In On Tefila B'tzibur*  
..... p. 221
- ELIE GLAZER: *The Halachos of Kedusha Learned from the Story of Korach*  
..... p. 225
- ELCHANAN HOROWITZ: *Count Your Blessings*  
..... p. 229
- TZVI KAUFFMAN: *The Two Types of Megillas Esther*  
..... p. 233

YEHUDA LAITIN: *Blessings and Beauty - Brachos on Hidur Mitzva* ..... p. 237

AHARON MARTON: *Wearing Tzitzis Without Techeiles* ..... p. 241

SHMUEL SHEMTOV: *Saying a Bracha on a Minhag* ..... p. 245

ZEV WIESEL: *No Intention And No Addition* ..... p. 249



## Editors' Preface

In the year that has passed us by we have been *m'fuzar um'forad*, but only physically. Emotionally and spiritually, our *kehilla* is steadfastly *yeshno am echad*. Our bonds of friendship, *chesed*, and community are stronger than ever.

How? How is it that we have remained so united as a *kehilla* when we are so rarely in the same room (or courtyard or zoom meeting) together? We believe three answers rise to the top. First is *siyata d'shmaya*. Hashem's extraordinary kindness – *afilu b'hastara shebesoch hahastara* – has been with us every step of the way. Second is that our community's common goals of *ahavas Torah* and *yiras Shamayim* have been a powerful glue that holds us so closely together. Third is the unflinching commitment of our beloved Rav and Rebbetzin. Rabbi and Mrs. Revah have toiled heroically to uplift our spirits, support us, and encourage us to grow even at the most difficult times. For this our *kehilla* is forever grateful.

One of the most amazing examples of Rabbi Revah's devotion to our families is the time he spends learning with each of our sons as they approach their Bar Mitzvahs. For each boy, the Rav takes a complicated *sugya*, and over many sessions, learns it together with them, giving each boy a taste of the high level Torah learning that awaits them in adulthood. He then works with them to be able to deliver a dazzling *pshetel* in which they can give over their Torah, which becomes a building block for their growth into *B'nai Torah* and *Talmidei Chachamim*, *B'ezras Hashem*. This year, while the *pshetlach* were as dazzling as ever, the crowds were sparse. So in this issue of *Nitzachon*, we would like to share with you these beautiful fruits of the Rav's *ameilus batorah* with our boys, in a special section titled *Tiferes Banim*. May we continue to see the growth in Torah of our *banim u'banos*, together with our Rav and Rebbetzin, and together with each other.

On another note, in the *Sifsei Yesheinim* section of this issue, we are highlighting the Torah of Rabbi Moses J. Feldman, one of the pioneering *Talmidei Chachamim* of early 20th century Los Angeles. We would like to express our *hakaras hatov* to his grandson, Rabbi Daniel Z. Feldman, a prominent Rosh Yeshiva at Yeshivas Rabbeinu Yitzchok Elchonon, for writing a beautiful biographical sketch of his grandfather, and for sharing with the *Nitzachon* readership – in his grandfather's honor – a valuable essay on the meaning of not eating on *erev Pesach*. We are also honored that another of Rabbi Moses Feldman's illustrious grandsons, Rav Dovid Fendel, the Rosh Yeshiva in Sderot, has contributed *divrei halacha* about *matanos l'evyonim*, in his grandfather's honor.

Michael Kleinman

Yaakov Siegel

Yaakov Rich





לעילוי נשמת  
אברהם בן יוסף דוד

In honor of Adas Torah,  
*Nitzachon* and the  
Torah it spreads.

With special thanks to  
Rabbi and Mrs. Revah.

Wishing everyone a  
healthy and safe  
*Purim Sameach*



*Joey and Tracey Goldstein*  
*and Family*

In Memory of Our Dear Parents

**Sydney Kleinman**

שמואל בן יצחק ע"ה

On his 25<sup>th</sup> yahrtzeit, 6 Nissan

**Ilse Kleinman**

חנה בת באנדאט ע"ה

On her 9<sup>th</sup> yahrtzeit, 3 Iyar

**Effie Gross**

אפרים בן אליהו ליב ע"ה

On his 20<sup>th</sup> yahrtzeit, 3 Nissan

In Memory of our beloved

**Dr. Ronald Kleinman**

ראובן ליב בן יצחק ע"ה

On his 22<sup>nd</sup> yahrtzeit, 16 Tammuz

**Evie Kleinman**

חווה בת אברהם ע"ה

On her 6<sup>th</sup> yahrtzeit, 28 Nissan

May the inspiration from this journal  
be a *zechus* for their *neshamos*



*Lesley and Brian Kleinman*

Dedicated in Loving Memory of

**Jacob Siegel**

יעקב בן צבי הלוי

**Rose Siegel**

שרה ראסא בת רפאל

**Manfred Raphael Lehmann**

רב מנשה רפאל בן החבר ר' חיים ופייגא

**Sara Anne Lehmann**

שרה בת ר' יצחק משולם פייש וחיה חנה איידל

**Jamie Lehmann**

חיים מנחם בן ר' מנשה רפאל ושרה



*Yitzchok and Barbara Lehmann*  
*Siegel and Family*

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

**Harvey and Eva Rich z"l**  
**Kurt Marcus z"l**

May their memories be blessed



*Alan and Marilyn Rich*

In memory of  
משה ולאה פינקלשטיין  
ישראל איסר וחיה אסתר גוטליב  
עובדיה ועליזה סילבר

By their grandchildren and great-grandchildren



*Dalia, Evan, Leah, Hadassah,  
and Meira Silver*



# Rosh V'rishon



Rabbi Dovid Revah

Rabbi Daniel Z. Feldman

Rabbi Dovid Fendel

*- Guest Contributors -*





# By the Light of the Moon: Perspectives on Rosh Chodesh

RABBI DOVID REVAH



**T**he city of Gateshead is a poor town in the north of England with no great claim to fame, but in the Jewish world it is well known for its Torah institutions. Gateshead hosts the largest Yeshiva and girls' seminary in Europe, and a prestigious Kollel. I learned in the Gateshead Yeshiva and at the time I learned at the Yeshiva, Rabbi Mordechai Miller was the head of the girls' seminary. Rabbi Miller would give a *shiur* to a group of boys in his home on long Shabbos afternoons. One week I attended, and he spoke about America's space exploration and putting a man on the moon. He was extremely critical and said that there was little benefit to humanity or to science; certainly not enough to justify the enormous costs. He felt it was motivated by arrogance and quest for power<sup>1</sup>.

At that time, I disliked the speech and I felt it was reflective of a typical British anti-American sentiment. To my loss, I did not go back.

A few years ago, I was reading one of Rabbi Miller's *sefarim* called *Yom Tov Shiurim*. In one of the *shiurim*, Rabbi Miller discussed his assessment of space exploration. As I was reading it, I felt that the ideas really resonated with me. And then it hit me – this *shiur* was the same *shiur* that I disdained many years before, and evidently, my perspective had matured with age!

While the secular world views space as the last frontier to conquer, and our walking on the moon as a giant step for mankind, the Torah has a different perspective.

---

<sup>1</sup> He did note that the one consolation was that America reached the moon before Russia. At least the American astronaut quoted a *pasuk* from *Tehillim*:

כי אראה שמיך מעשה אצבעותיך, ירח וכוכבים אשר כוננתה (תהילים ח:ד)

*When I see Your heavens, the work of Your fingers; the moon, the stars, that You have set in place.*

After the Russians went to space, the Soviet leader Khrushchev said that now he was certain there is no God, because the astronaut Yuri Gagarin went to space and did not see Him.

---

Rabbi Dovid Revah, the *Rav* and *Mara D'asra* of Adas Torah,  
has led our *Kehilla* since 2005.

The primary role of the moon in *halacha* is to facilitate the calendar. Our calendar is based on the lunar cycle, with each month corresponding to the moon orbiting the earth and Rosh Chodesh coinciding with the new moon.<sup>2</sup> In addition, at the beginning of every month, when we see the new moon, we have a mitzva of *Kiddush Levana*, saying a *bracha* recognizing Hashem's creation of the heavens.

I would like to share four ideas that we can learn from seeing the new moon every month and celebrating Rosh Chodesh.

1. The *gemara* in *Sanhedrin* 42a says that the mitzva of *Kiddush Levana* is not just one of the many *brachos* that we make throughout the day and year, but it is an act of *kabbalas pnei Shechina*, greeting the Divine Presence.<sup>3</sup> We say in *Kiddush Levana*,

אלמלי לא זכו ישראל אלא להקביל פני אביהם פעם אחת בחודש דים.

*Even if this was the only mitzva we were privileged to fulfill, we would be grateful.*

Rabbeinu Yona explains how *Kiddush Levana* is *kabbalas pnei Shechina*. He says that one of the ways we see Hashem is through contemplating the beauty, majesty, and complexity of the heavenly bodies. We look at the moon not as something to reach and control, but to see the greatness of Hashem. But it's specifically the moon, which wanes and disappears, that leads us to thank Hashem. We tend to take for granted things that are always with us, and unfortunately it is only when they are gone that we realize what we had. Hashem created something in nature that goes away and comes back. Towards the end of the month, as there is less light in the sky, we notice the waning moon. When the moon returns and we see it anew, we stop and appreciate it.

Hopefully when we see the new moon, we use it as a vehicle to appreciate the many other things in our life which we may be taking for granted – our health, our family, our livelihood. This is the first lesson of Rosh Chodesh. Seeing the new moon teaches us to appreciate not just the moon but all the *bracha* that we have in our lives.

2. We say in the *bracha* of *Kiddush Levana*,

וללבנה אמר שתתחדש, עטרת תפארת לעמוסי בטן, שהן עתידים להתחדש כמותה

2 The moon's orbit is approximately 29.5 days, so our months alternate between 29 and 30 days. Our calendar is not completely lunar-based. The Torah says that Pesach must fall out in the spring. We add an extra month every few years to ensure the years synchronize with the solar cycle.

3 The *Shulchan Aruch* (O"C *Siman* 426) lists several practices which reflect *Kiddush Levana* as an act of *kabbalas pnei Shechina*. We must stand for the *bracha*, we walk outside to say the *bracha*, we wait to say the *bracha* until Motzei Shabbos, so we will be dressed in Shabbos clothing and be in a state of *simcha*, we dance after saying the *bracha*, and we do not say it at times of sadness like during the Nine Days.

*Hashem told the moon to renew. It is a crown of glory to Klal Yisrael who are destined to renew themselves like it.*

The moon gives us hope. It gets smaller and smaller and is reduced to nothing, and if you did not know better, you might think it was finished. At that point, it begins to grow and gets bigger again. This is the trajectory of *Klal Yisrael*. There are times that it looks like there is no future to *Klal Yisrael*. As recently as seventy years ago, it was believed that Orthodox Jewry would disappear. But *Klal Yisrael* once again rebuilt.

This is true not only of *Klal Yisrael*, but of an individual as well. Looking back at the end of the month, we may see the many mistakes and failures that we made, but we do not despair. Rather, the moon demonstrates to us that we can rebound from our mistakes. The *pasuk* in *Mishlei* 24:16 says that a *tzadik* may fall many times, but is always able to learn from his mistakes and move on.

The last day of the month is called *Yom Kippur Katan*, a minor *Yom Kippur*, because at the end of the month we are supposed to reflect on the previous weeks, to assess what went well and what needs improvement.

In the *Musaf* of *Rosh Chodesh*, we say that *Rosh Chodesh* is a *zman kapara*, a day of atonement. *Rosh Chodesh* celebrated correctly, as a new beginning, with a commitment to change, offers a *kapara* for the deficiencies of the previous month.

When we watch the growing moon, as a nation we are filled with hope that this will be the month of *geula*, and as individuals, it charges us with the responsibility to make this month better than the one before.

3. At the time of the *Beis Hamikdash* on *Rosh Chodesh* we would offer a *korban musaf*. One of the animals brought as part of the *Korban* was:

ושעיר עזים אחד לחטאת לה'.

*One goat as a sin offering for Hashem. (Bamidbar 28:15)*

אמר הקב"ה שעיר זה יהא כפרה על שמיעטתי את הירח.

*Hashem is saying, Bring an atonement for Me, for My having reduced the size of the moon. (Chullin 60b)*

This is referring to the *midrash* that says that originally the moon reflected all the light of the sun, but Hashem minimized the moon and it now only reflects a minority of the sun's light. Hashem requested that we bring a *korban* to atone for His actions. The simple understanding of the *midrash* is that although Hashem could have created a perfect world, He deliberately made the world incomplete and imperfect. He entrusted *Klal Yisrael* with a mission to complete and perfect the world through

their Torah and *mitzvos*. The smaller moon represents one of the imperfections of the world, and Hashem gave us the job of completing it to the point that the light of the two will be equal. On Rosh Chodesh the moon directs us towards our mission of being partners with Hashem in completing his world<sup>4</sup>.

4. The first mitzva given to *Klal Yisrael* was the mitzva of *Kiddush HaChodesh*. At the beginning of every month, the *Beis Din* would wait for witnesses to come and testify that they had seen the new moon, allowing them to proclaim the day as Rosh Chodesh. Why was this the first mitzva, and not something like Shabbos, *kashrus* or *nidda*? The Seforno explains that Hashem was speaking to a nation of slaves about to be freed. The most important message He wanted to convey was *HaChodesh Hazeh Lachem, la'asos bahem kirtzonchem*. Your time is yours. Until now you were slaves, and you did not have control of your time. As of now, you own your time. Be sure to use it wisely and do not waste it. Empowering *Beis Din* to determine when the month begins sends this message every month. Your time belongs to you.

כשם שאני רוקד כנגדך ואיני יכול לגנוע בך...

*Just as I dance toward you, but I cannot reach you...*

We look at the moon not with a desire to touch it, but as a means to teach us a number of lessons: 1. To appreciate Hashem's world and all He has given us. 2. To retain hope on a national level and to accept responsibility to improve on an individual level. 3. To recognize our mission in life of partnering with Hashem to complete His creation. 4. To realize that one of the greatest gifts is time and to use it properly.

---

4 Of course, there are far greater problems in today's world than the size of the moon. The incomplete moon represents the work required of Adam Harishon had he not sinned. At that time, the world was almost perfect and the *avoda* of Adam was to bring about more light to the world by completing. After Adam sinned, the world's problems became more overt. Eventually, with the coming of Mashiach, we will rectify the sin of Adam and bring the world back to its pristine state prior to the sin. At that point, we will once again have the *avoda* of "fixing the moon".

However, there was a point in our history when we almost brought the world back to its original nearly-perfect state. This was when we stood at Har Sinai and accepted the Torah. But when we sinned with the *egel* we once again lost that status.

This explains why Rosh Chodesh is considered a *Yom Tov* for women. The women did not participate in the sin of the *egel* and left to them, the world would have reverted to the state of Adam before the sin and our *avoda* would have been represented by the incomplete moon. Had we listened to the women, we would have been at the stage where we could bring a *kapara* for Hashem for minimizing the moon, which is what Rosh Chodesh is about.

# Maintaining the Meaning in *Matza*

RABBI DANIEL Z. FELDMAN



It is no surprise to anyone that Pesach presents obligations that start long before the holiday itself does. However, it is not only the extensive household preparations, cooking, and cleaning that demand attention, but the 24-hour period before the *seder* specifically contains many *halachic* regulations. As the *seder* nears, there is an additional ruling that is taught in the *mishna* in *Pesachim* 99b: “On the eve of Pesach, adjacent to *mincha* time, a person may not eat until dark.”

According to two major commentaries there, Rashi and his grandson the Rashbam, this prohibition against eating is to preserve one’s appetite for the eating of *matza*, thus guaranteeing a *hiddur mitzva*, a “beautification of the mitzva”, which is in general a Talmudic mandate (see *Shabbos* 135a).

However, it is far from obvious that eating *matza* with a stronger appetite fits into the category of “*hiddur mitzva*”. There is a debate among the commentaries as to the parameters of “*hiddur mitzva*,” with some understanding that it refers only to the usage of physically beautiful objects in the practice of *mitzvos*, thus eliciting the admiration of onlookers and in turn enhancing the glory of God. To say, however, that *hiddur mitzva* includes the performance of a mitzva with maximal enthusiasm – an enthusiasm that is likely imperceptible to anyone other than the individual himself – adds a new layer of interpretation to the concept.

Indeed, this question was the subject of a correspondence between the Sochatchover Rebbe, Rav Avraham Bornstein, author of the *Shu”t Avnei Nezer*, and his student Rav Yoav Yehoshua Weingarten, author of the *Shu”t Chelkas Yoav*. The *Avnei Nezer*<sup>1</sup> asserted that while *hiddur* is indeed generally a reference to aesthetically pleasing objects, there is another type as well, one in which a mitzva

<sup>1</sup> *Shu”t Avnei Nezer*, O”C 433; also printed in the introduction to *Shut Chelkas Yoav*.

Rabbi Daniel Z. Feldman is a Rosh Yeshiva at the Rabbi Isaac Elchanan Theological Seminary at Yeshiva University, an instructor in the Sy Syms School of Business, and is the Rabbi at Ohr Saadya in Teaneck, New Jersey.

He is a grandson of Rabbi Moses J. Feldman *zt”l*

action of a certain type is strengthened. In this case, the mitzva is the act of eating, and as appetite strengthens that activity, it is considered a *hiddur* of that mitzva.<sup>2</sup>

The notion that there is a value in cultivating a greater enthusiasm for the consumption of *matza* is supported by a statement later on (107b) that Rava would drink wine on the eve of Pesach in order to stimulate his appetite. While some *acharonim*<sup>3</sup> drew from this the conclusion that there is a value to consuming greater amounts of *matza* than that which is mandated, others argue that this passage only involves the qualitative focus on the required amount.<sup>4</sup>

However, a statement on that same page actually undermines the above reasoning as the explanation for the prohibition of eating on the eve of Pesach, by providing a different reason. The Talmud there explains that the concern is that of *achila gasa*, of becoming full in a manner that would interfere with fulfilling the mitzva of *matza*. Apparently, the concern is that any eating done after the point of satiety would not constitute “eating” in the *halachic* definition, making the fulfillment of *matza* an impossibility. Accordingly, this reason is adopted by the Ran, as well as Rabbeinu David, who states that the Rashbam’s interpretation is thus incorrect.

In fact, both interpretations are somewhat surprising. In general, as the Pri Megadim observes, rabbinic prohibitions are enacted only to protect Torah prohibitions, and not positive commandments. In this case, it would seem that the prohibition of eating on *Erev Pesach* is protecting a positive commandment of eating *matza*, and according to Rashi and the Rashbam, it is not even for the mitzva itself but for an enhancement of the mitzva.

Rav Avraham Yitzchak HaKohen Kook<sup>5</sup> derives from this case that the Pri Megadim is incorrect, and rabbinic enactments can be formulated for positive *mitzvos*. Even if that is so, this example is nonetheless a rare occurrence and is noteworthy.

To understand this prohibition further, it may be instructive to consider an additional prohibition that may or may not share its reasoning. Tosafos in *Pesachim* 99b s.v. *lo yochal* records, in the name of the *Talmud Yerushalmi*, a prohibition against

2 Compare also *Moadim U’Zemanim*, III, 241. Rav Eliyahu Baruch Finkel (*MiShulchan Rav Eliyahu Baruch*, p. 5) suggests that the enthusiasm generated by the appetite emphasizes the theme of “*cheirus*” in the fulfillment of the mitzva of *matza*.

3 See *Mikraei Kodesh*, Pesach II, 46; *Avnei Nezer*, OC 448:7; *Shu”t Eretz Zvi*, *Siach HaSadeh* 4, p. 33.

4 See Rif, 23a

5 See *Tov Roei* to *Pesachim*.

eating *matza* on *Erev Pesach*. *Rishonim* differ as to the reason for this; according to some, such as the Rokeach and the Behag, it can be traced to verses in the Torah limiting the consumption of *matza* or the *korban pesach* to the nighttime. The Meiri, and a number of other *rishonim*, understand this as a means to protect the appetite for *matza* that evening, thus apparently seeing this as an extension of the general avoidance of eating that will go into effect later in the day.

The Rambam in *Hilchos Chametz U'Matza* 6:12 understands this concept differently, explaining that *matza* must be avoided on *Erev Pesach* so that the eating of *matza* that evening will be distinct and clear (*hekker*) as a mitzva. It is instructive to connect this to the view cited by the Rama (*O"C* 471:2), that this prohibition applies to children only once they reach the age of understanding the story of *Yetzias Mitzrayim* that is related Pesach night. This is surprising; one would assume that it is only necessary to appreciate the eating of *matza* itself. Taken together, these views suggest that *matza* may not be eaten on *Erev Pesach* in order to highlight the role the consumption of *matza* has in teaching the story of the Exodus from Egypt.

As such, Rav Shlomo Cynamon, in *Eish Tamid* to *Vayikra* p. 444, suggests we can understand why *Chazal* made an enactment to preserve one's appetite as Pesach approaches. The more eager one is to eat the *matza*, the more he is emotionally connected to the Exodus experience, and the more complete his fulfillment of the imperative to place himself within that historical perspective.

If so, perhaps the two reasons found in *rishonim* not to eat on the afternoon of *Erev Pesach* can be understood as essentially the same idea. While some understood the concern of "*achila gasa*" as did the Ran and Rabbeinu David, to refer to one who is so overfull that eating is off-putting and thus *halachically* meaningless, the Tosafos draw a distinction between two types of *achila gasa*. They note a less extreme version, in which eating is still imaginable, but the enthusiasm for added food would be absent. If this is the *achila gasa* relevant in this case, the concern is not materially different from that of Rashi and the Rashbam. The focus of both interpretations would be to enhance the experience of consuming *matza* and thus root it more firmly in its role as a story-telling tool.

In this light, we can also consider the unusual situation of a rabbinic enactment to protect this positive mitzva of *matza*. It is possible to question the significance of *matza* on Pesach. There is much written in the rabbinic literature about the negative



imagery of *chametz*, leading the Radbaz<sup>6</sup> to suggest that *chametz* really should have been forbidden all year round. Accordingly, *matza* on Pesach could have been perceived as simply the non-*chametz* option for a meal; even the affirmative obligation to eat it might only be an active display of disdain for *chametz*. However, *matza* is more than that; it was integrated into the experience of *Yetzias Mitzrayim*, and we eat it on Pesach night to transport ourselves into that context. Insisting that we not only eat *matza* dutifully, but with gusto and enthusiasm, underscores the positive message that *matza* contains.

According to the *Beis HaLevi* in parshas *Bo*, while *matza* is a commemorative mitzva, seemingly only meaningful after the event of *Yetzias Mitzrayim*, in fact it was always a part of the Torah's framework (for example, Lot served *matza* to his guests long before the Jewish nation was enslaved in Egypt). God orchestrated the events of *Yetzias Mitzrayim* in a way that incorporated *matza* in a meaningful way that reinforced our connection to a mitzva that was inherently significant.

There are many aspects to the symbolism of *matza*, but one possible element is the assertion of control over one's circumstances; not allowing the effects of time to overtake and "leaven." The Jews who left Egypt were not simply liberated from bondage, but were transformed from powerless slaves controlled by their circumstances to agents who could assert control over their time and make it meaningful, a point Rav Soloveitchik noted in the significance of the first mitzva to the Jewish people being the directive of "*hachodesh hazeh lachem*." It is noteworthy as well that the general imperative of not allowing *mitzvos* to be neglected is derived rabbinically from the language of "*u'shmartem es hamatzos*" – understood as, *ein machmitzin es hamitzvos*.<sup>7</sup>

*Matza* plays a crucial role in ensuring that Pesach is not only about running away from slavery, but about marching toward God and his Torah. *Matza* is not only the absence of *chametz*, with all of its negative imagery, but it is a symbol of initiative and attention that was proactively inserted by Providence into the moment of our liberation from slavery to man and our availability for service to God.

Close attention to the Rambam's formulation of the *Erev Pesach* restrictions reveals that there are actually three aspects. First, as noted above, is the prohibition of eating *matza*, to distinguish the mitzva that will come later. After that, he mentions

<sup>6</sup> See *Shut III*, 977, and *Metzudas David*, mitzva 107.

<sup>7</sup> See *Pachad Yitzchak*, *Pesach ma'amar* 1.



the general avoidance of eating too much in the afternoon, so that one will have a strong appetite (similar to the phrasing of Rashi and the Rashbam). Third, he notes that the early *chachamim* would go farther, completely abstaining from food on *Erev Pesach*, for the sake of extra endearment, “*chavivus*”.

Is this last element, *chavivus*, just one more degree of attention to *matza*, or is it perhaps a broader statement of relationship to the Torah as a whole? In some texts, the Rambam’s language is rendered, “*V’yihiyu matzos chavivin alav*” – the *matzos* should be endeared to him. However, in other texts, such as the Shabsi Frankel edition, the language is “*V’yihiyu mitzvos chavivin alav*” the *mitzvos*, in their totality, should be endeared to him.

The Avnei Nezer was one of the authorities noted above who recommended eating more *matza* than is mandated. However, in his *teshuva*, it is clear that he understands this as a value for *mitzvos* overall, as an expression of passion for God’s service; the inverse of the stricture against packaging *mitzvos* together (*ein osin mitzvos chavilos chavilos*), which implies the *mitzvos* are a burden. Accordingly, he applies this value to other *mitzvos*, such as *shofar* and *lulav*. Nonetheless, the source for this value is found in Rava’s *Erev Pesach* efforts to cultivate his appetite.

If this is the case, the points converge. On *Erev Pesach* we are striving to display a comprehensive excitement for all *mitzvos*, while at the same time this is a Pesach-specific goal, intertwined with the commemoration of *Yetzias Mitzrayim*. And indeed, this was the case at that moment in time. The Torah tells us (*Shemos* 12:34) that the Jews carried the unleavened bread “on their shoulders.” Rashi notes that although they could have had their animals carry the load, they wanted to display their affection for what they were carrying: “*mechav’vim hayu es hamitzva*.” The *mechilta*, Rashi’s source, has the language “*shehayu mechav’vin es ha-mitzvos*”. At this crucial moment of liberation, not only is *matza* present, but a theme of passion for the totality of *mitzvos* is manifest.

The *mishna* that teaches about preserving the enthusiasm for *matza* ends with a directive about the four cups, ruling that even one who depends upon communal sustenance for his meals must not be provided with any less than needed to obtain four cups of wine. The Rashbam, commenting on that line, notes the rabbinic statement that the four cups parallel the four expressions of redemption (*leshonei geula*) the Torah uses to describe *Yetzias Mitzrayim* (*Shemos* 6:6-7).

Some later works question why the Rashbam includes that point here, in this specific ruling. Perhaps it is simply the first opportunity to explain the message

of the four cups; or perhaps he is emphasizing that as a tool of *pirsumei nisa*, the obligation of the cups require the added effort of seeking charitable assistance to guarantee its fulfillment.<sup>8</sup>

The Torah Temima raises a different objection to the language of the Rashbam, and of other *rishonim*. He asserts that their reference to "*leshonei geula*" is a deviation from the original source, the *Talmud Yerushalmi*. There, the language is of four *geulos*, rather than four expressions of *geula*. He insists this is an important distinction: the four cups are not merely a linguistic marker, they evoke four distinct stages of redemption, each one crucial to remember.

My grandfather, Rabbi Moses J. Feldman, in his commentary *Meshivas Nefesh*, argued that this should not be leveled as a criticism against the *rishonim*. He brings an array of sources from Scripture, *midrash*, and *rishonim* to prove that this is indeed what they mean to say and what the *Yerushalmi* is saying: the Torah uses multiple expressions specifically because there are distinct redemptions, and all must be acknowledged.

Perhaps this is the intent of the Rashbam's comment on the *mishna* as well. We are taught that the needy must not be deprived of this mitzva; not only should he be able to purchase wine, but "*lo yifsichu lo mi'daled kosos*," he must not have fewer than all four cups. The commemoration begins with "I will take you out of the burdens of Egypt," but it must make it all the way to "And I will take you to Me for a people, and I will be to you a God."

Thus, the *mishna* closes as it begins, reminding us that *Yetzias Mitzrayim* was not only an escape from Pharaoh, just as *matza* is not only the avoidance of *chametz*. To remember what we are marching toward, and the excitement with which we push forward, is why we were redeemed in the first place, and it is what will forever reconnect us to that moment outside of time.

---

<sup>8</sup> See Rav Uziel Jakobovitz, *Birkas Moadecha*, #149.

# Matanos L'Evyonim on Purim

RABBI DOVID FENDEL



*These words were written in loving memory of my grandfather zt"l*

One of the rabbinic laws on Purim is to find two *evyonim*, two poor people, and give them each a minimal gift. The *Shibolei Haleket* is explicit that a minimal gift means very little (even a *peruta*). But the *Targum* on *Megillas Esther* says “*matnan d'chashiva*,” significant gifts. This would mean enough to buy a meal so that everyone will feel included in the “*simchas Purim*.” Even if you don’t find any needy person on Purim, some rule that you can put the money aside and give after Purim.

Interestingly, the Rambam advises that *matanos l'evyonim* is much more important than *mishloach manos* because of the tremendous *tzedaka* value inherent in the mitzva.

What is *matanos l'evyonim*? Is it merely that Chazal enacted a responsibility to give *tzedaka* on Purim, or is it a new *halacha* to create a Purim atmosphere and include all in the *simcha* of Purim? Let’s review some of the *halachos* that may enlighten us in this question.

## ***Ein Medakdekim B'Maos Purim***

This is a unique *halacha*; when it comes to *tzedaka*, one must ensure that the recipient is needy, but on Purim we do not check. It would seem that even if it turns out that the recipient wasn’t really needy, the giver has fulfilled his obligation. Obviously, this would not be true if *matanos l'evyonim* were an extension of *tzedaka*. The Ritva says explicitly that *matanos l'evyonim* is not only *tzedaka*, but an extension of *simcha*.

## **A Poor Person Must Also Give**

There is a debate amongst the *poskim* if a poor person must also give *matanos l'evyonim*. The Pri Chadash rules that a poor person is exempt from the *matanos l'evyonim* obligation. The Bach differs and argues that even though a poor person is

---

Rabbi Dovid Fendel is the Rosh Yeshiva of Yeshivat Hesder of Sderot.  
He is a grandson of Rabbi Moses J. Feldman zt"l

exempt from *tzedaka*, he must be part of creating a Purim *simcha* atmosphere. This puts *matanos l'evyonim* into a whole new category of *simchas Purim*, and not merely an extension of the *halachos* of *tzedaka*.

### The Recommended Shiur

Rav Asher Weiss *shlit"a* suggested that the recommended *shiur* of *matanos l'evyonim* is also dependent on our question. If *matanos l'evyonim* is an extension of the laws of *tzedaka*, then a *pruta* should suffice. However, if the idea is to create and enhance *simchas Purim*, then the minimum may be what's necessary for one meal.

### If There Are No Poor People

Perhaps if *matanos l'evyonim* is a law to give *tzedaka* on Purim, then if there are no poor people available, he can put the money aside and give it after Purim. But if *matanos l'evyonim* is part of the Purim experience, then after Purim it is too late, and the mitzva is no longer relevant.

### Planning To Give A Specific Amount

Rav Asher Weiss points out that the Beis Yosef brings a Hagahos Ashri that if a person thought to give a certain amount for *matanos l'evyonim*, then his thought (*machshava*) alone is enough to create a legal obligation. This would seem to indicate that *matanos l'evyonim* follows the *halachic* pattern of *tzedaka*. However, Rav Asher and others suggest that our original *chakira* should be rephrased: Is *matanos l'evyonim* merely *tzedaka* on Purim, or is there also an **additional factor** of *simchas Purim*? Either way, we would accept that the base of the enactment of *matanos l'evyonim* is *tzedaka*.

### Purim Meshulash

Interestingly, when Purim falls on Friday, and Purim in Yerushalayim falls on Shabbos (as it does this year in 5781), the six *mitzvos* of Purim are divided into two for each of three days. On Friday, we read the *megilla* and give *matanos l'evyonim*, on Shabbos we have the Torah reading and recite *al hanisim*, and on Sunday the *seuda* and *mishloach manos*. The juxtaposition of *mikra megilla* and giving *matanos l'evyonim* seems to indicate that *matanos l'evyonim* is merely *tzedaka* on Purim and not also creating a happy Purim for all, since otherwise the proper time for giving *matanos l'evyonim* would be together with the *seuda* on Sunday. Of course, there may be another way to understand it.

### Must It Be Given On Purim?

The *poskim* debate whether or not one can give *matanos l'evyonim* before Purim and

have it arrive on Purim (or to send it on Purim and it be received after Purim). The insistence of the giving being on Purim itself definitely points to the idea that *matanos l'evyonim* is more than merely a *tzedaka* obligation.

### What About Leftover Money?

There is one more unique law specifically related to the *halachic* status of *matanos l'evyonim*. The *gemara* in *Bava Metzia* (78b) dictates: “*magvas Purim l'Purim*.” This means that if monies were collected for Purim, they must be used only for that purpose.<sup>1</sup> Tosafos challenge this idea from the *gemara* in *Erchin* (6b) that rules that *tzedaka* monies, even if allocated for one purpose, are allowed to be transferred to another purpose. So why not Purim funds? If we analyze the question of Tosafos, it would seem that they compare *matanos l'evyonim* to *tzedaka* and expect the same rules. However, Tosafos answers that only on Purim do we say that we cannot change the purpose of the *tzedaka*, so that we enhance the *simcha* of Purim.

In fact, even in *hilchos tzedaka* we have a similar idea in the *mishna* in *Shekalim* (2:5): “*Mosar aniyim l'aniyim*,” if money was raised for a specific person who was captured or sick, excess funds can go only to that specific person, and even if it is an entire category (for instance if monies were raised for captured people). If there is extra money, it must remain for the same cause. The Rosh (Responsa 32) and the Rashba (Vol. 4, 55) debate what would be if the money was not used at all. The Rosh *paskens* that in this case the money can be changed to another cause because it is not *halachically* defined as “*mosar*,” excess. The Rashba, though, is convinced that the money must maintain its original purpose even if it was untouched.

It would seem that according to the Rashba, the question of Tosafos disappears, because just like one who collects for a very specific cause must use it for that exact cause or for the group of people it was intended for even if there is no immediate need for it, so too for the monies collected for the poor for Purim. However, according to the Rosh, Purim is different because even if money of *matanos l'evyonim* was not used at all, it must stay for Purim, which is different than with regular *tzedaka*. The Rosh may understand this in one of two ways. Either it could be because we assume that the donor is giving for a specific purpose not to be changed, or because part of the enactment of *matanos l'evyonim* is to create *simchas Purim*.

Especially with the current Covid challenge, let us all *daven* for a happy and healthy Purim.

<sup>1</sup> The Ramban even suggests that the leftover money should be saved for Purim the following year.



# Sifsei Yesheinim



Rabbi Moses J. Feldman *zt"l*





## RABBI MOSES J. FELDMAN ZT"l

by his grandson, Rabbi Daniel Z. Feldman

One of the trailblazers of Orthodox Judaism in Southern California was Rabbi Moses J. Feldman. He arrived in the area in the 1920's from London, England. Descended from forebears in the Russian town of Pinsk, he was the son of Reb Yissocher Feldman, who had been one of the founders of the Machzikei HaDaas congregation, then the largest and most influential center of Orthodox Judaism in London. He was a *musmach* of Etz Chayim Yeshivah there, where his *chavrusa* (study partner) was Rabbi Isaac HaLevi Herzog, later to become chief rabbi of Eretz Yisrael, and he was also a graduate of the University of London.



In London, he became close with Rav Avraham Yitzchak HaKohen Kook, and would later author a five-part biographical sketch of Rav Kook, due to "the profound impression he had left on me".

His first rabbinical position was in London in 1917, and then in Llanelly, South Wales. After that he came to Los Angeles and became rabbi at Congregation Beth Israel, then the largest Orthodox congregation in Southern California. He soon left the pulpit there and established Congregation Bnai Jeshurun in Boyle Heights. There, he combined scholarly work with community service and personal counseling, as well as high-level adult classes that he conducted. His counseling addressed the needs of people of all ages and circumstances.

Rabbi Feldman led a pioneering campaign for the establishment of Day Schools, to supplement and substitute for the Afternoon Hebrew Schools which were clearly inadequate. While he supported the existing Los Angeles Jewish Academy, he held high the vision of Day Schools for the growing Jewish population. He used his access to the media, such as the newsweeklies Bnai Brith Messenger and the California Jewish Voice, to carry on this and other campaigns.

He, of course, fought this battle by personal example. He was a father to nine children, and sent as many of them as he could to study in yeshivos and Bais Yaakov schools in the East. While at home, they strengthened the Young People's Synagogue at the Breed Street Shul, serving as acting rabbis, Torah readers, teachers, and participants, while also devoting themselves to home-study sessions.

Rabbi Feldman carried on his intellectual battles not only in the local newsweeklies but also in national monthlies, such as the Jewish Spectator. He authored several series of articles on Judaism and public policy, on Jewish ethical insights, and even in defense of the Jewish Tradition against the spurious claims of Christian missionaries with regard to Biblical and theological concepts. Some of his

articles took the form of ongoing debates that evoked widespread interest. He wrote elegantly in Hebrew, Yiddish, and English.

He engaged his listeners in edifying conversation, bringing wisdom and wit to the instruction he offered. He bridged the culture clash between London in the West by retaining his formal ways of the old country, including the Prince Albert suit and bowtie which he never relinquished, and a firm loyalty to *halachic* standards and propriety. He saw it as his mission to strengthen Yiddishkeit and learning, and he lived to see the seeds spread and blossom vigorously on the East and West Coasts, and in Israel, where his illustrious grandchildren lead the world of Torah study and activism in positions of prominence.

Rabbi Feldman's life was defined mostly by scholarship. He undertook the production of a multi-volume Concordance to Hebrew Liturgy and Lore, called *Areshet Sefatenu*, which contains a wealth of knowledge from all corners of biblical and talmudic sources and elsewhere, presented alphabetically. The volumes were prepared, as it happened, against the background of great economic difficulty, and of communal and family demands on his time. After the fourth volume was published, he was persuaded to set that project aside and first to complete a work that he had discussed with Rabbi Baruch HaLevi Epstein, author of the famous *Torah Temimah*. The latter had composed that eminent book, not while at home in his library, but largely from memory at his place of employment, namely the local bank. In correspondence spanning Europe to California, the need became clear for corrective improvement in the *Torah Temimah*, in both its citation of sources and their explication.

Rabbi Epstein, who died in 1941, had indicated he would welcome publication of a textual critique by Rabbi Feldman, a goal endorsed as well by Rabbi Menachem M. Kasher. Rabbi Feldman proceeded to create it, giving it the felicitous name *Meshivat Nefesh*, based on the verse in *Tehillim* (*Torat Hashem Temimah Meshivat Nefesh*). He even added an Index of Subjects and a List of Authorities Cited. Though he now placed production of this work on the front burner, so to speak, he unfortunately did not live to complete it. At his death in 1981, the book was brought to completion by his son, Rabbi David M. Feldman of Teaneck, N.J., who wrote an additional introduction, and prepared the finished work for the printer. The family has witnessed the satisfaction and praise elicited by *Meshivat Nefesh* from students and scholars everywhere; a representative rabbinic comment was that the book "magnifies the utility of *Torah Temimah* a thousand fold."

Rabbi Moses J. Feldman instructed, edified, and inspired his own generation. By dint of his personal example, his tireless efforts in the field, his vast literary output, and the direction he pointed out to his offspring, he built a legacy of informed Yiddishkeit for his contemporaries, and for subsequent generations into the present and future.

# *Kegavna:* A Mystic Glimpse of the Sabbath

RABBI MOSES J. FELDMAN ZT"l



**T**he meditation that begins with the word *Kegavna* (“In the manner”) and is recited during the Sabbath Eve Service among Chassidim, is from the Zohar (Terumah 135a, bottom). It is not a prayer, but an affirmation of a monistic doctrine of which Israel and the Sabbath are integral elements, as evolved by centuries upon centuries of spiritual yearning and striving, endeavor and cultivation with all the intensity of faith and heroic devotion it involved.

To understand it aright, one must mull over the three or four preceding pages in the text. It will then be seen to be in keeping with the theosophic concepts entertained long before the Zohar as we have it was authored, and which are frequently elaborated upon in it.

Kabbalistic devotees adopted it as a companion to the grand apostrophic eloquence and pride-filled pathos of *Lechah Dodi* which not only greets with fervor the arrival of the Sabbath but also calls upon suffering an humiliated Israel to stand fast and await vindication and redemption. Amid this blending of historical memory and living experience, “*Kegavna*,” chanted *parlando* mode, becomes a lyric adoration of the Creator’s all-embracing Unity, while it notes the oneness of the universe and the constant interrelation and interaction between the Creator and His Creation, and goes on to point to the Sabbath as that rallying and focusing medium capable of giving vitality, purpose, and enduring worth to these unitites if it be hallowed and actualized in full measure.

The worshipper, no matter how sweeping or far-reaching his thinking may be, does not for the moment take Infinity within his purview, but simply ponders on the closeness in influence between what is above our horizon and what is below it, between the heavenly and the mundane, between the divine and the human; holding

---

This essay was originally printed in the Jewish Forum (N.Y.), March 1955. It was reprinted in this abbreviated form in the fourth volume of *Areshet Sefatenu* (pp.8-10).

to the conviction that human destiny is the concern of the Divine and that human impulses register above even as divine projections and influences are regnant below

He sees One World that includes the spheres that cannot be ruled out from his life merely because they are invisible. So have the Rabbis posited the “verisimilitude subsisting between the terrestrial and the heavenly realms or spheres of empire” (*Ber.* 58a. Cf. *Zohar* Noah 70b top; *Exod.* 20a; *Lev.* 10a top.) Powered by the above-mentioned three-way unitary concept - a magnified or aggrandized application or reflection of the psychosomatic principle, as it were- he gives expression to the need for so unifying and elevating his aims and activities that they may serve to invest the all-encompassing Unity with new creative glory and beatitude (Cf. *Zohar* Kedoshim 81a bottom).

This is what the Rabbis meant by being “co-workers in the scheme of Creation” (*Sabbath* 119b top; *Ber. Rabba* 43,7); namely, in the sense of enhancing it and carrying it forward and upward - an idea that is perhaps indicated in the words “*asher bara Elohim La’asot*” (*Gen.* 2,3) - or else risk, even invite not merely its stagnation but its disruption, degeneration, and destruction.

The underlying scheme, then, of the statutory Sabbath observance which primarily marks the creation of heaven and earth and all that is therein, is the ever-present and all-pervasive creativity in all spheres of the universe couples with the obligation that rests upon man to be creative by keeping before his vision a heaven instead of glueing his mind to the earth. Hence the Rabbis pragmatically see Israel in the role of “mate” to the seventh day as a day of physical rest and spiritual refreshment (*Gen. Rabba* 2,8).

The presumed implication is that the Sabbath was designed to serve as the “additional soul” of Time which is “of the essence” or the soul of Existence, with collective Israel as the soul-mate of the Sabbath and the human exemplar of Eternity. No wonder that, by means of the Sabbath, Israel fortified its innate and acquired attributes that have mightily leavened human civilization so as to bring it more in accord or correspondence with the unity, around, and in all.

It is to be remembered, however, that the Sabbath to be holy, in this exquisite and positive sense, must be observed unequivocally, unmistakably, wholly. So hallowed, it will also hallow our work days to an appreciable degree. Materially and physically a day of relaxation, it is to be a time for greater involvement, invigoration, and self-cultivation morally and spiritually. It shall enable us to examine the inadequacies and defects in our thinking and in our conduct such as prevent the welding of our strivings and efforts, our beliefs and our deeds toward some great goal of spirituality

and ethical splendor conducive to harmony with the Supreme Unity. See Zohar, Naso 144b.

This actual and living mysticism is the essential purport of our declaration that speaks of "*Raza de'Shabbat*," the secret or significance of the Sabbath. When so viewed or interpreted - may it even be with a modicum of homiletic freedom - it is seen to be much less enigmatic or abstruse than it would otherwise appear. Indeed, *Raza de'Shabbat* is also the open secret of the wondrous survival of the Jewish People amid one exile after another and constant subjection to exasperating harassment as well as outright massacre during two millennia and more.

On the other hand, we understand why those who have incorporated in the Liturgy that Zoharic pearl of a prayer, "*B'rich Sh'mey*" (Va'yakhel 206a), shied away from "*Kegavna*" with its mystic and somewhat baffling content. Had it been included, it is questionable whether the more non-Chassidim would have become more Kabbalah-wise. What is certain is that its use and popularity among Chassidim nurtured their reverence for the entire Kabbalistic heritage, enabling even the average pietist to make a momentary ascent to a level of philosophic consciousness that transcends mere imagery or metaphor that is bound to empiric speculation.

Besides, non-Chassidim, too, warmly welcomed the *Ushpizin* (ethereal guests) into the *sukkah* (Raya, Zohar Emor 103 bottom) to stress the principle of hospitality, as the Zohar says, and also to associate our festive mood with the early heroes of Biblical history. Aye, even the thoroughly mystic formula that precedes the performance of a ritual mitzva, viz. "*Le'shem yichud Kudsha* etc." received widespread acceptance despite the outspoken opposition of so formidable an authority as Rabbi Ezekiel Landau (1713-92. *Noda bi'Yehudah*, *Yoreh Deah*, *kama* 93).

For a deeper insight into the ramifications of the subject, students should consult the detailed exposition by Rabbi Shneur Zalman of Ladi that first adorned his especial *siddur* and is reproduces around the text at issue. Daring "*Mercabah* travelers" as they aim to be, they'll find it more illuminating as well as safer than a trip in a space ship.



# Purim



Evan Silver

Michael W. Felsenthal





# Which is the Opposite?

EVAN SILVER



One of the celebratory themes of Purim from the *megilla* is that of *v'nahafoch hu*, the concept that everything was turned opposite or upside down. This seems to imply that Hashem reversed our fortune from negative to positive, but if the conclusion was the Jewish people being saved, then this was just a reversion to the original plan. As we do not know Hashem's plan, what we perceive as being turned upside down could, instead, be turning right side up, often coinciding with *teshuva* (repentance). While to most people this past year has seemed upside down, perhaps its hardships is Hashem correcting our path and awakening us to *teshuva*. By exploring the correlation between *hefech* and *teshuva* we can appreciate some of our recent challenges.

## Megilla

The *megilla* opens with the word *vayehi*, which the commentators point out is associated with a time of trouble. The Rishon Letzion says that since the Jews were already in *galus* (exile) prior to the start of the *megilla*, the trouble must be referring to a more recent occurrence, the wickedness of Achashverosh.<sup>1</sup> If that is the case, the *v'nahafoch hu* is Hashem changing the will and behavior of Achashverosh. The Jewish people's behavior at the start of the Purim story cause us to be subject to the wickedness of Achashverosh. The challenges and event of Purim were the impetus in bringing the Jewish people to *teshuva* so Hashem could save them. Chazal tell us that Achashverosh giving the ring to Haman did more for the Jewish people than all

---

<sup>1</sup> *Esther* 1:1

---

Evan Silver is a real estate professional in Los Angeles, CA, and a member of Hatzolah. He has been a member of Adas Torah since 2016.

the prophets.<sup>2</sup> The situation of great despair forced the Jewish people to the point of *teshuva*, ending with the acceptance of the Torah. We learn that the saying at the end of the *Megilla*, “*kiymu v’kiblu hayehudim*,” means the Jews accepted the Torah, this time by choice, as opposed to at Har Sinai where Hashem held the mountain over our heads.<sup>3</sup>

If the *megilla* did not start with *vayehi*, we would not have known anything was troubling. The Jewish people grew comfortable in their exile and were celebrating in the king’s palace, and it was only through Haman’s decree that the Jews became aware of a problem. When Hashem gives us a challenge or a punishment, the goal is not to recover from the experience and return to where we were previously, but to grow. A lesson is learned from the times one says *Birchas Gomel*. Just like after crossing the sea the person has a benefit of being at his new destination, one who *benches gomel* for recovering from an illness is changed by the experience and grows from having gone through and recovered from illness. At the end of the *megilla*, not only were things turned around, but there was also tremendous growth from the hardships, ending in the acceptance of the Torah and, ultimately, rebuilding the *Beis Hamikdash*.

### **Hefech gives Perspective**

The *gemara*<sup>4</sup> relates the story of Rav Yosef son of Rav Yehoshua, who fell ill and had a glimpse of the next world. He described it as an *olam hafuch*, an “opposite world,” for things that we view as important were not important there, and vice versa. His father told him that he saw a clear world, so really our world is the opposite world. Many of the things we think are important turn out to be meaningless in Hashem’s eyes. There is a reason the next world is called the *olam ha’emes* (true world). Even though to us it might seem backwards, really it is the correct world. We can see this in our own lives too. How many times do we think something is important when we are young, only to feel differently as we get older? We have missed important family or religious obligations because we thought the time at work was necessary, only to regret that decision years later. This past year truly helped put many of our life decisions into perspective. Our *davening* focused on returning to our *yeshivos* and shuls, and being able to see family, and not for a return to things like social events and sports games. Prior to this, many of the things we thought we were doing to advance ourselves in

---

<sup>2</sup> *Megilla* 14a

<sup>3</sup> *Shabbos* 88a

<sup>4</sup> *Pesachim* 50a

the physical world turned out to not only be irrelevant, but possibly detrimental to our spiritual well-being. The *gemara* in *Brachos*<sup>5</sup> says that if someone misses *minyan* Hashem inquires if they have a good excuse, like being sick, or a bad excuse like working. One needs to work but there needs to be an understanding that everything comes from Hashem, so missing *minyan* for work would not lead to a better financial situation. Life needs to find the correct balance between *hishtadlus* (personal effort) and *bitachon* (trust in Hashem), but perhaps sometimes our balance shifts too much in the wrong direction. This past year demonstrated the minimal impact of our own financial planning. Now more than ever, we better understand our reliance on Hashem for sustenance and the need to focus more on our performance of Torah and *mitzvos*.

The *gemara*<sup>6</sup> says that whoever was at Rebbi's funeral made it to *olam haba*. Rav Dessler asks how just being at a funeral would get someone into *olam haba*, without a lifetime of Torah observance.<sup>7</sup> He explains that attending the funeral of a *tzadik* causes a reevaluation of one's own life and results in an internal *hefech* (reversal). Unfortunately, this year we lost so many *gedolim*, and due to distancing, all the *hespedim* (eulogies) were online. While there were many *gedolim* lost, I found the close timing of Rav Dovid Feinstein and Rabbi Lord Jonathan Sacks impactful. Even though their positions were quite different, they both devoted themselves and their lives to the Jewish people. Rav Dovid Feinstein was a major *halachic* authority, but due to his humility, usually without most people noticing. After hearing how great and modest he was, one could not help but work on improving his own modesty. Rabbi Lord Sacks was able to spread Torah to the masses through his renowned speaking abilities and his prominent position. Learning about his life, what stood out most for me was that he only entered the rabbinate after the Lubavitcher Rebbe challenged him to do more. How many times do we shy away from challenges? These are just two of the many losses in the past year and unfortunately due to *yeridas hadoros* (decline of generations), we may not have the opportunity to learn from such people again. Do we regret the times we had the opportunities to learn from *gedolim* and chose not to? Hearing all these *hespedim* inspires us to improve in our own life by causing introspection, exemplifying Rav Dessler's statement that attending a funeral brings one to *olam haba*.

---

<sup>5</sup> *Brachos* 6b

<sup>6</sup> *Kesubos* 103b

<sup>7</sup> *Michtav Me-Eliyahu* 3:247

## A New Normal

Hashem tells us on the fast day *haftora*,<sup>8</sup> “*ki lo machshevosai machshevoseichem v’lo darcheichem derachai*”, “My thoughts are not your thoughts and My ways are not your way,” what we think is up could be down, and so the *hefech* we perceive is truly a return to the way Hashem wants it. While the upheaval of the past year may have seemed like a struggle, there has been a tremendous positive of refocusing our priorities. The reduced work hours and commutes, and the convenience of working from home enabled more family time. Many more people were able to have weekday family meals and be there when their children wake up and go to bed. As hard as it was having my children out of school, there was a tremendous value and joy through the expanded role in their *chinuch* (education).

With people no longer feeling glued to their office, this winter has brought more people to weekday *minyan* for mincha/maariv than last winter. The closure of schools made it difficult for a home to have two full-time working parents. There have been numerous articles about parents having to leave the workforce and the long-term effects this may have for women in the workforce.<sup>9</sup> Without discussing if this is better for the society as whole, we can examine some of the positives. Dr. David Pelcovitz discusses many of the positive effects on children in upper- and middle-class families with no risk of poverty, when the mother chooses to be home.<sup>10</sup> In many scenarios, both parents worked full-time or worked longer hours due to the work demand at a previous stage in their life but then continued out of routine without reevaluation. As we slowly come out of this, it is a new opportunity to reset the balance between home and work.

As our responsibilities change throughout life, we often do not change many aspects of our routine. Routines prove beneficial when forcing a set learning and *minyan* time in a busy schedule, but detrimental when preventing growth. The Shulchan Aruch tells us to have a set time of Torah each day but the Mishna Berura warns us to utilize all our free time and not to limit ourselves just to the set time.<sup>11</sup> Sometimes it takes the shift in routine to realize we have more time to learn than we previously thought. We also need to be careful that the loss of our routine did not cause a decrease in Torah and *mitzvos*, as we unfortunately saw the slow return of

<sup>8</sup> *Yeshaya* 55

<sup>9</sup> [www.wsj.com/articles/womens-careers-could-take-long-term-hit-from-coronavirus-pandemic-11594814403](https://www.wsj.com/articles/womens-careers-could-take-long-term-hit-from-coronavirus-pandemic-11594814403)

<sup>10</sup> [www.ou.org/life/parenting/impact-working-mothers-child-development-empirical-research-david-pelcovitz](https://www.ou.org/life/parenting/impact-working-mothers-child-development-empirical-research-david-pelcovitz)

<sup>11</sup> 155 sk 4

many to *minyan* and the *beis medrash*.<sup>12</sup> Usually right after *daf yomi* completes a cycle, numerous people are motivated by the *siyum hashas* to start the new cycle. Most years there seems to be a high attrition rate with the completion of *Brachos*, the first *masechta*. However, this year, the beginning of the cycle coincided with the start of lockdowns, motivating more people to continue the daily learning, often by utilizing new technology.<sup>13</sup> While there is no replacement for in-person learning, there is a huge benefit to the accessibility of *shiurim*, with the *rabbeim* forced to incorporate more onto the internet. There was a multitude of older *rabbeim*, who, up until now, minimally used technology. They had to learn and embrace new technology so they could continue to teach Torah in this time. Seeing their commitment to teaching Torah is an inspiration for us to continue in our own dedication to learning Torah.

The past few months have provided a unique opportunity in rebuilding our shuls. The *gemara*<sup>14</sup> often refers to “the day,” which is the day Rabbi Elazar ben Azarya took over as head of the *mesivta* from Rabban Gamliel. The day was special because previously only those who were “sincere,” which is defined as their inside being like their outside, could enter the study hall, but now the doors were open to all, so they had to add 700 benches. The influx of students led to many laws being resolved. There are different ideas on how access was restricted. One opinion was that the doors were difficult to open so only those who were deeply committed made the effort. Similarly, when *minyanim* resumed, they were made up of people who were committed to a serious *davening*. Some people did not feel safe indoors, and *davening* outdoors often meant being subject to heat and cold. With less convenient times, no kids groups and no *kiddushes*, people came just to *daven*. While some may say that Rabban Gamliel was wrong for restricting access, I would like to propose a different explanation. When they were first building up the *mesivta*, it required a strong core of the most committed people. Once it was established, it was ready for a change and could be open to the masses. Before Covid, there was a lack of decorum and respect in our shuls. We had issues with talking and cell phone use. Now, we, were given the opportunity to rebuild from the ground up, starting with a core of the most committed people. By the time everyone returns to shul, it will (hopefully) already

<sup>12</sup> It is important to make a distinction of those who stayed in complete quarantine due to heightened risk and those who returned to work, shopping, and other activities before returning to *minyan*.

<sup>13</sup> As an aside I still recommend everyone to consider taking up *Daf Yomi*, see my article in *Nitzachon* 7:2 on the subject. I have heard that the OU’s *daf yomi* app, *AllDaf*, had an increase in participation with *Shabbos* as opposed to a decrease as anticipated.

<sup>14</sup> *Brachos* 28a

be established as a true place of Torah.

Our *simchas*, too have had to adjust over the past year. Before, we heard how we may have been spending too much on our affairs. Years ago, I was fortunate to hear Rabbi Yisrael Reisman give a *teshuva drasha*. He mentioned how people who otherwise observed Torah and *mitzvos* often did not do *shnayim mikra*.<sup>15</sup> He suggested that instead of wasting our time and the *baal simcha's* money on the wedding meal, to go to the *chuppa* and dancing but to step outside during the dinner portion to do *shnayim mikra*. With the smaller *simchas* and lack of other social events, there has been drastically less time spent on social obligations this year, which we, too, could use for *shnayim mikra*. It is astounding that it is not more universally accepted. Whenever a poor mother bird builds a nest in a heavily Jewish area, everyone decides to disrupt the bird's nest in an attempt to fulfill the mitzva of *shiluach ha'ken*, of sending the mother bird away. This is because the Torah says the reward is *arichas yamim*, long days, even though they are most likely not fulfilling the mitzva properly anyway. The *gemara* lists the exact same reward for *shnayim mikra*, which one can do every day from the comfort of their own home. This is just one of many *mitzvos* that have been made more available through our new schedules.

## Conclusion

In addition to the end of the *megilla*, *hefech* describes seeing something opposite from what one is accustomed to, and as a result, changing one's actions, ideas that we have experienced in this past year. It has been a year where so many things that we previously occupied our time with were removed; workplaces, social events, professional sports, TV shows and movies. The uprooting of our entire daily schedule shows how everything really comes from Hashem. This allowed us to have more time for the things that are truly important and caused us to reexamine our priorities. People took this as an opportunity to build a time filled with Torah and *mitzvos*, which may have had similarities to the *shemita* years. In many ways, the complete reversal of life's routines taught us many lessons.

Before Covid started, for the most part people seemed to think that things were going well, just like the Jewish people did at the beginning of the *megilla*. The world being turned upside down perhaps gave us a glimpse of things being right side up. It is up to us to learn from these experiences so that, when this is all over, we do not simply go back to the way things were, but we use it to grow in our *Avodas Hashem*.

---

<sup>15</sup> The obligation to read the *parsha* twice each week and once with *targum*, usually with Rashi.

# Trials and Tribulations of Reading Megillas Esther: A *Baal Korei's* Perspective<sup>1</sup>

MICHAEL W. FELSENTHAL



**I**t's Purim night, and everyone is in their costumes, excited for the Purim festivities to begin. You walk in, *klaf* in hand, ready to *lein* after meticulously reviewing the *megilla*. Someone immediately comes up to you and asks, "are you the *baal korei*?" You smile confidently. "Yup, that's me."

"Can you please go fast? My kids can only sit for so long, and we have a party to go to after."

Stunned, you assure the individual that you will go at a reasonable pace. Then, another person comes up to you and asks "Hey, can you do some funny voices?" A little more stunned, you respond "Meh, not my thing. But don't worry, I'll still make it fun."

You then head up to the *bima* to prepare your *klaf* for reading. The *rav* of the *shul* comes up to you asks if someone else could read the *brachos*. You hesitate, then politely respond that you would prefer to read the *brachos*.

I have encountered each of these questions in one form or another as a *baal korei* for *Megillas Esther*. However, to grant these requests is far from simple. My goal for this article is to address these questions from a *baal korei's* perspective, while also adding some insights to properly fulfill the mitzva of reading the *megilla*.

But don't worry, we can still have fun...

---

<sup>1</sup> I owe a tremendous debt of gratitude to my *megilla* teacher, Shia Altman. His teaching me to read with perfection gave me the perspective I hope to provide in this article.

---

Michael W. Felsenthal is a financial professional at World Financial Group (WFG).  
Michael and his family have been members of Adas Torah since 2017.



## How Fast Can You Go?

To address the “speed” question, we first need to look at the *halachic* sources discussing the mitzva of hearing the *megilla*. The *mishna* relates the following *machlokes*:

ומהיכן קורא אדם את המגלה ויוצא בה ידי חובתו, רבי מאיר אומר, כלה. רבי יהודה אומר, מאיש יהודי. רבי יוסי אומר, מאחר הדברים האלה. (מגילה ב:ג)

*From where must a person read the megilla in order to fulfill his obligation?*

*Rabbi Meir says: All of it. Rabbi Yehuda says from (Esther 2:5) “there was a certain Jew.” Rabbi Yosi says from (Esther 3:1) “after these things.”*

It is clear that we follow the opinion of Rabbi Meir, who says that we are obligated to hear the entire *megilla* being read. But does the *halacha* dictate the speed at which the *megilla* should be read? The *Mishna Berura* writes:

וצריך השומע להאזין אחריו ולשמוע כל תיבה ותיבה מפי הקורא ואם חיסר הקורא אפילו תיבה אחת וכן אם השומע חיסר תיבה אחת לשמוע לא יצאו וצריך לחזור. (משנה ברורה תר”צ:מח)

*And the listener must hear every single word from the reader, and if the reader missed even one word and also if the listener even misses one word he is not yotzei and must go back.*

I have seen a *baal korei* read so fast to the point that he slurs his words, which can cast doubt on his reading being kosher. However, reading the *megilla* slowly can also cause an issue of *tircha d’tzibura*. So where does this leave us?

I would say the best thing is for the *baal korei* to know his audience. For example, I have had the *zechus* of reading the *megilla* on Purim night at the Cedars Sinai chapel. Since it is a smaller crowd, I know I can read at a moderate pace. However, I also *lein* at the UCLA Hillel. There, I would need to read at a quicker pace to ensure that the students can hear the *megilla* and make it to class.

At the end of the day, I believe quality matters more than quantity. To me, it is far more important to read and pronounce every word correctly to ensure that everyone is *yotzei* in hearing the *megilla*. That being said, I am also aware that people can only sit through a reading for so long. When I practice, I start by reading slowly to ensure each word is read correctly. From there, I gradually pick-up speed to ensure that I am reading at a pace that best fits my audience.

## To Voice, or Not to Voice?

Another common thing often done at *megilla* readings is for the *baal korei* to read in different voices matching the characters. I have not been able to find any sources on



this subject, so I will take a risk and speak from the heart.

The most common argument for the voices is to entertain the children present at the reading. Indeed, I can see how it would add to the comedic value of Purim. In weighing the list of pros and cons however, I see far more issues with doing the voices.

At the most basic level, I am concerned that the voices can be done in a way that can be a *bizayon* to the *megilla*. Furthermore, I have seen cases where the audience reacts in a light-headed manner. Not only can that distract people from hearing the reading, but it can also cause people to miss hearing certain words in the *megilla*. As seen in the previous section, missing even a single word can cast doubt on a person being *yotzei* in hearing the *megilla*. I am also concerned that the light-headed behavior can send the wrong message to the children who are present at the *megilla* reading. If we are bringing our children to hear the reading, then they should learn the proper way to be *yotzei*.

That being said, I am not at all suggesting that the *megilla* reading cannot be fun. One of my favorite parts of reading the *megilla* is when I get to read with certain tone inflections that fit the story. For example, the scene where Esther reveals her Jewish identity to Achashverosh demands that I read with a pleading tone. When Esther exposes Haman, I read with a strong level of conviction. There are other parts of the *megilla* that are read with the *trop* of *Eicha*. In that case, I read at a slightly slower pace with an emphasis of sadness.

Believe it or not, there are opportunities to inject humor without using any voices. Take the beginning of this *pasuk* in *Esther* 6:6:

וַיְבוֹא הָמָן

The *trops* between those two words offer a small break. As I finish the first word, I briefly pause. This allows me to tease my audience as they lean in anticipation, ready to wave their *graggers* and make their noise. I then say Haman, and the noise erupts immediately.

There are clearly ways to make the *megilla* reading fun. However, I would argue that the *baal korei*'s focus should still be on people being *yotzei* with his reading.

### Say it Yourself or Someone Else?

This last section is inspired by two completely separate events. In my first year of reading the *megilla*, I was doing a reading later in the afternoon before the Purim *seuda*. Right before the reading, the rabbi asked if someone else could say the *brachos*. I had not heard of such a concept and was hesitant to say yes. On a different occasion, I saw someone post a picture on Facebook of her husband on the *bima* with the *baal*

*korei*. The caption read that her husband had read the *brachos*.

This has led me to wonder if there is any basis for someone other than the *baal korei* to read the *brachos* for the *megilla* reading?

The answer can be found in the *Mishna Berura*:

יש פוסקין שסוברין לענין ברכה אם יודעין בעצמן לברך יברכו בעצמן כיון שהוא כבר יצא בקריאה ומנהג העולם להקל להוציאן בכל גוונ. (משנה ברורה תרצב:י)

*Some authorities hold regarding the blessing that if an individual knows how to make the blessing by themselves they should make the blessing by themselves since he [the baal korei] has already fulfilled his obligation regarding the reading. However, the widely held custom is to be lenient that they should be covered (in the reader's blessing and not make their own) in all cases.*

It would seem to be that the *Mishna Berura* is discussing a case where the *baal korei* has already read the *megilla* elsewhere. Interestingly enough, the *Mishna Berura* rules that the *baal korei* should still say the *brachos* “in all cases.” My personal interpretation is that he is assuming that most people cannot say the *brachos* themselves. However, I think the issue runs much deeper.

In my opinion, it is not enough to simply know how to say the *brachos*. It is the *nusach* that really sets the tone for the *megilla*. Without the proper *nusach*, the rest of the *megilla* would not flow cohesively. It is for this reason that I declined to have someone else say the *brachos* in the scenario mentioned above.

If someone truly desired to say the *brachos* on their own, I would advise them to learn the *nusach*. When we read the *haftara* in shul, the person who reads the *brachos* (and not the *haftara*) is assumed to know the *nusach*. Using that logic, the person reading the *brachos* should also learn the *nusach*. That being said, I would personally follow the *Mishna Berura*'s *psak* and have the *baal korei* read the *brachos* in all cases.

## Conclusion

*Megillas Esther* is an integral part to celebrating Purim. I personally have come to appreciate it much deeper since learning to read it. I hope everyone who reads this article walks away with a more profound understanding and appreciation for this mitzva.

I would also like to wish my fellow *baalei kriya* a *yasher koach* on reading the *megilla* each year. Only by learning the *megilla* myself did I come to understand the true *mesiras nefesh* involved in preparing the *megilla* each year before Purim. I hope this article gives you additional strength in reading the *megilla* for this year, and many years to come!

# Pesach



Robert Millman

Ariella Azizi

David Winter

Dr. Michael Kleinman



# Canine Kedusha

ROBERT MILLMAN



ולכל בני ישראל לא יחרץ כלב לשנו למאיש ועד בהמה למען תדעון אשר יפלה יהוה  
בין מצרים ובין ישראל. (שמות יא:ז)

*But against all of the children of Israel, no dog shall whet its tongue, against  
neither man nor beast, so that you shall know that Hashem will have  
differentiated between Egypt and Israel.*

What is the significance of the dogs not barking the evening of *makas bechoros*? We know that the Jewish homes experienced no deaths, while every Egyptian household experienced at least one death. Tosofos answers that this was a miracle because whenever the *malach hamaves* visits, dogs usually bark, but on the night of *makas bechoros* they did not.

However, our question remains. Why was this miracle necessary?

ואמרת אל־פרעה כה אמר ה' בני בכרי ישראל. ואמר אליך שלח את־בני ויעבדני  
ותמאן לשלחו הנה אנכי הרג את־בנך בכרך. (שמות ד:כב-כג)

*And you shall say to Pharaoh: "So said the Lord, 'my firstborn is Israel. So  
I say to you send out my son so that he will worship Me, but if you refuse to  
send him out, behold I am going to slay your firstborn son.'"*

We see from these *pesukim* that Hashem told Moshe to tell Pharaoh that there is a special relationship between Hashem and the Jewish people, the relationship of a father to a first-born son.

Accordingly, the final plague was not only indicative of *Hakadosh Baruch Hu* seeking justice from the *Mitzrim*, but also a demonstration of a caring and loving father. How do we see this? By the extraordinary miracle of no dogs barking while the

---

Robert Millman is a senior shareholder at Littler Mendelson P. C., the nation's largest law firm exclusively representing management in labor relations and employment law. He has been a member of Adas Torah since 2006.

*malach hamaves* was travelling throughout the land of Egypt.<sup>1</sup>

The following story<sup>2</sup> from the Holocaust, focuses, in part, on a dog. In the story, the dog proves the ancient adage that a dog is man's best friend. Yet let us focus on a much deeper idea: that dogs, who miraculously did not bark in the midst of darkness and death, symbolized the extraordinary love Hashem has for the Jewish people.

The crowded little *beis medrash* bristled with the hurried, random sounds of shuffling papers and books, chairs scraping the wooden floor, cabinets squeaking open and slamming shut. The boys moved with the frantic, fluttery motions of barely contained panic. The Nazis had arrived in Hungary. The boys were grabbing whatever belongings they could carry and trying desperately to get to their family homes safely.

"They're taking kids our age," Chaim Tzvi Solomon's friend told him in hushed tones. "The Germans are grabbing them right off the streets and sending them off to labor camps. We have to get home and get out of here."

"Where is there to go?" Chaim Tzvi responded. "They're everywhere."

He was only 16 years old, the son of Asher Solomon, a prominent member of the Jewish community. Life as he had known it so far had been anchored in warmth and stability. His days were filled with Torah learning; his home was filled with love and a sense of plenty. The sweet aroma of his mother's baking greeted him each evening as he walked through the door. Freshly laundered clothes hung in his closet and the crisp feel of clean sheets welcomed him each night as he lay down on his soft bed. But suddenly, that life seemed like the vision of a distant shore as the riptide of war threatened to drag him out to sea.

He glanced across the room at his rebbi. He was a small, slight man whose wiry frame seemed charged with electric energy.

Chaim Tzvi could barely recall ever seeing him seated. He seemed to subsist on an apple a day, along with an ample intake of strong, black coffee. He was quick in his movements and precise in his thinking, but never hurried or impatient. Now, while all the boys scurried about the room, packing their belongings and rushing out the door, the rebbi stood his ground, without any indication that he, too, was in mortal

---

1 In ancient Egyptian lore, Anubis was known as the deity of death. ([wikipedia.org/wiki/Anubis](http://wikipedia.org/wiki/Anubis)) Anubis was a jackal or dog-headed figure who they believed decided whether or not one's soul should be granted eternal life. In *Mitzrayim*, the dog was unequivocally associated with death. It is ironic that a dog, an Egyptian deity, would have a role to play on the night of *makas bechoros*. Hashem silenced their deity of death as He delivered the final *maka*.

2 Reproduced from "*Haggadah: Night of Emunah*" by Rabbi Binyomin Pruzansky with permission of the copyright holders, ArtScroll / Mesorah Publications, Ltd.

danger. He would go nowhere until the room was empty, until he saw that each of his *talmidim* was on the way home.

With his well-worn *sefarim* in hand and his coat draped over his shoulders, Chaim Tzvi was ready to leave the *beis medrash*. The urgency that was driving him out the door and back to his family fought against another strong feeling: the fear of being set adrift like a small boat cut from its mooring. He needed something to carry along with him on his journey into the unknown - something that would keep him tied to the sanity and sanctity of his upbringing. He walked over to his rebbi to say goodbye.

"Rebbi," he said softly, "please give me a *bracha*."

The rebbi's warm brown eyes rested upon his *talmid's* frightened face. What could he give this boy to sustain him through the days that lay ahead? Like a father packing his child's baggage for an arduous journey, the rebbi tried to find the right item to slip into his *talmid's* suitcase – the thing he could count on to help him when despair crept into his heart. He laid his hands upon Chaim Tzvi's head, looked deeply into the boy's eyes and said, "Promise me that you will always keep the close connection that you have with your Father in Heaven."

This was his rebbi's goodbye, Chaim Tzvi knew. They might never see each other again. There was nothing the rebbi could do to protect his *talmid*, nor was there anything the *talmid* could do to ease his rebbi's way through the uncertain and terrifying future.

It was time to cut the cord, but with this *bracha*, his rebbi was trying to bind the frayed ends with love and faith.

"I promise," Chaim Tzvi responded.

The rebbi held his hands on the boy's head for a moment more, as if trying to transfer yet one more dose of his own deep faith into his student's soul. Then he removed his hands and said, "Your connection with Hashem will guard you wherever you go."

As Chaim Tzvi rushed through the streets toward home, his rebbi's last words echoed in his mind. "Wherever you go ... where will I go? What will happen next?" There were no pretty answers to these questions, for where the Nazis appeared, all beauty was obliterated.

As he turned each corner, his eyes were alert for German soldiers.

Many boys had already been caught like stray cats and sent off to labor camps without a moment to say their goodbyes. Finally, he arrived at his family's front door, rushed inside and closed it quickly behind him, as if to lock out the terror lurking in the streets.

"Thank God!" his mother exclaimed tearfully as he entered. "I thought they had caught you, God forbid."

His mother's flustered manner and high, panicked tone of voice were enough to tell Chaim Tzvi that as bad as he had known things were, they were likely much worse. He rarely saw his mother lose control of her calm, steady manner, but now she was clearly at the edge of her endurance, clinging tightly to shards of hope like a drowning woman clinging to flotsam.

"Where is *Tatty*? What's going on?" he asked urgently. Around him, the family's belongings were stashed in cartons that lined the formal, elegantly furnished living room. A brilliantly hued Oriental rug with its sapphire, ruby, and deep gold detail lay coated in dust from the attic, where the empty cartons had been kept for decades.

A burgundy brocade sofa sagged with the weight of three large, bulging suitcases that had been stacked on top of it.

"*Tatty* is in his study speaking with Mr. Pearl about the situation," his mother answered. "They are making us move into a ghetto and we have no choice but to pack our stuff to go."

"Why can't we run away and hide somewhere?" Chaim Tzvi asked. Fear and denial turned his voice strident. "How can we just agree to go where they send us?"

"Your father has made his decision. As president of the shul, he feels it's his duty to stay together with the *kehilla*. He can't abandon them in their time of need," his mother explained. "Please, Chaim, no more discussion. Go pack. We have to be out of here soon, and if we're not ready on time, we could get arrested."

His mother's words were harsh, black and white with no hint of gray. Nor could it be otherwise, for in this new world, any hesitation, any mistake, could cost a life.

He knew that his mother needed him to be brave and grown-up, but tears sprang to his eyes unbidden. He turned away from his mother so she would not see him crying. "I'll go pack now," he told her.

At that moment, he heard a familiar scratching and barking at the back door. He opened it up carefully, scanning the yard for intruders. "Heshy, old boy!" he said happily to the panting brown Labrador retriever jumping around his feet. He squatted down and petted the dog's head vigorously, Heshy had faithfully protected the family's property for years, but the protection they needed now was unfortunately far beyond the loyal canine's ability to provide.

"You're the lucky one now, Heshy, aren't you? You don't have to move to the ghetto and you don't have Nazis out to get you. But don't worry, boy, those Nazis are going to lose this war and Hashem will pay them back for what they're doing to us."



You wait and see.”

Heshy wagged his tail merrily and shoved his head under Chaim Tzvi’s hand for another rub.

“All right, Heshy, I’ve got to go back. You go play and stay safe, OK?” He picked up a stick and threw it into the yard, and Heshy took off after it. Chaim Tzvi rushed up to his room to pack.

He tried not to think too deeply into the process. Surrounded by memorabilia of his entire childhood; photos, souvenirs of family vacations, books, birthday gifts - the process could easily have been a wrenching ordeal. Instead, he concentrated on narrowing down what he really needed. Whatever they took, they would have to carry by themselves. Therefore, the less he packed, the better.

He managed to whittle down his necessities to fit into one midsized suitcase, which he carried down the stairs and placed with the others on the burgundy sofa.

His father, Asher Solomon, was now standing in the living room with Mr. Pearl. Like tree limbs straining under a heavy frosting of snow, their gestures and voices seemed burdened to the breaking point.

“Chaim Tzvi, I’m glad you’re home,” he said in a businesslike manner. “You should stay here with your mother while Mr. Pearl and I go into the shul to remove whatever we can before the Nazis get there.”

“Let me go with you, please, *Tatty*,” Chaim Tzvi pleaded. He could not stand sitting tensely behind a closed door while his father risked his life out on the street. He would rather be there with him, helping in whatever way he could, risking his own safety as necessary, than sit and wait in fear.

“No, I’m sorry. It’s too dangerous,” Asher responded decisively. “Your mother needs someone to be here with her. Besides, we have a difficult day ahead of us tomorrow. You’ll be more of a help if you can get a good night’s sleep and have your strength for the move to the ghetto.”

Asher Solomon returned late that night. Despite his instructions, no one slept. The next few days were a confusing saga of travail as the family lugged their belongings to their new lodgings in the ghetto and settled into a small apartment shared by three other families. Chaim Tzvi tried not to look back; he was alive and safe and his family was together, and for now, that was comfort enough. His mother learned how to feed her family on the minimal rations they were allowed to procure. They learned how to fall asleep in their airless, overcrowded rooms, and carve out some small bit of dignity in their inhuman situation.

“Keep the connection to your Father in Heaven,” Chaim Tzvi told himself,

repeating his rebbi's instructions whenever life seemed unbearable.

After a few weeks, this brutal new life began to wear the veneer of normalcy, but then, the world tipped over once more. A letter arrived at the apartment addressed to Chaim Tzvi, informing him that he and the other young men his age would have the honor of serving the Third Reich in a Nazi labor camp. There was no choice. If he failed to appear, no doubt, his family would pay a heavy price.

This time, his packing took only a few moments: his *tefillin*, some food, his gold bar mitzva watch, and the clothes on his back were all that accompanied him as he was shoved onto a stifling train by an SS soldier who seemed bored with his own cruel task.

"Your connection with Hashem will protect you wherever you go," his rebbi had promised. Did he know where Chaim Tzvi would be forced to go? Would Chaim Tzvi rise to this test of faith?

He envisioned his rebbi's kind brown eyes peering into his own; he conjured the feeling of the rebbi's hands resting upon his head, and he tried to re-imbibe the strength that was passed to him that day.

The world Chaim Tzvi entered as he exited the train seemed to exist in a realm outside Heaven's domain. The kindness, truth, and justice Hashem had installed in His creation seemed to have failed to penetrate this corner of it, as if the labor camp were protected by a lead barrier that prevented sanctity from leaking in. Yet Chaim Tzvi struggled to uncover the buried proof that Hashem reigned here, too. There were the tender acts of kindness performed by one Jew for another when neither had anything to give. There were words of comfort, miracles of survival, and reserves of courage that had to originate from somewhere beyond the harsh physical realities of the camp. He kept his eyes open for these moments, inhaling them like oxygen for his suffocating soul.

To Chaim Tzvi, putting on *tefillin* each day was the key to keeping his faith alive. This was the concrete action he took in order to turn his promise to his rebbi into something tangible. As long as he was able to find a time and place each day to perform this precious ritual, he felt he was drawing around himself the protective blanket with which his rebbi had blessed him.

The work detail to which he was assigned had the backbreaking task of laying railroad tracks in an area several miles from the camp. The prisoners were marched to their work site each day at gunpoint, in blazing sun, driving rain, or bitter cold. Yet Chaim Tzvi was able to endure it all by infusing his mind with the sense that this was all happening on a stage - the false world built by the Nazis, in which he was forced

to act a role. But the role wasn't real life, he assured himself. Real life was reaffirmed each day when he found some opportunity to take his *tefillin* from his pocket and don them for a few brief moments.

One day, as the men fell into line to march back to the camp, a Nazi officer called the exhausted procession to a halt and ordered the guards to search each prisoner for contraband. Chaim Tzvi knew that if his *tefillin* were found on his person, he would be fortunate to be simply shot on the spot. As he was far down on the line, out of immediate notice of the guards, he quickly squatted down and began digging a hole to bury the *tefillin*. He placed them in the ground and covered them with dirt, patting it down to avoid detection. But it was too late.

"What are you doing there? What are you hiding?" a guard demanded.

For some reason, Chaim Tzvi took notice of this guard's face. He seemed like a teenager, probably conscripted and serving with not much more enthusiasm than his prisoners had for their task.

The commander of the unit was out of sight. An idea flashed into Chaim Tzvi's head.

"It's nothing you'd have any use for," he told him. "But listen, if you keep quiet, I'll give you something very special. Something very valuable. Will you keep quiet?"

The soldier grinned as if being engaged in a little game. He nodded in agreement. Chaim Tzvi removed his left shoe and quickly withdrew his gold bar mitzva watch, keeping it cradled in his downturned palm. He turned his hand briefly to show the guard, then dropped the watch subtly into his hand.

Would he turn Chaim Tzvi in anyway, now that he had the treasure?

For one sickeningly prolonged moment, the guard hovered over him, then walked down the line to inspect another prisoner.

The *tefillin* and Chaim Tzvi were safe.

Hour by hour, Chaim Tzvi survived the miseries of each new day of captivity. Finally, it was all over. The Russians and British entered the labor camp, and the Germans, like the false gods they had set themselves up to be, suddenly found themselves powerless against the prisoners who had trembled in their presence only days before. The slaves were free.

For weeks, Chaim Tzvi sought to discover his family's fate. He dreamed of the joyful, tearful reunion he would have with his siblings; certainly, at least some of his six brothers and sisters had survived. Perhaps his parents had survived as well; maybe they had found a place to hide, or perhaps they, too, were put to work and somehow found the strength to keep going. He cradled his hopes close to his heart, allowing

love and sweetness to flow again in his veins. One day, he heard that an old neighbor from his hometown had arrived at his Displaced Persons (DP) camp, searching for relatives. Chaim Tzvi wandered desperately throughout the camp, questioning everyone he saw in an effort to find the neighbor.

“His name is Reuven Landau. He’s about my age, a little taller than me - red hair ... have you seen him?”

Finally, Chaim Tzvi spotted Reuven himself, although he barely recognized him. Despite his young age, he had gone nearly bald. His formerly athletic frame was now sickly and stooped. Chaim Tzvi was only a few feet away from him when he suddenly knew who he was.

“Reuven!” he cried. The two men embraced, filled with an overpowering mixture of joy and sadness. They had survived, but they felt like the last men on earth - lone inhabitants of their previously well-populated, bustling worlds.

“Oy, vey, look at us, Chaim Tzvi,” his friend said. “We look like two old men. But we’re here. We’re here.”

“I’m trying to find my family,” Chaim Tzvi informed him. “Do you know what happened to them?”

Reuven put an arm around his friend’s shoulder and walked him to a bench where they both sat down.

“I was there when they were all rounded up,” Reuven said somberly.

“I’m sorry, Chaim Tzvi, but they all went to Auschwitz, and no one from that transport came out alive.”

“I see,” Chaim Tzvi said. The little bundle of hope that he had held next to his heart was ripped away. His insides collapsed like a building imploding on itself, leaving a heap of smoking debris where there was once structure and purpose. He cupped his head in his hands, and for the first time since he had been taken away, he cried. Bitter, lonely tears poured from the depths of his heart, tears of mourning for all that he had once had, all that never again would be. He sought no anesthesia; he wanted to feel his pain, to picture every face, to replay the sound of every voice that he would never hear again. He cried and cried, and when the tears began to abate, he pricked his heart with still another memory, and cried some more. Thus he spent many hours.

At last, contemplating his situation, he realized that he would have to rebuild his life. He was alone, yet he was alive. He decided to return to his hometown and see if there was anything left there upon which he could build. Perhaps his family had left some belongings behind that would help him? Perhaps there would at least be some

objects by which he could keep their memories alive?

A few days later, he stood at the site of his family's home, gaping in disbelief. The entire house had been stripped bare of every item within it. The walls were pocked by large holes where the intruders had apparently searched for a hidden safe. The orderly, stately Solomon home had been reduced to an empty shell housing nothing but the rubble born of greed and destruction. Chaim Tzvi turned away quickly, wishing to keep his mind's vision of his old home alive, undisturbed by the new reality.

He walked through the streets until he reached the shul. It had been burned to the ground. Nothing remained but charred beams and broken glass. He headed back to his old address, wondering what had drawn him back to this forsaken town in the first place.

On the front lawn of his house, there was a large, flat boulder shaded by a large, leafy tree. As a child he had sat in this spot often, sometimes learning, sometimes thinking. He sank down on the boulder now, thinking of what life had been like in this very spot, only a few years earlier.

He remembered the shul, and the resounding power of the prayers that filled it every Shabbos morning. His father had guided the shul with the utmost devotion for 25 years, and now, it was a pile of ashes. He wondered where the *Sifrei Torah* had gone.

They were ancient scrolls, written long ago in a beautiful script that won the admiration of all who saw them. Were they now among the ashes? Suddenly, Chaim Tzvi was overcome with a longing to hold those scrolls in his hands.

He turned his eyes toward Heaven and pleaded, "*Ribono shel Olam*, if those *Sifrei Torah* somehow survived the war, please help me find them. I have nothing left. Please let me at least have them." He lowered his head and cried.

A sharp bark startled him. He lifted his head and turned toward the sound. There, loping toward him with his ears bouncing and his tail wagging wildly was his old dog, Heshy.

"I can't believe it!" Chaim Tzvi cried. "It's really you, Heshy!"

The dog leapt up, placed his front paws on his master's lap and lowered his head so Chaim Tzvi could rub him between his ears, just as in the old days. Then Heshy jumped back down and barked, leaping from side to side insistently.

"What? What's the matter, Heshy?" Chaim Tzvi asked. Heshy ran to the gated entrance of the family's property, then back to Chaim Tzvi and then back to the gate again. His bark was strange, almost singsong in its tone. "It's as if he's trying to tell me something," Chaim Tzvi thought. The dog kept barking and tracking back and forth

to the gate, as if to say, “Come on!”

Finally, Chaim Tzvi followed Heshy out the gate and through the alleyways and streets of his hometown. The stores that had been owned by Jews sat empty, boarded up and falling into disrepair.

The streets were so empty that not even the beggars walked them anymore. Chaim Tzvi strode quickly after Heshy, wondering where this eerie journey would end.

At last, they reached a wheat field at the edge of town. Heshy sniffed the ground frantically until he found the right spot. There, he began to bark and dig, propelling loose clods of earth into the air behind him. Chaim Tzvi began to dig too, certain now that Heshy was the answer to his prayer. After about a half-hour of digging, Chaim Tzvi sank to the ground exhausted. What did this dog know, anyway? He laughed at himself, being dragged to an empty field by a dog.

But Heshy would not give up. He barked louder and dug harder and faster. Chaim Tzvi once again caught the sense of urgency and redoubled his own efforts. Finally, two feet into the ground, he felt something hard. It made a metallic clank when he struck it. He dug deeper, gradually revealing the outline of a large metal box. Chaim Tzvi’s limbs were tingling with excitement, suddenly recharged with strength and energy. Digging further and further, he finally pried the box loose from the moist earth all around it and heaved it out onto the grass. His heart pounded wildly in his ears as he slowly opened the heavy, rusted lid of the box. There before his eyes lay the two cherished *Sifrei Torah* from his father’s shul. They had survived, two holy siblings in hiding, waiting for the moment when they would re-emerge into the light.

Heshy’s insistent bark broke Chaim Tzvi’s spellbound gaze. He was clawing at the earth again, then running to his master and nosing his elbow as if to call, “Let’s go! Give me a hand!” Did the earth hold yet another treasure? Chaim Tzvi followed Heshy’s lead and began digging again next to the hole from which the Torahs had emerged. In just a few moments, he hit another metallic box, smaller than the first. He found a branch on the ground nearby and managed to wedge it under the box, prying it out of the earth with one strong downward thrust. He laid it next to the *Sifrei Torah* and carefully opened the lid.

“Heshy! Look!” he cried to the only pair of ears present to share this heart-stopping surprise. His mother’s gold and diamond jewelry, the family’s silver, and thousands of dollars in currency and gold coins winked and glistened before his astonished eyes. His family’s treasure had been saved from the Nazis.

He remembered back to his last day at home. His father had gone out with Mr.



Pearl; Chaim Tzvi was not permitted to go, but Heshy had tagged along. They had set out to the shul to try to save what they could before the Germans got there. They must have buried the *Sifrei Torah* and the Solomons' precious possessions, with Heshy as the only surviving witness. Chaim Tzvi imagined the difficulty with which the two men would have transported the heavy Torah scrolls and large cache of valuables through the Nazi-ridden streets and alleys. Each step was a risk of their lives. It had taken all day, he recalled. His father had returned that night pale and exhausted.

Before leaving town, Chaim Tzvi encountered one old familiar face – his family's cleaning lady. From her, he learned further of the sacrifice his father had endured in order to preserve the Torah scrolls and the valuables for whomever would survive. Knowing that the Solomons were a prosperous family, the Germans had dragged his father back home, dressed in his prison pajamas, and tried to force him to reveal where his wealth was hidden. They broke through the walls and pulled up the floor boards, searching anxiously like hungry animals sniffing for their prey. They demanded that Asher reveal the hiding place, but he insisted that he had nothing left; everything had been sold to purchase bare necessities.

They refused to believe his answer, and began beating him savagely, trying to force the information out of him. Heshy came running into the house and lunged at the aggressor, sinking his teeth into the German's hand and hanging on with all the strength in his formidable jaws. The Germans tried to run from the dog, shouting to each other, "Shoot him! Shoot him! He's mad!" but Heshy dashed out of the house faster than they could gather their wits to take aim. Asher, beaten and bleeding, was dragged off to Auschwitz, his usefulness to the German war effort now finished.

His last act had been to ensure that there would be more than dust and ashes upon which his survivors could build their future.

Chaim Tzvi packed his treasures and returned to the DP camp, this time with Heshy as his companion. He doted on the brave and loyal dog, trying to feed him from his own portions of food.

For some reason, though, Heshy lost his vigor. He wouldn't eat and barely moved from his position, resting quietly in the sun with his head set heavily upon his front paws. A week after arriving at the DP camp, Heshy died, his mission complete.

Within a few months, Chaim Tzvi received a visa permitting him to emigrate to Israel. Little by little, he healed and strengthened, calling upon the same faith that had saved him from despair throughout every ordeal. Eventually, he married and raised a family, and his once dramatic life took on the normal ebb and flow.

All week long he would throw himself into the daily grind of earning a living,

and finally, like a gift-wrapped box just waiting to be opened, Shabbos would arrive. It was then, on Shabbos morning, when one of his precious Torah scrolls was removed from the ark to be read, that he would tune his heart to the sound of his rebbi's last words to him: "Never lose your connection to your Father in Heaven." And he never did.

May we all be blessed with a healthy and meaningful Pesach, a *chag kasher v'sameach*. And to those shul members who happen to own a dog, if your dog does not bark at your *sedar* perhaps it is proof of his love and respect for you!



# Pesach: Not Just a Glass of Wine

ARIELLA AZIZI



A night of freedom, a night of numerous questions and oddities. There are an endless list of practices that we find to be intriguing in the Pesach *seder*. Be it the *matza*, the bitter herbs, or the custom of leaning, all are meant to unsettle us to question these practices. Among the classic list of questions enumerated in the *Ma Nishtana*, we find a key piece of the *seder* to be absent. Namely, that of the *arba kosos*, the four cups. For while we question many of the other practices of the *seder*, the four cups seem to slip by somewhat inconspicuously. Now, seeing as the night is full of questions, we must ask the obvious question of how drinking four cups specifically relates to our Exodus? Surely this isn't just an excuse to swish our wine glasses. Rather, as with everything in Judaism, and often with life in general, externals are deceiving. Thus, we must not simply accept our surroundings at face value. Rather, we must explore further in our search for true meaning and depth behind the bottles that line the *seder* table.

In our efforts to understand the meaning behind the four cups that we drink on *seder* night, we may turn to Rav Samson Rafael Hirsch, a rabbinic leader in 19th century Germany who served at the forefront of the battle against the Reform movement of his time. He strove to uncover the underlying meaning from within deceptively simple Jewish traditions. Today, we also struggle with a reform of sorts. For many of us, we are no longer satisfied by the answers that placated our ancestors. We struggle when we are faced with ancient practices that seem meaningless to us. So I believe that we can benefit from a return to the wisdom of Rav Hirsch, a return to the genuine search for meaning amidst the complex sulci of our *mesora*.

## The First Cup

"*Savri maranan*," the father's voice rings resonantly, "*Baruch ata Hashem Elokeinu Melech ha'olam borei pri hagafen*."

---

Ariella Azizi is an accounting student at Touro's Lander College for Women in Manhattan. Her family have been members of Adas Torah since 2004.

The first cup.

והוצאתי אתכם מתחת סבלת מצרים... (שמות ו:ו)

*And I will take you out from under the burdens of the Egyptians...*

In understanding the meaning behind the burdens mentioned here, Rav Hirsch classifies them as mental pressures. He writes that one who is overburdened lacks the ability to express his inner Godliness. As Maslow's Hierarchy of Needs demonstrates, when one is deprived of his physiological needs, as one desperately claws to salvage his last claim on his life, he lacks the capacity to self-actualize and, consequently, he experiences a regression into a primeval existence driven by instinct alone. This was the unfortunate state of the Jewish people in Egypt. After centuries of bitter enslavement, of unending torture, and mournful hopelessness, the Jewish spirit had dimmed and nearly extinguished. As such, they were unable to heed Moshe's call of redemption. As the *passuk* states,

וידבר משה כן אל בני ישראל ולא שמעו אל משה מקצר רוח ומעבדה קשה.

(שמות ו:ט)

*Moses spoke thus to the children of Israel, but they did not hearken to Moses because of [their] shortness of breath and because of [their] hard labor.*

In light of this reality, Rav Hirsch writes that, "Relief from burdens is not the result of freedom; it is the *prerequisite*. Only when man has discharged his physical load and escaped from material burdens can he come to himself, to breathe freely, reflect, and arrive at a happy awareness of self" (*The Hirsch Haggadah*, Feldheim, p. 258). In drinking the first cup, we empathize with the experience of our ancestors by embarking on our personal journey towards freedom, towards finding our breath. Historically, Pesach was the time when the Jewish people discovered that Hashem is all-powerful, and that He is directly involved in personal, daily life. If we are to believe the same, we must affirm our faith by shedding our personal burdens. As King David wrote in *Tehillim*,

השלך על ה' יהבך והוא יכלכלך. (תהילים נה:כג)

*Cast your burden on the Lord, and He will bear you.*

As we sip our first glass of wine, we too are encouraged to *let go*, to release the stresses that pressure us, to shed the yoke off of our necks and to finally allow ourselves to enjoy the gift of life. This is our trust fall, so to speak, our litmus test of how genuinely we believe in Hashem. Can we trust Him with our burdens, our

anxieties, our struggles? Are we willing to be let go and experience freedom or do we wave a dismissive hand out of “shortness of breath”?

## The Second Cup

Next, we move on to the second cup.

והצלתי אתכם מעבדתם... (שמות ו:ו)

*And I will save you from their labor...*

Rav Hirsch explains that the second cup signifies societal bondage, subservience to external expectation, as indicated by the focus on the words, “*their* labor”. Rav Hirsch expresses this in writing, “there were no free men in Egypt.” (p. 261) *None*. Rav Hirsch does not refer only to the Jewish slaves. Rather, all the citizens of Egypt were enslaved. Yes, even the nobility and the Pharaohs. Now, while they may not have been physically enslaved as the Jewish people were, while they were not coerced to perform physical labor in the searing heat, they were forced to acquiesce to the rigid caste system within which they lived. Rav Hirsch explains further (ibid.):

*The Egyptians idealized the unrestrained expression of man's basest instincts, symbolized by animal worship and expressed by materialism, to which altars were built and society dedicated. Hence, no one was considered simply a human being or even an Egyptian. Rather, a man was defined and ranked according to his particular caste and professional guild.*

People in Egypt did not view themselves, or others, as free-willed beings. Rather, all were predestined to a certain societal and astrological fate beyond their control. This perspective of ancient Egyptian society sheds clarity on the verse in *Avadim Hayinu* that reads,

ואילו לא הוציא הקב"ה את אבותינו ממצרים, הרי אנו ובנינו ובני בנינו משועבדים היינו לפרעה במצרים.

*And if the Holy One, blessed be He, did not take our forefathers from Egypt, behold, we and our children and our children's children would still be enslaved to Pharaoh in Egypt.*

While it may at first be difficult for one to accept the idea that, had God not redeemed us, we would have remained enslaved, after examining the structure of Egyptian society, we may find it to be fairly plausible. For had we remained in Egypt, we would have remained tightly bound to an inflexible perspective on man's existence.

In response to this form of societal bondage, Hashem sought to equalize all.

Thus, in sending the plagues, he did not discriminate according to wealth, occupation, or social position. Rather, as Rav Hirsch explains (p. 263):

*Each plague that smites the people and the land is a "mission" from a free, omnipotent God...The supernal arm that despises enslavement, that mocks artificial class divisions, is revealed, outstretched equally over the exalted king on his high throne and the laborer at his bench.*

God's method of redeeming the Jews from Egypt sought to unravel the centuries of social systems that Egyptian society cultivated. Once the Jews were redeemed from Egypt, they retained the lesson that God taught them by the original Exodus forever. For, although (p. 264):

*[T]hey suffered every conceivable restriction and oppression... to the mentality of slaves they never returned...Those who went forth from Egypt restored the forgotten consciousness that all men have One Father, all possess equal rights, because all were created in the image of God, their Creator.*

Upon leaving Egypt, the Jewish people adopted the determination of free men, irrespective of their physical environments. Perhaps this is why we find the event of *Yetzias Mitzrayim* to be so ubiquitous among our prayers. For it serves as a constant reminder that all are free to *choose* who they wish to be. We remind ourselves of the Exodus daily so as to never, not even for a moment, fall prey to the fatalistic view of our Egyptian oppressors. Rather, each individual is empowered to choose his destiny and to acknowledge his friend's uniqueness as well.

### The Third Cup

וגאלתי אתכם בזרוע נטויה ובשפטים גדלים. (שמות ו:ו)

*And I will redeem you with an outstretched arm and with great judgments.*

As we prepare to drink the third cup, towards the late hours of the night, we are called upon to envision our redemption. For in order to achieve true freedom, we must not only cast off our limiting factors. Rather, we must actively pursue authentic meaning and purpose in our lives. Rav Hirsch elucidates this concept so eloquently in saying (p. 266):

*A liberation which merely strikes off the shackles remains a negative attainment at best....[F]or his liberation and his vocation to reach their ultimate fruition, merely lifting the yoke and breaking the fetters is not enough. Man must become aware of the Source of his freedom. He must*

*acknowledge that his deliverance is God's gift, so that his liberation will make him feel constantly attached to God... If one conceals from him that he has been freed on this earth in order to serve God, then not only does one prevent him from reaching his Divine destiny on earth, but also robs him of the very foundation upon which his freedom is based.*

Such striking words. For freedom is only meaningful when, through it, one acquires purpose. In God's taking us out of Egypt, we discovered the true Source of our freedom as well as our ultimate purpose. For the freedom that God granted us was not only physical liberation. Rather, every Jew was granted the capability to seek Godliness and divinity within himself. It is for this reason that the *mishna* states,

שׂאִין לָךְ בֶּן חוֹרִין אֵלֶּא מִי שֶׁעוֹסֵק בְּתַלְמוּד תּוֹרָה. (אבות ו:ב)

*For there is no free man but one that occupies himself with the study of the Torah.*

For it is through Torah learning that we are able to transcend our physical inclinations. Through the potential self-refinement entailed in God's commandments, we access our truest, purest selves. Furthermore, as we draw closer to God, we suddenly find that the mirage of life is betrayed. If we choose to commit to building a relationship with God, to trusting Him in the hard times and celebrating with Him in times of joy, then all of the illusory sources of strength to which we commonly fall prey will bow in defiance to Him as well.

So on the night of our liberation, we eat the bread of our affliction in realization of the fact that our freedom is sourced within ourselves. We internalize the fact that irregardless of where we presently are and who we have become, we are a holy nation connected to God. Such freedom is not dependent on our externals, not on our life circumstances or our physical limitations, but on our mindset. Here, with the third cup in hand, we bask in the serenity of unconditional freedom.

## The Fourth Cup

וּלְקַחְתִּי אֶתְכֶם לִי לְעָם... (שמות ו:ז)

*And I will take you to Me as a people...*

With our final cup, we revel in God's unconditional love for us and in our uniqueness as God's chosen people. Rav Hirsch elaborates this theme in writing (p. 272–273):

*This is the purpose and ultimate goal of the previous deliverance from*

*burdens, liberation and redemption. Yisrael dedicate themselves to God, and God designated them as His sanctuary and His domain: He made them His people.... Jewry's entire history, spanning more than three thousand years, is the actualization of this decision that "I shall take you."*

The fourth cup is an unwavering symbol of God's incontestable, eternal love for us. Regardless of our actions, God's love for us runs deep, an unconditional bond that can never be severed. So, as we acknowledge the inner meaning of the term *v'lakachti*, namely, God's acceptance of us, we are entreated to contribute the final piece in achieving true redemption. It is at this point that we hear God's gentle voice, "I will always love you. And I await the day that you will look at Me and tell me that you love Me too." If we are to actualize a complete redemption, we must place the final piece, completing the puzzle of thousands of years in exile. In the process of God accepting us, we too must accept Him.

Now we turn inward. How will we act with awareness of these four freedoms? How will we view ourselves, our peers, and our God? The primary purpose of the four cups is not to get tipsy, not to lose control of our reality, but rather, to grant us a heightened sense of freedom, enabling us to seize control of our lives and to choose. To choose to release our burdens, to choose to overcome societal structures, to choose to connect to our spiritual selves, to choose to acknowledge God's love for us and to mirror this unconditional love accordingly. It's all a choice and we are a free people.

# Freedom: Identifying Good and Its Opposition

DAVID WINTER



**H***ava nischakma lo*, let us act wisely concerning it [the Jewish nation], is a famous line everyone knows from the *pesukim* (verses) quoted in the *Haggada*. Pharaoh is credited with these three of the most chilling—and simultaneously comical—words to appear in the Torah. On a simple level, Pharaoh was plotting against the Jewish nation, using a series of steps to enslave them, kill their newborn sons en masse, and intensify their arduous labor as described in *masechta Sota* 11a-11b (see Rashi and the *midrashim*, quoted by Artscroll notes there). The plot seems to be the first time in history that the slippery slope method was employed to harm the Jews. Step 1 may seem familiar: make a certain activity (e.g. construction of buildings) a national and patriotic goal, an endeavor in which the leader (e.g. Pharaoh himself) makes a public show of toiling, and slowly alter the terms of engagement via a series of steps to the detriment of the people. This is the simple chilling aspect of these three words.

According to a deeper understanding of the words as relayed by Rabbi Chama b'Rabbi Chanina (see *Sota* 11a), Pharaoh used the singular of the subject “*lo*” because he meant it as a reference to Hashem. In meetings with his advisors, Pharaoh proposed dealing cunningly with God and “tricking” Him by using His rules against Him. It’s difficult to fathom the arrogance displayed by a finite human being that explicitly recognizes the Infinite Creator and still believes he can do something—anything—that Hashem doesn’t permit (see Rambam’s commentary on *Pirkei Avos* 4:4), but recorded history is replete with such people. Nimrod and his followers (see *Sanhedrin* 109a), Sancheirev (see *Sanhedrin* 94b), and Nevuchadnezzar (see *Chagiga* 13a) are just a few of the historical figures (or perhaps more accurately, villains) who

---

David Winter is an attorney based in Los Angeles, CA working as a consultant at a professional services company. He has been a member of Adas Torah since 2015.



come to mind that had such levels of rebellious arrogance. In fact, only the most famous Jewish apostate (who has a *din* of a non-Jew, as all heretics do) reports from the afterlife, undergoing his foul punishment, that it's a good idea to connect to the Jews and not to attack them (see *Gittin* 57a).

While the brand of comedy of such a “challenge” as Pharaoh presented to the authority of Hashem is nothing short of hysterical, that kind of comedy often (and currently) takes place over many years from a finite human perspective and some people sadly miss the fundamental point because Dovid Hamelech describes 1,000 years as like a day (*Tehillim* 90) and even 852 years is considered “quick” from the Torah perspective (*Sanhedrin* 38a). Given the true context of that span of time, periods of pain and trauma that seem interminable—or the fact that it has been 1,953 years since the destruction of the second *Beis Hamikdash*—barely account for more than a day and a quick time, and is less than 50 years from two “days” (see Maharsha to *Sanhedrin* 38a or Artscroll notes). This seems helpful to keep in mind when we look back to learn from history and forward to the future promise of Redemption.

### The Egyptian Experience and Its Lessons

There are many reasons and discussions *Chazal* relay as to why Pharaoh was permitted to enslave and oppress the Jews and the purpose of the experience. One of the most famous of those reasons seems to explain the root of how Pharaoh was even able to call that meeting with his advisors and bring such corrupt logic as *hava nischakma lo* into the world at all—*lashon hara* (negative speech).<sup>1</sup> The source of this famous reason is a Rashi in *parshas Shemos*, following Moshe Rabbeinu's reproof of two of the most notorious rabble-rousing serial problem-causers<sup>2</sup> in Jewish history, Dasan and Aviram, who were eventually eliminated by Hashem in imposing fashion.<sup>3</sup> Following Moshe's criticism of Dasan and Aviram regarding raising a hand to physically attack one another, Moshe was responded to with vitriol, “*hal'hargeini ata omer ka'asher haragta es hamitzri*” [will you kill me the way you killed the Egyptian?] and he was handed over to the Egyptian slavers (see *parshas Shemos* 3:14 and *Shemos Rabba* 1:30-31). Rashi cites *midrashim* in *Shemos Rabba* and the *Tanchuma* telling us that Moshe then understood that the reason for the exile in Egypt was *lashon hara*.

1 The Rambam (*Hilchos Dei'os* 7:5) defines *lashon hara* as words relayed to another that cause harm to someone physically or financially, or cause distress or fright.

2 Their negative influence is not sufficiently captured in this description.

3 In the end, we know them as *reshaim*, but the fact they made it out of Egypt illustrates they did *teshuva*, even if it was short-lived.



The Chazon Ish reportedly stated that to live a full life without hurting anyone else is the pinnacle of human achievement (see *Rav Chaim Kanievsky on the Yamim Noraim*, p. 55). In more classical sources, the highest level a person can achieve may be described as one who resides in the Tent of Hashem, as defined in *Tehillim* 15. The Chazon Ish may have been referencing this chapter of *Tehillim* as the words *lo asa l'ray-eihu ra'ah* [who has not done evil to his fellow] is found in the second phrase of *Tehillim* 15:3; the first phrase of that *pasuk* specifies that such a person doesn't speak *lashon hara* (*lo ragal al l'shono* [who has no slander on his tongue]). It seems that the Chazon Ish may have been conveying this point without giving every detail explaining his statement. It's important to note that avoiding harming another person does not mean failing to criticize or reprove a bad actor. Criticism and reproof is an obligation incumbent upon every Jew as part of the principle to love every Jew (see Days 100-101 of *Chofetz Chaim: A Lesson a Day*), but it must meet the seven elements of negative speech *l'toeles* [for a constructive purpose] to avoid being classified as *lashon hara* itself. Even beyond that, the methods and process for such critique are governed by complex intricate laws; all of these details are beyond the scope of this article (and this author's knowledge), but they, along with the rules and regulations of *lashon hara*, may be the most important laws in the Torah (see further discussion below).

While there is an obligation to love your fellow Jew and provide reproof (*ibid.*), there is also an obligation to seek the positive aspect of every situation and find excuses for behavior that does not meet the ideals delineated by the Torah with that same love (see Day 111 of *Chofetz Chaim: A Lesson a Day*). We see such interactions when Moshe davened for *Bnei Yisrael* after a portion of the population worshipped the *egel hazahav*, by telling Hashem that His children stumbled because He gave them too much gold (see *Brachos* 32a). We also find that there is a *malach* that is tasked with defending *Bnei Yisrael* in every possible situation, but there are apparently times when the *malach* runs out of defenses (see *Sanhedrin* 44b).<sup>4</sup>

It appears that the solution to assist that *malach* and prevent it from running out of defenses (or avoid it from even being called to the defense in the first place) is to eliminate *lashon hara* from our collective worldwide Jewish community by replacing

---

<sup>4</sup> The *gemara* in *Yoma* 77a relates that Hashem complained about *Bnei Yisrael* to the *malach* Michael, who attempted to defend them by saying that they should be spared in merit of the good ones, to which Hashem replied that they would all be punished (see Artscroll notes, the "good" people had an obligation to provide reproof to the rest of the people and they were delinquent!). Hashem then ordered the *malach* Gavriel to destroy the *Beis Hamikdash* and the people.

the underlying motivation to speak negatively with love. The *Satan* is empowered to accuse only as a result of *lashon hara* spoken in this world as part of the *midda k'neged midda* framework that Hashem designed to govern this world (see Days 13 and 14 of *Chofetz Chaim: A Lesson a Day* and Day 3 of *Chofetz Chaim: A Daily Companion*). In fact, according to the *Midrash Shir Hashirim*, as long as *Bnei Yisrael* is unified and not speaking *lashon hara* about one another, it is not punished even for worshipping idols.<sup>5</sup>

The principle of *midda k'neged midda* also explains how Pharaoh was given the ability, or even the idea, to rebel against Hashem. The defining characteristic of humanity — of *tzelem elokus* — is the ability to speak and create, as Onkelos explains the *pasuk* “*vayipach b'apav nishmas chaim vayehi ha'adam l'nefesh chaya*” [and Hashem blew the soul of life into his nostrils and man became a living being] by translating that man became a speaking spirit (see Days 2 and 16 of *Chofetz Chaim: A Lesson a Day*). Speaking *lashon hara* is a rejection of the *tzelem elokus* that every person has stamped upon them, in part because Hashem doesn't speak *lashon hara* (see *Sanhedrin* 43b), but primarily because it demonstrates a refusal to accept whatever Hashem decreed (see Day 118 of *Chofetz Chaim: A Lesson a Day*). Speaking *lashon hara* is therefore an apparent rejection of the sovereignty and total authority of Hashem *chas v'shalom* (the *a priori* cause of evil in the world). Such behavior is corrupt and a total perversion of an individual's existence because it fundamentally undermines the godliness and uniqueness endowed by speech. And since the actions of each member of *Bnei Yisrael* impact the entire world and not just their own lives and immediate surroundings (*Kiddushin* 13a), *lashon hara* caused the chain reaction that led to national enslavement.

Given the overwhelming devastation *lashon hara* causes (and the leniency of refraining from speaking *lashon hara*), it therefore seems that if *Bnei Yisrael* would observe the rules and regulations surrounding *lashon hara* for a single day, the final *geula* would occur. As cited by Rashi above, Moshe understood that *Bnei Yisrael* were in violation of the laws of *lashon hara* and that caused their enslavement. We know that *Bnei Yisrael* had done *teshuva* for this *aveira* at the time of the Exodus from Egypt because the dogs didn't bark at them and dogs are associated with *lashon hara* (see *Pesachim* 118a). Even Dasan and Aviram were saved, despite their well-known appetite for *lashon*

---

<sup>5</sup> This is the real meaning behind “love wins,” that the love every Jew has for one another protects all of us from any harm. The Chofetz Chaim, in his introduction to the *sefer Chofetz Chaim*, cites the *midrash* in *Devarim Rabba* 6:14 that says “in this world, because there is *lashon hara* among you, I withdrew My presence from among you;” a clear and unambiguous ultimatum to eradicate *lashon hara* (see Day 2 of *Chofetz Chaim: A Daily Companion*) in order to restore the *Beis Hamikdash*.

*hara*,<sup>6</sup> illustrating the efficacy of *teshuva* and temporary perfection.<sup>7</sup> Only a short time thereafter, however, seemingly best measured on a timescale of hours,<sup>8</sup> *Bnei Yisrael* returned to *lashon hara* with the negative expression of “*hamibli ein kevarim b’mitzrayim l’kachtanu lamus bamidbar, mah zos asisa lanu l’hotzianu mimitzrayim*,” were there no graves in Egypt that you took us to die in the wilderness, what is this that you have done to us to take us out of Egypt (*Shemos* 14:10-12) when confronted with the *Yam Suf* and the Egyptian army approaching.<sup>9</sup> It therefore seems that the perfection of speech only needs to be reached and maintained for the briefest complete unit of time, a single day.<sup>10</sup>

6 In contrast to the 80% of *Bnei Yisrael* that was eliminated in the plague of darkness, per Rashi. Apparently, the 80% had fallen beyond the point of no return via a profound rejection of Hashem whereas it seems that there is still hope for one who speaks *lashon hara*. Once the Torah was given, however, it seems that nobody can be deemed beyond the point of no return and there is an obligation to *daven* for or be a positive influence on such people (see *Brachos* 10a and *Sanhedrin* 37a). This 80/20 split may persist in certain aspects to this day.

7 Another interesting story involving negative speech and temporary perfection can be seen in *Yoma* 71b. Shmaya and Avtalyon, the primary leaders of *Bnei Yisrael*, were meeting the *Kohen Gadol* on Yom Kippur a short time after he had been in the *Kodesh Kodashim*, a chamber in the *Beis Hamikdash* so sacrosanct that seemingly more than 300 people who served as *Kohen Gadol* in the second *Beis Hamikdash* did not survive entering it because of their diminutive spiritual stature (*Yoma* 8b-9a). The people in the *Kohen Gadol*'s entourage switched to join the group surrounding Shmaya and Avtalyon and the *Kohen Gadol* proceeded to insult the two *gedolim*. The *Kohen Gadol* had survived the service in the *Kodesh Kodashim*, demonstrating a great achievement or even perfection in spiritual stature, and then only a short time thereafter showcased a lowly level by speaking *lashon hara*, illustrating that despite a person's basic character flaws, achieving perfection for a short time can allow a person to enter the *Kodesh Kodashim*! (see Rav Chaim Kanievsky on the *Yamim Noraim*, p. 85)

8 Rashi, however, says that it was on the third day (*Shemos* 14:2, “*Vayashuvu*”). Alternatively, there is a short *parsha* of *pesukim* that describe *Bnei Yisrael* crying out to Hashem (just before Hashem reveals Himself to Moshe) and that Hashem heard them (see *Shemos* 2:23-2:25); it's possible that the only thing they did that day was cry out, which was sufficient to break the shackles of *lashon hara*, illustrating that 24 hours of no *lashon hara* can bring national redemption.

9 See *Tehillim* 106:7. In addition, seven root causes of *lashon hara* are identified; negativity is one of them (see Days 129 and 141 of *Chofetz Chaim: A Lesson a Day*).

10 Or it may potentially need to be three days. To the extent that a person believes they may have spoken or listened to *lashon hara* on any given day (or any other [in]action that would constitute an *aveira*), it is worthwhile to recite the “bedtime pardon” and *yehi ratzon* prior to the *bracha* of *hamapil* before going to sleep. This pardon and *yehi ratzon* is a very effective backup tool because Hashem runs the world via the framework of *midda k'neged midda* (the secular world has noticed this framework to some degree and calls it karma) and by pardoning everyone and saying this *yehi ratzon*, one is asking that no other person be punished on their account, implicitly recognizing that no damage can hurt a person without Hashem's decree (see Day 105 of *Chofetz Chaim: A Lesson a Day*). Hashem thus spares the requesting person from being punished as well (see *Rosh Hashana* 17a-17b). There is an interlinear version of these texts that may potentially enable English speakers to recite them with greater *kavana*; the entire series of the pardon, the *yehi ratzon*, *Hamapil*, and *Shema* likely requires less than two minutes to recite, so a cost-benefit analysis should be very positive.

### The Struggle We See Today

As mentioned above, the identity and glory of humanity is synonymous with speech and the ability to speak. The purpose of speech is only for positivity and to connect to Hashem (see Days 2 and 16 of *Chofetz Chaim: A Lesson a Day*). It is a tragedy of truly epic proportions when there are any incidents of *lashon hara* among Jews, and among humanity as a whole. Even Hashem avoids negativity (see *Sanhedrin* 43b and *Pesachim* 3b-4a that reiterates the need to speak with *lashon n'kiya*.)<sup>11</sup> It's therefore important to understand the causes of *lashon hara*. The Chofetz Chaim identifies the impulse for *lashon hara* as an outcome resulting from seven harmful traits, including anger, arrogance, and despair (see Day 129 of *Chofetz Chaim: A Lesson a Day*). Rav Shamshon Raphael Hirsch comments specifically about the tendency to criticize a fellow Jew's laxity in mitzva observance as the lazy person's method to feel spiritual growth (see Day 40 of *Chofetz Chaim: A Daily Companion*), which contrasts the well-known line by Rav Yisrael Salanter that "the material needs of another is a spiritual matter for me." These physical needs were the *Kohen Gadol's* focus and attention in his *tefilos* for the people when he left the *Kodesh Kodashim* on Yom Kippur, not the shortcomings of his people (and the reason we need Yom Kippur in the first place) or even *tefilos* for **their** spiritual growth (see Rav Shteinman in *Rav Chaim Kanievsky on the Yamim Noraim*, p. 54).

The punishment for *lashon hara* described by the Torah is *tzara'as*, a spiritual ailment that afflicts the skin. The Chida suggests that the reason *tzara'as* does not manifest today is because when Hashem applies punishment to a person, it's for the person's benefit, to purify of sin and draw towards *teshuva*. Because it was only during the *Beis Hamikdash* that a person could become *tahor*, a person afflicted with *tzara'as* would remain in a *tamei* state for the rest of their lives. In the absence of the *Beis Hamikdash*, the impurity of this affliction clings only to the soul, but is not manifest on the person's body (see Day 41 of *Chofetz Chaim: A Lesson a Day*). It would seem, however, that there are other ways of bringing punishment to the world; many have noted the similarities and allusions to *metzora* and the spate of health guidelines over the course of the past year, including quarantining and the standard practice of covering the mouth when in the company of other people.<sup>12</sup>

<sup>11</sup> The *malach* Gavriel was punished for bringing a negative report in *Yoma* 77a.

<sup>12</sup> The end of the  *mishna* on *Sanhedrin* 29a includes a *pasuk* that is a source of the prohibition of *lashon hara*. There is often significant, or even critical, meaning ascribed to the juxtaposition of our texts in accordance with the 12th of Rabbi Yishmael's 13 hermeneutical principles (*Davar halameid mei'inyano v'davar halameid misofo*

The *gemara* in *Sanhedrin* 37b records a *machlokes* as to whether *galus* mitigates half or the full measure of punishment. Everyone agrees, however, that *galus* itself has caused major losses in material and spiritual benefits and hindered our ability to experience materialism on a spiritual plane (see *Sota* 49b, *Sanhedrin* 75a, and in contrast to *Avoda Zara* 65a). We have just felt, and continue to experience, the effects of a pandemic, a word that still does not and likely never will capture the gravitas of the experience, at least in the context of this virus. It would seem that we should be able to take a similar position as Moshe Rabbeinu did with the *egel hazahav*, that any shortcomings are the result of context and we want to be healed of all spiritual and physical maladies right away with the third *Beis Hamikdash*.<sup>13</sup> Numerous great people have passed away recently and many, if not all, of the markers of the End discussed in the last *perek* of *Sanhedrin* seem to be present, including the ones that say we should wait for it expectantly (98a). The *midrash* in *Shemos Rabba* 1:36 tells us that it was sufficient that the sinners in Egypt simply thought about doing *teshuva* in order for them to be redeemed (see *Rav Chaim Kanievsky on the Yamim Noraim*, p. 67); while the *gemara* in *Sanhedrin* 97b teaches us that *teshuva* must be done to bring *Mashiach*. Rav Chaim explains (see *Rav Chaim Kanievsky on the Yamim Noraim*, p. 72) that once we meet the requirement of a sincere desire to do *teshuva* and the stirrings of true repentance, Eliyahu Hanavi will arrive and help us complete our *teshuva*, which will result in the arrival of *Mashiach*, *bimheira b'yameinu*. My hope is that this article is old news by the time the book is published.

---

[something that is learned from its context or from the passage that follows]) and it's therefore worth noting that immediately following that *mishna*, the *gemara* discusses the methods of intimidating witnesses to ensure they tell the truth. The first suggestion is to tell them that false witnesses cause famine; there is concern that such intimidation tactics would be ineffective because a professional can always make a living (i.e. working remotely). The second suggestion is to tell them that false witnesses cause widespread death; there is concern that it would be ineffective because of the belief that nobody dies prematurely even in a plague (i.e. a pandemic). The third suggestion is to tell them that false witnesses are contemptible even to the ones who hire them, citing Izevel's plot to murder Navos (see *Yalkut Shimoni* 168 as to what Navos should have done); recall that Achav and Izevel's family was destroyed as a result.

13 It's interesting that the final generation prior to *Mashiach* is described as having the face of a dog (*Sota* 49b, *Sanhedrin* 97a). There are many explanations, but it seems noteworthy that *lashon hara* is associated with dogs. It's incredible to see the massive renewed focus on the laws of *lashon hara* that the pandemic has spurred. It's also worth noting that two figures are mentioned by name in *Sanhedrin* 98b, Chillak and Billak, who appear to be tied to the era of *Mashiach* and they seem to have names that eerily approximate a famous husband and wife political duo in the current era. Just switch the *ches* to a *heh*, which letters are often interchangeable, and the last letter for each may be the first letter of their last name (i.e. an initial).



# Avraham's Seder

DR. MICHAEL KLEINMAN



It all started with a question from my daughter Layla at the Shabbos table the week of *parshas Vayeira*. “I understand that the *Avos* kept the Torah, but why would Lot be eating matza when *Bnei Yisrael* had not left *Mitzrayim* yet?” She was referring to the story in the *parsha* where the *malachim* come to save Lot and the Torah states: “he made a feast for them and he baked *matzos*, and they ate.” (*Bereishis* 19:3) Rashi, quoting *Bereishis Rabba*,<sup>1</sup> explains that it was Pesach. A few *pesukim* earlier, *Bereishis Rabba* also records that Avraham served the *malachim* matza when they were his guests. Two *parshiyos* later, Rivka instructs Yaakov “Go now to the flock and fetch for me from there two choice young goats...” (*Bereishis* 27:9) Rashi, quoting *Pirkei DeRebbe Eliezer*,<sup>2</sup> explains that one goat was for the delicacies which Yaakov would bring to this father in order to receive the *brachos* and that the other was for the *korban Pesach* since that day was *erev* Pesach. One can accept the idea that the *Avos* kept the *mitzvos* because of their inherent value. However, here are three instances of *mitzvos* that on the surface should have been meaningless before the story of *Yetzias Mitzrayim*!

## The Meaning of Jewish Holidays

The start of the answer I came up with is based on a classic explanation of Jewish holidays. In contrast to other holidays, Jewish holidays do not “commemorate” an event in the past. We do not celebrate the 15<sup>th</sup> of Nissan because our ancestors left Egypt on that date thousands of years earlier. Rather, we believe that every day on the calendar is imbued with certain strengths that affect people and events. Rather than the event as a reason to celebrate the date, *Bnei Yisrael* had the ability to leave

---

<sup>1</sup> 48:12

<sup>2</sup> 32

---

Dr. Michael Kleinman is a pediatric dentist in Santa Monica, CA.  
He has been a member of Adas Torah since 2012.



*Mitzrayim* specifically because it was on that date! Each and every year the date brings powers that we personally and collectively can harness to help fulfill our purpose in this world. This is true for all the holidays of the year. In fact, we call our holidays *moadim*, which means times. The focus is on the time of the year, not the events.

With this background, the *mitzvos* of each *moed* take on a different meaning. Just as the holidays themselves do not commemorate an event, neither do their specific *mitzvos*. This starts to give a clue as to what reason the *Avos* would observe *mitzvos* directly related to *Yetzias Mitzrayim*. Despite the fact that these *mitzvos* “originate” from the first *korban pesach* and *matzos* that *Bnei Yisrael* ate as they left Egypt, through our *yesod* we understand that there must be some intrinsic power to these *mitzvos*. Even before *Yetzias Mitzrayim*, the *Avos* would have wanted to tap into the power of the date. So too, the specific *mitzvos* have *kochos* which the *Avos* would have wanted to utilize.

### The True Reason for Mitzvos

We now have a basis to explain why the *Avos* observed these *mitzvos*, but we still need to understand how they knew what to do in the first place and why it would benefit them. The Beis HaLevi teaches an eye-opening principle regarding *mitzvos*. When we discuss the “reasons for *mitzvos*,” we often hone in on those that are logical to us. Charity is a virtue because it helps the less fortunate survive. Murder and theft are forbidden because the world would destroy itself otherwise. We can grasp the logic of these rules. When it comes to what we call *chukim*, like the *para aduma* and *kashrus*, we do not readily see the reasons but believe that somehow they benefit the world. Some even try to come up with possible worldly benefits to these *mitzvos*. The Beis HaLevi turns this completely upside down. He explains that Hashem first created the Torah and *mitzvos* and then the world. *Histakel b'Oraisa u'bara alma*. The world was created in a way that we view murder as wrong because that is what the Torah says. Hashem could just as easily have created a world where murder was right. The Beis HaLevi explains that our perception needs to be altered to realize that everything we think and feel in the world is the result of the underlying basis of the Torah which the world was created upon. In truth, there are no worldly reasons for *mitzvos*; they are all beyond our comprehension. Any attempts at an explanation are merely superficial views through the lens of our physical world. This idea is a stark realignment of our natural way of thinking and helps us realize that all *mitzvos* have purpose and must be kept whether they are understood or not.

In contemplating why the *Avos* kept the Torah, the *sefarim* teach that they had



a keen intuition of Hashem's creation of the world which allowed them to naturally figure out *mitzvos*. This jives well with our new concept of *mitzvos*. Since the *Avos* were so connected with Hashem, they could closely observe how Hashem had created the world and organically follow the ways of Torah. Taking this one step further, the observance of *mitzvos* that were tied to future events, like matza, now make more sense. Our narrow view of the world links these *mitzvos* to events in history but they really transcend time. In this vein, the *Avos* may very well have even done the *mitzva* of telling the story of *Yetzias Mitzrayim*. We now understand how both dates on the calendar and *mitzvos* are imbued with enduring power and significance.

### Which *Mitzvos* did the *Avos* Actually Observe?

עקב אשר־שמע אברהם בקלי וישמר משמרתִי מצותִי חקותִי ותורתִי.  
*"Inasmuch as Abraham obeyed Me and kept My charge, My commandments, My laws, and My teachings."* (Bereishis 26:5)

Rashi teaches that each of the terms in this *pasuk* refer to different aspects of Torah observance, with the upshot being that the *Avos* kept every *mitzva* down to the last detail. The Ramban<sup>3</sup> questions this based on various recorded instances of the *Avos* specifically engaging in activities that seemingly violated the minute details of the Torah. He proposes different explanations to these questions but hones in on Shabbos observance as the root of their *avoda*. He quotes from the *midrash*<sup>4</sup> that Yaakov kept Shabbos even on the rabbinic level of setting up *eruv techumim*. He further quotes the *midrash*<sup>5</sup> that Yosef kept Shabbos in Egypt because "it is equal in importance to all the *mitzvos* because it is testimony to Hashem's creation of the world." The Ramban explains that Yosef specifically kept Shabbos in order to teach his sons to believe that Hashem created the world, in contrast to the heretical beliefs of the Egyptians around them. The *Avos* may or may not have kept all the *mitzvos*, but it seems clear that they did keep Shabbos.

### Shabbos: The Great Link

ושבת קדשו באהבה וברצון הנחילנו זכרון למעשה בראשית. כי הוא יום תחלה  
 למקראי קדש, זכר ליציאת מצרים.

3 26:5 Vayishmor Mishmarti

4 Bereishis Rabba 79:6

5 Bereishis Rabba 92:4

*And given us in love and favor His holy Shabbos as an inheritance, as a remembrance of the act of Creation. For this day is the beginning of all holy days, a remembrance of the Exodus from Egypt. (Friday night kiddush)*

The Nesivos Shalom<sup>6</sup> points out that *kiddush* highlights two aspects of Shabbos, the connection to *Maase Bereishis* and to *Yetzias Mitzrayim*. He explains from the Or Hachaim Hakadosh<sup>7</sup> that the world was created in six days and had no further strength to continue its existence. Hashem then brought Shabbos which reinvigorated the world and allowed it another week of existence. This is repeated each week with a new *Maase Bereishis*. Each week, when we start Shabbos, we must be cognizant of this reality and appreciate the new life we are given. He explains the connection between Shabbos and *Yetzias Mitzrayim* based on another Or Hachaim Hakadosh.<sup>8</sup> The *pasuk* describes that Hashem took the *Bnei Yisrael* out of Egypt in present tense, underscoring the fact that each year is a renewal of this liberation for us. This is familiar from the explanation above. However, he goes further and brings from the *seforim hakedoshim* that *Yetzias Mitzrayim* is written fifty times in the Torah, corresponding to fifty Shabbosim each year. Every week brings us the opportunity to take the power invested in *Yetzias Mitzrayim* of attaining freedom to apply to our own personal challenges.<sup>9</sup> Shabbos is the combination of these two concepts. Each and every week we receive a new physical life through the renewal of Creation, and a new lease on spiritual life by harnessing the power of *Yetzias Mitzrayim*.

The connection between Pesach and Shabbos goes further. The *pasuk* teaches us to start counting the *omer* on the second day of Pesach and refers to it as *mimacharas ha'Shabbos*, the day after "Shabbos." This means that the *pasuk* is calling the first day of Pesach "Shabbos." The Nesivos Shalom<sup>10</sup> explains that both Shabbos and Pesach contain the power of bringing us to *kedusha* and combating our challenges. The Torah also uses the phrases *zachor* and *shamor* by both Pesach and Shabbos. One needs to first remember (*zachor*) the power of these days then make sure (*shamor*) to act on it.

An additional point of connection described by the *Pesikta Rabbasi*<sup>11</sup> is the

<sup>6</sup> *Chelek 2, Shabbos Maamar 12*, first section

<sup>7</sup> *Bereishis 2:1*

<sup>8</sup> *Bamidbar 23:22*

<sup>9</sup> He also explains that there are aspects of this which apply each day, which is why there is a daily mitzva of *zecher Yetzias Mitzrayim*.

<sup>10</sup> *Chelek 2, Pesach Maamar 13*

<sup>11</sup> 21:19-20

matching number of ten *ma'amarei Breishis*, “statements of Creation,” ten plagues in Egypt, and the *Aseres Ha'dibros*, the Ten Commandments. The world was created with ten statements that established the fundamentals of the physical world. Before freeing the Jewish people from Egypt, Hashem sent ten miraculous plagues, each corresponding to one of the statements of Creation. This was Hashem's way of “flipping the breakers” on the physical world to let everyone know that He is fully in control. Finally, Hashem gave the Torah with ten commandments, also corresponding to the statements of Creation. This reestablished the physical world under the banner of Torah, bringing the spiritual and physical together. It is no coincidence that the Torah calls Pesach “*mimacharas ha'Shabbos*” in the context of counting the *omer*, the direct bridge from the plagues to *Matan Torah*.

The Ramban succinctly summarizes this relationship in his commentary on the Ten Commandments that are listed in *Devarim*.<sup>12</sup> The *pasuk* states:

וזכרת כי־עבד היית בארץ מצרים ויצאך ה' אלהיך משם ביד חזקה ובזרע נטויה על־כן  
צוך ה' אלהיך לעשות את־יום השבת.

*Remember that you were a slave in the land of Egypt and the Lord your God freed you from there with a mighty hand and an outstretched arm; therefore the Lord your God has commanded you to observe the Sabbath day. (Devarim 5:15)*

He explains that when we remember *Yetzias Mitzrayim* on Shabbos, we are really remembering that Hashem created and controls the world. When Hashem suspended nature to afflict the Egyptians and free the *Bnei Yisrael*, He was showing that “It is Hashem Who creates in all things original signs and wonders, and deals with everything solely in accordance with His will.” He was clearly showing His omnipotence from Creation and for all time. The Ramban concludes by stating that the point of the mitzva to remember *Yetzias Mitzrayim* on Shabbos is to get us to contemplate the six days of *maase bereishis* and the seventh day when Hashem rested. Thus, all three concepts merge together to constantly awaken us to our connection with Hakadosh Baruch Hu.

### The Avos's Seder

It is now clear that Shabbos observance has purpose no matter when in history it is being observed. The same is true for Pesach. The binding of *Maase Bereishis* to Shabbos

<sup>12</sup> *Devarim* 5:15, *d"h* Al kein tzivcha Hashem Elokecha la'asos es yom ha'shabbos

to Pesach is strong and the concepts impactful. We now can see what the *Avos* would gain from fulfilling the *avoda* of Pesach. We do not know exactly what was in their haggadah or what songs they sang. What we do know is that if they felt it beneficial to use these days and these *mitzvos* to help them grow closer to Hashem even before the events unfolded, then we certainly should too. They naturally intuited the Torah because they were looking to grow closer to Hashem. We too must remember that the purpose of *mitzvos* is ultimately to connect with Hashem. He has already given us the Torah, all we must do is follow it! May we all merit to see the final step of the journey with the coming of *Mashiach bimheira b'yameinu*!

# Shavuos



Rabbi David Mahler

Dr. Izzy Korobkin

Dr. Roy Braid



# *Eilu V'Eilu Divrei Elokim Chaim:* Multiple Truths and Today's Society

RABBI DAVID MAHLER



I believe the most enthralling aspect of *Talmud Torah* is the fact that *Chazal's* ancient wisdom is so relevant to our contemporary times. I often find myself moved by how a *gemara* or *midrash* speaks to the Jewish people in 2021 with the same applicability as it must have in the 5<sup>th</sup> or 12<sup>th</sup> centuries.

Presently, we live in a nation with a deep divide over a litany of issues. The gaping hole between those on both sides often precludes them from speaking, debating or arguing with respect and civility. In society today, people are demonized for their beliefs socially, religiously and politically. Our tradition teaches that this reality is anathema to the *hashkafas Hatorah*.

*Chazal* clearly see validity in dissenting and even conflicting opinions.

The *gemara* (*Eruvin* 13b) relates the following story:

*For three years there was a dispute between Beis Shammai and Beis Hillel, the former asserting, "the halacha is in accordance with our views," and the latter contending, "the halacha is in accordance with our views." Eventually, a bas kol (heavenly voice) rang out and announced: "these and those are both the words of the living God [both views represent a valid understanding of Torah law, but in practice,] the halacha follows Beis Hillel."*

The idea that opposing rulings have validity and legitimacy on both sides is echoed in the words of the *gemara* (*Chagiga* 3b):

*Perhaps a man will say, "since these rule tamei and those rule tahor, these prohibit and those permit, these disqualify and those declare fit, how can I learn Torah?" Therefore, the pasuk (Koheles 12:11) states "Given from*

---

Rabbi David Mahler is the Principal at Gindi Maimonides Academy in Los Angeles and on the Rabbinic staff at the Young Israel of Century City.

He has been a member of Adas Torah since 2014.

*One Shepherd” – One God gave them, and one leader said them from the mouth of the Master of All Matters.*

As any student of *Torah*, even a novice, knows, in the realm of *parshanut*, *machshava* and even *halacha*, diversity of opinion and interpretation is pervasive.

There is a glaring difficulty here, though. How can both contradictory rulings be “the words of the living God”? Isn’t one ruling correct and the other incorrect?

We will consider a number of approaches to this question.

The first view is quoted by the Ritva in the name of the French *Ba’alei Tosafos*.<sup>1</sup> According to their understanding, when *Hashem* taught Moshe the Torah on *Har Sinai*, He endowed him with a multi-faceted understanding containing all possible sides of every *halacha* – more accurately, forty-nine arguments to each side of a *machlokes*. *Hashem* taught Moshe contradictory and conflicting opinions to each *halacha*. Moshe was presented with every possibility. As a follow-up to hearing every conceivable argument at *Sinai*, the Ritva notes that Moshe became concerned. He asked *Hashem*, “How will *halacha* be decided? How will the *halachic* process function? Which of these myriad possibilities should be accepted if all are equally valid?” *Hashem* responded that the scholars of each generation will reach a consensus, and the majority opinion will be binding. The opinions recorded by *Chazal* are all legitimate, it’s just that society cannot run if we do not have one organized canon of law for all to live by. Therefore, we must rule according to one of the opinions, but the fact that one view is acceptable for normative practice does not invalidate the other’s legitimacy.<sup>2</sup>

According to this approach, Judaism believes in multiple truths. The opinions of Rabbi Yochanan and Reish Lakish, Rava and Abaye, the Rambam and the Ra’avad, and the Shach and Taz are all *Divrei Elokim Chaim* because originally, they were conceived by *Hashem*.

Others reject this idea, arguing that surely one view must be more true than another. Objectively, something is either kosher or *treif*, *kasher* or *pasul*, pure or impure. What then is meant by *eilu v’eilu*?

In his introduction to the *Nesivos HaMishpat*, Rav Yaakov of Lissa asserts that there is only one true and correct opinion. However, there is nevertheless real value

<sup>1</sup> The Ritva uses the phrase *Rabbanei Tzarfat*.

<sup>2</sup> It must be noted that *halacha* can only be decided by bona-fide, well-respected and formidable *poskim*. Not everyone is entitled to their opinion in deciding *halacha*.



in considering opposing positions, even if they are false, as they contribute to the value of *Talmud Torah* by identifying inconsistencies, misconceptions, refining correct opinions and sensitizing one to *halachic* intuition.

Beautifully and perhaps shockingly, he explains his understanding of *eilu v'eilu* by utilizing a comparison to a deep-sea diver. The diver swims deep in the sea and sees a stone he believes to be a pearl, a precious gem, yet it turns out to be a simple rock. He goes down again and believes he's found a jewel, and again it's a rock. This scene plays itself out over and over until he is finally successful. At that point, he realizes that the previous attempts served to refine his sense of touch. Each unsuccessful endeavor was crucial to his ultimate success. So too, this is the role of Beis Shammai. If not for Beis Shammai, how do we know Beis Hillel would have ever arrived at their conclusion? As the *gemara* states (*Eruvin* 13b), Beis Hillel studied the opinions of Beis Shammai before rendering their own. The wrong, incorrect, faulty view is indispensable when searching for the truth.

As opposed to the Ritva's more maximalist view, this one is a more minimalist understanding of *eilu v'eilu*. Whereas the first clearly promoted the approach of multiple truths, this one rejects it.

I believe it's important to mention the well-known saying that there are *Shivim Panim L'Torah*, seventy faces to Torah. Many have noted that seventy is a concrete number, suggesting that there are only seventy and no more. Some views are out of bounds. Some views may not be incorporated into our shuls, schools and homes.

There are two additional approaches that take more of a middle road. They are similar, yet contain nuanced differences.

The Netziv writes in his *Kidmas HaEmek*<sup>3</sup> that an idea proposed by a *tanna* or *amora* is in theory correct. It is a Torah idea, yet it does not fit perfectly for the specific case being discussed. Even though the bottom-line *halacha* is not in line with the opinion, the opinion is part of *Chochmas HaTorah*.

Rav Moshe Feinstein, in his introduction to *Igros Moshe*, seems to agree with the Netziv. In his words, the rejected opinions in *Chazal* are *divrei Torah mamash*. In his opinion, a person who wakes up early to learn and knows they will exclusively be studying the opinions of *Beis Shammai* or other rejected opinions, must still recite a *birchas hatorah*.

Additionally, elsewhere he suggests that the underlying principle of *eilu v'eilu* demands that we treat a rejected opinion in *halacha* with a full measure of reverence

<sup>3</sup> The introduction of the Netziv to his *Ha'emek She'eila* on the *She'iltos*.

even if we were familiar with and still not convinced by its argument.

According to both the Netziv and Rav Moshe, the “other” *shitos* are a bona-fide part of Torah.

An earlier source is similar, yet not identical. Rashi<sup>4</sup> comments that although we do not *pasken* like opinion A or opinion B in a specific scenario or at a specific time, it does not mean that in another time, we will not *pasken* like it. Rashi believes that both opinions are Torah-true. As minor changes in a given situation call for different lines of reasoning, at times, one logical argument is appropriate, while at other times, a different logical argument is appropriate.

What emerges from a rough overview of the main approaches to *eilu v'eilu* is that according to most understandings, all opinions, views, attitudes and conclusions are genuine and legitimate.

Yet we live in a society that is assaulting not only a freedom of ideas and attitudes, but any view that is not wholly in sync with our own. People often mention the need and desire for safe spaces, but a safe space is not one which mutes dissenting opinions. On the contrary, a safe space should be one where a respectful and listening ear is lent. Where one leans in to hear another. It is one where we understand that the many colors create a more gorgeous canvas. Why is it that we stigmatize those who disagree with us as if they are boorish, immoral and despicable?

As George Orwell once wrote, “If liberty means anything at all, it means the right to tell people what they do not want to hear.” The pursuit of truth and justice requires the freedom to disagree.<sup>5</sup>

One of today’s greatest challenges is our polarized society. By not listening to rational thoughts and fears of others, by not tempering our judgements of others with sensitivity, we risk sacrificing critical ideas and insights that can deepen our comprehension and internalization of the truth.

Thankfully, our *mesora* vehemently disagrees with our current climate and offers us various suggestions on how to really listen and learn from each other regardless of our differences.

The most inspiring aspect of all is found in *Yevamos* 14b. As noted earlier, Beis Hillel and Beis Shammai argued for three years until the *bas kol* announced the *halacha* will side with Beis Hillel. There are hundreds of disagreements between the two schools, yet their families married each other. Despite their differences, the

4 *Kesubos* 57b s.v. *ve’ha*

5 The previous two paragraphs are adapted from an essay by Rabbi Lord Jonathan Sacks zt”l.

schools of Hillel and Shammai created one community. The students of each, and their children, “intermarried” freely with the sons and daughters of the other side. They lived with mutual respect and reverence.

As wonderful as this sounds, the *gemara* stresses how truly remarkable it really was. The *gemara* highlights the fact that the two schools did not simply argue regarding the laws of *sukka*, Shabbos and *berachos*. Their dissension infiltrated into the world of purity and divorce, marriage and conversion. The rulings of these topics impact one’s personal and religious status. They “intermarried” despite disagreeing about the issue of who is a Jew, and who is still an *aguna*.

The Aruch HaShulchan<sup>6</sup> addresses the question as to why the Torah is referred to as a song (*Devarim* 13:19). The Torah, he argues, is described as such because its beauty derives from the interconnectedness and woven diversity of the varied voices and instruments. The debates of the *tannaim* and *amoraim* are the voices and instruments of our holy Torah serving to animate and harmonize its glorious and majestic beauty.

*Yehi ratzon* that the diverse opinions, attitudes and outlooks in our community and society at large serve to enrich and enhance, rather than detract and diminish. May we all be able to enjoy the harmonious symphony of community *b’ahava ub’achva*.

---

<sup>6</sup> Introduction to *Choshen Mishpat*



# The Steipler's *Birchas Hatorah*

DR. IZZY KOROBKIN



**T**he Shulchan Aruch (*O"C siman 47*) begins the *halachos* of *birchas hatorah* with: "One must be very careful regarding *birchas hatorah*."

The *halacha* requires a *bracha* before learning Torah. Why don't we make a *bracha* after learning Torah?

The Beis Yosef quotes the Rashba who says that learning Torah is a *mitzva* and (in general) we don't make *brachos* after performing *mitzvos*. (We make a *bracha* after getting an *aliya* because *krias hatorah* in shul is a *takanas Moshe v'Ezra* and we make *brachos* before and after *takanos*. Other examples include *krias hamegilla* and *hallel*.) The Beis Yosef now must contend with a *gemara* in *Nidda* which suggests that some people do make *brachos* after *mitzvos*.

כל הטעון ברכה לאחריו טעון ברכה לפניו ויש שטעון ברכה לפניו ואין טעון ברכה  
לאחריו. (נדה נב:)

*Any item which requires a blessing beforehand requires a blessing afterwards.*

*There are items which require a blessing beforehand but not afterwards.*

The *gemara* asks what the second statement comes to include. One suggestion is that the *mishna* means we don't make *brachos* after doing *mitzvos*. The *gemara* challenges this with the custom of *b'nei maarava* (residents of Israel) who do make *brachos* after *mitzvos*. For example, after removing tefillin they say "*asher kidshanu b'mitzvosav v'tzivanu lishmor chukav*, Who sanctified us with His *mitzvos* and commanded us to keep His laws."

In response to this opinion, the Beis Yosef quotes the Rashba that even if you do make *brachos* after *mitzvos*, you would not do so for Torah study since it applies all day and night. Therefore, there is no opportunity to make a *bracha achrona* as its performance is never complete.

---

Dr. Izzy Korobkin is a dentist based in Valencia, CA.

He has been a member of Adas Torah since 2017.

The Steipler in *Kehilas Yaakov Brachos Siman 24* questions the Beis Yosef. We hold *l'halacha* that *brachos* are not made after *mitzvos*. In fact, the Shulchan Aruch dedicates *siman 29* in *Hilchos Tefillin* to say that unlike *b'nei maarava*, we do not make a *bracha* when removing *tefillin*. Why then does the Beis Yosef give two answers regarding *birchas hatorah*? If we *pasken* not to make *brachos* after *mitzvos*, why suggest a second answer that Torah has no end and therefore couldn't have a *bracha achrona*?

The Steipler answers by introducing the law of *mitzvos lav lehe'enos nitnu*. The *gemara* in *Eruvin 31a* states that *mitzvos* were not given for enjoyment and that therefore one could place an *eruv techumim* in a grave. Normally one cannot benefit from the dead; however, since *eruv* is only made for a *mitzva* (not for personal benefit) one could make an *eruv* at a grave. The Steipler continues with an example where a person (Reuven) forbids himself from benefiting from another individual (Shimon). Reuven cannot eat Shimon's food, sleep in his house, sell to him, etc. Yet, he could take his *lulav* on second day of Sukkos because *mitzvos* aren't considered a benefit. Even though Reuven couldn't do the *mitzva* without Shimon's *lulav*, using it is allowed because *mitzva* performance is not considered benefit in *halacha*. The exception to this rule is the *mitzva* of learning Torah. Reuven could not take Shimon's *sefer* to learn from because learning Torah makes a person happy and is considered a benefit. For this reason the *halacha* states that a mourner cannot learn Torah, nor can anyone learn Torah on Tisha B'av. The Steipler quotes *Tehillim 19:11* "They [torah] are to be desired more than gold, yea more than much fine gold, and are sweeter than honey and drippings of honeycombs." There is inherent benefit in Torah study and therefore Reuven cannot learn by way of Shimon.

In this sense, the Steipler concludes that *birchas hatorah* has a *birchas hanehenin* component. There are three general categories of *brachos*.

- *Birchas Hanehenin*: Blessings on physical enjoyment
- *Birchas Hamitzvos*: Blessings on *mitzva* observance
- *Birchas Shevach V'hodaa*: Blessings of praise and gratitude

Because Torah provides inherent benefit to a person, the Steipler considers the *bracha* on Torah to be a *birchas hanehenin*. He demonstrates this from the wording of the *bracha*. Usually a *birchas hamitzva* is worded with the act of the *mitzva* whereas a *birchas hanehenin* is worded with the item in utility. For example, the *brachos* for *shofar*, *lulav*, and *matza* are on the action. The *brachos* on wine and bread are on the item. *Birchas hatorah* contains both elements. The *birchas hamitzvos* component is in "*la'asok b'divrei Torah*," to engage in words of Torah, action. The next *bracha* is a *birchas hanehenin*: *asher bachar banu mikol ha'amim v'nasan lanu es toraso*. Who chose

us from among the nations and gave us the Torah. This *bracha* takes on the form of a *birchas hanehenin* because it is on the item (Torah) and not the performance.

The Steipler says this is why the Beis Yosef provided two answers to why there is no *bracha achrona* for Torah. It's clear that *mitzvos* aren't usually given a *bracha achrona*. One may think Torah is different because it's also a *birchas hanehenin* and a *birchas hanehenin* always receives a *bracha achrona*. The second answer explains that Torah is different because its obligation does not end. When one stops a meal the obligation for *bracha achrona* initiates. If a person ate all day he would never say a *bracha achrona*. Learning Torah is different; even when one stops learning, it's merely a break until the next learning. The need for *bracha achrona* doesn't initiate because the obligation to learn doesn't end.

The Mishna Berura in *Siman* 47 quotes from the Pri Chadash and Chayei Adam that if a person is in doubt whether he recited *birchas hatorah* to only say *asher bachar banu* because that is the primary *bracha*, as explained in *Brachos* 11b that it includes Hashem, Torah, and *Bnei Yisrael*. It comes out according to the Steipler that the *birchas hanehenin* component of *birchas hatorah* is the most important part.

Continuing the discussion of *birchas hatorah*, Rav Tzadok Hakohen writes in *Kometz Hamincha* (note 61) that *birchas hatorah* has a unique component not found in any other *bracha*, *v'haarev na*, where we ask Hashem to make the Torah sweet in our mouths. This verbiage fits nicely with the *birchas hanehenin* concept but is otherwise an unusual *tefilla*. Rav Tzadok explains that regarding most *mitzvos*, if the *yetzer hara* tries to sway one away, there is an antidote. The *gemara* in *Kiddushin* 30b explains that Hashem created the Torah as the antidote to the *yetzer hara*. A person can study the laws of whatever mitzva they are struggling with and the Torah learning will help them overcome the evil inclination. However, what can one do if the *yetzer hara* is preventing one from learning Torah itself? He answers that the antidote to that *yetzer hara* is the *tefilla* of *v'haarev na*. *Birchas hatorah* with proper intention will abate the *yetzer hara*, thereby allowing a person better Torah learning. This explains the *gemara* in *Nedarim* 81a that Jerusalem was destroyed because they didn't say *birchas hatorah* before learning. The difficulty with this statement is that many other reasons are given for the Beis Hamikdash's destruction, mostly for sin or bad character. How is not saying *birchas hatorah* related to those sins? According to Rav Tzadok, Torah learning will only protect one from sin if it begins with a strong *birchas hatorah*. If one doesn't make *birchas hatorah* properly, then their learning will be deficient and therefore less effective against the *yetzer hara*. In other words, the *yetzer hara* is fought with Torah, and the Torah is effective with a strong *birchas hatorah*. If the *birchas*

---

*hatorah* is lacking, then the protective function of Torah is less effective. The *Beis Hamikdash* was indeed destroyed because of sin but started with a lacking in *kavana* during *birchas hatorah*.

The Levush in *siman* 47 explains the above *gemara* that they said *birchas hatorah* but without the enjoyment and intention Torah study should engender. The Mishna Berura explains at length the importance of saying *birchas hatorah* with happiness and excitement. After all, the Shulchan Aruch says to be “very careful” with this *bracha*. With our Torah learning and proper intention, we will merit to rebuild the *Beis Hamikdash*.



# Sleepless in Shavuot: A Study of *Krias Shema Al HaMita*

DR. ROY BRAID



There's no time in the Jewish calendar that causes us to confront our relationship with sleep more so than Shavuot. Although an individual's own decision to stay awake the whole night of Shavuot may depend on many factors, there is no denying that it is the most popular night for *Klal Yisrael* to pull (or try to pull) a collective all-nighter. The origins and explanations of how this custom became widespread are fascinating and much debated, and they deserve their own articles. This article will explore something that we miss out on Shavuot by staying awake all night, *krias shema al hamita*. Perhaps instead of attaining a deep sleep this Shavuot, we will instead get a deeper understanding of our sleep through this bedtime ritual.

The majority opinion is that the recitation of the *shema* "on our beds" is a distinct entity from our biblical obligation to say *shema* twice a day. While we can fulfill our obligation of saying our nighttime *shema* at this time instead of during *maariv*, there is of course, disagreement as to the exact purpose of the rabbinic enactment of saying *shema* "on our beds" when we have already said *shema* during *maariv*. There are two opinions as to the purpose of *krias shema al hamita*:

1. It is a mechanism of protection for our body as we are sleeping.
2. It is recited so that we have words of Torah on our lips as we go to sleep.

As we will explore, the specific *kavana* that one has will have practical implications on what paragraphs of the *shema* to say and the timing of when to say this *shema* in relation to the *bracha* of *hamapil*. Confused yet? The good news is that if you fall asleep while reading this, I will have done my job well professionally, since you will have gone to sleep with words of Torah on your lips like a *talmid chacham*. Additionally, if you don't fall asleep, perhaps it will still be as if you slept, invoking the concept we apply to *korbanos* that "learning about something is as if you fulfilled it."

---

Dr. Roy Braid is an anesthesiologist in private practice in Los Angeles and its surrounding area. He has been a member of Adas Torah since 2014.

### ***Krias Shema Al HaMita for Protection***

Although *krias shema al hamita* is certainly considered a rabbinic mitzva, it is also hinted to in the Torah itself. In *parshas Balak*, Bilaam tells Balak that despite his best efforts, he is unable to curse the Jews as he realizes that Hashem is in control of everything emanating from his mouth. *Bamidbar* 23:24 states “Behold, this [the Jews] is a people that rises like a lioness, raises itself like a lion, and does not lay down until it eats its prey...” Rashi comments there that this is a reference to the fact that a Jew does not lie down until he has destroyed or consumed anything that will be harmful to him. Rashi says that a Jew accomplishes this by reciting *shema* on his bed and entrusting his spirit to Hashem. The imagery of the first entry of the *Shulchan Aruch* is very well known, encouraging us to start our day eagerly like a lion performing the *mitzvos* of *tallis*, *tefillin* and *shema*. Equally important, says Rashi here, is to go to sleep like a lion. The “king of the jungle” knows that he is vulnerable when he sleeps, and so must entrust his survival to Hashem. This source would seem to indicate that our recital of *shema* at bedtime is for protection.

There is another source supporting *krias shema al hamita* being for protection. The *gemara* in *Brachos* 57b states that during sleep we are 1/60 dead, as our soul detaches from our body during sleep and returns to Hashem for an accounting. According to Rabbeinu Yona, this renders our body spiritually vulnerable to *mazikin*. Our soul gets examined each night, and Hashem decides whether we are worthy of having our soul and body reunite and continue to perform *mitzvos* in this world. This is the root of saying “*Modeh ani ... she-hechezarta bi nishmasi b'chemla*.” We thank Hashem for returning our souls to us. Our bodies certainly need protection while bereft of the soul, and the *shema* helps us to achieve that protection.

The *shema* provides this protection to the body specifically through its 245+3 words, which correspond to a person's 248 limbs.<sup>1</sup> *Shema* itself has 245 words and *Ashkenazim* generally have the custom of adding “*Kel Melech Ne'eman*” before *shema* while Sephardim generally add “*Hashem Elokechem Emes*” after *shema* in order to bring the word count to 248. Here again, we see a reference to the fact that these 248 limbs, which are partially dead when we are sleeping, could be a source of *tuma* if Hashem does not return our soul to us. The 248 words of the *shema* serve to protect this partially dead body.

---

<sup>1</sup> While a student in human anatomy might argue about the number 248, the context of this number is the *mishna* in *Oholos* (1:8), regarding the number of whole parts of a dead body that would convey *tuma* if someone were to touch them.

### ***Krias Shema Al HaMita* for Talmud Torah**

The *gemara* in *Brachos* 4b cites an opinion of Rabbi Yehoshua ben Levi that “even though a person recited *shema* during *maariv*, there is a mitzva to recite it at one’s beside.” The *gemara* uses a source in *Tehillim* (4:5) where it says “...reflect in your hearts while on your beds, and be utterly silent” as a proof to this practice. It essentially connects the word “heart” found both in this *pasuk* and in *shema* to the word “bed” of this verse. The *gemara*, continues, however, with an opinion by Rav Nachman which says that a *talmid chacham* is exempt from this *shema*. Rashi comments that this is because a *talmid chacham* is always reviewing his learning. This would seem to support the argument that the function of the bedtime *shema* is to be a source of Torah on our lips as we go to sleep, and since the *talmid chacham* always has other Torah on their lips, he is exempt from the *shema*. Abaye counters this by saying that the *talmid chacham* should at least say one *pasuk* before going to bed, “In Your hand I entrust my spirit; You have redeemed me, O Lord, God of truth (*Tehillim* 31:6),” which relates to how he entrusts his soul to Hashem while sleeping. Although this *pasuk* has the theme of protection, the fact that the whole *shema* is not required would seem to again imply that it is going to sleep with Torah on your lips that is most important.

The *gemara* in *Brachos* 60b quotes another overt source that mentions *krias shema al hamita* and then the *bracha* of *hamapil*. The *gemara* there says that one should say “*shema Yisrael ad v’haya im shamoa*.” This wording comes to teach us to include “*baruch shem kavod*” in our recitation, and it also opens a discussion as to whether the word “*ad*” meant to include “*v’haya im shamoa*” or not. In any event, the fact that the *gemara* does not rule that one should say all three paragraphs would be a proof that the function of *krias shema al hamita* is merely for saying words of Torah rather than protection.

### **Protection or Talmud Torah: What is the Difference?**

In the previous source, the *gemara* gave the order of saying *shema* before the *bracha* of *hamapil*, which pointed towards *talmud Torah* as the essential purpose of reciting *krias shema al hamita*. The rationale is as follows: since the theme of *hamapil* is protection (we ask Hashem for peace, and no bad dreams), we want the *bracha* of protection to be directly connected to our sleep without a *hefsek*. Therefore, if *shema* is for *talmud Torah* and not for protection, then it would have to be said prior to *hamapil* in order to avoid being a *hefsek*. However, if this bedtime *shema* is for protection, then it can be and should be said after *hamapil* because it has the same theme as the *bracha* and therefore would not be considered a *hefsek* (comparable to “pass the salt” not being

a true *hefsek* between washing and *hamotzi* because it is connected to the *hamotzi*). Saying *shema* after *hamapil* would presumably provide the most protection because it is as close as possible to when we close our eyes for the night. Another point that emerges is that if *shema* is for protection, then it would be incumbent upon a person to recite all three paragraphs (in accordance with the 248 words providing protection). A person who is saying *shema* for protection should also certainly include “*Kel Melech Ne’eman*” or “*Hashem Elokechem Emes*” but not both. So, although there are many differing practices, one comfortable conclusion that we can make is that it would be incongruous to say anything less than three paragraphs of the *shema* if one were saying the *shema* after the *bracha* of *hamapil*. It also seems that to cover both opinions, it may be prudent to say words of *talmud Torah* prior to *hamapil* and then proceed to say all three paragraphs of the *shema* after *hamapil* for protection.

### Rethinking Sleep

Sleep is often thought of as the absence of being awake. However, much in the same way that Shabbos is more than just desisting from *melacha*, sleep can be thought of as the time of higher achievement for both the body and soul. Yes, during the majority of our sleep hours (excluding REM), many of our essential body functions such as heart rate, respiratory rate, blood pressure, body temperature, kidney function and metabolism are reduced. However, there are a number of processes that are enhanced during sleep that propel us even further for the day ahead. Sleep is the time when our brain forms new memories, growth hormone is secreted more abundantly leading to physical growth, our skin and muscle cells regenerate most rapidly in order to repair injury, and our immune system is most active in producing antibodies. On a spiritual level, sleep is the time when our soul is allowed to “fly” closest to Hashem and receive divine influence without any hindrance of the body before being reunited the next morning. On Shavuot, the day that Hashem meets us in this world through the giving of the Torah, perhaps the way that our soul best achieves closeness to Hashem is by remaining with our body in this world and learning Torah throughout the night. In this way, our body and soul are united with Hashem, our body remains protected and Torah is on our lips. With this paradigm, it would seem, then, that *krias shema al hamita* on the night of Shavuot would be rendered unnecessary. With Hashem’s help, we will soon see the time of the *Mashiach* when our souls will be connected to Hashem constantly, the bodies of *Klal Yisrael* will see the promise of divine protection, and *talmud Torah* will be effortlessly flowing from our lips.

# Machlokes L'shem Shamayim



Rabbi Yaakov Siegel

Yaakov Rich



# “*Dina D’malchusa Dina*” Does Not Mean What You Think It Does

RABBI YAAKOV SIEGEL



If it's against the local law to give alcohol to minors under the age of 21, is it prohibited by *halacha* to share a beer with your 20-year old son? If federal law prohibits defacing currency, does the Torah forbid a Jew from tearing up a dollar bill? If federal regulations require you to move your seat back and tray table to their upright and locked positions prior to landing, is doing so a religious obligation? And if, to prevent the spread of a virus, state and county safety laws ban a gathering of families, is it *assur lihalacha* for three families with antibodies to get together for a Shabbos meal?

Many who read these questions will think that the answers lie in a detailed analysis of the applications of the talmudical principle of “*dina d’malchusa dina*” which literally means “the law of the kingdom (or government) is the law.” But with a basic analysis of the *gemaras*, *rishonim*, and *poskim*, we will see that this assumption is based on a misunderstanding, as *dina d’malchusa dina* does *not* mean that there is a religious Jewish obligation to follow secular laws.

## “*Dina Dimalchusa Dina*” Does Not Mean You Must Follow The Law

The phrase “*dina d’malchusa dina*” is found in four places in *shas*, (*Bava Kama* 113a, *Bava Basra* 54b, *Nedarim* 28a, *Gitin* 10b) quoted in the name of the *amora* Shmuel. At first glance, this principle could be understood in two different ways. It could mean that the same way a Jew is obligated to follow *dinei Torah* (Torah law), he is also obligated to follow the laws of the government. Alternatively, *dina d’malchusa dina* could mean that property or tax laws made by a government are legitimate, even if they are inconsistent with Torah laws. Laws regarding who is the rightful owner of property, are *dina*, legitimate, and therefore following them would not be considered

---

Rabbi Yaakov Siegel works in commercial real estate investment in Los Angeles.  
He has been a member of Adas Torah since 2007.

by *halacha* as stealing. In other words, does *dina d'malchusa dina* mean that the laws of the government are “*dina*” in that you are obligated to follow them, or does it mean that the laws of the government are “*dina*” in that they are legitimate?

An example of the difference between these two possibilities is if a government would have a law that banned defacing or destroying currency. According to the first understanding of *dina d'malchusa dina*, if a Jew violated the government's law, he would be violating Torah law as well. According to the second understanding, the *halacha* would not prohibit a Jew from defacing currency; however, if he is caught doing so and fined, the government's fine is legitimate in the eyes of *halacha* and is not considered robbery.

In this article we will show that the primary *gemaras*, *rishonim*, and *poskim* all understand *dina d'malchusa dina* in the second way. It does not mean that a Jew is obligated to follow the laws of the land, but rather that a government's laws are legitimate in the eyes of *halacha*, and following and enforcing those laws would not be considered stealing.

But even though our thesis is that *dina d'malchusa dina* does not mean that there is a *halachic* obligation to follow the law, there are some scenarios in which there is a *chiyuv lihalacha* to follow governmental ordinances. We will mention them now, but will discuss them in greater detail later in this article. One example is that *halacha* obligates a Jew to follow tax law and pay taxes levied by the government. Not doing so is considered *gezel* (stealing). Also, there is a religious obligation for a Jew to follow any regulations or ordinances if non-compliance could result in a *chilul Hashem* (a desecration of God's name). Finally, *halacha* requires compliance with governmental law, if it is a safety law (such as speed limits or jaywalking) which, if the law is broken, could result in *sakana* (life-threatening danger).

And even if in an isolated situation in which violating a law would not run afoul of a specific *halacha*, as loyal citizens every God-fearing Jew should do whatever possible to follow the letter and spirit of the law. The United States is a true *medina shel chesed* that, throughout its history, has been devoted to providing its Jews with religious freedoms and opportunities. California, specifically, has been a genuine *goldene medineh*, offering equality, prosperity, religious freedom, and boundless opportunity. And in Los Angeles, our government officials have consistently encouraged and supported the growth of our Jewish community, shuls, and Torah institutions. We, the beneficiaries of such governmental kindness, must maintain our strong loyalty to our country, state, and city. We, more than anyone, must be exemplary citizens and should maintain our utmost commitment to following local laws and ordinances



with great caution and care, whenever possible.<sup>1</sup>

### ***Dina Dimalchusa Dina Means Hafka'as Hamelech – the King has the Right to Take Property from its Owner***

Our analysis begins with the most explicit definition of *dina d'malchusa dina* given by the *rishonim*, which is found in Rabbeinu Yona:

כל מה שאמרנו שדין המלך דין, לא אמרו אלא לענין הפקעה, שהנכסים מפקיעין מבעליהן בדיני המלך וכל אדם זוכה בהם כמצותו כשיחזיק בהן, והפקעת מלך הרי היא כענין הפקר ב"ד. (עליות בבא בתרא נה. ד"ה עלה בידיו)

*All that we said that the law of the king is the law, only applies to [the king's ability to] remove ownership. Meaning, property can, through the laws of the king, be removed from its owner, and anyone can acquire the property based on the king's command when they take hold of it. This removal of ownership by the king is similar to "hefker beis din hefker" (the right of a Beis Din to transfer property from one owner to another).*

Obviously, according to Rabbeinu Yona, *dina d'malchusa dina* carries no affirmative obligation to follow laws unrelated to property ownership. Rather, it's simply the king or government's right (in the eyes of *halacha*) to declare who is the rightful owner of property. And it is this right that gives *halachic* legitimacy to the monetary and property laws of the king or government.

Understanding *dina d'malchusa dina* as a king's right to take property is by no means unique to Rabbeinu Yona. In fact, a careful study of the *sugyos* that discuss *dina d'malchusa dina* will show that this approach is almost universally accepted by the *rishonim* and *achronim*.<sup>2</sup>

1 See *Igros Moshe* (C"m 1:72) where Rav Moshe Feinstein expresses hesitation about expressing a clear *p'sak* regarding a *she'ila* related to *dina d'malchusa dina*:

שבלי יתראה חס ושלום שאנו מקטינים כבוד המלוכה דמדינתנו בפה אשר אנחנו מחויבים להכיר להם טובה על החסד שעושים עמנו ועם כל אחבנ"י שבמדינה הזאת. ואנחנו מברכים אותם ומתפללים להשי"ת בכל עת ושעה לשלום המדינה ונשיאיה ושריה כאשר נצטוו.

*I don't want it to seem chas vishalom as if we are belittling the respect for our country with the very mouths with which we are obligated to thank them for the kindness that they treat us with and all of our Jewish brothers who live in this country. We bless them and pray to Hashem at every opportunity for peace for the country and its leaders, as we are commanded.*

2 *D'var Avraham* (1:1:3) says explicitly that Rabbeinu Yonah's understanding of *dina d'malchusa dina* is "*shitas rov harishonim*."

## The Primary Sources in the *Gemara*, *Rishonim*, and the *Shulchan Aruch* are Clear about the Meaning of *Dina Dimalchusa Dina*

The *gemara* in *Bava Kama* 113a quotes the *mishna* in *Kilayim* (9:2) that says that one may not wear *shatnez* even on top of ten layers of clothing, and even if it is just to hide the clothes from tax collectors. On this the *gemara* asks:

להבריה בו את המכס מי שרי? והאמר שמואל דינא דמלכותא דינא? א"ר חנינא בר כהנא אמר שמואל במוכס שאין לו קצבה. דבי ר' ינאי אמרי במוכס העומד מאליו.  
*Is it really permissible to evade paying taxes? But didn't Shmuel say "dina d'malchusa dina," the law of the kingdom is the law? Rav Chanina bar Kahana answers in the name of Shmuel that one is allowed to evade taxes if the tax collector does not have a set amount that he is assigned to collect [but rather takes as much as he pleases – Rashi]. In the house of Rav Yanai they answered, that the mishna [which allows evading taxes] is talking about an unauthorized tax collector who illegally takes taxes for himself.*<sup>3</sup>

When the *gemara* asks how a person can evade taxes if Shmuel says the *halacha* is *dina d'malchusa dina*, what is the *gemara* asking? At first blush, it would appear that the *gemara* is asking, how are you allowed to evade taxes if the *halacha* is that *dina d'malchusa dina*, meaning that you are obligated to follow the law. But this is *not* how Rashi explains the *gemara*. When the *gemara* asks, "but didn't Shmuel say *dina d'malchusa dina*?" Rashi explains (*d"h dina d'malchusa dina*):

ונמצא שגזול את המוכס ישראל זה שקיבל את המכס מיד המלך נכרי בהיתר:  
*And it turns out that that [one who evades taxes] is stealing from the Jewish tax collector who legally was granted the right to collect taxes by the non-Jewish king.*

In other words, Rashi is saying that the *halachic* problem *dina d'malchusa dina* presents the tax cheat is *not* that it is *assur* to break the law, but rather if a Jew<sup>4</sup> legally got the right from the king to collect taxes, then the taxes legally belong to the

<sup>3</sup> In the time of the *gemara*, tax collection was different than the way it works today. Typically a nobleman would pay the king a sum of money for the right to collect the king's taxes in a geographic area, and the tax collector would keep the tax collections for himself.

<sup>4</sup> While Rashi focuses on stealing from a Jewish tax collector, it is also forbidden to steal from a non-Jew. Evading a non-Jewish tax collector is the subject of discussion in the continuation of the *sugya*, so to avoid wading into this issue before the *gemara* does, Rashi addresses only the Jewish tax collector, as stealing from the Jew would be stealing according to all opinions.

Jewish tax collector, and if you don't pay them, you are stealing from him. Clearly, *dina d'malchusa dina* means that the laws of the king – specifically the laws related to property ownership – are legitimate, *not* that there's a *halachic* obligation to follow all of a king's laws.<sup>5</sup>

This becomes even clearer in another example of *dina d'malchusa dina* brought in that same *sugya* in *Bava Kama* 113a. The *mishna* says that one may not exchange coins with a tax collector. The *gemara* and *rishonim* understand the reason to be because the tax collector's coins are stolen property. On this the *gemara* asks the same question and gives the same answer – why can't you exchange coins with the tax collector, didn't Shmuel say *dina d'malchusa dina*? And again, the *gemara* gives the same answers – either the tax collector did not have a set amount that he was assigned to collect, or alternatively, the *mishna* is talking about an unauthorized tax collector who is basically a robber. Here too, Rashi gives a similar explanation to the question of shouldn't it be permitted to exchange with the tax collector because of *dina d'malchusa dina*:

וזה שקיבל את המכס מן המלך בדבר קצוב כך וכך לשנה אין גזלן:

*And this tax collector who received from the king the right to collect taxes of a certain amount per year, is not a thief.*

Again, Rashi defines *dina d'malchusa dina* to mean that property taken based on the king's laws is not considered stolen. It is clear from Rashi that *dina d'malchusa dina* means the king or government's decree to take property is legitimate, *not* that there is a *chiyuv* to follow governmental laws.

The Rambam as well, explains this *gemara* in the same way:

מכס שפסקו המלך... והעמיד מוכס ישראל... ונודע שאדם זה נאמן... אינו בחזקת גזלן לפי שדין המלך דין הוא. (הלכות גזילה ואבידה ה:יא)

*A tax that the king decreed... and appointed a Jewish tax collector... who is an honest and trustworthy person... he is not considered a gazlan (robber) because the law of the king is the law.*<sup>6</sup>

<sup>5</sup> To be clear, as we mentioned in the introduction, in general, evading taxes *is assur lihalacha*, but not because *dina d'malchusa dina* means you have a religious obligation to follow the law. Rather, since the principle of *dina d'malchusa dina* gives a lawful tax collector the right to collect taxes, evading taxes becomes a violation of the Torah prohibition of *lo sigzol* (do not rob).

<sup>6</sup> The Meiri explains also this *gemara* (*Bava Kama* 113a) in the same way:

אין אומרים שהמכס מעיקרו גזל הוא אלא דינא דמלכותא דינא ר"ל שכל חוק שחקקו המלך לכל ולא חדשו לאדם אחד בפרט על אי זה מעשה דין גמור הוא ואסור לגזול.

*Lihalacha*, the Shulchan Aruch (C"m 369:6) uses almost the identical words as the Rambam:

והעמיד מוכס ישראל לגבותו למלך ונודע שאדם זה נאמן ואינו מוסיף כלום על מה שגזר המלך אינו בחזקת גזלן משום דדינא דמלכותא דינא.

*If the king installed a Jewish tax collector to collect for him, and he's known to be honest, trustworthy, and not to take more than the king's decree, he is not considered a gazlan (robber) because dina d'malchusa dina.*

It is thus clear that *dina d'malchusa dina* is limited, like Rabbeinu Yona said, to the *halachic* legitimacy of a king's right to take property for himself, or to give it to someone else. It is not a *halachic* requirement to follow all the king's laws.

### **The S'varos the Rishonim Give for Dina Dimalchusa Dina Show it Does Not Mean You Have to Follow the Law**

The two most famous explanations of *dina d'malchusa dina* are the Rashbam in *Bava Basra* and the Ran in *Nedarim*.

The *gemara* in *Bava Basra* 54b<sup>7</sup> states a surprising *halacha* from Rav Yehuda in the name of Shmuel. If a non-Jew sells land to a Jew, and receives the money, any other Jew is permitted to swoop in and “steal” the land from the Jew by making a *chazaka* (proprietary action) prior to the intended buyer receiving the deed from the non-Jew. This is because of the quirky difference in Torah law between how a non-Jew relinquishes ownership (receipt of funds) and how a Jew acquires ownership (receipt of deed or *chazaka*). On this the *gemara* asks:

מי אמר שמואל הכי והאמר שמואל דינא דמלכותא דינא ומלכא אמר לא ליקני ארעא אלא באיגרתא.

*Did Shmuel really say that [another Jew can jump in and acquire the land with a chazaka]? But didn't Shmuel say “dina d'malchusa dina?” And the*

---

*We don't say that the taxes are really stolen, but rather, dina d'malchusa dina, that is to say that any law that the king decreed for everyone, and he didn't just make it up to be against one specific person for some reason, it is a real law, and you're not allowed to steal from him.*

The Meiri does not say that there is a *chiyuv* to follow the law, but rather he says that the taxes are not stolen, and it is forbidden to steal from the tax collector. It is thus surprising that the Schottenstein Talmud (*Bava Kama* 113a3 footnote 31) cites this Meiri as saying “the laws of the land are thus valid under *halacha*, and a Jew has a religious duty to observe them.”

<sup>7</sup> The reader should not be too concerned if this *gemara* is overly complicated. Its understanding is not entirely necessary to appreciate the Rashbam.

*king said you can only acquire land with a deed!*<sup>8</sup>

On this *gemara*, the Rashbam gives his famous explanation of *dina d'malchusa dina* (*d"h mi amar Shmuel hachi*):

כל מסים וארנוניות ומנהגות של משפטי מלכים שרגילים להנהיג במלכותם דינא הוא. שכל בני המלכות מקבלים עליהם מרצונם חוקי המלך ומשפטיו והלכך דין גמור הוא ואין למחזיק בממון חבירו ע"פ חוק המלך הנהוג בעיר משום גזל.

*All taxes, levies, and customs of the laws of kings that they typically have in their kingdoms are the law. Meaning, all the citizens of the kingdom willingly accept upon themselves the laws of the king, and therefore they are real laws ("din gamur"). So one who takes his friend's money based on the king's law that applies in that city is not considered stealing.*

The Rashbam explains that the reason for *dina d'malchusa dina* is that the citizens willingly accept upon themselves to be bound by the king's laws. By living in a country, they have voluntarily accepted that the *dina d'malchusa* will be *dina* for them. But for our discussion, the last sentence of the Rashbam is the key. The Rashbam does *not* say that since citizens willingly accept the king's laws, they are obligated to follow them. Rather, he says that if one has property taken from him based on the king's laws, it is not considered stolen, because the one who had the property taken willingly accepted upon himself the legitimacy of the laws of the land. *Dina d'malchusa dina*, according to the Rashbam, does not mean that everyone has agreed to follow the laws, but rather everyone has agreed to accept the legitimacy of the laws.<sup>9</sup>

The Ran's famous explanation is found in *Nedarim* 28a, where the *gemara* has a discussion almost identical to the *gemara* in *Bava Kama* (113a) we discussed previously. The *mishna* in *Nedarim* says that you can swear to a tax collector that food is *truma* (and forbidden to a non-Kohen) to avoid having to pay taxes. On this, like in *Bava Kama*, the *gemara* asks, what happened to Shmuel who ruled *dina d'malchusa dina*? The *gemara* gives the same answers that it gave in *Bava Kama* that the *mishna*

<sup>8</sup> The *gemara* doesn't resolve this contradiction, but rather simply attests to the fact that Shmuel does hold of both of these rules. The Rashbam answers the question by saying that Shmuel holds *dina d'malchusa dina*, but factually disagreed that the king's law was that you could only acquire a property with a deed.

<sup>9</sup> *D'var Avraham* (1:1:3) says that the Rashbam agrees entirely to Rabbeinu Yona that *dina d'malchusa dina* is limited to *hafka'as hamelech* which works in a way similar to *hefker beis din hefker*. According to the *D'var Avraham*, the Rashbam is explaining that the king's ability to take property and decide its ownership is based on the agreement of the citizens to follow the king's monetary decrees.

is either talking about a tax collector who does not have a set amount of tax he is authorized to take, or about an unauthorized tax collector. On this *gemara*, the Ran (*d"h bimoches ha'ome me'eilav*) gives his famous explanation of *dina d'malchusa dina*:

וכתבו בתוספות דדוקא במלכי עובדי כוכבים אמר דדינא דמלכותא דינא מפני שהארץ שלו ויכול לומר להם אם לא תעשו מצותי אגרש אתכם מן הארץ. אבל במלכי ישראל לא לפי שא"י כל ישראל שותפין בה. וכי אמרינן דינא דמלכותא דינא ה"מ לענין שאם קנה אחד מכס זה חייבים ליתן לו את המכס. וכן נמי אם לא קנה אותו אלא שהוא ממונה לגבות את המכס שאינו רשאי ישראל חבירו לישבע שהן תרומה דליכא אונסא כיון דדינא דמלכותא דינא.

*Tosafos write that dina d'malchusa dina only applies to a non-Jewish king, because the land belongs to him, and he is able to say if you don't follow my commands I will kick you out of the land. But not for Jewish kings, because all Jews are partners in the ownership of the Land of Israel, and when we say dina d'malchusa dina, this only relates to one who acquired the right to collect a tax, that [all Jews] are obligated to pay him the tax. And even if he did not acquire the right to collect, but was appointed [by the government] to collect the tax, his fellow Jew is not allowed to swear to him that the food is truma because the tax collector is not considered stealing because of the principle of dina d'malchusa dina.*

While this Ran is hotly debated regarding its application to whether *dina d'malchusa dina* applies in modern-day democratic Israel, for our discussion, the Ran is clear. The Ran does *not* say that since the king can kick you out of his kingdom, you have an obligation to follow his laws. Rather, he says that since the king can kick you out of his kingdom, if he takes your money through taxes, it is a legitimate taking.

### **The Torah Sources the Achronim Give for Dina Dimalchusa Dina Show it Does Not Mean You Have to Follow the Law**

While the *rishonim* give *s'varos* (logical sources) for the concept of *dina d'malchusa dina*, the *achronim* suggest sources in the *pesukim* of the Torah. Most *achronim* hold that *dina d'malchusa dina* is a *din d'oraisa*, a Torah law,<sup>10</sup> and suggest numerous sources in the Torah from where the concept of *dina d'malchusa dina* originates. All of these sources relate to a king's power over property law, not any Torah obligation to follow

<sup>10</sup> See *Avnei Miluim* (E"H 28:2), *Chasam Sofer* (Y"D 314), *D'var Avraham* (1:1), and *Minchas Asher* (2:121). The sole dissenter seems to be the *Beis Shmuel* (E"H 28:3) who holds that *dina d'malchusa dina* is a *din derabbanan* (rabbinic rule).



a king's regulations or civil ordinances.

Rav Avraham Dovber Kahana Shapiro (the Rav of Kovno who died in the Kovno Ghetto in 1943) says in *Shu"t D'var Avraham* (1:1) that *dina d'malchusa dina* comes from "*Vayishb mimenu shevi*" (*Bamidbar* 21:1) a non-Jewish king's right to *kivush milchama*, to capture people during war and make them his own. Since the king can own his subjects, he can declare what property belongs to whom. Therefore, his declarations of monetary laws are binding. This source would not generate a Torah *chiyuv* to follow governmental ordinances unrelated to monetary laws.

The D'var Avraham presents a second source for the concept of *dina d'malchusa dina*, which is the *Parshas Hamelech*. In *Shmuel* 1 (8:11-17), the *navi* Shmuel warns the Jewish people against having a king, because the king would surely take their property, produce, and children. In the *gemara* (*Sanhedrin* 20b), Rav says the king is not allowed to do those things, but Shmuel (the *amora*) says the king is allowed. The D'var Avraham says that (*amora*) Shmuel's rule of *dina d'malchusa dina* comes from the very same Shmuel's rule that the king is allowed to take all these things from his subjects. Again, this source for *dina d'malchusa dina* would give the king right to impose monetary rules and to legitimately take property, but it would not create a Torah obligation on a government's subjects to follow non-monetary governmental ordinances.<sup>11</sup>

The *Chasam Sofer* (C"m 44) presents a similar source for *dina d'malchusa dina*. The *pasuk* in *Shir Hashirim* (8:12) says "*Ha'elef lecha Shlomo u'masaim linotrim es piryu*," one thousand are for you Shlomo, and two hundred are to guard his fruit. The *gemara* in *Shevuos* (35b) quotes the very same *amora* Shmuel who understands this *pasuk* to be giving a king the right to draft up to one sixth of the population into military and civil service. Here too, this source would give the king right to impose monetary laws and take property, but it would not create any Torah obligation to obey non-monetary governmental regulations.

### ***Dina Dimalchusa Dina Only Applies to Monetary Laws***

Based on these sources, it is not surprising that every single case that the *gemara*,<sup>12</sup>

11 See *Minchas Asher* (2:121) where Rav Asher Weiss *shlit"a* derives a different, novel conclusion from *Parshas Hamelech*.

12 The fourth and final case in which the *gemara* discusses *dina d'malchusa dina* is also a case of monetary law, and is unrelated to any *chiyuv* to follow governmental ordinances. In *Gitin* 10b, the *gemara* states that a document evidencing a gift that was processed by a non-Jewish court is valid even though the witnesses are not Jewish, because of the principle of *dina d'malchusa dina*.

*rishonim*, *Shulchan Aruch* or *Rema*<sup>13</sup> apply *dina d'malchusa dina* is a monetary case. *Rabbeinu Yona* we quoted above is explicit that *dina d'malchusa dina* only applies to *hafka'as melech*, a king declaring that property no longer belongs to one owner, but instead belongs to the a different owner (or to the king himself). The *Rambam* too is explicit that *dina d'malchusa dina* only applies to monetary laws. When the *Rambam paskens lihalacha* like the *gemara* in *Bava Basra* we quoted above which applied *dina d'malchusa dina* to buying land from non-Jews, the *Rambam* expresses *dina d'malchusa dina* by saying:

עושין כפי משפט המלך, שכל דיני המלך בממון, על פיהן דיני. (הל' זכיה ומתנה א:יז)  
 We follow the laws of the king [regarding the acquisition of land]. Because  
 we adjudicate all of the **monetary** laws of the king based on his words.

Based on this, *Rav Hershel Schachter* said explicitly in a recent shiur about *dina d'malchusa dina*, that “it only applies to *dinei mamonos*,” monetary laws.<sup>14</sup>

If *dina d'malchusa dina* meant one has an affirmative obligation to follow the king's laws, the obligation should not differentiate between monetary laws or any other types of laws.<sup>15</sup>

13 At first glance, it appears that one notable exception to the unanimity of the *poskim* that *dina d'malchusa dina* only applies to monetary law is the *Rema* regarding *hashavas aveida*. The *Shulchan Aruch* (C”M 259:7) rules that if one finds an object that was swept away by a flood, the finder can keep it even if the owner is standing and screaming, “someone please help me retrieve my object!” On this the *Rema* writes:

ואע”ג דמדינא אין חייבין להחזיר באבדות אלו אם גזר המלך או ב”ד חייב להחזיר מכח דינא דמלכותא  
 או הפקר ב”ד הפקר  
 Even though according to Torah law, he doesn't have to return these lost objects, if the king or beis  
 din decree [to return it] he is obligated to do so because of *dina d'malchusa dina* or because of  
 hefker beis din hefker.

On the surface, it may seem that the *Rema* is saying that *dina d'malchusa dina* can create a religious obligation to return the lost object. But it's also possible that the *Rema* means that if the king declares an obligation to return a lost object, then the object becomes the property of the original owner, and if one refuses to return it, he will therefore be stealing it from its original owner.

14 Shiur given June 29, 2020 <https://www.yutorah.org/lectures/lecture.cfm/974293> (05:30)

15 There are other interesting *halachos* of *dina d'malchusa dina* that only make sense with understanding it as a government's right to *hafka'as hamelech*.

*Rav Dovid Menachem Manish Babad* (1865-1937) in *Shu”t Chavatzeles Hasharon* (C”M 8) ruled that *dina d'malchusa dina* does not apply to communist or socialist laws that take property from the wealthy, even if the governments were democratically elected. He explains that since these laws are so far from the *da'as Torah*, that “*chalila lomar shezeh yihyeh mikri din gamur al pi toraseinu hakedosha*”, it is forbidden to say these laws should be considered genuine according to our holy Torah. According to *Rav Hershel Schachter* <https://vimeo.com/18049451> (13:50), this was the widespread *p'sak* of the *rabbanim* in communist Russia. Now if *dina d'malchusa dina* means that we have a Torah *chiyuv* to follow the king's laws because we've all agreed to



### **Cheating on Taxes is an *Issur D'Oraisa***

Even though *dina d'malchusa dina* does not mean that there is a religious obligation to obey governmental ordinances and regulations, there are some laws that one is *halachically* obligated to follow. The first is the *chiyuv* to pay taxes. This is explicit in the Rambam (*Gizeila V'aveida* 5:11):

עובר המבריה ממכס זה מפני שהוא גזול מנת המלך בין שהיה המלך עכו"ם בין  
שהיה המלך ישראל.

*This tax cheat violates an aveira because he is stealing the portion of the king, whether it is a non-Jewish king or a Jewish king.*

The *Shulchan Aruch* (C"M 369:6) quotes the Rambam almost verbatim as the *halacha*, and the Rema adds that the *aveira* violated is the Torah prohibition of “*lo sigzol*,” thou shall not steal.<sup>16</sup>

Further elaboration on paying taxes in *halacha* is beyond the scope of this discussion, but see Rav Yaakov Yeshaya Blau’s *Pischei Choshen* (*Gineiva V'aveida* 1:4) for a detailed explanation of the topic.

### ***Chilul Hashem* is a Severe *Issur D'oraisa* and Must be Avoided Like the Plague; Okay, Even More than the Plague**

Anytime a Jew breaks a law there is a serious risk of *chilul Hashem*, arguably the most severe sin a Jew can violate. The Rambam famously (*Hilchos Teshuva* 1:4) says that nothing other than death can bring a person atonement for the terrible sin of *chilul Hashem*. The *gemara* (*Yevamos* 79a) says “*mutav sheti’aker os achas min hatorah v’al*

---

live in his country or because he has the ability to throw us off of his land, what difference would it make if the government’s laws are close to Torah law or not? Would it make any sense to say that it’s *assur* to have a *l’chaim* with your underage son in a capitalist country but not in a communist country? But if *dina d'malchusa dina* is limited to the Torah accepting that following a government’s monetary laws is not considered stealing, then it would make sense that if such communist property laws would be considered immoral in the Torah’s eyes, then following them *would* be considered stealing.

Furthermore, the Rema (C"M 369:8) quotes the Rosh and Mordechai that *dina d'malchusa dina* only applies to taxes on land. This is based on the Ran’s idea that the king owns the land and can throw people out if they don’t follow his laws. Even though the Rema doesn’t *pasken* like this *shita*, it’s important to note that that the Rosh and Mordechai obviously hold that *dina d'malchusa dina* is not a *chiyuv* to follow any governmental edict. It is clear that they hold that it means that since the king owns the land, the monetary laws he makes related to land are considered genuine and following them is not considered stealing.

16 Since *dina d'malchusa dina* grants the king or government the right to take property, if they decree a tax, the tax obligation becomes the king’s property, and evading it would be considered stealing from the king. Or in the case where the king lawfully sold the tax collection’s rights, it would be stealing from the tax collector.

*yischalelel shem Shamayim bifarhesia*,” it’s better to uproot a law from the Torah than to publically desecrate Hashem’s name.<sup>17</sup>

Furthermore, in the *gemara*’s discussion of *dina d’malchusa dina* and paying taxes in *Bava Kama* (113a), it is explicit that any taxes that one is *not* obligated to pay (such as some of the cases where a non-Jew who is not part of the government is imposing taxes) one must still pay those taxes if it might lead to *chilul Hashem*, and this *gemara* is quoted as *halacha* by the *Shulchan Aruch* (C”M 369:6).

It is hard to understate how bad it makes Hashem and His Torah look if someone sees a Torah-observant Jew break a law, even a law that not all non-Jews are keeping. We all know that some non-Torah observant people may look at “holier-than-thou” Orthodox Jews with a cynical eye, just hoping for signs of hypocrisy to prove to themselves and others, that those Jews aren’t so moral after all. If a Torah observant Jew is seen violating even the smallest violation – even, for example, parking in an illegal parking spot for five minutes – it could create a *chilul Hashem*, and it’s very hard to come up with situations that it could be worth it to take such a grave risk.<sup>18</sup>

### Breaking Safety Laws Can Violate the *Issur* of Putting Oneself or Others into *Sakana*

It is forbidden for a Jew to do something that puts his or her life at risk even if it is just a small amount of risk. But a small risk that society generally accepts, such as driving a car, is permitted under a principle called *dashu bei rabim* (socially accepted risk). With this background in mind, governmental safety regulations can create a *halachic*

17 When Dovid Hamelech wanted to appease the *Givonim* for Shaul’s sins against them, they asked to kill seven of Shaul’s descendants. Even though Torah law would not allow killing innocent people because of this request, Dovid ruled that since Shaul’s actions against the *Givonim* were a terrible *chilul Hashem* which could be rectified in this way, it would be better to violate the Torah prohibition of murder in order to rectify this *chilul Hashem*.

18 The timeless words of the *Mesilas Yesharim* seem more timely now than ever:

ובכל מה שיעשה צריך שיתחלל ויתבונן מאד שלא יצא משם מה שיוכל להיות חילול לכבוד שמים חס וחלילה. וכבר שנינו, אחד שוגג ואחד מזיד בחילול השם. ואמרו ז”ל (יומא פו): היכי דמי חילול השם? אמר רב: כגון אנא דשקילנא בישרא ולא יהיבנא דמי לאלתר... והענין, שכל אדם לפי מדריגתו ולפי מה שהוא נחשב בעיני הדור, צריך שיתבונן לבלתי עשות דבר בלתי הגון לאיש כמותו... ואם איננו עושה כן, הרי שם שמים מתחלל בו חס וחלילה.

*In everything that a person does, he needs to look and think carefully to make sure nothing can come out of it that could be a chilul Hashem chas v’shalom. And we have already learned (Avos 4:4), that it is a chilul Hashem whether by mistake or on purpose. And chaza”l said (Yoma 86) “what is an example of chilul Hashem? Rav said ‘like me when I took meat and didn’t pay immediately’” ... The idea is that each person according to his level, and how he is looked up to in society, must think hard to make sure that he doesn’t do anything inappropriate for a person of his stature... for if he does not do so, he will desecrate shem Shamayim, chas v’shalom.*

obligation in two ways.

First, they can impact what risks society generally accepts. For example, let's say a certain medication is widely used in one country, but is banned in a different country because of safety concerns. Since in the first country, the risks of taking this medication are *dashu bei rabbim*, widely accepted by society, it would be permitted to take that medication. But if in the second country, because of the government ban, people would recoil from the fear of the risks associated with the medicine, it would be *assur* to take the medicine because the safety risk is not *dashu bei rabbim*. Even though the risks of taking the medication is identical in both countries, the *halachic* permissibility changes because of the government rule's impact on society's perception of the risks.

Second, in many cases, mass compliance with safety laws is necessary to prevent *sakanas nefashos*. In such cases, compliance with those governmental laws would become obligatory. Rav Shmuel Halevy Vosner, in a 1997 *teshuva* published in *Sefer Meir Nisivim* (p. 209) rules that one is obligated to follow traffic laws, and writes:

וכל בית דין בעירו עם מנהיגי הציבור חייבים לעשות למנוע נזיקין מהתושבים. ואין לזה שייכות אם יש דינא דמלכותא או אין דינא דמלכותא, דהתקנות שנעשו על ידי השלטון נעשו לטובת הציבור למנוע אסונות, ואם לא נעשו על ידם, היה חיוב עלינו לעשות כזה.

*Every beis din in its city, together with the city's leaders, are obligated to prevent damage to its inhabitants. And this has nothing to do with dina d'malchusa dina, because [traffic] rules made by the government are made for the public benefit – to prevent accidents. And if the government didn't make them, the batei din would have an obligation to make them.*

Similarly, when Rav Yaakov Kamenetsky was asked whether one is prohibited to speed because of *dina d'malchusa dina*, he responded that speeding is not *assur* because of *dina d'malchusa dina*, but it is *assur* because of *safek sakana* (a possibility of danger).<sup>19</sup>

19 Quoted by Rav Hershel Schachter <https://vimeo.com/18049451> (13:50). A good *nafka mina* (practical example) of the difference between the two ways governmental ordinances impact the *halachos* of *sakana* would be laws requiring bikers to wear helmets or drivers to wear seat belts. If society does not feel that it is reckless to bike or drive a short distance without a helmet or seatbelt, since compliance is not needed to protect the public from danger, these would be not be prohibited *lihalacha* if one is certain there would be no *chilul Hashem*. (But as we mentioned in the introduction, even in a situation where there would be no specific *halachic* obligation to follow a certain governmental ordinance, as loyal citizens that society could look up to as moral role models, it is important to do whatever possible to follow every law.)

What about breaking a public safety law in the rare situation where there is no concern of danger? For example, if one is on a deserted road with no cars around at 2:00 am, can he run a red light? Rav Vosner, in his aforementioned *teshuva*, says no, because “*d’heirus haseder mevi lidei sakana binefesh kayadua*” (everyone knows that a breakdown of these type of rules can lead to real danger).

Rav Asher Weiss disagrees, and rules (*Minchas Asher* 2:123) that if one is certain that there is absolutely no danger, one may run that proverbial 2:00 am red light. Rav Weiss argues that even the government does not intend to have such a regulation banning crossing the intersection when there is no danger at all, but has no way of phrasing a law that would depend on an individual’s judgement.

It is possible, however, to argue that in a non-Jewish society Rav Vosner might agree with Rav Weiss. Rav Vosner seems to be arguing that the *chiyuv* to follow safety regulations is akin to the *chiyuv* to follow a *p’sak* of *beis din*, because in a Jewish-run society it is a *beis din*’s obligation to set up safety rules which they can pass off to the government to do for them. But in a non-Jewish society, since it is not *beis din*’s job to set up safety regulations, perhaps each Jew only has a *chiyuv* to “stay safe” rather than “follow the safety laws”. Based solely on strict *halachic* considerations, this would allow one to run that red light at 2:00 am with no cars around.<sup>20</sup>

Also, if Rav Vosner holds that the obligation to follow traffic laws comes from the obligations to avoid *sakana* and to follow a *p’sak* of *beis din* who have the obligation themselves to ensure the safety of their community, what would be if a community’s *beis din* or *rabbanim* consult with safety experts and decide that a governmental public safety law is either not necessary or detrimental to the community? It seems logical that they would have the right to endorse some public safety laws and (very cautiously) not endorse others. In such a case there would not be a *halachic* obligation to follow those governmental regulations.<sup>21 22</sup>

---

20 Again, even in a situation where there would be no specific *halachic* obligation to follow a certain governmental ordinance, our loyalty as citizens and our positions as potential moral role models for society, demand of us to do whatever possible to follow every law.

21 And again, even in a situation where there would be no specific *halachic* obligation to follow a certain governmental ordinance, our loyalty as citizens and our positions as potential moral role models for society, demand of us to do whatever possible to follow every law.

22 Rav Hershel Schachter *shlit”a* has a novel approach which could create other situations of a *halachic* obligation to follow secular law (<https://www.vimeo.com/1804941> [40:15] and explained in greater detail in personal conversations). The *gemara* in *Sanhedrin* 32b says that the word “*tzedek*” is repeated twice in “*tzedek tzedek tirdof*” to teach that a *beis din* is obligated to enact common-sense compromises, such as traffic laws, for society. Rav Schachter explains that these government rules give a driver a *zechus* (right) to drive calmly through

### Davening Indoors, Masks, and Social Distancing

In conclusion, let's say local or federal ordinances are enacted that ban davening indoors, or require masks when learning in a *beis medrash*, limit the capacity of *mispalilim* in a shul, or prohibit having Shabbos guests. Is a Jew obligated by *halacha* to comply with these laws?

To answer any of these specific questions, there are two questions we need to ask, but two questions we do not. First, we need to ask if there might be a *chilul Hashem*. If that is a possibility, and it clearly is in so many of these instances, then breaking the law would be a severe *issur*. It is critically important to realize that so many people around us have been seriously hurt – physically, emotionally, and financially – by the spread of illness and the restrictions put in place to try to prevent its spread. How would someone mourning the loss of a loved one feel if he or she sees Torah-observant Jews breaking a law put in place to prevent people from spreading illness? And what about someone – Jew or non-Jew – whose *parnassa* comes from a restaurant or gym, and is desperate for infection rates to drop low enough for their business to reopen? How will he feel about Hashem and his Torah, if he sees a Torah-observant Jew breaking these laws? It is really hard to break any of these laws with any kind of certainty that there would be no *chilul Hashem*.

Second, we need to ask if the behavior is potentially dangerous. This is a question that must be answered by every community's *rav* together with infectious disease specialists. If they decide that it is dangerous, then it would be *assur lihalacha*.

But we do *not* need to ask if this behavior is *assur* because of *dina d'malchusa dina* as we have shown that this does not create *halachic chiyuvim* or *issurim*. It only establishes that the government has the right to determine property ownership, and that following the government's monetary laws is not considered stealing.<sup>23</sup> And lastly, we do not need to ask whether we *should* follow the law. Because in a city, state, and country that have done so much to deserve our devoted loyalty, even in the rare case that there is not a strict *halachic* obligation to follow a governmental ordinance,

---

his green light. Someone who runs a red light would violate the prohibition of *gezel* by taking that right away from that driver. Similarly, any violation of a law enacted to ensure peace and civility could be considered *gezel* if it infringes on anyone else's right to peace and quiet.

23 An interesting outcome of this discussion is that "religious liberty" ends up not being relevant to questions about *chiyuvim* to follow governmental regulations. If a safety regulation prohibits performance of a mitzva, *poskim* would have to determine how to balance the performance of that mitzva with the potential of *chilul Hashem* or *safek sakana* that might come with doing it. But the *poskim* would not need to balance the performance mitzva with any *issurim* of *dina d'malchusa dina*, because no such *issurim* exist.

we most definitely should do whatever possible to set an example for the society around us and follow every law.

# The Obligation to Abide by the Law

YAAKOV RICH



Imagine a scenario in which a Jewish woman seeking *halachic* guidance receives a *psak* that it is permitted – though not required – for her to abort her unborn child.<sup>1</sup> If, in the state that she lives, performing an abortion at her stage of the pregnancy would be against the state law, would it be in violation of *halacha*? Similarly, *halacha* recognizes cases where it would be permitted to exhume a body from burial,<sup>2</sup> whereas in many states this is illegal unless a petition is submitted and approved. Does the law of the state affect the *halachic* permissibility of doing so?

These are cases that are taken seriously by society and by the law, but does *halacha* recognize the law in these scenarios? More specifically, is there a *halachic* obligation to follow the law of the place where you live? Recently, this topic received wide attention when local guidelines were enacted in municipalities around the world restricting gatherings and obligating mask-wearing in an attempt to slow the spread of COVID-19. Some claimed that the *halachic* principle of *dina d'malchusa dina* *halachically* obligated constituents to follow these guidelines. Others claimed that *dina d'malchusa dina* does not apply to anything outside of the realm of taxes and asset ownership, and that from a *halachic* perspective, the new laws trigger no *chiyuv*.

Who is correct is not a simple question, and even great *poskim* have admitted to being perplexed by this area of *halacha*. Rav Moshe Feinstein, when asked about following certain tenancy laws in New York, began as follows:

הנה מה שהאריך כתר"ה בענין דינא דמלכותא קשה לכתוב בענינים אלו משני  
טעמים חדא מטעם שכתב בשו"ת השיב משה שהביא כתר"ה שיש מבוכה רבה בין

1 This is not the place for a *halachic* discussion of abortion, except to note that there are many *poskim* who permit it in certain cases. See, as an example, *Tzitz Eliezer* (7:48). I can also point to a more expansive discussion of the topic which appeared in *Nitzachon* (4:1; p. 111) by Dovid Levine.

2 See the *Shulchan Aruch* (Y"D 363:1) and the *Pischei Teshuva* there.

Yaakov Rich is Director of Machine Learning at YMeadows Inc.  
He has been a member of Adas Torah since its inception in 2004.

הפוסקים וסתירות רבות וצריך לזה עיון וזמן רב אולי יעזור ד' להבין לאסוקי להלכה וכל שכן לקטני ערך כמוני.<sup>3</sup>

*That which you deliberated regarding dina d'malchusa – the local law – it is difficult to write about this topic. Firstly, for the reason which is mentioned in the responsa Heishiv Moshe, which you cited; namely that there is much confusion amongst the poskim [regarding this] and many contradictions. It would need a lot of time and attention, perhaps Hashem will help me understand how to apply this halacha, and certainly for someone as lowly as myself.*

Rav Moshe continues by making another important point – that *halachic* obligation is not the only reason that someone in the United States of America should be following the law.

ועוד מטעם שבל יתראה חס ושלוש שאנו מקטינים כבוד המלוכה דמדינתנו בפה אשר אנחנו מחוייבים להכיר להם טובה על החסד שעושין עמנו ועם כל אחבנ"י שבמדינה הזאת ואנחנו מברכים אותם ומתפללים להשי"ת בכל עת ושעה לשלום המדינה ונשיאיה ושריה כאשר נצטוינו.

*Additionally, I don't want it to seem – God forbid – as if we are belittling the respect for our country with the very mouths with which we are obligated to thank them for the kindness that they treat us with and all of our brethren who live in this country. We bless them and pray to Hashem every day for the welfare of this country and its government as we are required to.*

This point that Rav Moshe makes in this *teshuva* is one he makes in other *teshuvos* as well.<sup>4</sup> There is an obligation to have *hakaras hatov* for our ability to live freely and proudly as a Jewish community here in America. And therefore, even if in a particular

3 Igros Moshe (C"m 1:72). The Heishiv Moshe that he quotes here continues as follows:

דלפעמים הרימו דגל המלוכה עד מרום ולפעמים השפילו עד לעפר, ולא ראיתי שום אחד מהמחברים שיאמר בזה דבר ברור ויסוד חזק כחכם ידע פשר דבר להשוות כל המקומות שדברו בזה

*Sometimes they [the poskim] raise the flag of the government to the heavens, and other times they lower it to the ground. I have not seen a single author who has a clear thing to say about this, or a strong foundation of it like a wise man who knows the interpretation of things (Kohes 8:1) in order to harmonize all the places where they [Chazal and the rishonim] spoke of this issue.*

See also Shu"t Chelkas Yaakov (E"H 23), where in discussion of the sources regarding *dina d'malchusa*, he adds:

הרואה יראה כמה עקולי ופשורי שיש בין הפוסקים בדיון דמ"ד ואין לנו בזה פסק מבורר  
*The reader will see how much meandering there is in the poskim in this issue of dina d'malchusa dina, and we do not have for this a clear decision.*

4 For another, even stronger-worded example, see Igros Moshe C"m 2:29.



case the *halacha* does not obligate one to follow the law, careful consideration of one's actions is still necessary.

At first glance through the sections of the *gemara* where *dina d'malchusa* comes up, it does seem that it only relates to *dinei mammonos* (monetary issues) such as property ownership and taxes. But yet we also find that some *poskim* apply the idea of *dina d'malchusa dina* to non-monetary issues as well. Most notably, the Rama writes, based on a *teshuva* of Rabbeinu Gershom, that a government ruling could obligate someone to return lost property to its original owner even when the *halacha* – based on the rules of *hashavas aveida* – would not require it.<sup>5</sup> Additionally, recent *poskim*

---

5 See the Mordechai (*Bava Metzia* 257), who elaborates the case Rabbeinu Gershom was responding to. Some Jewish merchants had been on a ship that sank near the harbor. One of the Jews (Reuven) attempted to salvage his sunken possessions (by hiring a non-Jew), but was unable to salvage everything, and the rest of his possessions were taken by other non-Jews, and one of the items was sold to another Jew (Shimon) in the city. According to the local law, people who found items in the sea were permitted to charge the owner for their trouble, but were ultimately required to return the property. Shimon claimed that he was entitled to keep the property he bought since this would be a case of *shataf nahar* – wherein items are swept up by a river and we assume the owner was *meya'eash*. For several reasons, Rabbeinu Gershom disputes Shimon's claim, one of the reasons being:

ומושלי העיר כבר צו להחזירו ודינא דמלכותא דינא...

*Since the local authorities already demanded he return the item, and dina d'malchusa dina...*

This seems to be a case where *dina d'malchusa* is used to obligate someone in a non-monetary matter, that is, to return a lost object. However, to be fair, it is arguable that this is in fact merely a case in which *dina d'malchusa* is used to affect the ownership of property, as the Rabbeinu Gershom continues there:

ועכו"ם שכופר בה דינו כגנב ודינו של שמעון זה כלוקח מן הגנב...

*And this non-Jew who denies [i.e. violates] it [the local law] is considered a thief; therefore*

*Shimon should be treated as someone who purchased [stolen goods] from a thief...*

It's not clear to me if this is an elaboration of how *dina d'malchusa dina* is being applied in this case; if so, it is just that the government has authority over whom property and money belongs to and the *halacha* has to treat that as valid ownership. Alternatively, this is an additional reason that Rabbeinu Gershom is adding to the obligation to return the item by dint of *dina d'malchusa*.

The Rama, when he quotes this *halacha*, uses the following language:

ואע"ג דמדינא אין חייבין להחזיר באבידות אלו אם גזר המלך או ב"ד חייב להחזיר מכח דינא דמלכותא או הפקר ב"ד הפקר

*Even though these items are not required in general to be returned, if the king or beis din decreed [that it must be returned], he is obligated to return it based on the power of dina d'malchusa dina or hefker beis din hefker.*

Arguably, it does sound like the Rama understands this as an obligation upon the finder rather than just the fact that *dina d'malchusa* makes us treat the original owner as the *muchzak*. (See also the Rama in *C"m* 356:7.) [*Hefker beis din*, which the Rama also mentions here, is a reference to another one of the reasons brought by Rabbeinu Gershom to dispute Shimon's claim, and is not really related to the *dina d'malchusa* reasoning. See also below, where we discuss the power of *hefker beis din*, and the *rishonim's* understanding that it actually gives *beis din* the power to make *takanos* which obligate the individual to comply.]

such as Rav Chaim Pinchas Scheinberg, Rav Menashe Klein, Rav Dov Lior,<sup>6</sup> and Rav Asher Weiss,<sup>7</sup> have all ruled that abiding by local traffic laws is obligated by the principle of *dina d'malchusa dina*, besides for the fact that they may sometimes be obligated additionally because of *sakanas nefashos*. How do these *poskim* understand the principle of *dina d'malchusa dina* to allow them to come to the conclusion that it obligates people to follow the law with respect to non-monetary matters?

The goal of this article is to gain a detailed understanding of the underpinnings of *dina d'malchusa dina* in such a way that justifies its application to be much wider than just the types of cases where it arises in the *gemara*.

### The People of a City can Force One Another...

Before jumping into the topic of *dina d'malchusa*, it's worthwhile to explore one *halachic* concept which can obligate people to follow many of the local laws even independently from the principle of *dina d'malchusa dina*, and that is *shutfus*, shared ownership. Do people who live in the same neighborhood – or the same city, state, or country – have *halachic* responsibilities to one another? The *Shulchan Aruch* contains a series of *simanim* regarding what people who share a courtyard, or live on the same street or in the same city, must be willing to contribute to the group and can be forced to do so if they refuse.

כופין בני העיר זה את זה... לעשות חומה דלתים ובריה לעיר ולבנות להם בית  
הכנסת... הגה וה"ה לכל צרכי העיר...

*The people of a city can force another to build a wall, doors and locks [for security], and to build a shul, etc. [Rama:] And the same is true for all communal necessities.*<sup>8</sup>

The Rama continues to elaborate on how the community follows the majority in cases when not everyone can agree on what is necessary or how to accomplish it. This implies that if the community collectively (by majority) decides that they need, for example, a security patrol, then all members of the community are obligated to contribute to that end. Where does this obligation come from?

The source for this ruling of the *Shulchan Aruch* comes originally from the *mishna* in *Bava Basra* (1:5). The *perek* there begins by discussing *shutfim* (partners)

<sup>6</sup> See *Meir Nesivim* (1:3)

<sup>7</sup> *Minchas Asher* (Vol. 2; C" M 121; see in particular Section 5)

<sup>8</sup> C" M 163:1

who share a courtyard and decide to build a wall in the middle; the *mishna* discusses what terms they are required to fulfill, and it continues by telling us that *shutfim* who share a courtyard can compel one another to build certain necessities for it. This is the context in which the *mishna* states that the inhabitants of a city must contribute to its necessities (such as the wall and gate etc.) as well. It seems clear, then, that the obligation stems from the same source. Just as people who share a courtyard are considered *shutfim* and share the responsibility of whatever is necessary for its upkeep, so too the members of a city – or any state or country for that matter – who share certain needs that are necessary for the upkeep and day-to-day life in that city are considered *shutfim* and share the responsibility to contribute to those needs.<sup>9</sup>

The fact that the people of a city are considered *shutfim* with respect to the needs of the city makes them contractually obligated to follow whatever the majority of the *shutfim* – the inhabitants of the city – decide. And in many cities, where the people vote on representatives to decide on the laws and enforce them, the laws that these representatives institute would create an obligation upon all the inhabitants to follow them *midinei shutfus*.

The *mishna* itself only discusses this idea of *shutfus* between the people of a city

---

9 See *Shu"t Maharam Mi-Rothenburg* (918; Prague edition), Rama (*C"m* 176:25), and for more details, see *Shu"t Chasam Sofer* (*O"t* 1:193).

In general, it is assumed that to become partners in anything, a formal *kinyan* must be performed by all the participants, but there are many *rishonim* who hold that a *kinyan* is not necessary for a group of people when there is an agreement that benefits all parties; see at length *Shu"t Maharik* (181). (See also *Chidushei Rabbi Akiva Eiger*, *C"m* 333:1; and the discussion of Rav Hershel Schacter in "B'inyan Daas al Ha-tnai", *Hadarom* Vol. 50, pp. 27-31.)

However, several of the *acharonim* attempt to find another way of understanding the status of the *bnei ha-ir*. See, for example, *Nesivos Hamishpat* (178:3) who sees this concept as distinct from *shutfus*. As he puts it, "Even for two people who are not partners, anything which is necessary for both of them and one does not want to do it, the other can force him, and the proof is that which we learned: 'the people of a city can force one another to build a wall etc.'"

Rav Isser Zalman Meltzer sees here a type of *shutfus* which differs from regular partnership in some ways. For example, someone who leaves the city does not have to sell or be *makneh* his portion of the *shutfus* to the remaining inhabitants; and someone who has several children does not pass less of the ownership than someone else who has a single child, as would be the case in a normal partnership. (*Even Ha'ezer Hilchos Sh'cheinim* 2:10; see also *Shiurei Rabbi Dovid Povarsky*, *Bava Basra* 43a.)

Rav Elchanan Wasserman (*Kovetz Shiurim*, *Bava Basra* 40-41) does not even consider *shutfus* as the basis for the relationship of the *bnei ha-ir* to one another, and he struggles to find a reason why one resident should be able to force another to do anything. After suggesting that it might be a *takanas chachamim*, he concludes that maybe it comes from the mitzva of *hashavas aveida*, similar to the obligation to save someone's property if he sees a flood coming; and even though in general one doesn't have to expend money to do so, since in this case doing so benefits the person himself as well, it's not considered a real loss.

with regard to monetary responsibility, i.e. that each person is obligated to contribute money for the needs of the city. This may be enough to show that each constituent in a democratically run country, state, or city, is *mechuyav* to pay taxes, since the taxes are levied in order to support the needs of the jurisdiction. And indeed, this argument is used by Rav Hershel Schachter to come to exactly that conclusion.<sup>10</sup> But does this mean that the people of the city can obligate one another also in non-monetary issues? If the city decides, for example, to limit the height of structures that anyone may build on their property, or that a particular street may only be driven on one way, or that everyone must wear a mask in particular areas in order to mitigate the spread of a disease, does this also obligate each inhabitant *midinei shutfus*?

Firstly, I think that a simple reading of this *gemara* in *Bava Basra* leads us to answering this question in the positive. The *gemara* (8a) discusses the details of how to collect for the needs of the city, and certain things for which *talmidei chachamim* are exempt from contributing to.

הכל לכריא פתיא אפי' מרבנן ולא אמרן אלא דלא נפקי באכלוזא אבל נפקי באכלוזא  
רבנן לאו בני מיפק באכלוזא נינהו.

*Everyone [is responsible to contribute] to digging wells for water, even talmidei chachamim. But this is only true when the people did not declare that everyone must go themselves [to dig the wells, but rather they hired contractors (Rashi)]. However, if the people declared that they go themselves, the talmidei chachamim are not included in this.*

The *gemara* here rules that things that are for the general upkeep of the city (as opposed to for its defense and security), even the *chachamim* of the city must contribute. But if the rule of the city is that the people perform the necessary tasks themselves, then *talmidei chachamim* are exempt from participating. What this means is that the *gemara* considers it a given that if the people of a city decide that everyone must participate in some action for the *tzarchei ha-ir* – the general upkeep and what is needed for their day-to-day lives – then everyone is obligated to comply. The *gemara* includes this as part of the *shutfus* obligations mentioned by the *mishna*.<sup>11</sup> Indeed,

10 See the “Contemporary Halacha” section in *Einayim L'Torah* (December 3, 2005). This is also discussed in his shiur, “Dina D'Malchusa Dina: Paying Cash, Traffic Laws, Taxes, Backyard Camps” (December 19, 2010), available online ([https://www.torahweb.org/audio/rsch\\_121910\\_video.html](https://www.torahweb.org/audio/rsch_121910_video.html)).

11 This is also pointed out by Rav Aharon Leib Shteinman in *Ayeles Hashachar* (*Bava Basra* 8a):

אלא דבהא דחייבים לילך בעצמם לחפור חזינן דיש על בני העיר כח להטיל חיוב על גוף האדם, ואין זה  
מחמת חיוב ממון דרמי עליהו, ובמקום ממון טורחים בגוף, אלא דיש להם כח לחייב חיוב על הגוף

*From that which they are obligated to go themselves to dig [wells], we see that the people of*

when the Rashba was asked regarding how to split the responsibility of guarding a town at night among its residents, he was clear that his response applied “whether they are guarding it by money [i.e. by contributing to hire guards] or by the people themselves, one night one person, the next night another.”<sup>12</sup>

So far we have seen that *halachically*, everyone in the city are *shutfim* with respect to municipal necessities, and therefore when it comes to things that are for the safety and stability of the city, everyone is obligated to contribute their time and money to what is needed. And as we mentioned from the Rama, if not everyone can agree on how to go about this, the majority can compel the minority to follow. But as we’ll see in a moment, the *bnei ha-ir* are given even more power in *halacha* than just *shutfus*; in fact, they collectively possess the power of a *beis din*.

### What Can a Community Impose on the Individual?

The *gemara* a bit later in *Bava Basra* (8b) quotes a *beraisa* from the *Tosefta* regarding the abilities of the *tzibur* to obligate certain practices.

ורשאין בני העיר להתנות על המדות ועל השערים ועל שכר פועלים ולהסיע על קיצתן.  
*The people of the city may fix the size of the measures used in that city, they may fix the prices [for products sold there], and the wages paid to the workers, and [they may] fine people for violating their specifications.*

The *Tosefta* itself (*Bava Metzia* 11:12) contains many more examples of cases in which the community can specify certain practices (particularly economic practices) that must be followed by everyone; even the practitioners of a particular skill (e.g. bakers, weavers, etc.) within the city can set specific business practices that they all must follow. The *rishonim* disagree on the precise prerequisites for this to take effect, but the Rashba wrote a series of *teshuvos* on this topic which are widely quoted by later *rishonim* and *acharonim*. The message that we get from the *teshuvos* of the Rashba is that the collective community has the power to make *gezeiros* and *takanos* – rules and decrees of all forms – that everyone is obligated to follow.

לפי שהיחידים משועבדים הם לציבור, וכמו שכלל הקהילות משועבד לב"ד הגדול או לנשיא כך כל יחיד ויחיד משועבד לציבור שבעירו.

*the city have the power to impose an obligation on the person himself. It is not based on a monetary obligation, which, instead of with money, is being fulfilled with action, rather they have the power to obligate the action itself.*

<sup>12</sup> *Shu"t HaRashba* (3:382). See also the *teshuva* of Maharam Mi-Rothenburg included in the *Mordechai* (*Bava Basra* 475).

*Because the individuals are "subjugated" by the community. Just as all the communities are subjugated to the head beis din or to the nasi, so too each individual is to the community in his city.*

Similarly, in another *teshuva*:

כל שהרוב מסכימין ומתקנין ומקבלים עליהם אין משגיחין לדברי היחיד, שרוב כל העיר ועיר אצל יחידיהם הם כב"ד הגדול אצל כל ישראל, ואם גזרו הם גזירתם קיימת והעובר ענוש יענש.

*Regarding anything to which the majority agree, and make a decree, and accept upon themselves, we pay no attention to the individual's opinion. Because the majority of a city with respect to its constituents is like the beis din hagadol with respect to all of Klal Yisrael. So if they make a decree, it stands, and anyone who violates it shall be punished.*

Thus, the *tzibur* (or its majority) has the power of a *beis din*, to declare laws that obligate everyone, and to be *mafkir* – to forcefully remove property from someone's ownership.<sup>13</sup> This seems to be an independent power from that of *shutfus*; it's not merely collective ownership or a collective responsibility, it's a form of actual governance or sovereignty over the inhabitants and their property.

The power of *beis din* is somewhat enigmatic, and it's not clear whether the Rashba means that the *bnei ha-ir* are given the power of a *beis din*, or whether the power of *beis din* comes to begin with from the fact that they represent the *bnei ha-ir*.<sup>14</sup> But it is clear that *beis din* – and by extension, the people of the city themselves

13 Another example from the Rashba (*Shu"t HaRashba* 7:340):

דעת [י] הוא שהציבור יכולין להכריח את היחיד להיותו בהסכמתם בכל ענין שיהיה תקון הקהל  
*I believe that the community is able to force the individual to comply with whatever they agree amongst themselves in any matter that benefits the community.*

14 See the interesting discussion of Rav Ido Rechnitz (who is a *dayan* on the Eretz Chemda batei din for *dinei mammonos*) in his *sefer, Medinat Halacha Democratit* (pp. 11-12), where he proposes two approaches to the opinion of the Rambam in *Hilchos Mamrim* regarding *takanos* of *beis din* which the *tzibur* did not accept. His latter approach is that since the power of *beis din* to make *takanos* comes from the acceptance of the *tzibur*, if the people themselves are not able to follow a *takanas beis din*, then they never fully had the power to enact it to begin with. Rav Rechnitz suggests that this approach parallels that of Rav Chanania Gaon who writes (*Teshuvos HaGeonim – Shaarei Tzedek* 4:4:16):

שכל מקרה שיקרה לבני המדינה וכולם שווים בו ותקנה הוא להם וצריכים לו, כופין זה את זה לאותו דבר והסכמת הזקנים נוחגת בם, וכל בני המדינה נכנסים תחתיהם, כענין שנאמר וכל אשר לא יבא לשלש הימים כעצת השרים והזקנים יחרם כל רכושו והוא יבדל מקהל הגולה.

*Anything instance of something which benefits everyone and everyone needs it, they can compel one another for that thing. And they would do as agreed by their leaders, and everyone in the*



– have the ability to enact binding legislation over all the inhabitants of the city. For example, if *beis din* decrees that only the meat of a certain *shochet* may be eaten, it would be forbidden to eat any other meat slaughtered by anyone else.<sup>15</sup> This is seen as an extension of the concept of *hefker beis din hefker* – the ability of *beis din* to remove property from its owner, as this power is drawn from their completely binding authority over the individual.<sup>16</sup>

---

*country is subjected to them, as it says: "Anyone who did not come in three days would, by decision of the officers and elders, have his property confiscated and himself excluded from the congregation of the returning exiles."*

The *gaon* here refers to the *pasuk* from which the *gemara* (Gittin 36b) derives the power of *beis din*, and he formulates it as a power of the **people of the country** to compel one another. And as he cites there, we find a similar idea from Rav Shlomo Fisher (*Beis Yishai, Drashos* 1:15):

נראה דאף הכח שנתנה תורה לב"ד הגדול שבלשכת הגזית, אף הוא מותנה בקבלת כלל ישראל עליהם את הדיינים שנתמנו לכך.

*It seems that even the power that the Torah gave to the great beis din in the Lishchas HaGazis, is dependent on the acceptance of Klal Yisrael of the judges that are appointed to it.*

15 *Teshuvos HaRosh* (7:1)

16 The extent of *hefker beis din hefker* is a matter of much discussion amongst the *poskim* as well. Although some *rishonim* limited its extent to only specific prominent *batei din* (See the words of Rabbeinu Tam as quoted by the Mordechai in *Bava Basra* 480), others expanded its application to any *beis din* or even any communally-accepted leadership (see *Teshuvos Rabbeinu Gershom* 67; Mordechai, *Gittin* 384; See also *Shu"t Maharam Mi-Rothenburg*, Lvov ed. 423, who quotes Rav Yosef Tov-Elem as extending the power that *beis din* has to administer sanctions as they see fit even to leaders of the community who are not a *beis din* as well.)

The fact that the concept of *takanos hatzibur* and *gezeiros* comes from *hefker beis din* is not completely straightforward, and not all *rishonim* agree with it. The Rambam, for example, implies that the power of *beis din* to make *takanos* derives from a different source, based on the *pasuk* of "al pi hatorah asher yorucha" (*Mishne Torah, Hilchos Mamrim* 1:2; also see the introduction to *Mishne Torah*), rather than from *hefker beis din*. However, it seems that the understanding of the Rashba, and the Ramban as well, is that the concept of *takanos hatzibur* comes from the power of *beis din* to enact a *cherem* (see the Ramban's discussion in his *Mishpat Hacherem*; and the implication of *Shu"t HaRashba* 4:296). The Ramban's and the Rashba's understanding of the *halachos* of *charamim* is not simple (see Rav Yerucham Fishel Perla, *Pirchei Tzion* 5:96, who struggles at length to justify the details of their *shita*), but it is arguable that according to their approach, *hefker beis din hefker* is merely an application of *beis din*'s power to enact *charamim* (see the language of the Rashba in *Shu"t HaRashba* 1:781; the discussion of Rav Moshe Tzvi Neriah in *HaTorah V'hamedinah* Vol 1, p. 57; and of Rav Yisrael Meir Lau in *Yachel Yisrael* 1:18; see also *Shu"t Chasam Sofer, E"H* 1:108). And this power of *beis din* which includes *charamim* and *hefker*, according to the Ramban and the Rashba, comes from the *haskamas hatzibur*, and in reality is the power of the *tzibur* and their chosen leadership.

Another point of reference is Tosafos in *Kesubos* (29a), who discuss the *takana* of David Hamelech upon the community of *nesinim*. The way Rabbeinu Tam understands it is that the *nesinim* were already forbidden to marry *min hatorah*, but David made a *takana* that declared their status to be that of *avadim*, and Tosafos there say that this *takana* was made through the power of *hefker beis din hefker*. This indicates the possibility that *hefker beis din*, at least according to Tosafos, is not just the power over people's property, but over the people themselves – and the ability to subjugate them. Perhaps this is related to the language used by the Rashba we quoted above, "*she-hayechidim meshubadim hem l'tzibur*."

This brings us to an important concept elaborated by the Dvar Avraham. When the *gemara* in *Bava Basra* (54b) mentions *dina d'malchusa dina* in the context of acquiring land, Rabbeinu Yona there explains the concept as being analogous to *hefker beis din hefker*, and the Dvar Avraham attempts to elucidate the reasoning behind Rabbeinu Yona's comparison.

והנ"ל שדעתו ז"ל היא דדד"מ ידעינן מההוא קרא גופא דילפינן מיניה הפקר ב"ד  
הפקר בגיטין (ל"ו ע"ב) מקרא דוכל אשר לא יבא לשלשת הימים כעצת השרים  
והזקנים יחרם כל רכושו. וס"ל דלא נאמרה הלכה זו לב"ד של ישראל בתור ב"ד אלא  
בתור ממשלה שהרי השרים והזקנים כתיב, ולא ביחוד בב"ד של ישראל נאמרה כ"א  
בכל ממשלה בביתה שהיא השלטת בכל אשר לנתיניה.

*And I think that his [Rabbeinu Yona's] understanding is that the principle of dina d'malchusa is derived from the same pasuk that we learn hefker beis din hefker in Gittin (36b) from the pasuk (Ezra 10:8), "that anyone who did not come in three days would, by decision of the officers and elders, have his property confiscated and himself excluded from the congregation of the returning exiles." And he [Rabbeinu Yona] holds that this halacha [of hefker beis din] is not said with respect to a Jewish beis din from the fact that it is a beis din, but rather from the [more general] fact that it is a **government**, since the pasuk says "officers and elders" [rather than judges]. Thus, it is not only for a Jewish beis din that this [concept of hefker beis din] is said, but also for any government in the place over which it rules over anything of its constituents.<sup>17</sup>*

What this means is that *hefker beis din*, the concept that *beis din* has a certain sovereignty over the property of the individuals, the concept from which the *rishonim* extend *beis din's* power to all *takanos* that are made for the benefit of their society,

---

And although we've seen that the Rashba understands these powers of *beis din* (and by extension, the *tzibur*) to extend to all *takanos* that are for the purpose of "*tikun hakahal*" (and the *acharonim* discuss what counts under this definition), others like Rabbeinu Tam limit the idea of *takanos hatzibur* to things that are "*l'migdar milsa*" – to guard people from violating *issurim* or in general to enforce the observance of *mitzvos* (for example, the case of the *shochet* which we quoted above from *Teshuvos HaRosh*; see also *Shu"t Maharik* 180). However, as noted by the Mahari ben Lev (*Shu"t Mahari ben Lev* 1:115), regarding *takanos* that are enacted for people's safety, even Rabbeinu Tam would agree that these are valid, as since "*chamira sakanta me-issura*," therefore *takanos* for people's safety are even greater than *takanos l'migdar milsa*.

17 *Dvar Avraham* 1:1. Without this connection of *dina d'malchusa* to the power of the *tzibur*, it would be difficult to argue that *hefker beis din* and *takanos hatzibur* should apply to a secular government. However, see the discussion of Rav Moshe Shternbuch in *Teshuvos V'hanhagos* (3:338), and see those cited below in note 21.



stems ultimately from the fact that they have the *haskamas bnei ha-ir* – the collective acceptance of their constituents to govern over them.<sup>18</sup> This power of *beis din*, then, would therefore be true of any governmental body with the same acceptance of its people. To Rabbeinu Yona (according to this understanding of the Dvar Avraham), this is the root of *dina d'malchusa dina*.<sup>19</sup>

To summarize so far, we've seen two characteristics of the population of any given city, state or country (or a majority thereof): that of *shutfim*, and that of a *beis din*. It's not obvious if these two characteristics are related, as typically the *poskim* derive them from different sources, the former from the *mishna* of "*kofin oso livnos la-ir*" (*Bava Basra* 1:5), and the latter from the *beraisa* of "*rashain b'nei ha-ir l'hasnos*" (*Bava Basra* 8b).<sup>20</sup> The concept of *shutfim* is relatively straightforward to apply to a democratically-run city, state, or country today; all the inhabitants – Jewish or not – share in certain municipal needs. That the second characteristic – that of a *beis din* – can be applied to today's governments, though, is not trivial, but we found that it indeed can be applied according to the Dvar Avraham's understanding of Rabbeinu Yona, who sees its application as the basis for the idea of *dina d'malchusa dina*.<sup>21</sup>

18 See note 14.

19 See also *Shu"t Tzitz Elizer* (16:49) who writes that this idea of the Dvar Avraham is supported as well by the *Teshuvos HaRosh*; and Rav Yisrael Meir Lau (see note 16), who suggests that this is also supported by Rashi in *Sanhedrin* (5a). The same idea is expressed as well by Rav Ovadia Hedaya in *Shu"t Yaskil Avdi* (Vol. 6, C"m 8). Rav Asher Weiss (see note 7), however, is bothered by the idea of the Dvar Avraham, and instead offers a different interpretation of Rabbeinu Yona. (For Rav Asher Weiss's understanding of *dina d'malchusa dina*, see note 36.)

Although we are using this idea of the Dvar Avraham to extend the power of *beis din* to any accepted government, it is worth pointing out that the Dvar Avraham does not push this further than the principle of *hefker beis din hefker*; he does not indicate that it would apply to the concept of *takanos hatzibur* discussed by the Rashba. (See below, note 27.)

20 In the *Tosefta* (*Bava Metzia* 11:12), these two *halachos* of "*kofin bnei ha-ir zeh es zeh*" and "*rashain bnei ha-ir l'hasnos*" are subsequent *halachos*, and it's possible that they were understood by some to come from the same concept of the status of *bnei ha-ir* as a *beis din*. This is also implied by the *teshuva* of Rav Chanania Gaon (quoted above in note 14), and it would explain why so many of the properties of a regular *shutfus* do not apply to the *bnei ha-ir* (see note 9).

21 Even without the connection to *dina d'malchusa dina*, there are some contemporary *poskim* who attempt to apply the idea of *takanos hatzibur* to secular law. See, for example, Rav Shlomo Aviner (comments available online: <https://tinyurl.com/y6rzfeqq>); see also the suggestion of Rav Asher Weiss (in a *teshuva* printed in the compilation *Nesivos Chaim*) that the Department of Transportation has the status of community leaders, and therefore following their traffic laws may be an obligation based on *takanos hatzibur* (independent of *dina d'malchusa*).

## Two Aspects of *Dina D'malchusa Dina*

As we saw from the Dvar Avraham above, it is possible to understand *dina d'malchusa dina* as the possession of the government of the powers that we associate with a *beis din*, which are given to it by the collective acceptance of the population. The idea that *dina d'malchusa dina* stems from the people's acceptance is not an original one; so let's briefly go through the background of the *rishonim's* understanding of *dina d'malchusa*, and then we can see where this fits in.

There are two main theories in the *rishonim* for the *sevara* (reasoning) behind *dina d'malchusa dina*.<sup>22</sup> We'll start first with the theory of the Ran, who quotes the Tosafos on the topic:

וכתבו בתוספות דדוקא במלכי עובדי כוכבים אמר דדינא דמלכותא דינא מפני  
שהארץ שלו ויכול לומר להם אם לא תעשו מצותי אגרש אתכם מן הארץ.

*The Tosafos write that we say the law of the land is the law (dina d'malchusa dina) only for a non-Jewish king because the land belongs to him, and so he can say to them, "If you do not follow my rules, I will expel you from my land."*

This theory of the Ran is quite straightforward. If you want to live in my house, you must follow the conditions I set forth, which include following whatever rules I stipulate. Similarly, the inhabitants of a kingdom live on the king's property; therefore, they must follow his rules. The context of the Ran is to obligate the paying of taxes, but arguably, this logic should extend to any law that the king has for the people in his kingdom. In general, if someone sets conditions to the use of his property, violation of those conditions constitutes *gezel* (theft).<sup>23</sup>

22 Many *rishonim* and *acharonim* give explanations for the principle of *dina d'malchusa dina*, but as Rav Asher Weiss notes in his *teshuva* (see note 7), conceptually, they fall under two categories – that of the Rashbam's idea, and that of the Ran's.

23 Although this is how Rav Shlomo Zalman Auerbach (whom we will cite below) understands the Ran's theory, it is not clear from the Ran at all that he intends his *sevara* to extend to all laws. However, it is true that if the land belongs to someone else and you are there only with their permission, it is understood that your presence is conditional on following their rules, and to do otherwise would be in violation of stealing. For example, Rav Yosef Shalom Elyashiv has said (quoted in *Nesivos Chaim* 82; n. 112) that driving on roads without a driver's license would be *gezel*, since the roads belong to the *tzibur*, and one's usage of them is conditional on following the traffic laws. We could consider that the same would apply to all laws that are effective on public property like public decency laws, weapons-carrying laws, etc. Depending on the municipality, and how much the local government has an ownership over private property, this may apply to things like building codes as well. For example, in today's Israel, since a vast majority of land is owned by the state, and is technically just leased to private citizens, some have argued that violating building and structural laws would also be *gezel* under this principle as well (see *Emek HaMishpat*, *Hilchos Sh'cheinim* 16:21).

The second theory is that of the Rashbam, who writes in *Bava Basra* (54b):

כל מסים וארנוניות ומנהגות של משפטי מלכים שרגילים להנהיג במלכותם דינא  
הוא שכל בני המלכות מקבלים עליהם מרצונם חוקי המלך ומשפטיו והלכך דין גמור  
הוא ואין למחזיק בממון חבירו ע"פ חוק המלך הנהוג בעיר משום גזל.

*All taxes, duties, and practices of law that kings are accustomed to using  
in their kingdoms, it is the law (din). Because all the people of the kingdom  
willingly accept upon themselves the laws of the king, and therefore it  
has halachic effect (din gamur). Thus, someone who takes possession of  
another's property based on the king's laws for that city [the case in the  
gemara here] does not violate the prohibition of stealing [as he would if we  
just considered the halacha].*

Basically, it seems like the Rashbam is saying that since the people in the country accept the rule of their government, its laws have a binding effect on them. Why, you may ask, do the people accept the rule of their government? It must be that the people feel that the government is there for their own benefit and protection, and that the laws passed by the government are based on the will of and for the benefit of their society as a whole. We can speculate that the Rashbam is thinking along the lines of what we attributed earlier to Rabbeinu Yona, that the broad acceptance of the population gives the government the power that a *beis din* would have. This is in fact proposed by Rav Shlomo Zalman Auerbach.<sup>24</sup>

דסברת הרשב"ם היא דדמי למה שאמרו בגמ' דרשאינ בני העיר להסיע על קיצתן...  
והיינו משום דסברא הוא, שכל קבוץ אנשים רוצים ודאי לטובתם במינוי טובי העיר  
לשמוע להם בכל מה שימצאו לנכון לתקן לטובת הציבור ואף אם יש מי שמתנגד לזה  
בטלה דעתו אצל כל אדם, וא"כ ה"ה נמי שכל בני המדינה רוצים שפיר במוראה של  
מלכות ובדיניהם כיון שהוא לטובת המדינה. והנה בריב"ש ובשו"ת הרא"ש מבואר,  
דהוא מטעם שבני העיר בעירים חשיבי כבי דינא... וה"ה נמי בדינא דמלכותא אע"פ  
שהוא מלך עכו"ם, וכוונת הרשב"ם להוסיף בכך שאפילו אם אינו כ"כ בעלים גמור  
לגרש אותם מן הארץ, עכ"פ סברא הוא דמרצון הטוב מקבלים עליהם בני המדינה  
את הדין.

*The reasoning of the Rashbam is similar to that which is said in the gemara  
that the people of a city may impose a fine on those who violate their  
regulations... This is because it is logical in general that a group of people  
are interested for their own benefit in the appointment of leaders that they*

<sup>24</sup> *Minchas Shlomo, Nedarim 28a*

*will heed whatever they decide to legislate for the benefit of the community – even if there are some who disagree with it, their opinion is nullified by everyone else. So too, the inhabitants of a country are interested in a government and the rule of law since this benefits their country. And from the teshuvos of the Rivash and the Rosh, it is clear that this is because the people of a city are considered like a beis din... And this is the same idea behind dina d'malchusa, even though the king is not Jewish. The point of the Rashbam is to add [to the idea of the Ran] that even if the government does not have the authority to expel people from their country, nonetheless [dina d'malchusa would still hold] from the logic [above] that the people of the county have an interest in accepting the law.*

By suggesting that the Rashbam is adding to the theory of the Ran, rather than differing from it, Rav Shlomo Zalman is following in the tradition of the Chasam Sofer, who writes that in actuality, the reasonings of the Rashbam and the Ran are not mutually exclusive; they can merely be referring to different types of laws.

ומ"מ נ"ל דלא פליג אלא במסים ומכס שמטיל על כרחם ס"ל לא שייך לומר בני מדינה נוחא להו אלא משום שהוא אדון הארץ וא"כ יש לחלק בין מלכי ישראל למלכי אר"ה אבל במנהגי ונימוסי' כמו ב"ב נ"ד ע"ב מודה ר"ן דהטעם משום דניחא להו ואין לחלק בין מלכי ישראל לאר"ה.<sup>25</sup>

*Nonetheless, I think that [the Ran] does not disagree [with the Rashbam] except with regard to taxes and duties that are levied against their will. In these matters, you cannot say that the people of the country are interested in such a law; they just follow it because he [the king] is the owner of the land. And if that's the case, you can differentiate between Jewish and non-Jewish kings. But with regard to customs and normative practices like the case in Bava Basra [where the law in question was using deeds to transfer ownership of land], there the Ran agrees that the reasoning is that the people have an interest [in accepting the laws, as the Rashbam reasoned], so therefore no differentiation can be made between Jewish and non-Jewish kings.*

What emerges is that with respect to laws that are intended for the benefit of the people, which today would be the vast majority, the reasoning of the Rashbam would apply, as the people – as a collective – have an interest in accepting these upon

<sup>25</sup> Shu"t Chasam Sofer, C" M 43

themselves. But, in ancient monarchies, the taxes that were collected would often be mostly to enrich the royals and would be used at their discretion, so the Rashbam's reasoning would not apply, yet the reasoning of the Ran would nonetheless still obligate the adherence to these taxes.

So what we've seen is that although there are two primary ways to understand *dina d'malchusa dina* in the *rishonim*, according to the Chasam Sofer (followed by many other *acharonim*<sup>26</sup>) only the Rashbam's approach is really relevant to democratic countries today in which taxes are levied mainly to support the expenses of the government. And as we've also seen, the Rashbam's approach can be understood to be consistent with the Dvar Avraham's explanation of Rabbeinu Yona, that the government accepted by the inhabitants has all the powers of a *beis din*.

Finally, to summarize this approach, we are relying on three logical steps to conclude that *dina d'malchusa dina* includes the power to obligate an individual to follow the laws of their government:

1. A *beis din* – even one with only local authority – has the power to make *takanos* and *gezeiros* with the intention of *tikun hakahal* – the people's best interest – based on the principle of *hefker beis din hefker*, and the people of the community are obligated to follow them. This is what we have seen from the Rashba and others above.
2. This power of *beis din* stems from the *haskamas hatzibur*, the collective acceptance of their authority by the people, and therefore extends to the *tzibur* themselves when deciding policy by majority or by their chosen leadership. This we've seen as well from the Rashba and many other *rishonim*, and is the basis for the *beraisa* in *Bava Basra* about the *bnei ha-ir* imposing regulations.
3. Since the idea of *dina d'malchusa dina* too stems from the *haskamas hatzibur*, as formulated by the Rashbam and Rabbeinu Yona, what it means is that the powers of *hefker beis din* and *takanos hatzibur* are possessed as well by the local government. This is what we saw from the Dvar Avraham<sup>27</sup> and Rav Shlomo Zalman Auerbach.

26 Many *poskim* use the Chasam Sofer's idea in their *teshuvos*. See for example *Shu"t Minchas Yitzchak* (2:86), *Shu"t Imrei Yosher* (C"m 152), and *Dovev Meisharim* (1:76). Additionally, the head *beis din* in Israel (when it consisted of Rav Nissim, Rav Elyashiv, and Rav Zolti) made an important ruling regarding *dina d'malchusa* which relied on the Chasam Sofer's opinion (*Piskei Din Rabani'im*, Vol. 6; p. 337).

27 To be very clear, while the Dvar Avraham does verbalize this third step of ours, he applies it very strictly to the principle of *hefker beis din hefker* as is implied by Rabbeinu Yona as well, and he does not extend it to *takanos* and *gezeiros*, indicating that he does not necessarily accept our first point above – that *takanos beis din* are based on *hefker beis din* (see note 16).

### Which Laws are Obligations Under this Approach?

We've seen that there are two main forces in *halacha* which could obligate a citizen to abide by the law merely because it is the law: (1) the status of the population as *shutfim* in the necessities of the municipality and the broader state, and (2) the status of the government as the accepted authority, giving it the power of a *beis din* to make *takanos* intended for the *tikun hakahal* – the benefit of the people. The latter is what we've identified as the force behind *dina d'malchusa dina*.<sup>28</sup>

The status of *shutfus* obligates each individual's contribution toward the *tzarchei ha-ir* – the collective necessities, so it is straightforward to apply this to paying taxes, as these are levied mainly to support what the majority has deemed necessary expenses.<sup>29</sup> Also, this would apply to complying with laws intended for collective safety and security, such as a military draft or the local fire codes. Most of the rest of the laws would likely be obligated under our understanding of *dina d'malchusa dina*; as the power of *takanos* is understood by the Rashba, anything that is instituted for the purpose of *tikun hakahal* – the physical or economic well-being of society – obligates all constituents. This would of course include traffic laws, employment laws, building codes, and many other common areas of law.<sup>30</sup>

The two cases that we began this article with – abortion and exhumation – are particularly interesting. These are laws not instituted for people's safety, nor are they necessarily economically beneficial; they are morally-based laws. Are these considered as being for the purpose of *tikun hakahal*, such that *takanos* would be

28 These two *halachic* forces are the main ones behind obligating compliance with many laws, but there are others as well. In particular, it is important to note that the *halacha* gives validity to the *minhag hamedina* in various areas, such as with the payment of workers (see *Shulchan Aruch C"m* 331:1), and today we would consider the law of the land to qualify as the *minhag hamedina*.

29 There will likely be expenses for which taxes are used which would not fall under the category of *tzarchei ha-ir*. Nonetheless, it would be hard to argue that this would exempt an individual (from the *shutfus* perspective) from a corresponding percentage of their taxes, even if they did know how much of their taxes were being used for a given expense, as they would have to use the concept of *yesh breira* on their funds given the future breakdown of government expenses. (And this of course ignores the fact that any taxes might anyway be obligated under *dina d'malchusa dina*.)

30 In the previous section, we suggested the possibility that following the Ran's approach would lead to the conclusion that compliance with all laws is obligatory to avoid a violation of *gezel*. However, as Rav Shlomo Zalman indicates in his discussion we quoted above, that might be the case only if the government has the authority to expel a non-abiding citizen from the country. (This brings up an interesting point, as even if a country does maintain that they have such an authority, today the expulsion of a national would generally be in violation of international law. For a discussion of whether *dina d'malchusa dina* applies to international law – particularly in regards to buying a slave – see *Shu"t Mizrach Shemesh* 3:11, Section 7.)



binding? I think that there is an argument to be made that they would be binding as *takanos*, and that therefore this would also be the case for *dina d'malchusa dina*. The *beis din* has authority to make *takanos l'migdar milsa* – enactments to protect the observance of *mitzvos*; in other words, they can make *takanos* concerned with the spiritual well-being of the community, and the same might extend to the government with *dina d'malchusa*, that they can make laws concerned with the morality of their society, and these would be considered binding as *dina d'malchusa*. Such an argument, although somewhat tenuous, I think has some merit.<sup>31</sup>

Now, what about local restrictions put in place in response to a rapidly-spreading virus? Is this something that would be obligated under the status of the population as *shutfim*? The *rishonim* discuss a case in which a city is plagued by a gang of bandits, and it is clear that the *shutfus* does obligate participation in whatever is determined necessary for the protection of the collective.<sup>32</sup> Does this logic extend to a case in which a city is plagued by COVID-19, which has the potential to kill? Possibly. But either way, it certainly qualifies as *tikun hakahal*, which would obligate compliance with these restrictions under the understanding of *dina d'malchusa dina* we've elaborated above.

---

31 It is in reality difficult to compare, in this case, the purpose of a *beis din* to that of the government. For a *beis din*, which typically would have authority over a Jewish population, observance of *mitzvos* is a starting point, and they have a responsibility to enforce the observance of the community. Thus, *takanos l'migdar milsa* can make sense from the perspective of protecting the observance of laws (*mitzvos*) which everyone is already obligated to abide by, rather than being seen as independently maintaining the spiritual or moral quality of the populace. Rav Asher Weiss (who follows a unique approach to *dina d'malchusa*; see note 36), in his *teshuva* on this topic (*Shu"t Minchas Asher*, Vol. 2, C"m 122), makes a distinction between laws which maintain order and laws which enforce a moral imperative:

יסוד הדבה, כל שדין המלכות בא להסדיר סדר חברתי ומסחרי בלבד ולקבוע סדר הנהגה בין אדם לחבירו ובין יחיד לציבור יש לה תוקף, אך כאשר דין המלכות מושתת על יסודות הצדק והמוסר המנוגדים לתורה"ק דינים בטל וחלילה לנו לייקרו וללכת אחריו.

*The core of the matter is that any law which is made to improve the economic condition, or to maintain order in the behavior of people between themselves or communally, is binding. However, when the law is based on a justice or moral value which is contrary to that of the Torah, the law is invalid, and heaven forbid we attribute value to it and follow it.*

It's not clear to me whether Rav Weiss means that **any** morally-based law is not included in *dina d'malchusa dina*, or just those that are against Torah values (which itself is somewhat subjective; his context in the *teshuva* is regarding the secular law which treats women equally with regard to inheritance). Certainly our example of exhumation is based on a value of *kavod hameis*, which is consistent with Jewish values. A more interesting case would be if a government banned the practice of kosher *shechita*, as has taken place in Belgium quite recently (by requiring the animal be stunned prior to slaughter). Here is a law that is (at least arguably) based on a moral value against cruelty to animals, a value that is, at a basic level, consistent with the Torah's, but is contrary to the idea we find in Jewish practice that minimized pain may be caused for the benefit of human consumption.

32 See *Beis Yosef* (C"m 163).

As we can see, this understanding of *dina d'malchusa dina* is quite expansive. There are, though, three main exceptions to the application of *dina d'malchusa dina* that are discussed by the *poskim* that I believe apply to our understanding as well, and are worthwhile to mention here at least briefly. The first is if the law directly contradicts or hinders Torah observance; Rav Shlomo Zalman, for example, brings up the hypothetical case of a decree banning the donning of *tefillin*. The concept of *dina d'malchusa* does not overpower *mitzvos min hatorah*.<sup>33</sup> The second exception is if the law singles out a specific person or group of people; this is considered something that is not within the category of valid legislation.<sup>34</sup> Finally, the third exception is anything which is widely unenforced. This could apply to something like jaywalking in New York City, or driving five miles-per-hour above the speed limit; if it is something that is broadly violated and unenforced, then it qualifies as something that the community is unable or unwilling to follow, and even a *beis din* could not maintain a *takana* in such a scenario.<sup>35</sup>

33 The discussion of Rav Shlomo Zalman is specifically regarding the approach of the Ran, but he concludes that for a government to force its Jews to violate the Torah would itself violate the *mitzvos b'nei Noach*. The relationship of *dina d'malchusa dina* with the rest of *halacha* is another big topic, and as far as *dinei mammonos* is concerned, see the Shach's discussion (C"m 73:39) regarding *dina d'malchusa* which contradicts *dinei torah*, and the Chazon Ish's famous objection to the Shach (C"m, *Likutim* 16:1). See also the discussion of Rav Asher Weiss (cited in note 31).

According to our approach, only a law that actually prevents observance of *mitzvos* is invalid, like Rav Shlomo Zalman's example of banning *tefillin*. But a ban on *shechita* would not necessarily fall under this category as it does not prevent the observance of *mitzvos*, since there is no *chiyuv* to perform *shechita* if one does not eat meat. (This may, however, be irrelevant, since arguably it is not a law that is enacted for the benefit of the society; see note 31.) Similarly, if a ban on polygamy would prevent the observance of *yibum*, it could be argued that this too is not a hindrance to the observance of *mitzvos*, since if *chalitza* can be performed, then *yibum* is no longer obligatory.

34 See, for example, the Rambam (*Hilchos Gezeila V'aveida* 5:14), who states that rather than *din* – law, this would be considered *chamas* – oppression.

35 See *Nemukei Yosef* (*Bava Basra* 29b in the Rif). See also the list of *rishonim* and *acharonim* who hold the same position in the discussion of Rabbi Yisrael Moshe Chazan (*Nachalah L'Yisrael*, pp. 42-43). From our perspective, there are two main *sevaros* behind this. First, the fact that the law remains unpracticed shows that in reality it provides no benefit to society, and all the more so if it is unenforced. (Similarly, see *Shu"t Minchas Asher*, Vol. 2, C"m 123, regarding building a *sukka* on public property where it is well-known that the authorities there are not *makpid*.) Secondly, from the perspective of *takanos hatzibur*, *beis din* is not able to enact *gezeiros* that the public is unable to follow (see the *gemara* in *Avoda Zara* 36b, and the understanding of the Rambam in *Hilchos Mamrim* 2:6) whether or not it would provide societal benefit; and using our connection of *takanos hatzibur* to *dina d'malchusa dina*, we would presume that the same would apply to laws which are widely unenforced.



## Conclusion

Our goal for this article was to develop an understanding of *dina d'malchusa dina* which would justify the position of those *poskim* who use the principle to maintain a religious obligation to follow non-monetary laws. Our approach, which combines that of the Rashba regarding *takanos hatzibur* and that of Rabbeinu Yona to *dina d'malchusa dina*, while admittedly being a *chidush*, could be a reasonable one which would validate such a *halachic* position.<sup>36</sup> Additionally, besides the concept of *dina*

---

36 It's worthwhile to mention here some other approaches elaborated by contemporary *poskim* which lead to similar conclusions to what we've concluded above. According to Rav Shmuel HaLevi Vosner (*Shevet Halevi* 10:291), since a *beis din*, as leaders of a community, would have an obligation to institute laws and regulations for public safety if they had the authority to do so, there is an obligation (independent of *dina d'malchusa*) to follow the corresponding laws instituted by the governmental bodies who do have the authority to enact such laws. (This could be understood as an application of *takanos hatzibur*, but in which the government is seen as the *shaliach* of the *beis din*.) The context of his *teshuva* is traffic laws, but it's not clear how far such logic stretches, and if it would extend to any laws intended to preserve people's safety, including COVID regulations. Interestingly, Rav Vosner stresses that even if in a particular scenario, violating the law would not be considered unsafe (such as crossing a red light with no cars or people around in a deserted area), it would still be forbidden, "since deterioration in order eventually causes a danger to life".

Rav Asher Weiss (cited in note 7) develops a unique *chidush* in his approach to *dina d'malchusa dina* which he also attributes to the Mabit. He theorizes that when the Torah introduces the mitzva of instituting a king, it assumes as axiomatic that there is such a thing as a king, presupposing the existence of a sovereign entity with the powers to enact binding laws; thus many of the *halachic* qualities that we attribute to a Jewish king are in fact qualities of any king (or governmental body) over the people in his country. And although there is no formal mitzva that obligates following the laws instituted by such a sovereign power, Rav Weiss attributes the obligation to the concept of *ratzon hatorah*, which he details at length elsewhere (*Minchas Asher, Devarim* 51). *Ratzon hatorah* can obligate certain practices even without explicit commandments in *pesukim* (a classic example being *tzaar baalei chaim*).

Without proceeding on too much of a tangent, one of the possibilities that Rav Weiss suggests for how to understand the obligations of *ratzon hatorah* (ibid, Section 4) based on the words of Rav Nissim Gaon and the Netziv, is that there are some practices which are so intrinsically fundamental that they predate *matan torah* and are considered obligations independent of the *mitzvos*. This is similar to the idea famously developed by Rav Shimon Shkop in *Shaarei Yosher* that there is a set of "natural" laws whose obligations precede those of the Torah; for example the prohibition in the Torah against stealing pre-supposes that some object is considered as belonging to a particular person, a natural concept that comes "*mi-sevara*". (See also the comments of the Chasam Sofer in his letter to the Maharatz Chajes; *Shu"t Chasam Sofer*, Vol. 1, O"C 208.) And indeed, there are those who include *dina d'malchusa dina* as part of this idea of obligations which are prior to those of the Torah. In his *sefer Ohel Moshe* (2:138), Rav Elazar Moshe Halevi Horowitz (who was *rav* of Pinsk from 1860 until 1890) explains how there is a fundamental human obligation to follow an agreement, as we see in the Torah even before *matan torah* that many people made agreements (*krisas bris*) which obligated them to follow through on their word. In fact, our obligation to follow the *mitzvos* of the Torah itself stems from the fact that the Jewish nation made an agreement with Hashem, a byproduct of this prior human obligation. And according to Rav Horowitz, this is what obligates *shutfim* in their responsibilities to one another, what gives power to the decisions of the community without any *kinyan*, and it is what generates the obligation of *dina d'malchusa*.

*d'malchusa*, we introduced the concept of *shutfus* between residents of a municipality, which could independently obligate people to comply with some local laws.

As we mentioned at the start of this article, the *poskim* are not clear about the framework of *dina d'malchusa*, and additionally, there are different opinions about *takanos hatzibur* as well. While I think there is definitely room to be *meikel* in cases that call for it, at the same time I can understand why, in a case that could involve *sakanas nefashos*, like traffic laws, or COVID regulations, some *poskim* would prefer to be *machmir*, and to discourage their violation under *dina d'malchusa dina*. I think that in this case no less than in many other areas of *halacha*, it is appropriate to say, “*v'hamachmir tavo alav bracha*” – may he who is stringent be rewarded.

---

(See also a similar theory relating to *dina d'malchusa*, although one that considers this concept to be part of the *mitzvos bnei Noach*, proposed by Rav Yaakov Anatoli – a student of Rav Shmuel ibn Tibbon in thirteenth-century Provence – in *Malmed Hatalmidim, parshas Mishpatim*. Notably, Rav Isser Zalman Meltzer considers the opinion of Rashi (*Gittin* 9b) to be that *dina d'malchusa dina* originates from the *mitzvos bnei Noach*; see *Even Ha'ezer, Hilchos Nizkei Mammon* 8:5.)

Lastly, Rav Herschel Schachter is of the opinion (based on the *gemara* in *Sanhedrin* 32b) that laws can give people *zechuyos*. For example, a driver on the road with a green light in front of him has the *zechus* that people going the other direction will stop for him, or more generally, that the drivers around him will abide by the rules of the road and will not be intoxicated, etc.; and if someone violates those rules, they are effectively stealing this *zechus* from him. This idea has potentially broad implications – it could for example indicate that an individual in public has the *zechus* that those around him be wearing masks if that is the regulation put in place in that locale. (See the video cited in note 10; this was also confirmed in a conversation of Rav Schachter with Rabbi Yaakov Seigel on February 2, 2021.)

# Halacha and Machshava



Rabbi Pinchas Gelb

Adiv Pachter

Stephen Kirschenbaum

Donny Feldman

Eli Snyder

Dr. Jonathan Nissanoff

David R. Schwarcz



# This Verse Says Nothing But “Dorsheini”

RABBI PINCHAS GELB



**E**ven among works of genius, Rashi's commentary on the Torah stands out. The elevated spirit of Rashi's commentary reflects his careful attention to the details in the Torah's words. Through his paraphrase of *midrash*, Rashi draws out subtleties from the text, context and subtext of the verses that, without his brief comments, would have remained completely unperceived, hiding in plain sight.

Indeed, Rashi has a dual goal in his Torah commentary, as he states in his explanation of *Bereishis* 3:8: “[In writing this commentary,] I have come only for the simple meaning of Scripture and for *aggada* that resolves the words of Scripture with each word stated in its proper place and with its correct meaning.” Thus, Rashi's first purpose is to explain the meaning (*peshat*) of difficult words and phrases, and his second goal is to draw upon the totality of *aggada* in order to resolve lacuna in the verses.<sup>1</sup> In this way, he integrates his keen insights regarding the text and context of the verses with his mastery over the entire corpus of *midrash* and *gemara* – which appears to have been exceptionally well-ordered in his mind – to reach conclusions based on pronounced nuances in the Torah's language.

Rashi generally does not explain his methodology. But, through his comment on the first words in the Torah, “*Bereishis bara*” (Gen. 1:1), he gives a glimpse into his reasoning and also provides an important statement of purpose for his Torah commentary as a whole. In this sense, Rashi's comment on the Torah's introductory phrase serves as an illustrative example of the text-focused approach of his commentary.

---

<sup>1</sup> In his comment to *Shemos* 23:2, Rashi amends this to include *midrashei halacha*.

---

Rabbi Pinchas Gelb is a lawyer in Los Angeles.  
He has been a member of Adas Torah since 2005.

## Rashi's Explanation to the Torah's First Two Words

Rashi states that the Torah's first phrase cries out for interpretation: "*Ein ha-mikra hazeh omer ela dorsheini*," "This verse says nothing but 'Expound me!'" Yet, it is unclear what about the Torah's first two words is so startling.

Rashi explains. Had the verse meant to convey just the sequence of Creation, it would have started with the word "*barishona*," instead of "*bereishis*."<sup>2</sup> The term "*barishona*" implies numerical ordering, while the term "*bereishis*" is always used as the beginning of something else in connection with some bigger goal or broader purpose, and should be translated as "in the beginning of ..."

Rashi cites three examples. The verse in Yermiyahu 26:1 states: "*bereishis mamlechet Yehoyakim*," "during the beginning of the reign of Yehoyakim." The verse in Bereishis 10:10 states: "*va-tehi reishis mamlachto ... be-eretz Shin'ar*," "the beginning of [Nimrod's] kingdom was ... in the land of Shin'ar." The verse in Devarim 18:4 states: "*reishis degancha ... titen lo*," "the beginning of your grain ... you shall give to [the kohen]."

Rashi similarly explains the Torah's first verse to mean "In the beginning of, Hashem created the heavens and the earth" and then asks the self-evident question: the beginning of what?

Indeed, the word "*bereishis*" suggests that there is some underlying purpose in the act of Creation, but the verse does not seem to identify Creation's broader significance. The context of the verse, likewise, provides no clue as to the implicit meaning that the phrase "*bereishis bara*" conveys. This is the Torah's first verse. There is nothing prior. Of particular significance considering the Torah's use of the word "*bereishis*" instead of "*barishona*," there is no introductory statement of purpose. The first two words function as if the reader knows the purpose of Creation. But these words appear in a contextual vacuum. There is nothing leading up to them.

Rashi therefore explains that, while "*bereishis bara*" can be understood to mean "in the beginning of creating," which is the *peshat* explanation, the *midrash* concomitantly seizes upon the verse's use of the word "*bereishis*," instead of "*barishona*," to conclude that the verse also can mean that the world was created "for the sake of reishis." The prefix "*be-*" shows relationship. It means not only "in" or "with," but also "for the sake

2 Rashi does not base his question on the fact that the word "*bereishis*" is unnecessary and the verse could have started simply with "*bara Elokim ...*," "Hashem created ...," omitting the word "*bereishis*" entirely. Rashi assumes that there is a textual need for the verse's first word. But he seizes upon the connotation of the term "*bereishis*," as opposed to "*barishona*," to provide the basis for his question, as well as for his conclusion.

of.” Elsewhere in Tanach, the term “*reishis*” refers to Torah (which *Mishlei* 8:22 calls “*reishis darko*,” “the beginning of His way”) and to the Jewish people who received the Torah (which *Yirmiyahu* 2:3 calls “*reishis tevuaso*,” “the beginning of His crop”).

Hence, through the words “*bereishis bara*,” Rashi finds expression of an overarching purpose in Creation: namely, the Torah and the Jewish people who accepted the Torah. Indeed, the implication of Rashi starting his commentary with this specific insight<sup>3</sup> is that his Torah commentary – itself – possesses a motive force that extends back to the primordial purpose inherent in Hashem’s first act of Creation.

### **Rashi’s Choice of This *Midrash***

Rashi is a textualist. His central point of reference is the Torah’s language. To Rashi, the question of the purpose of Creation is not a philosophical conundrum. Rather, it is a textual problem inherent in the Torah’s choice of words. This is further borne out by noting the *midrashim* that Rashi, in his interpretation of the Torah’s introductory phrase, chooses not to cite.

For instance, as opposed to Rashi, Ramban cites *Midrash Rabba* 1:4 that the term “*reishis*” in this verse also refers to (i) *challa* which *Bamidbar* 15:20 calls “*reishis arisoseichem*,” “the beginning of your dough,” (ii) *ma’asros* which *Devarim* 18:4 calls “*reishis degancha*,” “the beginning of your grain,” (iii) *bikkurim* which *Shemos* 23:19 calls “*reishis bikkurei admascha*,” “the beginning of the first-ripening produce of your land,” and even (iv) Moshe Rabbeinu, because *Devarim* 33:21 praises the tribe of Gad for having requested the area of land where Moshe was buried and uses the phrase to describe Moshe: “*vayar reishis lo, ki sham chelkas mehokek safun*,” “he [the tribe of Gad] chose the beginning portion for himself, for that is where the lawgiver’s plot is hidden.”

Rashi’s interpretation does not cite these alternate ways of explaining the verse’s use of the word “*bereishis*” instead of “*barishona*.” His choice of the *midrashic* meaning of “*reishis*” most closely reflects the text because, of all the possibilities that the *midrash* presents, only the Torah and the Jewish people are referenced as the subject of the respective verses and are specifically called “*reishis*” as a title, and not simply to reference the first item in an ordered sequence.

The verses cited to suggest that the term “*reishis*” refers to *challa*, *ma’asros* and *bikkurim* do not actually use the term “*reishis*” as a subject. In each of these, the

---

<sup>3</sup> Rabbi Mordechai Breuer points out that this second Rashi, interpreting the Torah’s initial phrase, is actually Rashi’s first comment to the language of any verse. Rashi’s prior comment of the Torah does not interpret any specific word or phrase. Rather, it functions as an introduction to the Torah as a whole.

term is used to reference the “beginning of” dough, grain and produce, rather than, itself, being called “*reishis*.” And, concerning the fourth alternative that it might refer to Moshe, the verse’s phrase “*vayar reishis lo*” potentially refers to the land that was conquered first, rather than to Moshe (who, instead, is referenced in the second half of the verse as the “lawgiver”), as Rashi expressly states in his interpretation of that verse.

Consistent with his comment to *Bereishis* 3:8 about his reference to *midrash* in his Torah commentary, Rashi uses the “*aggada* that resolves the words of Scripture with each word stated in its proper place and with its correct meaning.” Here, the other *midrashic* possibilities about the meaning of “*reishis*” actually use the term as part of a prepositional phrase rather than as a subject, which likely is why Rashi does not cite them in his explanation to the verse.

Hence, Rashi chooses the *midrashic* interpretation that, of the choices, most closely fits the text. The structure of the first two words in the Torah implies that there is a higher-level meaning to the text; the choice of the word “*bereishis*” as opposed to “*barishona*” conveys that there is purposiveness to Creation. Rashi then draws upon the *midrash* which explains that the term “*reishis*” elsewhere in *Tanach* is used as a subject, and not just as the ordering of a sequence, to specifically reference the Torah and the Jewish people.<sup>4</sup>

In so doing, Rashi considers the *Tanach* as a whole. He leaves aside the *midrashic* interpretations that do not fit the grammar of the text as well, even when they are based on other verses in the Torah, preferring instead to cite the interpretations grounded in the language found in *Mishlei* 8:22 and *Yirmiyahu* 2:3, which fit more exactly into the verse that he is interpreting.

### Rashi’s Phrase

In his comment to this first verse of the Torah, Rashi uses a striking phrase: “*Ein ha-mikra ha-zeh omer ela dorsheini*,” “This verse says nothing but ‘expound me!’” This phrase has become a popular idiom in modern Hebrew to express astonishment about

4 This also, incidentally, provides some measure of comfort to *Knesses Yisrael* because, by linking the verse at the beginning of *Yirmiyahu* (“*Kodesh Yisrael laHashem, reishis tevuaso*”) to this first verse in this Torah (“*Bereishis bara Elokim*”), Rashi’s interpretation conveys that, notwithstanding the embattlement prophesied by *Yirmiyahu*, the significance of *Yisrael* pre-dates Creation and, accordingly, will always persist. Indeed, the earlier verse in *Yirmiyahu* 1:5 speaks about *Yirmiyahu* himself, but, based on Rashi’s interpretation of the first words of *Bereishis*, this earlier verse equally could be speaking about *Yisrael*: “When I had not yet formed you in the belly, I [already] recognized you; and when you had not yet come forth from the womb, I sanctified you; a *navi* to the nations have I made you.”



all aspects of life. However, in the context of Rashi's commentary on the Torah, this phrase seems unnecessary and redundant. What exactly does the word "*dorsheini*" mean? And why is the verse's proclamation, of all things, "*dorsheini*"?

One meaning of the word "*dorsheini*" is to investigate something closely in order to discern the truth. The *mishna* in *Sanhedrin* 32a uses the term "*derisha v'chakira*" as sharp investigation of a testifying witness. In this sense, the phrase is straightforward. "*Ein ha-mikra ha-zeh omer ela dorsheini*" means that the syntax of the verse invites close analysis.

Yet, "*dorsheini*" can also mean to search for someone and, in particular, to seek Hashem. For example, *Amos* 5:4 states: "*Ki cho amar Hashem le-veis Yisrael, dirshuni vichyu*," "For thus said Hashem to the House of Israel, seek Me and live." *Tehillim* 24:6 renders this more personally: "*Zeh dor doreshav, mevakshei Panecha, Yaakov selah*," "This is a generation of those who seek Him out, [the descendents of] Jacob who seek Your presence, Selah!" Likewise, *Tehillim* 34:5 states: "*Darashti es Hashem ve-anani, u-mikol megurosai hitzilani*," "I sought out Hashem and He answered me, and from all of my fears he delivered me." Similarly, *Yeshayahu* 55:6 states: "*Dirshu Hashem behimatz'o kerauhu bihyoso karov*," "Seek Hashem when He can be found; call upon Him when He is near."

This sometimes can be an indirect connection through a prophet or a sage. For instance, *Bereishis* 25:22 states: "*Va-yisrotzetzu ha-banim be-kirba va-tomer im kein lama zeh anochi – va-teileich lidrosh es Hashem*," "The children agitated within her and she said, 'If so, why am I thus?' – and she went to inquire of Hashem." Further, *Shemos* 18:15 states: "*Va-yomer Moshe le-chosno ki yavo eilai ha'am lidrosh Elokim*," "Moshe said to his father-in-law, 'Because the people come to me to seek God.'"

Thus, in addition to meaning examination and analysis, the term "*lidrosh*" also means to seek Hashem. When Rashi uses the phrase "*ein ha-mikra ha-zeh omer ela dorsheini*," he also could be conveying the imperative to seek out Hashem through subtleties in the Torah's words. The personification conveyed by the phrase "*dorsheini*," "expound me," expresses that the object of this *derisha* (or *derash*) is not simply to analyze but also to aspire toward an engaged, enduring relationship with the singular voice of the Torah, and ultimately with Hashem.

This is similar to the insight of HaRav Yosef Dov Soloveitchik zt"l regarding the "personality" of the *gemara*, which he described on April 1, 1973, when speaking about the custom to say the *hadran* upon completing a Tractate:

*The Torah should be seen not just as a book, but as a living personality, a queen like the Shabbat Malketa, with whom one can establish an I-thou*

*relationship. In many places the Torah is referred to as a personality, as for example: "The Torah said before the Holy One Blessed Be He." The study of Torah should be a dialogue, not a monologue... When you apprehend the Torah as a personality, not just as a book, it infiltrates your emotional as well as your intellectual life. An am ha'aretz cannot have this experience, and one cannot be lamdan without it. ... No matter how much involved one is in other matters, there should always be an awareness of the appreciation of Torah as the highest value. For this reason, when we make a siyum we say hadran alakh—we still return to you. ... "Daatan alakh"—in our latent awareness we are still committed to you. "V'daatakh alan"—we hope you won't forget us. We hope that you, the tractate, will also keep us in mind, and if we view the Torah as a friend, the Torah will indeed be able to watch over us.*

To seek out the Torah means to understand the tenor conveyed by the context and subtext of the Torah's verses. This is what Rashi means when he says in *Bereishis* 3:8 that he only comes for the "simple meaning of Scripture and for *aggada* that resolves the words of Scripture with each word stated in its proper place," and uses the phrase "*davar davur al ofanav*," which is actually a quote from *Mishlei* 25:11. There, Rashi explains that the word "*al ofanav*" means that an interpretation is correct. He cites an example from *Tehillim* 88:16 where the verse states "*eimecha afuna*" (which is similar to the word "*ofanav*"), which Rashi explains to mean that it is "*meyusheves u-mevoseses... be-libi*," that it sits well internally.<sup>5</sup>

In this sense, Rashi is saying that the *midrashim* which he quotes are the ones that, not only fit well with the text, but also resonate as correct expressions of its context and subtext. Indeed, Rashi's commentary centralizes fidelity to the Torah's language. He paraphrases *midrash* to explain gaps and incongruities in the verses based on his keen sensitivity to their nuance. His own sensitivity to the flow and undercurrents of the text gives his Torah commentary stature and lift, as well as rooted insight into the depth within the Torah's words, thereby responding vigorously to the inviting charge of the Torah's first verse which declares "*dorsheini*."

---

<sup>5</sup> Rashi uses almost the same formulation in his comment to *Mishlei* 25:11, that it is "*mevoseses u-meyusheves be-kirbi*."

# Torah Gems from Rabbi Elimelech Biderman *shlit" a*: Lessons in *Tefilla*

ADIV PACHTER



## ***Birkas HaTalis: Avoiding Jealousy***

In the morning before *davening*, we wrap the *talis* around our head and in that solitude we say “How precious is Your Kindness, O God.” It is only when we are submerged in our *talis* that we can truly appreciate the kindness of Hashem because under the *talis*, there is no one else to compare our lot to; it is just us and Hashem and there is no place or chance for jealousy at that moment.

## ***She’asa Li Kol Tzorchis: Let’s Not Fall***

Each morning we make the *bracha* of “*She’asa li kol tzorchis*.” This is the only *bracha* that is said in singular. The rest are plural. This is because what is meant for you and your needs, and you are not to worry about what anyone else has. There is no room to say *tzorcheinu* because what anyone else has is not relevant to you at all.

Someone once went into a shoe store and ask for a pair of shoes for the *Chag*. They asked him what size he was, and he said size 12. The store owner said he would give him a size 15 shoe, but the customer said that was too large, and would cause him to trip and fall. The owner was adamant and gave him the larger size, because his friend was a size 15! The lesson is that what the next guy has is not meant for you. Do not look at what others have, because if you do, you will end up tripping and falling.

## ***Bitachon Erases doubt***

In *Ahava Rabba* we say *Avinu Malkeinu baavur avoseinu shebatchu becha*, Our Father Our King, for the sake of our forefathers who trusted in You. We beseech Hashem to be gracious with us in the merit of the *bitachon* of the *Avos Hakedoshim*. Is that their main, most noteworthy trait?

When a person asks *lama*, why, that’s a question relating to the past. Why did

---

Adiv Pachter is a real estate professional in Los Angeles, California.

He has been a member of Adas Torah since 2010.

such and such happen? Regarding the future a person asks *ma yehiye*, what will be?

*Lama* and *ma yehiye* both have the numerical value of 75. *Bitachon* is yet a third word that also has the numerical value of 75. If a person lives with *bitachon* he eradicates any questions of *lama* or *ma yehiye*.

### **Stay Focused! You Can Turn Everything Around Through Tefilla!**

It says in the Torah, *l'avracha b'vris*, and Rashi says this is *derech haavara*. Make a *mechitza* from here and a *mechitza* from there and then we go in between. This is the way of *teshuva*. When we make a *bris* with Hashem before Rosh Hashana, we need to make these same *mechitzos*; forget what was in the past. Do not worry about what will be in the future. Just focus on the fact that right now, we are standing in front of Hashem.

The Avnei Nezer explains why we eat honey on Rosh Hashana. Eating a bee is prohibited but its honey is permitted, the exact opposite. A bee stings and hurts but the bee's honey is sweet. Another opposite. This is to remind us that we can turn everything around on Rosh Hashana!

### **Ask Hashem While The Crane Is Still In The Air!**

It says in the *Zohar Hakadosh* that on Hoshana Rabba, they give over the decrees for the coming year in Heaven. The *Zohar* tells us that until the end of Hoshana Rabba, we can still change everything for the good. There was once a congregation that ordered a trailer to use as a shul. The *aron kodesh* was already built in. The trailer was delivered and a crane was used to put the trailer in its correct place. Someone stood there directing the crane driver where exactly to put it. He shouted a little to the right, a little to the left, forward, back, until they finally let the trailer down in place. When the Rav entered the shul he realized that they placed the trailer in the right place but backwards. The *aron kodesh* was on the *maariv*, west side, not the *mizrach*, east side as it should be. Someone said to just go back outside and shout again right, left, back etc. The Rav answered that you can scream all you want, but the crane is no longer here, so it won't help. Only when the trailer is still in the air can you shout and it will help. Before Hoshana Rabba, everything is literally in the air and in our hands. We were given the day of Hoshana Rabba to cry out and daven to Hashem to have a sweet year. We say this *Zohar* in the *tikun leil* Hoshana Rabba which we say after saying the *tehilim*.

### **Pure Tefilla: Beseeching Hashem, NOT Because We Deserve It!**

We learn a lot about *tefilla* from Hoshana Rabba, which is called *Yom Arava*. The

Zohar explains that *aravos* are similar to lips, and this day is dependent on your lips. The Sfas Emes explains our opportunity on this day. The *arava* has no taste and no smell, so why do we make such a big deal out of it? It is not compared to the *tzaddik*, but rather to the *rasha*. He writes that the *arava* is similar to lips, and we know that the main strength of *Klal Yisrael* is our mouth, *Hakol Kol Yaakov*. The *tzadik* is compared to the *esrog* that has taste and smell, so when he davens, of course it goes very high because he is a *tzadik*. But when one cries out and says to Hashem, “I know I have no smell or taste, I know that I have no merits, but I have a mouth and I cry out to You Hashem,” such a prayer is *areiva*, sweet to Hashem. When one isn’t asking in the *zechus* of anything, because he knows that he has no *zechusim*, he’s asking for a *matnas chinam*, an undeserved gift from Hashem. This type of prayer is sweet to Hashem. He calls out to Hashem like a child to his father. The day is called Hoshana Rabba because it will help even the lowest person make their prayers sweet to Hashem. Even the lowest person, in the lowest generation, can use their mouth to cry out to Hashem. We must use our mouths to cry out.

### Never Give Up! A Jew Is Never Lost

The pasuk in *Bereishis* 21:14 says: “*Vateysa B’midbar Be’er Sheva*,” Hagar got lost in the desert. Rashi explains that she strayed and returned to the idols of her father’s house. Rav Mordechai Pogramansky was once travelling on a train with a *mohel* from Minsk to Kovno to do a *bris*. However, they missed their stop and had to stay on the train until the end of the route and then get off and take the train in the other direction. The *mohel* was very agitated about all of the wasted time on the extra trip. While they were still on the train that was taking them in the wrong direction, Rav Mordechai turned to the *mohel* and told him an insight from the Kotzker Rebbe on this Rashi. How does Rashi know to translate lost as idol worship? Why not translate it simply that she was lost? The Kotzker Rebbe explained because a *yid* is never lost. A *yid* knows wherever he ends up, it is because Hashem directed him to the place; he is not lost. So, if she felt lost, it **must** be that she returned to idol worship. So, if we missed our stop we must remember that it was *min ha-shamayim*. When they got to the end and got off the train, they saw a *yid* pacing around nervously. They went over to him and asked why he was so nervous. He said that his newborn son just turned 8 days old and he needed to make a *bris* but the *mohel* that he had hired just cancelled on them. Rav Mordechai turned to the *mohel* and said “Now, do you understand why we had to miss our stop?” However, we have to remember this lesson even when we do not see the end of the story.



# Inviting a Non-Observant Jew for a Shabbos or Yom Tov Meal

STEPHEN KIRSCHENBAUM



Many families face the dilemma as to whether to invite non-observant friends or relatives to a Yom Tov meal. On the one hand, the potential for positive spiritual impact is enormous, as outreach (*kiruv*) professionals agree that seeing a joyous family experience a peak Torah event such as a Yom Tov meal has motivated many to increase their level of commitment to Torah observance. On the other hand, extending an invitation to a non-observant join a Yom Tov meal involves the guest driving to the meal by car (unless he or she is a neighbor).

This question is even thornier for those who have become religious and have had family gathering in their home for a Yom Tov meal every year. If one does not continue inviting his relatives due to concern for their driving, he risks alienating his extended family. Similarly, if one does not invite relatives to a Shabbos or Yom Tov Bar Mitzva one risks the relative becoming very insulted and upset. The *poskim* of the 20th century grappled with this quandary and presented a variety of approaches. We shall present those of Rav Moshe Feinstein, Rav Moshe Shterbuch and Rav Shlomo Zalman Auerbach, and conclude with some practical suggestions.

## Rav Moshe Feinstein

Rav Moshe Feinstein was asked in 1953 by a rav in Detroit as to whether it is permissible for him to encourage people to come to shul when he knows that those individuals live far from the synagogue and will drive to shul on Shabbos.<sup>1</sup> Rav Moshe strongly prohibits it. He argues that extending such an invitation constitutes a violation of the prohibition of *Lifnei iver lo sitein michshol*,<sup>2</sup> placing a stumbling block before the blind. *Chazal* in *Avoda Zara* 6b understand this prohibition to include facilitating others (analogous to the blind, as they are blinded by their passions) to

1 *Teshuvos Igros Moshe*, O"C 1:99

2 *Vayikra* 19:14

sin (the stumbling block). Extending the invitation to Shul facilitates their sinful behavior of driving on Shabbos, a serious violation of Torah law, as each time one presses the accelerator, he violates the prohibition of burning on Shabbos.<sup>3</sup>

Rav Moshe goes even further and asserts that extending such an invitation not only violates *lifnei iveir*, but also constitutes violating a severe prohibition, namely *meisis*, convincing someone to sin,<sup>4</sup> which in certain circumstances constitutes a capital crime! Rav Moshe proves that *meisis* applies not only to the situation discussed in *Devarim perek 13* of influencing someone to worship *avoda zara*, from the *gemara* in *Sanhedrin 29a* that classifies the snake of *Bereishis perek 3* as a *meisis*.<sup>5</sup> Rav Moshe notes that even though convincing someone to violate a prohibition other than *avoda zara* does not constitute a capital crime, it nevertheless is a severe prohibition to the extent that the Heavenly court will not muster a defense for such action on one's Day of Judgment.<sup>6</sup>

Some have noted that this ruling of Rav Moshe appears to be inconsistent with a ruling<sup>7</sup> in which he permits observant doctors to exchange shifts in the hospital with non-observant Jews. Rav Moshe reasons that since the non-observant would have in any event been violating Shabbos, it's better that they spend Shabbos in the hospital where they will work on Shabbos for the sake of saving lives than violating Shabbos outside the hospital. It would seem that one could similarly argue that it's better that the non-observant spend Shabbos morning in Shul where they will not violate Shabbos rather than other venues where they would violate Shabbos the entire morning.

### Rav Moshe Shternbuch

Rav Moshe Shternbuch includes in the first volume of his responsa, entitled *Teshuvos VeHanhagos*, a series of *teshuvos* addressing *halachic* challenges faced by newly observant Jews (*ba'alei teshuva*). In one case, he was asked by *ba'alei teshuva* if they were permitted to invite their parents to Shabbos evening dinner even though they will drive home after the meal. Rav Shternbuch permits the invitation, especially since the child told his parents that he is upset with their driving on Shabbos.

<sup>3</sup> For an explanation as to why it is also forbidden to drive on Yom Tov, see *Teshuvos Yechave Da'as* 3:36.

<sup>4</sup> *Devarim* 13:7-12

<sup>5</sup> The snake, of course, convinced Chava to violate God's command not to eat from the tree of knowledge.

<sup>6</sup> Just as God did not suggest a defense for the snake, as noted in the aforementioned *gemara*.

<sup>7</sup> *Teshuvos Igros Moshe*, O"C 4:79



Rav Shternbuch makes a bold assertion regarding the prohibition of *lifnei iveir*. He argues that this restriction applies only if one seeks to harm. However, he does not violate *lifnei iveir* if his intention is to help. Rav Shternbuch asserts that *lifnei iveir* is analogous to the prohibition to wound (*chavala*) in this regard, as it is permitted to “wound” for therapeutic purposes in a non-combative manner, such as a surgeon performing a needed operation.

Similarly, since one intends to help his parents by inviting them to Shabbos meal and thereby bring them closer to Torah observance and not spiritually harm them, he does not violate *lifnei iveir*. Rav Shternbuch notes that in the case he is addressing, the parents were positively inclined to being drawn closer to Torah life and therefore, the Shabbos meal invitations were indeed part of the process of supporting the parents returning to religious observance.

Although Rav Shternbuch does not cite support for his view, perhaps we can draw support for his approach from a suggestion made by Rav Akiva Eiger.<sup>8</sup> Some background information is needed to understand the ruling. A man is forbidden to shave his face with a razor (*makif*) and to be shaved by a razor (*nikaf*), as taught in the *gemara* in *Makkos* 20b. The *mishna* in *Kiddushin* 1:7 asserts a woman is not included in this prohibition but violates *lifnei iveir* if she shaves a man’s face with a razor.<sup>9</sup>

Rav Akiva Eiger suggests, though, that a woman should shave a man with a razor if he was determined to shave with a razor and could not be persuaded to refrain from such activity (hospital nurses might be faced with this issue). He reasons that had the man shaved himself, he would violate two prohibitions, shaving and being shaved. However, if the woman shaves him, he violates only one prohibition, the prohibition to be shaved. Perhaps Rav Akiva Eiger’s suggestion supports Rav Shternbuch’s approach that one is not considered to be causing another to stumble if in the bigger picture he is ultimately helping that person. We should note, though, that some *poskim* do not accept Rav Akiva Eiger’s approach<sup>10</sup> and note that one can distinguish between Rav Shternbuch’s case and Rav Akiva Eiger’s case. Nonetheless, some support to Rav Shternbuch’s approach can be understood from this ruling as the rulings do share a similar attitude and approach.

<sup>8</sup> Commentary to *Shulchan Aruch*, Y”D 181:6

<sup>9</sup> *Shulchan Aruch* ad. loc

<sup>10</sup> See *Teshuvos Tzitz Eliezer* 15:19

### Rav Shlomo Zalman Auerbach

We should note that *Chazal* already grappled with issues of relationships between fully-observant and less-observant Jews. Although Jews in the time of *Chazal*, generally speaking, were observant of most Torah laws, there were those who were lax in their observance of some exceedingly challenging laws, such as *shemitta* observance (refraining from working the land in the seventh year).

The *mishna* in *Shevi'is* 5:6 teaches that one can sell certain agricultural implements to such a semi-observant Jew during *shemitta*, but certain implements are forbidden to be sold. Plowing implements, for example, are forbidden to be sold to such Jews during the seventh year as these items will clearly be used for violation of Torah law, as all plowing is forbidden during *shemitta*. Harvesting equipment, on the other hand, is permitted to be sold since certain harvesting is permitted during the *shemitta* year. The principle is that if the item is expected to be used only for forbidden activity, then selling it violates *lifnei iver*; however if the item is expected to be used for either forbidden or permitted activity, one does not violate *lifnei iver*, as one is not facilitating the violation of a sin in such a case since the item will not necessarily be used for a forbidden use.

Rav Shlomo Zalman Auerbach applies this principle in a letter addressed to Yeshivas Ohr Sameach, a well-known outreach yeshiva, regarding extending Shabbos and Yom Tov invitations to homes and beginner services in shuls. Rav Shlomo Zalman rules that one may invite a non-observant Jew on Shabbos or Yom Tov if he offers him a place to sleep over thereafter. In such a case, one does not violate *lifnei iver* since the invitation does not necessarily facilitate the violation of Shabbos or Yom Tov. By framing the invitation in such a manner, the situation is analogous to the *mishna's* case of selling harvesting equipment to a semi-observant Jew.

Rav Hershel Schachter states that Rav Yosef Dov Soloveitchik espoused this approach as well.<sup>11</sup>

### Conclusion

Our *poskim* grapple with this dilemma, as do many families. Rav Shlomo Zalman's approach is adopted in practice by many families, outreach organizations, and shuls. However, another consideration is the impact of non-observant guests driving to or from one's home on Shabbos and/or Yom Tov on one's children. Children should feel and understand the love and respect for the relative or friend who visits as well as

---

<sup>11</sup> In lectures and private conversations heard by author

the sorrow for the violation of Shabbos and/or Yom Tov.

Some families have dealt with this dilemma by limiting their invitations to their non-observant relatives to Chanuka, Purim or Chol HaMoed to eat in the sukka. Others will extend the invitation only if the driving will occur on Yom Tov but not Shabbos, since violation of Shabbos is a capital sin and violation of Yom Tov is not. Others will extend the invitation if the guest will violate Shabbos or Yom Tov in only one of his trips, i.e. the guest either arrives before Shabbos and/or Yom Tov or leaves after Shabbos and/or Yom Tov ends. In any event, one should carefully weigh one's options and seek the guidance of one's rav in determining a resolution to this very important issue.



# Rav Hershel Schachter on Ventilator Triage and COVID-19

STEPHEN KIRSCHENBAUM



**A**t the peak of the COVID-19 pandemic in April 2020, there were hospitals worldwide that did not have enough respirators to treat the wave of arriving COVID patients with severe symptoms. Hospitals all over were faced with the unenviable task of having to decide “*Mi yichye u’mi yamus*,” who will live and who will die. Amid these dire circumstances, Rav Hershel Schachter stepped in and issued fundamental rulings as to how to manage these perplexing dilemmas, some never before seen and analyzed by the great rabbis of previous generations.

Rav Schachter, along with other leading *poskim* such as Rav Asher Weiss, Rav Mordechai Willig and Hacham Yitzhak Yosef, provided desperately needed guidance for this and myriad other *halachic* issues that emerged as the world was forced to confront this onslaught of the Coronavirus in 2020.

## Nine Introductory Concepts

Nine basic *halachic* concepts must be clarified in order to grasp the significance of Rav Schachter’s *psakim*.

האשה שהיא מקשה לילד, מחתכין את הולד במעיה ומוציאין אותו אברים אברים,

מפני שחייה קודמין לחייו. יצא רבו, אין נוגעין בו, שאין דוחין נפש מפני נפש.

*If a woman is having difficulty giving birth, they cut up the fetus in her womb and extract it limb by limb, because her life takes precedence to its life. If most of it has emerged, they do not touch it, since we may not dispense with one life in favor of another. (Ohalos 7:6)*

This *mishna* teaches that we are forbidden to kill in order to save the life of another.

מאי חזית דדמא דידך סומק טפי, דילמא דמא דההוא גברא סומק טפי.

*How do you know that your blood is redder? Perhaps the blood of so-and-so is redder? (Pesachim 25b)*

The reason we may not kill one to save another is the famous Talmudic teaching “How is one to know if one’s blood is redder than another.”

האיש קודם לאשה להחיות ולהשיב אבדה. והאשה קודמת לאיש לכסות, ולהוציאה מבית השבי. בזמן ששניהם עומדים לקלקלה, האיש קודם לאשה. כהן קודם ללוי, לוי לישראל, ישראל לממזר, וממזר לנתין, ונתין לגר, וגר לעבד משחרר. אימתי, בזמן שכלן שוין. אבל אם היה ממזר תלמיד חכם וכהן גדול עם הארץ, ממזר תלמיד חכם קודם לכהן גדול עם הארץ.

*A man precedes a woman with respect to whom to save and to whom to return a lost item. A woman precedes a man with respect to whom to provide with clothing and to rescue from captivity. If they are both subject to abuse, the man precedes the woman. A kohen takes precedence over a levi, a levi over a yisrael, a yisrael over a mamzer, a mamzer over a nasin, a nasin over a convert, a convert over a freed slave. When does this apply? When they are all equal in Torah knowledge. But if there were a mamzer who is a talmid chacham and a kohen gadol who is an am haaretz, the mamzer precedes the kohen gadol. (Horayos 3:7–8)*

These *mishnayos* set forth a list of who enjoys precedence to save before the other. Priorities include a *kohen* before a *levi* and a *levi* before a *yisrael*.

וכל המקיים נפש אחת מישראל, מעלה עליו הכתוב כאלו קיים עולם מלא.

*Anyone who saves one Jewish life is as if he saved an entire world. (Sanhedrin 4:5)*

The *mishna* famously teaches the infinite value of each life as an “entire world.”

אין מעבירין על המצות. (יומא מג.)

*One may not pass up a mitzva. (Yoma 43a)*

An oft-cited *halachic* principle is that one does not bypass *mitzvos*. In one well known example, a man places his *tallis* on before donning *tefillin*, but if by mistake he encounters the *tefillin* first, he may not leave the *tefillin* in favor of his *tallis*. Rav Schachter defines this principle as a scenario in which one has the unequivocal opportunity to perform a *mitzva* but circumvents that opportunity to either perform another *mitzva* or to not be *mekayem* any *mitzva* at all. There are several *gemaras* in which the common theme is this exact scenario, whether it be a circumvention that is logistical in nature, or otherwise. In light of this rule, Rav Moshe Feinstein, in an early 1950’s ruling regarding penicillin distribution, advised Israeli Ashkenazic

Chief Rabbi Yitzchak Herzog that doctors with a limited supply of penicillin should provide the medicine to the first patients he encounters in the hospital.

ברי ושמא ברי עדיף. (כתובות יב:) אין ספק מוציא מידי ודאי. (חולין י.)  
*Given a certainty and an uncertainty, the certainty is more important.*  
 (Kesubos 12b). A doubtful case cannot take away from a certain case.  
 (Chullin 10a)

*Halacha* assigns priority to those with a high chance of survival over those with a lower chance of survival.<sup>1</sup>

ומנא תימרא דלחיי שעה לא חיישינן דכתיב אם אמרנו נבוא העיר והרעב בעיר ומתנו  
 שם והאיכא חיי שעה אלא לאו לחיי שעה לא חיישינן.  
*How do we know that we are not concerned with a short [extension of]  
 life? As it is written: "If we decide to enter the city, then the famine is in  
 the city and we will die there" [Melachim II 7:4] - but is there not a short  
 [extension of] life there? Rather, we are not concerned with short-spanned  
 life. (Avoda Zara 27b)*

This *gemara* accords the value of a normal life expectancy (*Chayei Olam*) over only a very brief life expectancy (*Chayei Sha'a*). Rav Moshe Feinstein<sup>2</sup> defines *Chayei Sha'a* as one who doctors expect to live no longer than one year. Rav Schachter follows this view in his landmark *teshuva*.

דתניא דבי ר' ישמעאל אומר ורפא ירפא מכאן שניתן רשות לרופא לרפאות.  
*As it was taught in the school of Rabbi Yishmael: "And he shall surely  
 heal." [Shemos 21:19] From here we learn that permission is granted to  
 the healer to heal. (Bava Kama 85a)*

The Torah grants humanity a license to heal. Tosafos (ad. loc. s.v. *shenitna*) explain that otherwise we would be forbidden to attempt to override the Divine decree for the individual to fall ill. Ramban explains that the Torah grants permission for physicians to risk the patient's life in the attempt to save his life.<sup>3</sup>

שנים שהיו מהלכין בדרך וביד אחד מהן קיתון של מים אם שותין שניהם מתים ואם  
 שותה אחד מהן מגיע לשוב דרש בן פטורא מוטב שישתו שניהם וימותו ואל יראה

1 Rav Akiva Eiger to Yoreh Deah 339:1 s.v. *V'Chol HaMe'ameitz*.

2 *Teshuvos Igros Moshe* 3:36.

3 *Toras HaAdam*, page 41.

אחד מהם במיתתו של חבירו עד שבא ר' עקיבא ולימד וחי אחיך עמך חיך קודמים לחיי חבירך.

*Two people were walking on a path and one of them had a jug of water. If they both drink, they will die, but if only one drinks, he will reach civilization. Rav Petora taught: Better that both should drink and die than one see the death of the other. Later, Rabbi Akiva taught: "And your brother shall live with you" - your life takes precedence to the life of another. (Bava Metzia 62a)*

In this classic Talmudic scenario, two people are walking in the desert and only one of them has sufficient water to survive. Rabi Akiva famously rules that one is not obligated to sacrifice his life and to share his water.

### Five Cases Addressed by Rav Hershel Schachter in April 2020

Case Number One: Only one ventilator is available when two people arrive at the hospital simultaneously, and one person has a high chance of survival and the other has a low chance of survival.

This case is straightforwardly resolved. The ventilator is given to the patient with a higher chance of survival. Dr. Abraham S. Abraham<sup>4</sup> records this ruling citing *Teshuvos Igros Moshe*, C"m 2:74 and *Teshuvos Tzitz Eliezer* 9:17:10:5. This ruling is consistent with the Talmudic principles of "*Bari VeShema Bari Adif*" (*Kesubos* 12b) and "*Ein Safeik Motzi Midei Vadai*" (*Chullin* 10a). The order set forth in *Horayos* applies only to patients with an equal chance of survival.

Case Number Two: Removing a ventilator from a very sick person to save someone with a high chance of survival for whom no ventilator is available.

In such a case, Dr. Abraham (ibid.) notes that the *halacha* forbids removing a ventilator from a very sick person not expected to survive a year even to save a patient expected to achieve a full recovery if given a ventilator. In this situation, we apply the principles of "*Ein dochin nefesh mipenei nefesh*" and "*Mai chazis dedama didach somek tefei dilma dama dehahu gavra somek tefei*."

Dr. Abraham notes that this applies even if the ventilator is attached to a very aged and ill individual who contributes little to society and the arriving patient is someone who greatly benefits society.

Case Number Three: A person with little chance of survival arrives at the hospital but people with a greater chance of survival are expected to arrive shortly thereafter

<sup>4</sup> *Nishmas Avraham*, Y"D 252:2.



– there is only one ventilator available.

In such a case, one would expect the *halacha* to obligate attaching the ventilator to the patient who arrives first due to the rule of “*Ein maavirin al hamitzvos*.” However, Rav Schachter boldly rules in such a case that one may withhold the ventilator from such a patient and save it for those with a dramatically greater chance of survival that are anticipated to arrive within “an hour or two.” Rav Schachter explains that in such a scenario, we view “as if the stronger patients are already present.”

Perhaps the following serves as a basis for this bold ruling. *Halacha* permits violation of Shabbos or Yom Tov only for a current situation of *pikuach nefesh* (*choleh lefaneinu*) following the famous rulings of the Noda BeYehuda<sup>5</sup> and Chasam Sofer.<sup>6</sup> However, the Chazon Ish in *Ohalos* 22:32 rules that one may violate Shabbos not only if the dangerously ill person is *lefaneinu*, but even if the sickness (*choli*) is *lefaneinu*.

In our case, despite the fact the *choleh* is not *lefaneinu*, since the *choli* is *lefaneinu*, we may view the patients’ anticipated imminent arrival as if they are already present. Although *halacha* demands “*Ein dochin nefesh mipenei nefesh*,” this rule applies only to actively killing a patient but not to passively withholding care in the attempt to save the lives of others that are much more likely to fully recover.

Rav Schachter explains that the overarching *halachic* principle is helping the patient who will benefit the most from the limited treatment available. He explains that the priorities set forth by the *mishna* in *Horayos* are no longer operative today. He cites Rav Moshe to that effect<sup>7</sup> and Rav Schachter notes that this has emerged as the normative *halachic* position.

Case Number Four: Doctors already intubated a patient not expected to live longer than a year. Shortly after doing so, patients with a much greater chance of long-term survival arrive and there is no ventilator left to save their lives.

In such a case, Rav Schachter permits placing a DNR (do not resuscitate) order on the patient not expected to live a year. In such a case, if the patient’s heart fails then he need not be resuscitated, and the ventilator may be used to save those with a dramatically greater chance of survival.

This is quite a stunning application of the *halachic* preference for *chayei olam* over *chayei sha’a*. It is rather stunning to place a DNR order without the consent of the patient or his health proxy. Nonetheless, Rav Zalman Nechemia Goldberg adopts

<sup>5</sup> Teshuvos Noda BeYehuda, 2 Y”D 210

<sup>6</sup> Teshuvos Chasam Sofer, Y”D 336

<sup>7</sup> Teshuvos Igros Moshe, C”M 2:74

a similar approach.<sup>8</sup>

**Case Number Five:** A patient has a ventilator connected to himself and doctors wish to share the ventilator with other patients.

Rav Schachter permits sharing the ventilator with others even if it imposes a 15% or even higher chance of death on the patient who originally had the ventilator. He writes that doctors may risk the lives of one patient who would otherwise definitely die to save the life of another. Rav Schachter applies the Ramban who defines and explains the Torah's license to heal as permitting physicians to risk life in the attempt to save lives.

This is a bold application of the Ramban who permits risking a patient's own life to save his life. Rav Schachter expands this notion to risk the life of one patient to save the life of another. *Halacha* forbids killing one to save the other, "*Ein dochin nefesh mipenei nefesh*." However, it permits risking one to save another.

Rav Asher Weiss<sup>9</sup> concurs with Rav Schachter's ruling. He notes that standard procedure in Israeli hospitals is to remove less critically ill patients from the intensive care units in favor of those in dire need of the intensive care units.

## Conclusion

Rav Schachter, in this landmark *teshuva*, places two major limitations on the rule of "*Ein dochin nefesh mipenei nefesh*;" it applies only to active killing and does not apply to placing lives at risk to save the life of others. The Eternal Word of God continues to shine brightly, shedding light even in the darkest days of the Coronavirus pandemic. The greatest *poskim* of our time apply God's Eternal Word even to the most ethically complex dilemmas arising throughout the distressing days of the Coronavirus pandemic. We never cease to be amazed to see the *Ba'alei Hamesora* in each generation lead *Klal Yisrael* through darkness and readily apply the *halacha* to any and all issues arising in such grave circumstances.

---

<sup>8</sup> *Techumin* 36:209-213

<sup>9</sup> *Minchas Asher on Coronavirus*, number 6

# Triggering Outdoor Motion Sensors on Shabbos

STEPHEN KIRSCHENBAUM



One Friday night, I asked my children to swerve out of the range of a motion detector that would trigger a light when we passed by. While my children happily complied, one might wonder (as did my children) as to whether this was truly necessary. The answer depends on the resolution of several fundamental issues regarding *Hilchos Shabbos*.

## Unintentional Results - *Davar She'Eino Miskavein*

Ostensibly, this should be questionably permissible. After all, the dispute that rages between Rabi Shimon and Rabi Yehuda throughout *Shas*<sup>1</sup> as to whether a *davar she'eino miskavein* (an unintended action) is permitted is resolved in favor of the lenient view of Rabi Shimon, as set forth by Rabi Yochanan and recorded in the *gemara* in *Beitza* 23b.

However, our case is not so simple; even Rabi Shimon would rule strictly in a case of *psik reisha*, where it is inevitable that *melacha* will result from one's action, as stated many times throughout the Talmud, such as the *gemara* in *Shabbos* 133a. Moreover, the result is desired as the light makes it easier to walk, making it a *psik reisha denicha lei*, which is undoubtedly forbidden, and even constitutes a Torah-level prohibition, as is clear from Rambam in his *Mishne Torah*, *Hilchos Shabbos* 1:6.

## A Surprising Rashba

Nonetheless, there is a strong basis to be lenient. The *mishna* in *Shabbos* 106b permits, as explained by Rashba on *Shabbos* 107a, closing the door to a house even though one thereby traps a deer inside the house. Rashba surprisingly explains that since one's intention when closing the door is to protect the home -- and not to trap the deer -- no *melacha* is violated despite the fact that one is aware that the deer is being trapped and that the result is inevitable.

<sup>1</sup> Such as in the *gemara* in *Beitza* 23b.

Many *acharonim*, including the Avnei Neizer,<sup>2</sup> the Chelkas Yo'av,<sup>3</sup> and Rav Ovadia Yosef<sup>4</sup> explain that since one does not come in direct contact with the deer and does not intend to trap the deer, this renders the action as indirect (*grama*). The combination of the fact that it is an unintended act and is *grama* renders the act permissible. *Grama* is not forbidden in a case of unintentional causation even in a case of *psik reisha*, as explained by the *Even Ha'Ozer* O"C 328.

The approach of these *acharonim* fits well with the *gemara* in *Shabbos* 133a, which presents a special interpretation of the Torah to permit performing a *bris mila* in case one has *tzara'as* on the *mila*.<sup>5</sup> The *Sho'eil U'Meishiv* poses a question on Rashba based on this passage in the *gemara*. Why, according to Rashba, is it necessary to have a *pasuk* teach us that we may perform *mila* if there is *tzara'as* present? After all, the Rashba permits an action where one's intention is for the permitted activity (*mila*) and the forbidden activity takes a proverbial back seat.

Based on these *acharonim*, the answer is simple, as noted by Rav Ovadia Yosef in the aforementioned *Teshuvos Yechaveh Da'as*. Rashba's principle does not suffice to permit such a *mila* since one is performing the forbidden action directly. In the *mila* case, one directly performs the forbidden act, unlike the case of closing the door, where one is not directly in contact with the deer.

Rav Hershel Schachter explains that the Rashba's approach fits with the Rambam<sup>6</sup> who believes that intention often defines the difference as to whether something is defined as direct or indirect. The Rambam obligates one for damages caused by animals who escape due to his breaking the fence enclosing the animals only if one's intention was for the animals to cause damage.<sup>7</sup>

Thus, according to the Rashba, triggering an outdoor sensor light does not violate Shabbos. One's intention is purely to walk on the street and although he is aware that he is triggering the sensor to turn on the light, no Shabbos violation occurs. He does not come into direct contact with the light and has no intention to turn on the light,

2 O"C 194

3 1 O"C 11

4 *Teshuvos Yechaveh Da'as* 5:29

5 Recall that the Torah prohibits removing *tzara'as* (*Devarim* 24:8).

6 *Mishne Torah*, *Hilchos Nizkei Mamon* 4:2, as explained by the *Maggid Mishne* ad loc.

7 It is for this reason the Rambam (*Hilchos Nizkei Mamon* 4:1) excuses thieves who breach a fence to gain access to the enclosed area from the damages caused by animals that escaped through the breach. While the thieves must pay for the damage to the fence, they need not pay for the damage done by the animals, since their intention was not for the animals to escape.

and thus one has not transgressed in such a circumstance.

### **Ran's Dissent**

However, Ran in the pages of the Rif to *Shabbos* 38a strongly rejects the Rashba's thesis. He believes the conventional rules of *davar she'eino miskavein* and *psik reisha* apply in such a case. Ran believes that the case the *mishna* is speaking of is a situation wherein the person closing the door is not aware of a deer being trapped inside the house. The Maggid Mishne in *Hilchos Shabbos* 10:23 also subscribes to the view of Ran. Thus, according to Ran and Maggid Mishne, it would be forbidden to trigger a sensor light, since one does ultimately benefit from the added light.

### **Ruling of Rav Hershel Schachter<sup>8</sup>**

Rav Schachter rules that one should try his best to accommodate Ran's stricter opinion and avoid triggering the sensor light. However, in case one cannot avoid an outdoor sensor light, one may rely on the Rashba's approach.<sup>9</sup> This ruling may also be followed by Sephardic Jews, as Rav Ovadia Yosef in the aforementioned *Teshuvos Yechaveh Da'as* adopts the same approach to a similar issue.<sup>10</sup> Thus, the Kirschenbaum children acted appropriately by circumventing the range of the sensor light which they might have otherwise triggered while walking home.

We should clarify that it is possible that even the Rashba would forbid triggering an indoor sensor light in certain circumstances, such as one located in a stairwell in an apartment building. In such a case, it is often impossible to walk at night, and it seems that one's intention in such a case would indeed be to trigger the sensor light in order to make it possible to ascend and descend the stairs safely.

<sup>8</sup> In lectures and private conversations heard by author

<sup>9</sup> The Shulchan Aruch does not address the question as to whether the opinion of Rashba or Ran is accepted in practice. Interestingly, Rav Zalman Nechemia Goldberg (*Techumin* 25:441-449) explains that it is the Avnei Neizer's explanation of Rashba that, in part, serves as the basis of his father-in-law Rav Shlomo Zalman Auerbach's position to permit walking through Jerusalem's Old City and the plaza of the *Kosel HaMa'aravi*, despite the unavoidable presence of security cameras in the area.

<sup>10</sup> Moreover, since most of the sensors trigger non-incandescent lights, the underlying concern is merely rabbinic in nature. This is because the consensus opinion is that completing an electric circuit is merely a rabbinic concern, when there is no heated filament involved. In such a case, Rav Ovadia in a number of *teshuvos* (including the aforementioned responsum in *Teshuvos Yechaveh Da'as*) proffers as an added lenient consideration (*snif l'hakeil*) the opinions that *psik reisha* is not forbidden if the underlying prohibition is merely rabbinic in nature (such as Rav Akiva Eiger, cited in *Teshuvos Chasam Sofer, Yoreh Deah* 140). Even though the stricter view found in the *Magen Avraham* 314:5 forbidding a *psik reisha* even regarding a rabbinic prohibition is the accepted view, we may utilize the lenient view in combination with the Rashba's opinion to be lenient in case of need.



# Do Walk-In Closets and Porches Require a *Mezuza*?

STEPHEN KIRSCHENBAUM



Many homes do not have a *mezuza* in every place that seemingly requires one, such as utility rooms and garages.<sup>1</sup> Many families also do not have *mezuzos* affixed to their walk-in closets or at the entrances to their porches. In this essay, we shall discuss whether this practice is correct or not.

## The Four-*Amah* Requirement: Rambam vs. Rosh

The *gemara* in *Sukkah* 3a teaches that we are not required to attach a *mezuza* to the door of a house which is smaller than four *amos* (cubits) by four *amos*. The *rishonim* debate whether the *gemara* requires a minimum length and width of four *amos*<sup>2</sup> or just an area of sixteen square *amos*, regardless of length and width.<sup>3</sup> For example, if an area is eight *amos* long and two *amos* wide, it is sixteen square *amos*, but not four *amos* wide. In such a case, a *mezuza* is required according to the Rambam but not according to the Rosh. This issue is quite relevant, as many walk-in closets have narrow corridors but are quite long.

The *Shulchan Aruch* Y"D 286:13 only cites the view of the Rambam and not the dissenting view of the Rosh. The Beis Yosef explains that the Rambam's view is authoritative because no one agrees with the Rosh on this matter.<sup>4</sup> The Shach (ad. loc. s.k. 23), however, notes that Rabbeinu Yerucham does agree with the Rosh.

The Shach therefore concludes that one should affix a *mezuza* in such a situation

---

<sup>1</sup> See *Shulchan Aruch*, Y"D 286:2

<sup>2</sup> Rosh, *Hilchos Mezuza*, number 16

<sup>3</sup> Rambam, *Hilchos Mezuza*, 6:2

<sup>4</sup> Y"D 286, s.v. *U'Ma SheKatav Oh SheEin Bo*

---

Stephen Kirschenbaum is a Trust & Estates attorney in the Private Client / Private Company group at Gipson Hoffman & Pancione in Century City, CA.  
He has been a member of Adas Torah since 2016.

in accordance with the Rambam but should omit reciting a *bracha* in deference to the Rosh. Alternatively, if one attaches *mezuzos* to an area of such dimensions on the same occasion as he affixes a *mezuzah* to an area that certainly requires a *mezuzah*, one should recite the *bracha* before affixing the *mezuzah* to the latter area and bear in mind that the *bracha* should also apply to the attaching of the *mezuzah* to the former area. The Aruch HaShulchan rules in accordance with the opinion of the Shach.<sup>5</sup>

The question, though, is how to define an *amah*. This matter is fiercely debated among 20th-century *poskim*. Rav Avraham Chaim Naeh rules that an *amah* is 18.9 inches, while the Chazon Ish believes that it is 22.8 inches. Rav Hershel Schachter<sup>6</sup> rules we should follow the ruling of Rav Moshe Feinstein, who believes that an *amah* is 21.25 inches.<sup>7</sup> Indeed, the Aruch HaShulchan presents an almost identical *shiur* for an *amah*.<sup>8</sup> On the other hand, Rav Feivel Cohen writes that he believes that the common practice is to be strict and accommodate both the smaller and larger versions of an *amah*.<sup>9</sup> Regarding our issue, Rav Avraham Chaim Naeh's opinion is the strict one and should be followed if one adopts Rav Cohen's approach. One should consult with his Rav regarding which opinion should be followed.

We should note two important points:

1. Walk-in closets which are four *amos* long and four *amos* wide are no different than any other room, and require a *mezuzah* according to all opinions; and
2. There is a debate when determining the measurements of a walk-in closet regarding whether shelves contained therein are to be included or excluded in the calculation. In such a scenario, one should consult his Rav.

### ***Teshuvos Chamudei Daniel***

Many, perhaps most, walk-in closets do not even encompass an area that is sixteen *amos* square and would seem to not require a *mezuzah*. However, the Teshuvos Chamudei Daniel<sup>10</sup> severely limits the *gemara's* exemption of an area of less than four by four *amos*. He rules that this exemption applies only to an entire residence that is

<sup>5</sup> Y"D 286:21

<sup>6</sup> In lectures and private conversations heard by author

<sup>7</sup> Teshuvos Igros Moshe, O"C 1:136

<sup>8</sup> Y"D 201

<sup>9</sup> Badei HaShulchan, addendum to Hilchos Nidda, printed in the Badei HaShulchan to Hilchos Basar BeChalav p. 385

<sup>10</sup> Cited in Pischei Teshuva, Y"D 286:11



less than four by four *amos*. However, if an area of a house (such as a storage area) is normally less than four by four *amos*, it would require a *mezuzah*. Indeed, the Rosh (ad. loc.) explains that a house that is less than four by four *amos* is not suitable for residence and therefore does not require a *mezuzah*. However, many storage areas are smaller than four by four *amos*, and the reasoning to exempt a small area from *mezuzah* does not seem to apply to them.

The Pischei Teshuva does not cite any opinion that disagrees with the Chamudei Daniel, and Dayan Weisz, in *Teshuvos Minchas Yitzchak* 4:92, notes that many *acharonim* agree with this view. On the other hand, Rav Ovadia Yosef<sup>11</sup> notes that many *poskim* disagree with the Chamudei Daniel.

We should note that the Chamudei Daniel's ruling applies only to an area which one enters. Thus, a *mezuzah* would be required to be affixed on the right side (as one enters) of a walk-in closet. However, Dayan Weisz<sup>12</sup> writes that all would agree that an area that one does not enter, such as a pantry or closet that is not a walk-in, does not require a *mezuzah*.

### **Rav Akiva Eiger**

Rav Akiva Eiger places a further limitation on the four by four *amos* exemption.<sup>13</sup> He believes that it does not apply if the area that is less than sixteen square *amos* leads into an area that requires a *mezuzah*. He rules that one is required to affix a *mezuzah* to the right side as one leaves the small area into the larger area. Even though the small area is in and of itself exempted from a *mezuzah*, one is required to affix a *mezuzah* just as one places a *mezuzah* on the doorway to his home. In that case, one places a *mezuzah* on the right side entering the house, since one enters from an area that does not require a *mezuzah* (the outside) to an area that does require a *mezuzah* (one's home). According to Rav Akiva Eiger, one would place a *mezuzah* on the right side as one leaves a walk-in closet if it enters a room which requires a *mezuzah* (as it does in virtually all situations), as one is leaving an area that does not require a *mezuzah* (the walk-in closet) to an area that requires a *mezuzah* (such as a bedroom).

We should emphasize, however, that according to the Chamudei Daniel's approach (which Rav Akiva Eiger implicitly rejects), one is required to affix a *mezuzah* on the right side as one enters a walk-in closet. Since it is not a viable *halachic* option

<sup>11</sup> *Teshuvos Yechaveh Da'as* 4:51

<sup>12</sup> *Teshuvos Minchas Yitzchak* 3:103

<sup>13</sup> Commentary to *Shulchan Aruch*, Y"D 286:13

to affix *mezuzos* on both doorposts,<sup>14</sup> *poskim* must decide whether to follow Rav Akiva Eiger or the Chamudei Daniel, as it is impossible to accommodate both views.

Although the Aruch HaShulchan rules in accordance with Rav Akiva Eiger,<sup>15</sup> some *acharonim* dispute or limit his view. The Gedolei Hekdesh<sup>16</sup> argues that the entrance to an area less than four *amos* by four *amos* does not constitute an entrance, and therefore does not require a *mezuzah*. Dayan Weisz asserts that even Rav Akiva Eiger's ruling applies only in a case in which the entrance to the small area serves another function in addition to serving as the entrance to that small area. Rav Moshe Feinstein writes that Rav Akiva Eiger's assertion is "bewildering" and that "in practice one is not required to accommodate his view."<sup>17</sup> Rav Ovadia Yosef (ad. loc.) does not even consider the opinion of Rav Akiva Eiger in his ruling (he cites Rav Moshe as one of his many precedents for this approach).

During the time I was privileged to learn at Yeshivas Rabbeinu Yitzchak Elchanan at Yeshiva University, there was a *mezuzah* affixed to the right side as one left the walk-in coat closet in the third floor Beis Midrash in Furst Hall, in accordance with the view of Rav Akiva Eiger. I recall being told that this practice stemmed from a ruling issued by the founding Rosh Kollel, Rav Aharon Lichtenstein, and was subsequently endorsed by his successor, Rav Hershel Schachter.

## Porch

A similar issue applies to affixing a *mezuzah* to a porch (or a deck). A porch would seem not to require a *mezuzah*, since it does not have a roof.<sup>18</sup> However, one could claim that it does require a *mezuzah* either because it is normal for a porch not to have a roof (similar to the approach of the Chamudei Daniel) or that one should affix the *mezuzah* on the right side as one enters the house from the porch based on Rav Akiva Eiger. The Aruch HaShulchan (ad. loc.) explicitly applies Rav Akiva Eiger's ruling to an area that does not have a roof.

A consensus view has not emerged among contemporary *poskim* regarding this issue. The Chazon Ish rules that one should affix a *mezuzah* on the right side as one

14 This might violate *Bal Tosif*. See *Pischei Teshuva*, Y"D 291:2 and *Teshuvos Igros Moshe*, Y"D 1:176 in the postscript to the responsum.

15 Y"D 286:23

16 289:9, cited by *Teshuvos Minchas Yitzchak* ad. loc.

17 *Teshuvos Igros Moshe*, Y"D 1:181

18 *Shulchan Aruch*, Y"D 286:14

enters a house from a porch,<sup>19</sup> while Rav Ovadia Yosef (ad. loc.) cites many *poskim*, such as Rav Yaakov Emden and Rav Shlomo Kluger, who rule that it should be placed on the right side as one leaves one's home to enter the porch. Rav Ovadia concludes that a porch does not technically require a *mezuzah*, but one who affixes a *mezuzah* at the entrance to his porch "will have a *bracha* bestowed upon him." Rav Ovadia rules that those who affix a *mezuzah* to their porch entrance should do so on the right side as one leaves the house to enter the porch.

### **Conclusion**

Many individuals do not have *mezuzos* attached to their walk-in closets, and they certainly have many opinions upon which to rely. One who adopts the strict view and attaches a *mezuzah* to a walk-in closet (either to the right or left side) should most likely omit the *bracha* in deference to the many opinions who rule that walk-in closets do not require a *mezuzah*.

In practice, one should inquire of his Rav as to whether walk-in closets and porches require a *mezuzah* and to which side it should be affixed. Moreover, it is highly recommended for one to invite his Rav to visit his home for an inspection to ensure that *mezuzos* are properly affixed in all the required areas and that they are attached to the appropriate side of the doorway.

---

<sup>19</sup> *Y"D* 168:5



# Electricity and Positive *Mitzvos*

STEPHEN KIRSCHENBAUM



**R**av Ovadia Yosef and Rav Eliezer Waldenberg express an overwhelming *halachic* consensus that a heated filament is defined as fire in the context of *Hilchos Shabbos*. The question is whether we may apply this ruling in a lenient direction as well and use electricity for *mitzvos* that require fire.

We will discuss the use of an electrically-heated filament regarding five areas of *halacha*: Shabbos and Yom Tov candles, *havdala*, Chanuka, and *bedikas chametz*.

## Shabbos and Yom Tov Candles

Four great *poskim* from the first generation to address electricity and *halacha* permit the use of electric lights for Shabbos candles. These are Rav Yitzchak Schmelkes,<sup>1</sup> Rav David Tzvi Hoffman,<sup>2</sup> Rav Avraham Shteinberg,<sup>3</sup> and Rav Chaim Ozer Grodzinsky.<sup>4</sup> Many of the next generation's great rabbanim agreed, including Rav Yosef Eliyahu Henkin,<sup>5</sup> Rav Aharon Kotler,<sup>6</sup> Rav Yosef Dov Soloveitchik,<sup>7</sup> and Rav Ovadia Yosef.<sup>8</sup>

It is most significant that Rav Ovadia Yosef permits lighting Shabbos candles with a *bracha*. Even Rav Ovadia, who adheres to the traditional very strong Sephardic inclination to avoid situations where there is only a possibility of one uttering blessings in vain,<sup>9</sup> permits one to use electric lights for Shabbos candles and recite the blessing. The possibility of one uttering a blessing in vain motivates Rav Ovadia to reach a contrary result when discussing the use of electric lights for *havdala* candles.

---

1 *Teshuvos Beis Yitzchak*, Y"D 120

2 *Teshuvos Melamed LeHoil* 1:47

3 *Teshuvos Machaze Avraham* 41

4 *Teshuvos Achiezer* 4:6

5 *Edus LeYisrael*, page 122

6 As reported in *Teshuvos Kochevei Ohr* 1:1-2

7 Cited by Rav Hershel Schachter in *Nefesh HaRav*, page 155-156

8 *Teshuvos Yabia Omer* 2, O"C 17; *Teshuvos Yechave Da'as* 5:24

9 See, for example, *Teshuvos Yabia Omer* 1:29:11 and 4:42-43; *Teshuvos Yechaveh Da'as* 1:66, 2:32, 4:4, and 4:41.

While Rav Ovadia cites a minority of *poskim* who object to the use of electric lights for Shabbos candles, he concludes that there is not a compelling reason to assert that one does not fulfill the mitzva of candle lighting with electricity.

Rav Yehoshua Neuwirth, writing in the *Shemiras Shabbos KeHilchasa* 34:4, states the rule as follows: “One who uses electrically produced light for Shabbos or Yom Tov candles has *halachic* support for his practice, and may recite a blessing on this lighting.” In footnote number 22 he notes that “many *acharonim*” subscribe to this view. *The Radiance of Shabbos* (p. 12), however, quotes Rav Moshe Feinstein as saying that one should not recite a *bracha* on an electric light.

Rav Neuwirth’s conclusion is especially noteworthy despite the overwhelming influence of Rav Shlomo Zalman Auerbach on his composition of the *Shemiras Shabbos KeHilchasa*. Rav Neuwirth cites Rav Shlomo Zalman as stating that Shabbos lights must contain an independent fuel supply. Thus, while he in theory allows electric Shabbos candles, he raises the possibility that this is only permissible when the power source comes from a battery. Standard electric lights may not be used, he is quoted as saying, because “one is considered to be lighting without fuel since at every moment new electric current is being generated at the power station.”

Other *poskim* do not share this concern. Rav Ovadia Yosef notes that there is no Talmudic source which indicates that a fuel supply is necessary for Shabbos candles.<sup>10</sup> The Rambam writes that Shabbos candles are for *kavod Shabbos*,<sup>11</sup> *oneg Shabbos*,<sup>12</sup> and to promote *shalom bayis*, domestic tranquility,<sup>13</sup> by helping family members avoid stumbling over furniture. Accordingly, since ample lighting is provided, the fact that when one lights an electric bulb no fuel supply is present should be irrelevant.

An interesting explanation is reported in the name of Rav David Cohen of Brooklyn, NY. Since the electric current is not under the control of the one doing the mitzva, one should not recite a blessing. This rationale appears to be based on an assertion set forth by Rashba<sup>14</sup> and Ra’avad,<sup>15</sup> that one may not recite a blessing over a mitzva when performance of the mitzva is dependent on the future actions of others. Since the ongoing production of electrical current is dependent on the

<sup>10</sup> *Teshuvos Yabia Omer*, O”C 2:17

<sup>11</sup> *Mishne Torah*, *Hilchos Shabbos* 5:1

<sup>12</sup> *Id.* at *Hilchos Shabbos* 30:1

<sup>13</sup> *Id.* at *Hilchos Chanuka* 4:14

<sup>14</sup> *Teshuva* 18

<sup>15</sup> Commenting on Rambam, *Hilchos Ishus* 3:23

power station, one may not recite a blessing over a light powered by such current. Nonetheless, this approach is not accepted by most other *poskim*.<sup>16</sup> In civilized countries, the electricity supply is stable to the extent that the lighting of an electric light powered by electricity coming from a power station is considered under the person's control.

Despite the acceptability of electricity for Shabbos candles, Rav Ovadia writes it should be used only if there is no alternative; this is the generally accepted approach. Thus, electric lights are commonly used by those spending Shabbos in a hospital, for example. Rav Yitzchak Yosef<sup>17</sup> similarly recommends guests using electricity to fulfill their obligation to light candles in the room provided by their hosts.

Use of electricity for Shabbos candles should be encouraged in situations where one would leave lit Shabbos candles unattended. Fire departments routinely urge in the strongest terms not to leave lit Shabbos candles unattended.<sup>18</sup> Thus, if a family plans to leave their house soon after Shabbos begins to eat the Friday night *seuda* at a friend's home, they should use electricity to fulfill the mitzva of *neiros Shabbos* that week.

Guests staying in a hotel should also be encouraged to use electricity for Shabbos candles instead of the typical Shabbos candle lighting that occurs in the hotel's lobby. *Shemiras Shabbos KeHilchasa* 45:9 acknowledges that it is customary for the women staying at a hotel to light at a designated place in the dining room. However, he writes that this is proper only if the lighting occurs close to the table where she and her family will be eating. Unfortunately, this is not easily accommodated. Therefore, Rav Neuwirth recommends that it is best for one woman to recite the *bracha* in the dining room and the rest of the women to light Shabbos candles with a *bracha* in each of their respective hotel rooms. For safety reasons, this should be accomplished using electric lights. Similarly, Rav Hershel Schachter has decried on multiple occasions the collective lighting of Shabbos candles in a side room in a hotel by dozens of women. Instead, he strongly recommends using electric lights in their room instead.<sup>19</sup>

The problem with using electricity for Shabbos candle lighting, as noted by Rav

16 Rav Zvi Pesach Frank, cited by Rav Yaakov Ariel *Techumin* 35:31, and Rav Benzion Abba Shaul, *Ohr LeTzion* 18:12, though, agree with Rav Shlomo Zalman.

17 *Yalkut Yosef*, O"C 263:19

18 See, for example, <https://www.fdnysmart.org/sabbath-holiday-candle-safety-2> and <https://www.ou.org/life/health/physical-health/fire-safety-revisited>.

19 In lectures and private conversations heard by author

Moshe Shternbuch,<sup>20</sup> is that while the goal of *oneg Shabbos* is accomplished, the goal of *kavod Shabbos* is not, since it is far from clear that one is lighting the electric lights in honor of Shabbos. Rav Ovadia Yosef also mentions a strong preference for electric lights where it is clear it is being lit for the purpose of Shabbos. This is accomplished in certain hospitals which provide Jewish patients with specially designated electric Shabbos candles. In this way, it is clear the electric lights are lit in honor of Shabbos.<sup>21</sup>

While the *halachic* consensus authorizes the use of electricity for Shabbos candles in case of great need, there is an ongoing dispute as to whether only an incandescent bulb is acceptable for Shabbos candles or whether any electric light suffices. Rav Yosef Shalom Elyashiv<sup>22</sup> believes any electric light is acceptable, whereas Rav Hershel Schachter<sup>23</sup> and Rav Asher Weiss<sup>24</sup> argue that only an incandescent bulb is acceptable since it has a heated filament.

The question hinges upon how we define the *ner Shabbos*.<sup>25</sup> Rav Elyashiv believes it refers to light and Rav Schachter and Rav Weiss believe it refers to fire. The *Shemiras Shabbos KeHilchasa* does not distinguish between types of electric light and seems to accord with the view of Rav Elyashiv.

This very relevant question often arises today since incandescent bulbs are becoming far less popular. The advantage of the Zomet Institute's Shabbos electric lights is that it uses an incandescent bulb to avoid this dispute. It is also battery powered to satisfy the opinion of Rav Shlomo Zalman, Rav Zvi Pesach Frank, and Hacham Ben Zion who accept electric lights only if they are battery powered. In Israel, it also satisfies the concern of reciting a *bracha* on electricity that will be produced in a manner that does not conform to *halacha*. Thus, the Zomet electric Shabbos lights are a much better option for situations when regular Shabbos candles are not an option.

### Electric Lights for *Havdala*

Although a consensus has emerged permitting the use of electricity for Shabbos candles in case of great need, no such consensus has emerged regarding the use of

<sup>20</sup> *Teshuvos VeHanhagos* 2:157

<sup>21</sup> The Zomet Institute developed and markets such a product, available at <http://www.zomet.org.il/eng/?CategoryID=250&ArticleID=493>.

<sup>22</sup> Cited in *Shevus Yitzchak* 83

<sup>23</sup> In lectures and private conversations heard by author

<sup>24</sup> *Yeshurun* Nissan 5774

<sup>25</sup> The *bracha* we recite on Shabbos candles is *L'hadlik ner shel Shabbos*



electric lights for *havdala*.

Some issues regarding electric lights and *havdala* are not subject to dispute, however:

1. *Shemiras Shabbos KeHilchasa* 61:32 cites Rav Ovadia Yosef,<sup>26</sup> who notes that an electric light without a heated filament is not acceptable; no dissenting view is presented. The *bracha* on *havdala* light is “*Borei me’orei ha’eish*,” demonstrating that *eish*, a fire, is needed.
2. *Shemiras Shabbos KeHilchasa* (ibid.) also cites Rav Shlomo Zalman Auerbach who rules that a frosted bulb, even if incandescent, is unacceptable for *havdala*.<sup>27</sup> Once again, no dissenting view is cited. This assertion is based on the Shulchan Aruch, which states that one may recite *Borei me’orei ha’eish* only if one directly sees the flame of the fire.<sup>28</sup>
3. Rav Ovadia<sup>29</sup> and Rav Eliezer Waldenberg<sup>30</sup> agree that even non-frosted incandescent lights may not be used for *havdala* after Yom Kippur. The light used for *havdala* after Yom Kippur must be lit for the entire fast (*neir sheshavas*).<sup>31</sup> An incandescent light, even if it has been on the entire fast, is not considered to be lit the entire fast, since at every moment the electricity used by the light is being newly generated.
4. Rav Waldenberg (ibid.) notes that even those authorities who permit the use of unfrosted incandescent lights for *havdala* concede that they are not the preferable form of fire to use for *havdala*. The Shulchan Aruch states that it is preferable to use an *avuka* (a candle of more than one wick) for *havdala*.<sup>32</sup> An incandescent bulb consists of one filament, and therefore, according to all opinions, does not constitute the optimal way of reciting *havdala*.

No consensus has emerged regarding even the use of a non-frosted incandescent bulb for *havdala* lights. *Shemiras Shabbos KeHilchasa* 61:32 leaves this dispute unresolved, simply noting that “some authorities prohibit, and some authorities permit.”

---

<sup>26</sup> *Teshuvos Yabia Omer*, O”C 17-18

<sup>27</sup> *Me’orei Eish* 5:1

<sup>28</sup> O”C 298:15

<sup>29</sup> *Teshuvos Yabia Omer*, 1 O”C 18:12

<sup>30</sup> *Teshuvos Tzitz Eliezer* 1:20:13

<sup>31</sup> *Shulchan Aruch*, O”C 624:5

<sup>32</sup> O”C 298:2

Rav Ovadia Yosef does not permit the use of even non-frosted incandescent bulbs for *havdala*.<sup>33</sup> He cites the *Shulchan Aruch*,<sup>34</sup> based on a statement in the *Talmud Yerushalmi Brachos* 8:6, which states that it is prohibited to recite the *havdala* blessing over a fire that one sees through an *aspaklaria* (a mirror or glass) or in any situation in which one sees only diffused light but not a fire. Based on this ruling, there are authorities who rule that a *havdala* light may not be covered even by see-through glass, since it constitutes a *hefseik* (obstruction) from the light.<sup>35</sup> Rav Ovadia Yosef rules that one should not use an incandescent bulb for *havdala*, since, according to these authorities, the blessing recited over the incandescent light would be in vain, because it is covered by a glass case.

Rav Waldenberg, by contrast, notes the authorities who permit using a light covered by glass, provided the glass is transparent. Second, Rav Waldenberg argues that even according to those who rule to the contrary and prohibit making a *bracha* on a fire covered in glass, the outer case of an incandescent bulb does not constitute an obstruction since it is an integral component of the bulb and cannot be removed. The *gemara* in *Yevamos* 78a-b clearly indicates that any impediment which is an intrinsic part of an item (or person) is not considered a *hefseik*.

Rav Shlomo Zalman Auerbach also rejects the use of electric lights for *havdala*.<sup>36</sup> He notes that the *gemara* in *Pesachim* 54a relates that on the *Motzei Shabbos* following Creation, God provided Adam HaRishon with the knowledge to make fire by rubbing two stones together. *Chazal* enacted *havdala* to commemorate Adam's discovery. Rav Shlomo Zalman argues that the fire used for *havdala* must be *halachically* identical to the fire that Adam HaRishon discovered on that first *Motzei Shabbos*. Accordingly, Rav Shlomo Zalman rules that even a non-frosted incandescent light may not be used for *havdala* because of both its physical and *halachic* distinction to the fire discovered by Adam.

While both incandescent lights and a fire are biblically prohibited, *halacha* deems an incandescent light to be violative of a *tolada* (derivative biblical prohibition) and not of the *av melacha* (primary biblical prohibition), since no combustion takes place. Rav Shlomo Zalman argues that this is why Rambam classifies heating a metal

33 *Teshuvos Yabia Omer*, 1 O"C 17-18; *Teshuvos Yechave Da'as* 2:39

34 O"C 298:15

35 See the *Mishna Berura* 298:37

36 *Me'orei Eish* 5:1

until it glows as only a *tolada*.<sup>37</sup> Rav Shlomo Zalman states that the critical difference between an *av melacha* and its *tolada* is whether combustion of fuel is present. Only in circumstances where fuel combustion is present is there an *av melacha*; in all other circumstances, there is only a derivative *tolada*.

It is possible to disagree with Rav Shlomo Zalman by noting that nowhere in the *gemara* or *rishonim* is there ever stated a requirement that the fire used for *havdala* must be violative of the *av melacha* and not the *tolada*. In fact, this assertion seems contrary to Rambam's rule that there is only one distinction between a secondary and primary biblical violation, relating to the requirement to offer a *korban chatas* if Shabbos was violated by mistake.<sup>38</sup> It is reported that Rav David Cohen of Brooklyn, NY defends Rav Shlomo Zalman by noting that that statement can be limited to issues relating to prohibited work on Shabbos, and not to its positive commandments.

Many prominent authorities permit the use of non-frosted electric lights for *havdala* if one has no other option. These include the Rogachover Gaon,<sup>39</sup> Rav Avraham Shteinberg,<sup>40</sup> and Rav Waldenberg (ad. loc.). Most famously, Rav Chaim Ozer Grodzinsky recited *Borei me'orei ha'eish* on electricity to clarify that we are prohibited to use electricity on Shabbos.

Nonetheless, Rav Mordechai Willig strongly advises against using even a non-frosted incandescent bulb for *havdala*, even in the most extenuating circumstances. He observes that today, most incandescent bulbs are frosted; if we permit using non-frosted bulbs for *havdala*, people will be confused and use incandescent bulbs even in improper circumstances.<sup>41</sup>

While it was excellent public policy in the early 20th century for Rav Chaim Ozer to recite *havdala* on electric lights, in the early 21st century, the best policy is to avoid using electricity for *havdala* in all circumstances, since no consensus approves using even non-frosted incandescent bulbs.

37 *Mishne Torah, Hilchos Shabbos* 12:1

38 *Id.* at 7:7

39 As cited in *Teshuvos Har Tzvi* 2:114

40 *Teshuvos Machazeh Avraham* 41

41 In a lecture heard by the author



# Examining a Link Between *Birchas Hamitzva* and *Zilzul Mitzva*

DONNY FELDMAN



In a *teshuva* written on 7 Kislev 5692 (1931), Rav Moshe Feinstein answers a question from Lyuban (Belarus) that is difficult for people living in America during the 21st century to relate to: a man spends the entire day, from dawn to dusk, at his place of work and it is impracticable for him to wear *tefillin* at any point during the working day.<sup>1</sup> His choices, as indirectly presented by Rav Moshe, are to: (1) put on *tefillin* before he leaves for work in the morning (before *amud hashachar*,)<sup>2</sup> (2) find a different job,<sup>3</sup> or (3) not put on *tefillin* at all.<sup>4</sup> Rav Moshe rules that he **must** put on *tefillin* before he leaves for work in the morning, even though he will do so before the proper time.

Rav Moshe explains that there is no concern he will go to sleep once he is awake for work (similar to one who wakes up early to depart on a trip and puts on his *tefillin*,)<sup>5</sup> so he must put on *tefillin* even though it is *halachically* nighttime. Solving difficult *halachic* situations such as this is precisely what makes *poskim* so necessary

1 *Igros Moshe*, O"C 1:10

2 Considered *halachically* nighttime, during which the Rabbanan instituted a *gezeira* prohibiting the wearing of *tefillin* lest one come to sleep while wearing them, *Shulchan Aruch* O"C 30:3.

3 Rav Moshe mentions that there is no reason to require one to leave his job to fulfill the mitzva of *tefillin*, as this would be considered a loss of more than a *chomesh*, which one is not required to do (Rema, *Shulchan Aruch* O"C 656:1); and all the more so, especially in Belarus in 1931 where he would be unable to secure another job because "*hakol b'yadam v'lo yitnu lo*."

4 Not explicitly entertained by Rav Moshe. I assume Rav Moshe did not consider the option of putting on *tefillin* after work, once it was dark, because there was a slight chance one could fall asleep with the *tefillin* on, unlike the case of one who leaves for a trip early in the morning as cited in next footnote.

5 *Shulchan Aruch* O"C 30:3.

Donny Feldman is Senior Managing Director of SNF Management Company, LLC, an owner and operator of skilled nursing facilities. He has been a member of Adas Torah since 2006.

and valuable, but as *teshuvos* go, this is not a particularly remarkable one. What is remarkable about this *teshuva* is Rav Moshe's statement that not only should this man from Lyuban put on his *tefillin* earlier than is allowed, he is able to do so while saying a *bracha* on the *tefillin*,<sup>6</sup> which contravenes the general rule that one must wait until the time of "*misheyakir es chaveiro*."<sup>7</sup>

There are three types of *brachos*: *birchas hanehenin*, *birchas shevach v'hodaya*, and *birchas hamitzva*.<sup>8</sup> Other than *birchas hamazon* (when one is satiated)<sup>9</sup> and *birchas hatorah*,<sup>10</sup> all *brachos* are *mid'rabbanan*. As such, we are lenient and do not say them in the case of doubt, *safek*,<sup>11</sup> because of the Torah prohibition of '*lo sisa*,'<sup>12</sup> which proscribes using Hashem's name when there is no valid purpose. The possibility of repeating Hashem's name as part of a *bracha* that one may have already said, and violating *lo sisa*, is not warranted to possibly fulfill a mitzva *mid'rabbanan*.<sup>13</sup>

Rav Moshe explains that to put on *tefillin* without a *bracha* will lead someone who is not a *talmid chochom* to disregard, cheapen, or be lax in the performance of the mitzva of *tefillin* ("*yavo l'hakel ulezelzel b'hanachasam*").<sup>14</sup> Rav Moshe does not cite a source for the underlying psychological consideration that assumes if there is a *bracha* attached to the performance of a mitzva, it must be an important mitzva, whereas the absence of a *bracha* could lead to a devaluing of specific *mitzvos*.

6 This is at least partially based on the opinion of Rabbeinu Peretz (cited in the *Tur*, O"C 30:3) that in the case of a traveler who arises before *alos hashachar*, a *bracha* can be recited on his *tefillin*. Although this opinion of Rabbeinu Peretz is not generally relied upon [and is not brought by the Rosh], in extenuating circumstances such as one pressed to arrive at work on time, coupled with the possibility of not reciting the blessing of *tefillin* at all, which can breed a lack of respect toward the mitzva of *tefillin*, one may rely upon the opinion of Rabbeinu Peretz and recite the *bracha* even before the correct time.

7 *Shulchan Aruch* O"C 30:1. Generally understood as the time when a person can recognize a friend with whom he's slightly acquainted from a distance of four *amos*. The *Mishna Berura* (30:9) explains the rationale for the time of "*misheyakir*" as "because before then we are concerned a person may sleep in them, as it is considered nighttime."

8 Rambam, *Mishne Torah*, *Hilchos Brachos* 1:4

9 *Shulchan Aruch*, O"C 184:4

10 *Mishna Berura*, 47:1, quoting the Shaagas Aryeh

11 *Shulchan Aruch*, O"C 210:2, "*safek brachos l'hakel*"

12 *Shemos* 20:7, *Devarim* 5:11

13 *Kesef Mishna*, *Hilchos Brachos* 11:16. According to the Magen Avraham in *Shulchan Aruch* O"C 215:6 one 'only' violates an *issur d'rabbanan* when saying a *bracha* under these circumstances.

14 Rav Moshe points out, though, that a *talmid chochom* is better off putting on his *tefillin* under these circumstances without a *bracha* because of "*safek brachos l'hakel*."

While he does not allude to this specifically, Rav Moshe parallels the logic at work in the *gemara*<sup>15</sup> in *Shabbos* (23a), that recognizes that the second day of Yom Tov is “only” observed *misafek* as a custom. Nevertheless, we make *brachos* on the second day of Yom Tov, though ordinarily *mitzvos mid’rabbanan* in the case of *safek* do not warrant a *bracha*, so that people don’t come to take its sanctity lightly. This ruling links the presence of a *bracha* with maintaining the importance of the mitzva; to safeguard a mitzva’s sanctity, sometimes a *bracha* is required.

A similar example of the psychological nexus between *birchas hamitzva* and the related mitzva’s importance is found in a different context of *safek*. Above we discussed the *safek* of whether one should make a *bracha*; here, the *safek* is whether or not one made a *bracha* that one was obligated to make *mid’oraisa*. In general, *safek d’oraisa l’chumra*,<sup>16</sup> so one who isn’t sure if he said *birchas hamazon* would (possibly repeat and) say it. The Magen Avraham<sup>17</sup> makes a notable comment, distinguishing between the first three *brachos* (which are *mid’oraisa*) and the fourth (which is *mid’rabbanan*). When considering the twin notions of *safek d’rabbanan l’kula* and *safek d’oraisa l’chumra*, perhaps one should only repeat the first three *brachos* of *birchas hamazon* and not the fourth. The Magen Avraham writes one should even say the fourth *bracha*, which is “only” *mid’rabbanan* so one doesn’t come to view *birchas hamazon* as unimportant (“*d’lo l’zalzulei ba*”).<sup>18</sup>

To this point we have seen two examples (*tefillin* while still night and repeating the fourth *bracha* of *birchas hamazon*) of when there is a *safek* regarding a *bracha mid’rabbanan*, that despite the rule of *safek d’rabbanan l’kula*, the *psak* is nevertheless to say the *bracha*. This is done as a means of safeguarding the importance of the mitzva and avoiding *zilzul* mitzva. Rav Moshe and the Magen Avraham are both sensitive to

15 I am indebted to Rabbi Jackie Siegel for pointing out this source to me.

16 *Shulchan Aruch*, O”C 184:4

17 Ad loc.

18 The Chasam Sofer (*Chiddushei Chasam Sofer*, *Shabbos* 23a) explains the basis for the Magen Avraham’s *psak* that even in the case of *safek* one should say the fourth *bracha*, by marshalling the Rambam’s understanding of *mitzvos mid’rabbanan*. The Rambam (*Mishne Torah Hilchos Mamrim* 1:1-2) believes, in effect, that every mitzva *d’rabbanan* is a mitzva *d’oraisa*. In his view, when the Rabbis enact a law, that law is backed by the Torah (*Devarim* 17:11), which means it becomes a Torah prohibition to deviate from it (“*Lo sasur min hadavar asher yagidu lecha*”). According to this view, the focus of the prohibition (or positive commandment) is not the act per se, but rather the violation of instructions of the Rabbis who forbade it (or required it). According to the Chasam Sofer, then, there emerges a second reason why (in addition to establishing a safeguard against *zilzul*), in the case of *safek*, one should *bentch*, even saying the fourth *bracha*, because the fourth *bracha* is actually *mid’oraisa* because of “*lo sasur*.” It should be noted that the Ramban raises many issues with this position, in his *Commentary to the Rambam’s Sefer Hamitzvos*, *Shores* 1.

the articulation of a *bracha* lending importance to the performance of a mitzva as well as its corollary, that the absence of a *bracha* leads to underperformance or “zilzul” of *mitzvos*. I would like to humbly suggest that we see the validity of this reasoning in the contemporary underperformance of two ritual *mitzvos*: sitting in the *sukka* on Shemini Atzeres and washing *mayim acharonim*.

After a lengthy discussion in the *gemara* about dwelling in the *sukka*<sup>19</sup> on the eighth day of Sukkos outside of *Eretz Yisrael*,<sup>20</sup> a clear and uncontested *halachic* decision is issued: “*maysiv yasvinin, bruchei lo mevarchinen*,”<sup>21</sup> we dwell in the *sukka* (as if it is the seventh day of Sukkos), but we do not make a *bracha* when doing so.<sup>22</sup> Despite the conclusion of the *gemara* and the codification of the *halacha* in the Shulchan Aruch and the Mishnah Berura,<sup>23</sup> the practice of dwelling in the *sukka* on Shemini Atzeres, at least among Orthodox Jews outside of *Eretz Yisrael* who are otherwise scrupulous in their performance of *mitzvos*, is not as widespread as one might expect.<sup>24</sup>

There are numerous justifications, *limudey zechus*, and explanations offered

19 The issue of sleeping in the *sukka* on Shemini Atzeres and the appropriateness of an associated *bracha*, are beyond the scope of this essay.

20 Which is treated as though it might be the seventh day of Sukkos (*safek shevii*).

21 *Sukka* 47a. Codified in the *Mishne Torah*, *Hilchos Sukka* 6:13 and the *Shulchan Aruch*, *O”C* 668:1.

22 There are two primary explanations for why a *bracha* is inappropriate. The first, the opinion of Rabbi Yochanan (*ad loc.*), held that the various *tefillos* and *brachos* of Shemini Atzeres must be consistent. As *kiddush* and the *tefillos* of that day refer to it day as Shemini Atzeres (*Sukka* 46b), we cannot say a *bracha* on sitting in the *sukka* as that would imply that the day is part of Sukkos (Rashi, Rif, Rosh, Meiri *ad loc.* Also see *Sefer Hachinuch*, *mitzva* 323). A second explanation is that saying a *bracha* on sitting in the *sukka* on Shemini Atzeres might lead people to view the day as the seventh day of Sukkos, and not as Shemini Atzeres (see *Emes LeYaakov on the Tur*, 668). The very act of sitting in the *sukka* on that day, even without a *bracha*, indicates it might be the seventh day of Sukkos, and can cause people to treat this day casually (Rif, Ritva *ad loc.*, “*v’lo yezalzeli bikdushaso*”). This explanation again invokes “zilzul” as a means of safeguarding the importance of a mitzva, though in this case, it is used to militate *against* saying a *bracha* upon the performance of a mitzva, unlike previous examples we’ve examined which use the specter of “zilzul” as a means of favoring a *bracha* in the case of *safek*.

23 Interestingly, the Vilna Gaon (*Maase Rav* #216) is quoted as saying that we should be more careful fulfilling the mitzva of sitting in the *sukka* on Shemini Atzeres, which is a mitzva *midivrei sofrim*, than we are with the mitzva of sitting in the *sukka* on [the first day of] Sukkos, which is *mid’oraissa*, because one who ignores a mitzva that is *midivrei sofrim* is *chayav misa*. This opinion is not brought elsewhere l’*halacha*, but it is an interesting directional statement nonetheless.

24 The Schottenstein Edition of *Tractate Succah*, Volume II, 47a1, footnote 10 phrases it more delicately than I do, though it is notable that the editors felt the need to comment: “The *gemara*’s conclusion would appear to be at odds with the practice observed in some Diaspora communities nowadays of dwelling outside the succah on Shemini Atzeres.”



for this apparent laxity,<sup>25</sup> most of which pertain to cold-weather climates. Here is a representative selection:

(1) In cold climates, sitting outdoors and dining in a *sukka* in the late fall is not commonly done for enjoyment. One who sits in a *sukka*, therefore, is doing so to fulfill a mitzva. This would be problematic on Shemini Atzeres as the mitzva of dwelling in a *sukka* applies to Sukkos, not Shemini Atzeres, so to do so on Shemini Atzeres diminishes its status as a distinct Yom Tov.<sup>26</sup>

(2) There is a widespread tradition<sup>27</sup> among prominent Rabbanim in cold-weather climates, often *chassidish*, to make *kiddush* in the *sukka* on Shemini Atzeres during the day,<sup>28</sup> eat some *mezonos* and then go indoors to eat the *seudas* Yom Tov.<sup>29</sup>

(3) Writing with the intention of reconciling the divergence of *minhag* and stated *halacha* of the *gemara*, the Sfas Emes takes issue with the conclusion that there is an obligation to sit in the *sukka* on Shemini Atzeres entirely. His understanding of “*maysiv yasvinin, bruchei lo mevarchinen*” is that of a *matir*; one does not violate the issur of “*baal tosif*” by sitting in the *sukka* on Shemini Atzeres, though there is no obligation to do so, and one should not say a *bracha* if he elects to sit in the *sukka*.<sup>30</sup>

(4) Chassidim often visit their Rebbe’s at “*tisches*” or “*farbrengens*” on Shemini Atzeres. When many Chassidim assemble in their Rebbe’s *sukka*, space is scarce. Since a *choson* and his attendants are *patur* from the mitzva of *sukka* because “*mitztaer potur min hasukka*,”<sup>31</sup> it stands to reason that those who gather at their Rebbe’s *sukka* should also be *patur* from the *sukka*. In subsequent years, when crowds may have been smaller or when not visiting one’s Rebbe, it is possible that the situational dispensation due to *mitztaer* was forgotten, and the “*minhag chassidus*” became to not

25 Termed a “*taus*,” a “*davar she’i efshar lihyos, sheharey hu mamash negged maskanas hagemara lehedy’a*,” attributed to Rav Yosef Dov Halevi Soloveitchik in *Nefesh Harav*, pg. 220.

26 *Aruch Hashulchan*, O”C 668:4-5

27 Some variant of this is quoted in *Sefer Hapardes* (Rashi), *Machzor Vitry* 384, *Maharil Hilchos Lulav* 6, *Sefer haBesht*, Volume 1, page 22, *Mishmeres Sholom* 46, *Shu”t Maharshag*, I, 35.

28 Specifically during the day, for at night one must include the *bracha* of *shehecheyanu* in *kiddush*, and eating in the *sukka*, which one has been doing for the last seven days as part of Sukkos, conflicts with the *shehecheyanu* (*Beis Yosef* 668). The *Tur* (O”C 668:1) mentions that there are those who have the *minhag* not to sit in the *sukka* at night on Shemini Atzeres, but do so during the day, and “this is not a [legitimate] *minhag*.”

29 *Magen Avraham* 668:2 explains the reason for eating half a *seuda* in the *sukka* and half indoors is so that when people daven for rain on Shemini Atzeres [during *musaf*], they can do so will their full intent (“*b’lev shalem*”).

30 *Sfas Emes al Hashas* (*Sukka* 47a). See also *Korban Nesanel* on the Rosh (4:5:7) for a related discussion of *baal tosif*.

31 *Sukka* 25b, codified in *Shulchan Aruch* O”C 640:4

sit in the *sukka* on Shemini Atzeres.<sup>32</sup>

The *gemara* in *Chullin* (105a) discusses various hand washings related to eating and states “*mayim rishonim mitzva v’acharonim chova*.”<sup>33</sup> In other words, washing one’s hands before eating bread is a *mitzva*, whereas washing before *birchas hamazon* is a *chova* (literally, “obligation”). What is the difference between a *mitzva* and an obligation? Rashi (*ad loc.*) explains that a *chova* signifies a somewhat greater degree of obligation than a *mitzva*.<sup>34</sup> The Shulchan Aruch<sup>35</sup> quotes the *gemara* verbatim, establishing *mayim acharonim* as a *chova*. The Mishna Berura there explains that Chazal instituted *mayim acharonim* for two reasons: (1) as a means of protection against *melach sedomis*, a salt used in the Talmudic period that was considered dangerous if it got into one’s eye; and (2) to clean one’s hands before saying *birchas hamazon*, “*vihiyisem kedoshim*”<sup>36</sup>. He then writes that even nowadays, when *melach sedomis* is not found among us, one should be careful handling other forms of salt, which have similarly dangerous chemical properties. The obligation to wash *mayim acharonim* seems to be obligatory, even arguably more important than *mayim rishonim*.<sup>37</sup> Yet again, there seems to exist a chasm between theoretical *chova* and actual practice.

Tosafos<sup>38</sup> note that in their era, due to the absence of *melach sedomis*, people were not accustomed to washing *mayim acharonim*. And later in the *siman* quoted above,<sup>39</sup> in which the Shulchan Aruch establishes *mayim acharonim* as a *chova*, the Shulchan

32 Attributed to Rav Yosef Dov Halevi Soloveitchik as quoted in *Nefesh Harav*, pg. 220

33 Another opinion, based on a *beraisa*, is that both “*mayim rishonim* and *mayim acharonim chova*, [whereas] *mayim emtzayim* [washing between dairy and meat] *reshus*.” The point is that all opinions consider *mayim acharonim* to be a *chova*.

34 “*Adifa mimitzva*.” Tosafos (*ad loc.*) quotes Rabbeinu Tam who explains the difference, that during a *milchemes reshus*, soldiers are exempt from *mayim rishonim* but must still wash *mayim acharonim*.

35 O”C 181:1

36 *Brachos* 53b, incorporating *Vayikra* 20:7 (or *Vayikra* 11:44, according to the Vilna Gaon). This bookends the *pasuk* which begins “*V’hiskadishtem*...” and you shall sanctify yourselves, which the *gemara* explains refers to *mayim rishonim*.

37 The Aruch Hashulchan (O”C 181:6) rules that if one does not have enough water for both *mayim rishonim* and *mayim acharonim*, *mayim rishonim* takes precedence because there are those who are lax in *mayim acharonim*, though he also rules that if, on Shabbos, one who washes *mayim acharonim* at the morning *seuda* will not have enough water to wash *mayim rishonim* at *Seuda Shlishis*, he should wash *mayim acharonim* at the earlier *seuda*.

38 *Chullin* 105a. Tosafos do add, though, that for those people who are particular to wash their hands after eating, not washing their hands prevents them from saying *birchas hamazon* and they should wash *mayim acharonim*. See also Tosafos on *Brachos* 53b.

39 O”C 181:10

Aruch mentions that there are those whose *minhag* it is to not wash *mayim acharonim*. Commenting on this statement, the Mishna Berura<sup>40</sup> quotes the opinions<sup>41</sup> that one must still wash *mayim acharonim* today even without *melach sedomis*.<sup>42</sup> Rav Vosner comments that *mayim acharonim* today is a *chumra*, rather than a *chova*.<sup>43</sup>

Regarding a *bracha*, the Tur<sup>44</sup> quotes the opinion of the Remah to require a *bracha* due to *mayim acharonim*'s lofty status as a *chova*, and the opinion of the Behag and Rav Amram Gaon opposing a *bracha* because *mayim acharonim* is just for our protection from *melach sedomis*.<sup>45</sup> The Shulchan Aruch<sup>46</sup> rules that we do not make a *bracha* on *mayim acharonim*, though he repeats the *gemara*'s statement that it is a *chova*. Whether we say a *bracha* or do not, and it seems clear the practice is not to say one, there are many Orthodox Jews who are not careful with this *chova*.<sup>47</sup>

Perhaps this mitzva is not widely practiced simply because *melach sedomis* is not commonly used or found today as Tosafos mentioned above.<sup>48</sup> But many *acharonim* consider the obligation still binding, either because of Tosafos's second reason

40 O"C 181:22

41 The Vilna Gaon, Magen Avraham, Maharshal and Birkei Yosef

42 The Aruch Hashulchan (O"C 181:5) instructs every head of household to warn his family to be careful in the mitzva, even in the absence of *melach sedomis*. And Rav Avigdor Halevi Nevezahl (*Mishna Berura [with commentary of] B'Yitzchak Yikarei*, O"C 181:1, "she'ein") writes that in Eretz Yisrael (where *melach sedomis* is more prevalent) one should wash *mayim acharonim* even if doing so will cause one to miss out on a *zimun*, whereas outside of Eretz Yisrael joining in the *zimun* would take precedence.

43 Shevet Halevi, O"C Volume IV, 23.

44 Tur, O"C 181:7

45 Chullin 105b. Rav Yehuda in the name of Rabbi Chiya explains that *melach sedomis*, at least at the time of *gemara*, was mixed with the salt people commonly used at their table and could blind one's eyes. Rashi, in a comment to the *gemara* in Menachos 21a, explains that *melach sedomis* came from the "shores of the sea," presumably referring to the Dead Sea, which fills the valley that once contained the nearby city of Sodom. The Rambam (*Mishne Torah*, Hilchos Brachos 11:4) also rules we do not make a *bracha* because *mayim acharonim* was only instituted against *sakana*.

46 O"C 181:7. The Mishna Berura provides two reasons we do not say a *bracha*: (1) because we perform this mitzva due to *sakana*, and just as we do not typically make *brachos* on *shemira* from other *sakanos*, we do not make a *bracha* here, and (2) nowadays we do not perform the mitzva *k'tikuna* (as established by the Chachamim).

47 It is interesting to note further that even among communities where men are careful to wash *mayim acharonim*, women typically do not wash *mayim acharonim*, a curious distinction given the reasons for the establishment of the *chova* in the first place. See *Halichos Bas Yisrael*, pg. 58, footnote 11 and *Teshuvos veHanhagos*, I:174 which do not distinguish between women and men, and *Shevet HaLevi*, O"C IV, 23, which does.

48 *Minhagei Yisrael Mekoros V'toldos*, Volume III, page 180, ("bimrutzas hayamim shenital taam ha'issur, memayle hachel hatzibbur l'zalzel b'chova").

(*brachos* shouldn't be said if one's hands are unclean) is still relevant, or because other salt is dangerous.<sup>49</sup> Therefore, it seems to me that the laxity is possibly **more** than just the non-existence of *melach sedomis*. Perhaps the absence of a *bracha* facilitates the dismissal of the obligation in conjunction with the absence of *melach sedomis*.

In his *teshuva* about wearing *tefillin* earlier than is typically permissible, Rav Moshe evinced concern that a contemporary non-*talmid chochom* may become lax in his performance of a mitzva if the mitzva didn't require a *bracha*. Perhaps he was tapping into a psycho-social phenomenon, relevant not just in the 20th century but dating back to the time of the *gemara*, that without a *bracha*, ritual *mitzvos* may lose at least some of their importance, and the absence of a *bracha* may be perceived of as a reason to be lenient. A similar psychological phenomenon seems to underlie the *gemara's* requirement of a *bracha* on the second day of Yom Tov, and the Magen Avraham's requirement that one repeat even the fourth *bracha* when repeating *birchas hamazon*; omitting these *brachos* will lead to *zilzul mitzvos*. Perhaps we need to add one more item to the list of why the sitting in a *sukka* on Shmini Atzeres and washing *mayim acharonim* are often not widely practiced, as they do not require a *bracha* on their performance.

---

49 Though it seems that one with clean hands who is not accustomed to washing his hands after a meal is not required to wash *mayim acharonim* (*Aruch Hashulchan* 181:4).

# Discretion During Chaos

ELI SNYDER



In a tumultuous and unprecedented time, the Covid-19 virus placed the Jewish community in a an interesting, but familiar, place. While the world made decisions about how to conduct their lives with precautions to avoid catching and/or spreading the virus based on recommendations from epidemiologists, medical doctors and researchers, filtered through the media and politicians, religious Jews had a more foundational lens to approach the situations – that of *halacha*. Using the available scientific data on the one hand and *halachic/hashkafic* principles and precedence on the other, communities were tasked with determining the path forward. Shuls were locked, weddings were postponed, and *brisim* were Zoomed. Regarding private indoor social gatherings, such as a Pesach Seder or a Shabbos meal, we have heard from different sources that these would be unequivocally *assur*, both from a perspective of guarding your own health as well as protecting the health of others. But is that really the case? Can we unilaterally state that all indoor private meals with other families are against *halacha*? The idea of *sakanos nefashos* in this context is quite interesting and deserves some additional examination.

The assertions that 1) putting our own health in danger and 2) putting the health of others in danger, are a violation of *halacha* are not up for much dispute. Regarding the former, we can point to *Devarim* 4:9, “*Rak hishamer licha u’shmor nafshecha meod*,” “Only take heed and take of yourself greatly” and *Devarim* 4:15, “*V’nishmartem meod l’nafshoseichem*,” “Take good care of your life.”<sup>1</sup> While these *pesukim* on the *p’shat* level are referring to keeping the Torah and guarding your spiritual wellbeing, the

---

<sup>1</sup> See the article “Health and *Halacha*” by Dr. Morris Silver and Evan Silver in *Nitzachon* 5:2 for a deeper analysis of this principle.

---

Eli Snyder is a Senior Engineer at Instil Bio, a pharmaceutical company developing novel therapies for solid tumor cancers. He has been a member of Adas Torah since 2010.

Rema<sup>2</sup> and Rambam<sup>3</sup> clearly understand them to apply to physical health as well. For the latter assertion, one can simply look in *Parshas Mishpatim* or much of *Sefer Nezikim* regarding responsibility for damaging the health of another and obviously the ultimate prohibition of “*Lo Tirtzach*” in the Ten Commandments. However, where can these concepts be applied regarding private social gatherings<sup>4</sup>?

The degree that one must be careful to preserve one’s own health and life should not be discounted. All *mitzvos*, with the exception of the “Big Three”, must be violated to save a life following the principal of “*V’chai bahem*,” “And by which he should live” (*Vayikra* 18:5). Our lives are the most precious commodity and must not be treated with apathy or carelessness. However, taking this logic to the most extreme conclusion would imply a quite cloistered and hermetic life. How can one risk driving a car when there is a non-zero chance of getting into a fatal accident? Even stepping outside, one runs the risk of getting hit by lightning, attacked by a wild animal, or being struck in the head by a meteorite. Even if one is on the way to a *mitzva*, e.g. *davening* with a *minyan* or earning a living, surely *V’chai bahem* should take precedence? Most of the opinions that held private social gatherings are *assur* during a pandemic would still allow outdoor, physically distant, mask-wearing *minyanim* which themselves present a non-zero risk of Covid transmission. How can that be?

The *gemara* in several places (e.g. *Shabbos* 129b, *Yevamos* 12b) encounters cases where there is a possible risk of death and yet are permitted under the premise of “*Shomer Pesaim Hashem (Tehillim 115:6)*” – Hashem protects the common folk. That is to say, Hashem allows us to carry out our normal lives without fear of a rare catastrophic event. The *gemara* in *Shabbos* qualifies, “*Keivan d’dashu bei rabim*,” since the public tramples over the concern. When an activity becomes so commonplace that the public (not just the Jewish community) deems it as an acceptable risk, we are essentially allowed to partake in said activity. A detailed dive into the *acharonim* on the topic<sup>5</sup> yields essentially two qualifiers to apply *Shomer Pesaim Hashem*; the risk must

2 Y”D 116:5

3 *Mishne Torah, Hilchos Rotzeach* 11:5

4 There seem to be three major categories of *halachic* consideration when approaching the necessity to abide by recommended and legal Covid guidelines – 1) The actual health risk of self and others 2) *Dina D’Malchusa Dina*, the need to follow the law of the government even when outside of Jewish law and 3) *Chillul Hashem*. Regarding #2, pending the arguments made in the “*Machlokes L’Shem Shamayim*” in this issue of *Nitzachon*, you can draw your own conclusions and for #3, I wanted to avoid this discussion by focusing on activities done in private.

5 See “Are Double Black Diamonds Kosher?” by Rabbi Yaakov Siegel in *Nitzachon* 4:2 for a thorough discussion of the definition and application of *Shomer Pesaim Hashem*, in general and to skiing in particular

be a *miut she'eino matzui*, exceedingly rare, and *dashu bei rabim*, common practice i.e. *minhag hamakom*. If you are lacking one or the other, you might have trouble applying the principle. For instance, smoking cigarettes is very much a commonly accepted practice in many societies but the health risk involved is too objectively severe to be considered ok. Inversely, an activity that has the public perception of great danger, but with a statistically low mortality rate, such as bungee jumping or skydiving, might still be *assur*. In context of private indoor gatherings during the age of the Covid-19 virus, can we reasonably apply *shomer pesaim*?

To begin with the first qualifier, what is the numerical threshold for a *miut she'eino matzui*, if any? A common threshold in *halacha* is a less than 10%, and even the most dramatic estimates for Covid-19 mortality rates in the most vulnerable populations would fail to meet that criteria. There are other instances where *poskim* use a threshold of 1 out of 1000. This can start as the benchmark for beginning a statistical analysis of the risk involved in a private social gathering during the Covid-19 pandemic. At the time of writing, the United States has close to 21 million confirmed cases of Covid. Out of a population of approximately 330 million people, this comes out to 6.4% of the US population or 1 out of 16 people.<sup>6</sup> This is over the course of approximately 10 months, 300 days, and per CDC estimates, the average person is contagious with Covid for 10 days. So those 1 out of 16 people over the course of the pandemic were contagious for just 10 of 300 days, 1 out of 30, so in practice, a random American on the street has a  $1/16 \times 1/30$ , or 1 out of 480, chance of being contagious with Covid on a given day.<sup>7</sup> Now, assume you invite said random American over for Friday night dinner, indoors, with no mask or physical distancing. What is the chance they will infect you? This is highly dependent on whether he or she is symptomatic or asymptomatic. A meta-analysis performed by four researchers from the University of Florida Department of Biostatistics was published online by the Journal of the American Medical Association and found that the overall secondary attack rate<sup>8</sup> of

<sup>6</sup> One might take issue with using the confirmed case number due to the number of unconfirmed cases of Covid, arguing that the number of people who have had Covid can be much higher. However, for example, if you were to double the number of cases in the US to adjust for the untested population, you would proportionally need to halve the mortality rate and the numbers would effectively cancel out.

<sup>7</sup> We are heavily relying on the law of averages here since depending on the state, county, city and even community, the likelihood of a given person having Covid fluctuates tremendously based on when during the pandemic we are looking. Therefore, if you take a personal accounting, it is crucial you look at the current numbers in your community and make your decisions accordingly.

<sup>8</sup> The number of cases among contacts divided by the total number of contacts.



Covid within a household was 16.6%. However, for symptomatic cases the secondary attack rate was 18.0% and just 0.7% for asymptomatic cases. This is also within a household, where there is a persistent exposure, but putting that aside, using these numbers we have a 1/2667 chance for the symptomatic Shabbos guest to give you Covid and a 1/68571 if asymptomatic. Again, being conservative, we can use the overall 16.6% average rate which gives us about a 1/3000 chance of catching Covid at this Shabbos meal. Now what is the mortality rate? We know it depends on demographics. If you are between 20-49 yrs old, the CDC estimates a rate of 0.02% and between 50-69, it is 0.5%. For the younger crowd, 1/3000 X 0.02% brings you to a 1/14.5 million chance of dying. Our 50-69 year old needs to be a little more careful given their chance is 1/578,000.

There is, of course, an incredible amount of variation in these numbers based on the number of guests, the frequency and duration of your Shabbos meals, the current Covid numbers in a given community at the time and the care your specific guests take to limit their exposure. The reality is that hundreds of thousands of Americans have died. However, what our analysis should clearly indicate is that in the right context, we undoubtedly have a *miut she'eino matzui*. What about the second qualification of *dashu bei rabim*? How does the general public perceive the threat of the virus? In the last few decades, there was never discussion of cancelling weddings, closing schools and isolating our families due to flu season or even during the H1N1 or SARS epidemics. Covid-19 is a much different beast and it is a lot more difficult to ascertain the *minhag ha'olam* given the dynamic perception and political climate surrounding Covid-19 and the populace's reaction to it. In the early months of lockdown, beginning mid-March and continuing through April, each of us can anecdotally ascertain that there was a pervasive panic in the climate and regardless of whether the panic was warranted, it would be difficult to apply *shomer pesaim Hashem*. However, over the following months, as testing became more available and the behavior of the virus was better understood, the perceived threat diminished. One could argue that the disproportionate number of positive Covid cases in the US versus the rest of the world on its own indicates that Americans soon enough abandoned the initial Covid hysteria.<sup>9</sup> In sum, whether fueled by increased knowledge

<sup>9</sup> A clear proof is California. While under the strictest lockdown measures in the entire country, there were months that California had among the highest positive Covid case rate. Given that lockdowns primarily focus on closing public areas, and strict measures were taken in professional and commercial settings that *were* allowed to stay open, it would have to be deduced that the high rate of spread was heavily influenced by private social gatherings e.g. Thanksgiving, the Winter holidays etc.



or by brazen ignorance, the endpoint indicates that, indeed, *dashu bei rabim*.<sup>10</sup> As such, *shomer pesaim Hashem* can arguably be applied and an indoor social gathering, within reason, would be permitted.

To address the assertion that private social gatherings are a violation of *halacha* due to putting the health of others in danger, an additional understanding of the laws of *nezek*, damages, is necessary. It would be nice to say that since no one carrying the virus *intends* to sicken their friends, it would be *b'shogeg* and perhaps they would not be liable. However, the *mishna* in *Bava Kama* (26a) states quite clearly:

אדם מועד לעולם בין שוגג בין מזיד בין ער בין ישן סימא את עין חברו ושיבר את הכלים משלם נזק שלם.

*The legal status of a person is always that of one forewarned. Therefore, whether the damage was unintentional or intentional, whether he was awake while he caused the damage or asleep, whether he blinded another's eye or broke vessels, he must pay the full cost of the damage.*

The *rishonim* make room for an *ones gamur*, one who is acting completely out of duress, as an exception to damages but it would be hard to say that one who willingly congregates inside with their friend is an *ones gamur*. Can one be *mochel* on damages? This too is a discussion. We know in the case of surgery that this is certainly true, but there is a direct medical benefit to the surgeon cutting a patient open to perform the surgery. The *Minchas Chinuch* (48:3) regarding the mitzva to not wound a parent states:

ונלע"ד דזה שחייבה התורה בהכה או"א או בחבירו היינו דוקא בלא רשות אבל אם אביו ואמו אומרים לו שיקם או יקללם או חבירו א"ע בלאו הזה וא"ח מלקות ולא מיתה.

*The prohibition of the Torah to not strike one's father mother or friend is specifically without their permission, but if a parent or friend tells him to hit or curse them, they have not transgressed this prohibition and are not liable lashes nor death.*

<sup>10</sup> I would still want to emphasize this is limited to this particular application of the general sentiment towards Covid precautions. In contrast, as a personal example, several years ago I fell a little ill and in the course of treatment, I was left for a time with a literal zero white blood cell count in my bloodstream. While my personal health risk was astronomically higher than it is during any point of the Covid pandemic, no healthcare professional suggested I stay at home, avoid crowds, wear a mask etc. The extent of precaution was using Purell on my hands after each hand shake that week in Shul. Consider how differently we would approach this situation not just now but even in a future post-Covid world and it is clear there is a probable permanent shift in perception of contagious disease. To that end, *dashu bei rabim* needs to be evaluated for specific actions and might not be able to be applied too broadly.

In our case perhaps we can apply the same principal, that by extending or accepting an invite, there is an unspoken *mechila* absolving either party of the damages incurred by breathing in their proximity. However, we might be able to make an even better argument. Later in Bava Kama (32B) we have a *mishna*:

שנים שהיו מהלכין ברה"ר אחד רץ ואחד מהלך או שהיו שניהם רצין והזיקו זה את זה שניהם פטורין.

*With regard to two people who were walking in the public domain, or one who was running and another one who was walking, or who were both running, and they damaged one another, both of them are exempt.*

There is an implicit danger in running in a *reshus ha'rabim*, and since both parties accepted the risk upon themselves, they cannot fault the other. The Rosh (101:6) explains that this is beyond just *mechila*; by placing oneself in this situation, the damage you incurred is your own responsibility. This idea can be applied to, for example, a game of basketball where both parties know that there will be incidental contact and by stepping on the court, the possible injury they might experience is in a sense self-imposed. Similarly, we use *shomer pesaim Hashem* to allow us to drive a car, but that should only allow us to drive on lonely abandoned roads. Are we not also endangering others when we step behind the wheel? Again, we need to say that there is an implicit knowledge for any individual driver that they are incurring a (small) risk by sharing the road with other drivers and the decision to nevertheless drive is an implied acceptance of the risk. It is important to note that on both the basketball court and the road, that tacit social contract only exists on the assumption that the other basketball players and drivers will not act recklessly or negligently. Our principle works when the rules of the court and the road are followed, but if one punches their opponent in the face (unless this is hockey) or texts while driving, they are acting beyond the accepted social risk and should be held liable. For the private social gathering, the same rules should apply. Reuven invites Shimon under the assumption that Shimon has no suspicion he is carrying Covid or was recently in contact with a positive case. If Shimon obscures his own fever or neglects to mention his roommate is sick, he should be liable if Reuven contracts the virus since Reuven may have not invited Shimon under those circumstances. Reuven can only invoke *shomer pesaim Hashem* when his chance of exposure is exceedingly rare and as such, relies on Shimon to be presumably Covid-free. On a larger scale, when you go to the grocery store or to Shul, everyone there is assuming an universal acceptance of the rules posted on the door or legislated by a governing body i.e. wear a mask, do not

enter if you have a fever, cough etc. Whether you believe a mask is actually effective in preventing spreading of disease in that context, you have an obligation to wear one since that is the condition that your compatriots are allowing themselves to visit said establishment. In a Shul or store where it is known that mask-wearing is not enforced, there may be less of a personal impetus to wear one since that is the commonly accepted risk for all the parties involved. It is like driving on the Autobahn vs the 405 or playing ice hockey instead of basketball.

As far as the *issur* to not harm oneself or others, we should be able to contend that in certain circumstances, a private social gathering does not violate any *halacha*.<sup>11</sup> Beyond the psychological and physical toll extended isolation can present,<sup>12</sup> this is important to emphasize since it is crucial in any *halachic* determination to view the case with a nuanced approach before painting with too broad a brush. There might be “objective truths” in *halacha* but their application must be measured before a wide declaration of *assur* or *muttar*. This principle is profoundly present when it comes to laws like *nidda* and *basur v’chalav*, and to abandon it in the light of Covid-19 can be dangerous and disheartening. In a time when public trust in the mainstream media is crumbling, when confidence in our governing bodies are ever waning, we turn to our rabbinic leadership for an honest and sincere response. Take for example a “Message from Agudath Israel of California,” which emphasized responsibility and care in light of the December surge of coronavirus cases in the Los Angeles community. While they state, “We should make every effort to minimize social gatherings,” it is not presented as an *assur/muttar* determination. And as a conclusion, the final line states, “The hope is that whatever decisions a God-fearing Jew makes with regard to this virus, let them be based on facts and with concern for the well-being of all other members of our *kehilos* and the community at large.” There must be room for each individual to make an informed and responsible decision, weighing the threat at hand in the specific time and place. In a dark time when people have been reduced to faceless vectors of a nefarious virus, utilizing our personal *da’as* when confronting a challenge is crucial to preserving our humanity.

11 I am not personally advocating throwing all caution to the wind regarding indoor social gatherings. *Minhag chasidus* might urge us to extend past *halachic* limits, as the Rambam states regarding living a healthy lifestyle.

12 A phone or video call is never a perfect replacement, especially for the intimacy and warmth of a Shabbos meal, which geographically speaking, is not always possible outdoors.



# Airline, Hotel, Amazon, and Other Internet Price Mistakes: Can We Take Advantage of Those Amazing Opportunities?

DR. JONATHAN NISSANOFF



**D**an's Deals, TJB Deals, Secret Flying, The Points Guy, price mistakes, and so many other amazing websites often advertise the deals of the century. Does *halacha* allow one to take advantage of "the deal?"

Everyone reading this title is excited and hoping that the final answer is yes. Who isn't enticed to by a top-of-the-line cell phone for \$100 when it retails for \$1,500? Everyone feels that they got a deal. But is it truly a deal when you might not even be allowed to keep it because *halachic* authorities might say that it is really not permitted?

I must admit that I am unable to conquer my *yetzer* and not take advantage of a good deal. I am very weak and I admit it. I needed to make sure that there was a valid *halachic* authority that allows me to continue to be weak and not force me to challenge that part of my *yetzer hara*. I am subscribed to a few websites that alert me when there are price mistakes. And like many others, I have always thought it was allowed and acceptable. One day, I was reading a blog from other consumers that felt that it was a *chilul Hashem* to be "taking advantage of the airlines" and that it was against *halacha* to purchase a "mistake-priced" airfare or items that wouldn't reasonably have been priced so low to be a correctly-priced item. There was a lot of back and forth on this blog with so many people taking both sides and quoting *halacha* that supported their side. I was very worried that I might have been doing something that wasn't acceptable, so I decided to undertake the task of looking into this issue and gain a

---

Dr. Jonathan Nissanoff is an Orthopedic Surgeon and the medical director for  
Orthopedic Specialists of Southern California.  
He has been a member of Adas Torah since 2016.

better understanding of why people felt that this was not *halachically* acceptable, so that one day I can educate them otherwise. I had every intention to find every *meikil* opinion on the issue, as I was not prepared to give up traveling first class for the price of coach, nor giving up staying at a Fairmont hotel for the price of a Motel 6. The issues here are somewhat grey in nature for certain issues and black and white for others. In the end, I would recommend that every one should follow the black and white *halacha*, and to ask their Rabbi about the grey issues.

Let's go over the issues one by one and see what is and is not permissible according to *halacha*, and how we can make the argument that you can be *meikil* on taking advantage of the best price afforded to you and nature of "their deal."

The following *halachic* questions come to mind when bargain hunting. Is it ok to call different stores to find the best price for an item? Are you taking away *parnasa* from a local store that has a higher price by purchasing the same item on Amazon for less (not to mention free shipping and no-hassle returns on Amazon Prime)? There are even applications on your smartphone that can scan a product in a store and tell you all the prices of that same item selling in stores nearby. Are you allowed to walk into a store and use this application? You are essentially using the store owner's information and goods that he paid for, including his overhead and staff. By not reimbursing him for information that you have gleaned for free using this app, one might in fact be stealing this information. Pretending to be a legitimate shopper could be considered *geneivas da'as*, misleading while engaging in deceptive behavior, which is prohibited. Even if the store owner knows that this technology exists, they cannot legally prevent someone from using the technology (i.e. their cell phone) and stop customers from using these applications. One could theoretically avoid the problem of *geneivas da'as* by simply telling the merchant that you are looking at his products but also will be checking online to see if there is a better price elsewhere. If the merchant grants you permission to do so, then there is no *geneivas da'as* as you may very well turn out to be a serious buyer in his store if his prices are competitive.

In addition, it is prohibited to ask a seller how much he or she is charging for an item if the person asking really has no interest in purchasing the item and is only asking about the price for other reasons. Doing so violates the prohibition of "*V'lo sonu ish es amiso*, do not oppress (by misleading) one's friend. (*Vayikra* 25:17)" By asking the price, he is raising his friend's hopes that he has a potential customer, only to be disappointed when he realizes that his hopes were raised for nothing. This is forbidden even if the person asking has no intent to disappoint the seller.

The *gemara* in *Bava Metzia* (58b) explains the *pasuk* of "*V'lo sonu ish es amiso*"

to be referring to *ona'as devarim*, verbally causing someone to suffer. The *gemara* points out that such *ona'a* is worse than financial *ona'a*, since there is no way to really compensate a person for physical, mental, or emotional suffering, whereas it is possible to compensate a person for financial suffering. This idea is codified in *Shulchan Aruch C"m* 228:1-4.

There should be no difference whether the seller is Jewish or not, as *geneivas da'as* applies equally against Jews and non-Jews (*C"m* 228:6) According to many *poskim*, *geneivas da'as* is forbidden *min ha-Torah* (Ritva, *Chullin* 94b; *Sefer Koveitz* on Rambam *Hilchos De'os* 2:6.) So in short, one is not permitted to use these applications to get a deal elsewhere.

Although the example above is real, the reality is that it is highly impractical for someone to actually utilize this application. Most people don't have the time to go into a store and start scanning every item they wish to buy, taking down notes as to which products are cheaper at which stores nearby and then set out on an expedition spending the next eight hours of the day running all over town to twenty different stores to save a few dollars.

*Gneivas da'as*, in the end, is based solely on the original intent of the consumer. If the intent was moral and ethical, then the action is usually permissible. If the intent was to deceive or steal, then the same exact action is forbidden. Purchasing an item with the intent to keep the item, then using the item only to find out it is defective, and then returning it is permitted, but purchasing an item to use temporarily with the intent of returning it and getting back your money is prohibited.

It would be reasonable to walk into a store and ask what a particular price is and then decide if this is the price that you intended to pay for the item. Most people already have either done their research in an open market and can make an educated decision whether it is better to order something online that might be cheaper, but will take several days or weeks to get, or to purchase something locally and pay more for the convenience of getting the product immediately. The price that someone is willing to spend for that differential many vary from person to person and circumstance to circumstance, and therefore it is permissible to ask the price for something that you would have otherwise intended to purchase from that store even if in the end you decide that the value for the product isn't worth paying for.

What if you go to a store and find an item priced better than what you were able to get it for online. You would be ecstatic that you didn't just assume that the price in the store was higher, as you were willing to pay that higher price for the convenience of getting that item immediately. But what if after you bought the item you found out



that the owner mispriced the item? Are you required to return it? Are you at least required to inform the owner that there was a mistake? If you already used the item and it was a one-time use item, are you required to pay the difference? What if the difference was way too high and you wouldn't have purchased it in the first place if you knew that this was the price the owner of the store would have asked for? These are real issues that happen everyday. Usually, they do not happen in the Main Street retail store, but rather they happen online.

Recently, there was a first class flight that was offered online from Delta from NYC to Hawaii during Yeshiva Week for \$25. Clearly no one in their right mind would say that this wasn't an error fare. (The actual cost for a regular first class fare is \$5000 each way!) Interestingly enough, this must have been an acceptable action based on *halacha* because every flight was full of Jews! Practically every meal served on those flights were kosher meals (which, at \$35 apiece, cost the airline more than the \$25 price of the ticket that was paid).

I love to get a good deal. When I download an app like Uber Eats and they give me \$30 for free to use, I might decide to use the \$30 on only one meal. The meal effectively turns out to be free. Does *halacha* say that I am required to use Uber Eats again because they gave me a free meal? Does *halacha* state that the meal has to be more than \$30 as it is clear that they will lose the full \$30, if that is all I purchased? Businesses give away items on purpose to entice the buyers to spend more. Not all buyers spend more, and it would be unreasonable for a layperson to think that a multibillion dollar company with several full time statisticians and psychologists that study human behavior don't know this and understand that a certain pool of the population may never use their product again. All this is factored into their equation to market and give away \$30 of food to millions of people. If you called up Uber Eats and asked if you would be allowed to just use the \$30 for \$30 worth of food and then delete the app, they would say you can, even though they don't want you to do that. This, therefore, cannot represent theft in any manner. Essentially, Uber Eats is basically paying people \$30 to use the app.

With this understanding of how complex these issue can be, let's explore the issues that *halachically* define stealing and how it might or might not apply to deals that appear on our phones, WhatsApps, or emails.

### **Ona'a**

In general terms, *ona'a* (lit. overreaching) refers to the Jewish laws surrounding monetary deception. While the word is used in modern Hebrew to describe fraud or



embezzlement, in *halacha* it describes unfair pricing, the act of wronging another by selling an article for more than its real worth or by purchasing an article for less than its real worth. As detailed in *Shulchan Aruch C"m Siman 227*, there are different rules for when the difference is less than, more than, or exactly  $1/6$  from the proper price.

The law of *ona'a* applies to overcharging as well as undercharging, as the prohibition is not of theft in its raw form but is encompassed in the wider prohibition against robbery. The punishment for *ona'a* is not lashes, despite the express enjoinder of the prohibition as a negative command. That Rambam in *Hilchos Mechira 12:1* explains that this is because it is remediable by restitution, as the person who harmed the other is obligated to repay the difference of the amount over or under paid.

### **Claim for Restitution or Invalidation of a Transaction**

A purchaser who wishes to claim restitution or to invalidate a transaction on the grounds of overcharging must do so within the time it would take for him to show the article to a merchant or another person who can ascertain its market price (*Shulchan Aruch, C"m 227:7*). A longer delay entails forfeiture of his right, but he need not pay the price if he has not yet done so (Sifsei Kohen). If the injured party is the seller, he may retract at any time since he no longer holds the article and cannot show it to a merchant (*Hilchos Mechira 12:6; Shulchan Aruch C"m 227:8*). However, if the seller should ascertain the value of the article and thereafter fail to claim restitution of the amount of the undercharging or invalidation of the sale, he will forfeit his right to do so (*Shulchan Aruch, ibid.*), but another opinion is that the seller retains this right at all times (*Maggid Mishne, Hilchos Mechira 12:6*).

The *poskim* debate as to whether the law is applicable when there exists a range of prices and no set market value. Beis Yosef *C"m 209* says there is no *ona'a* in such cases, while the Bach and Shach say that there is. It's possible that even when secular law dictates that the sale is valid, there may be a *halachic* obligation to undo the sale. Rav Vosner, in *Shevet HaLevi 5:218*, concludes that there is *ona'a* when there is no set price in the market, in accordance with the aforementioned Shach and Bach.

So let's get back to our question. An airline employee accidentally deletes a "0" at the end of a price and the \$2000 ticket to Israel is now only \$200. What is the buyer obligated to do once he has succumbed to his desire and purchased that ticket? This is a very complicated question, as one can argue that there is no uniformity to the cost or value of any ticket. You can have a ticket priced at \$100 if your flight is in one month and the same ticket priced at \$1000 if the flight is tomorrow. If you go online and plug in dates and flight segments, you can see every ticket priced for that

flight from every airline, and they are all vastly different in how they are priced. The variation can be anywhere from 10 to 100 times from the lowest to the highest priced fare.

In order to get a better understanding of the *halacha*, we need to understand the raw data on how airlines decide to price their tickets. A certain percentage of tickets are set aside to sell at a certain price. Another percentage are sold at a higher price. The system is continued until the very last tickets are sold at the highest price. Because of this inherently ambiguous nature of the “price and value” of a ticket, this pricing structure should, in and of itself, exempt a “mistaken airfare” from *ona’a*.

To put a stake in the heart of this issue and allow the consumer to *halachically* keep the underpriced ticket, we need to look at a concept called “*kim li k’hani poskim*” which states that a litigant in a Din Torah has a right to declare that he agrees with the opinion of a Rabbi that is favorable to his position.<sup>1</sup> An airline has the right to

---

<sup>1</sup> Here are the situations where we are allowed to apply *Kim Li*:

- a. In any financial adjudication that comes before a *Beis Din*, in which there is a disagreement among the *rishonim* or *acharonim* as to how to decide the case, a *Beis Din* is not permitted to extract money from one of the litigants and award it to the other, as the liable party can claim “*Kim Li*, I am sure that the rabbis who are of the opinion that I do not have to pay this money are correct!”
- b. The claim only works for the person who has possession of the money or object in dispute (the *muchzak*). Therefore, if a plaintiff had seized money or items under dispute from the defendant and is now coming before the *Beis Din* for their opinion as to whether or not he is in the right, *Kim Li* will work in his favor. If the airline took back the electronic ticket, it would be very difficult to then get it back.

There is a basic difference in how we deal with *sfeikos* in the laws in *Orach Chaim* and *Yoreh Deah* (which deal primarily in Bein Adam L’Makom) and financial *halachos* found in Choshen Mishpat, (which is primarily Bein Adam L’Chaveiro). In *Orach Chaim* and *Yore Deah* (also known as *Issur V’Hetter*), the Torah gives rules on how to determine the *halacha* in cases of doubt, such as *rov*, following a majority, or *chazaka*, following a status quo. Although we may not know conclusively that this is accurate, these tools help us make a determination of which side should prevail. As stated above, some *halachos* are black and white. As an example, we know that a pencil is *muktza* and cannot be moved on Shabbos. Sometimes the same *halacha* can move into the grey or white zone in specific circumstances; the status of that pencil might change if it is now used as a splint for a finger fracture, nullifying its status of *muktza*. In *dinei mamonos* a *Beis Din* has no right to force someone to pay in a situation of doubt. Determining liability is either through the testimony of two kosher witnesses, or the admission of the litigant that the facts as stated are true. When the status of a mispriced item changes from *ona’a* to not *ona’a*, then the *halacha* also changes with regard to the requirement of returning the item to not having to return the item. Therefore, if there would be a *machlokes* between the Rosh and the Rambam regarding a certain issue, since today our *Batei Din* do not have the stature to decide conclusively that one opinion is more correct than the other, it is not absolutely clear that the litigant (or the purchaser of the mispriced ticket) must pay. Therefore, the *Beis Din* can not extract money from one person to be given to the other involuntarily, and is required to leave the money in the possession of whoever has it (the one who holds the mispriced ticket). There is an old saying that 90% of ownership is who has possession of the item. This holds true in this *halacha* as well.

The litigant that is in the possession of the disputed item can not be considered a thief at all, even though there

say, “I know that the law is in accordance with the *poskim* that hold that I am allowed to get the ticket back (See *Beis Shmuel C”M* 68:19).” The purchasers of the Dan’s Deals ticket can then respond that in their view, the law is in accordance with the *Beis Yosef* (who would allow keeping the item). While the buyer cannot use this principle prior to purchasing the mispriced-ticket in order to permit the purchase, he is able to utilize this principle after the ticket has been purchased and then have no obligation to undo the deal.

We can make one more argument to exclude the sale of a mispriced airline ticket from the category of *ona’a*. The laws of *ona’a* do not apply to an item sold in an auction. You can have different prices for the same item on the same websites (i.e. Amazon, Ebay). Many websites even allow the consumer to “bid” on an item, or contact the owner to see if he is willing to give a reduced price. If, in fact, the internet is considered to be an auction block with businesses trying to underbid the other, then we may be able to follow the ruling that due to the public nature of the sale, there are no set prices and no official market price.<sup>2</sup>

If the above arguments don’t convince you to take advantage of the next deal in good conscience, this one should. Perhaps the ticket price was not, in fact, below market rate. One of the reasons why the total cost of the ticket was so much lower than usual was that the fuel surcharge was not included.<sup>3</sup> When someone fails to charge an additional fee that is not part of the sale price of the ticket, such as a fuel surcharge, failing to not having it charged would not negate the sale.<sup>4</sup> The situation may be analogous to a venue that charges an entrance fee and then makes sales of drinks or food once someone enters that venue. If the venue owner failed to collect the entrance fee there would be no obligation for the purchaser of the drinks or food to pay that uncollected entrance fee.<sup>5</sup>

---

is a doubt as to whether or not the disputed item belongs to him. Theft only applies to something that clearly belongs to someone else, or something regarding which that *Beis Din* has issued a verdict that it belongs to another person. (*Nesivos Mishpat* in *Biurim* 4:3, the *Nesivos Mishpat* at the end of *Siman* 25 (*Kitzur Dinei Tfishah Klal* 20-24), and the *Birchei Yosef C”M Siman* 25.

2 Rabbi Yoseph Shaul Nathanson, *Shoel UMeishiv* Edition IV 3:137

3 Fuel surcharges are almost like the tax we pay on gasoline at the pump. We may not even know that we pay it, but once we ask how much tax we are paying we realize it can be more than half and sometimes more than three quarters of the price of the gallon at the pump.

4 While some may argue that the fuel surcharge is an accounting device, the fact is that technically it appears to be legally construed as an extraneous fee.

5 *Teshuvos HaRosh* 13:20

To solidify this argument, let's understand why these fuel surcharges exist, to give us more insight on why not paying them would not constitute *ona'a*.

I believe there are four main reasons fuel surcharges exist:

1. So airlines can charge travelers for allegedly "free" frequent flier awards and companion tickets with part of the fare.
2. So airlines can make their fares appear much lower than they really are.
3. So airlines can lower the fare basis on which they pay commissions to travel agents.
4. So airlines can circumvent the law and raise the fares on routes where fare increases still need some sort of outside approval.

Accordingly, since the fuel surcharge is technically not part of the sale itself, if it were unintentionally left out by the airline, creating the "price mistake," one would not be forced to undo the deal from a *halachic* perspective, as the purchaser actually did pay for the full price of the ticket and the fuel surcharge, again, is extraneous.

Not to beat a dead horse, but, in addition to all this, there is a *halachic* rule of *dina d'malchusa dina*, the law of the land is the law we follow in *halacha*. Since the Department of Transportation mandates that price mistakes on airline tickets must be honored by the airline, then *halachically* there is no requirement to return a ticket with a price mistake. The reason why this law even exists is because when a purchaser books a flight and makes a "booking mistake," legally the purchaser who made the mistake is responsible for any fees associated with changes. If the flight is non-refundable, the purchaser will forfeit the ticket and take the loss because of his mistake. So too, if the tables are turned and the airline makes a price mistake, the airline is responsible for the loss of their mistake. Because this is such a regulated industry, there is no *ona'a*.<sup>6</sup> The airline has agreed to operate all areas of its business in accordance with the regulations set by the authorities, including the conditions regulating sales and sale prices. As such, the sale is *halachically* valid. Furthermore the acceptance of the mistaken priced ticket is not about a forced regulation but the

---

<sup>6</sup> Had such a glitch occurred in any unregulated industry, it would be a classic case of *ona'a* and *mekach ta'us*. This would have been substantiated by the fact that the quoted price clearly would not have reflected the market value of the merchandise, and the seller had not intended to sell the merchandise at this low price. The merchant would therefore render the sale null and void. If, for purposes of good PR, the merchant wished to honor the sale, he may do so. Therefore, in the case of a sale where the merchant did not find out about his price mistake before the online purchase, one may *halachically* take advantage of the mistake (hoping that the merchant would honor the sale) since his action has no legal bearing on the seller and the buyer is simply hoping that the seller will still honor that mistake in the end.

result of a voluntary acceptance to do business in accordance with those regulations set forth by the government. As such, there was no *halachic* prohibition against taking advantage of this price error on the airline ticket.

In addition, I have found that after finding out about the mistake the airline has made, the airline usually honors these sales for charitable or public-relations motives, making this a non-*halachic* issue altogether. Furthermore, if a plane is flying anyway with empty seats, it probably is worth the airline selling the seats for almost nothing because their variable costs per flight are so low. So in many cases, the airline is probably even profiting from the sale at such a heavily discounted price.

Now that we have discussed the specific issue of airlines (which are parallel to price mistakes on hotel rooms) we now need to look at the issue of what happens when there is a price mistake on Amazon. The law of the land does not require the company who made that mistake to honor that price. Therefore, before the item is shipped, if the price mistake is caught by the company and sale and shipment is cancelled, there is no requirement for the seller to honor that mistake. But what happens if the seller didn't catch the price mistake in time and wasn't able to cancel the order and the order ships. Are you required to return the item? If you are required to return the item (and don't have Amazon Prime), there is now going to be an incurred expense to ship the item back. If the owner calls and requests the item back and is willing to pay for the shipping, there still shouldn't be a *halachic* and moral obligation to return the item, based on the above auction block argument.

Furthermore, if the seller chooses not to call and request the item back, then then one can make the assumption that the seller has accepted the sale of the price at the discounted rate, making the sale a valid sale. If a person fully understood the value of the item and agreed to the "*ona'a*", then there is no *ona'a* negating the sale (Shulchan Aruch 227:21). Additionally, the seller has likely lowered the value of the item because of the additional shipping cost needed to retrieve it and possible "used item depreciation of the item," and so there would be no *ona'a* anyway.

This concept also constitutes *mechila*, forgiveness of the underpricing and validation of the sale. Once the company agrees to the sale, they cannot *halachically* revoke the consent.

In the end, there are lots of very difficult questions that need to be answered when purchasing items that are "price mistakes" and concluding that one is allowed to rely on *halacha* to keep those items. There are issues that go beyond *halacha* and enter into an individual's moral values and obligations as well. There are many *poskim* that one can rely on that allow "taking advantage" of price mistakes that occur on the

internet. Airline mistakes, Amazon price mistakes, and hotel price mistakes are part and parcel to our life in the 21st century since most shopping is now done on the internet. Based on the above information on *halachic* authority, it appears that one would be allowed to visit the various deal sites.

In the end, one must consult a rav who understands the complicated nature of how to treat the person who gets addicted to purchasing deals on these web sites after he understands that *halachically* he may be permitted to keeping all the items that were price mistakes.

# The Big Reveal: Today's Epic Battle Of Gog And Magog

DAVID R. SCHWARCZ



**M**any are bewildered and overwhelmed by the ominous and lethal COVID-19 pandemic. These dark times hearken back to the Middle Ages when we sought redemption through realization of the Messianic prophetic visions.

Indeed, collectively we query “*Ma Nishtana*” - why is COVID-19 different from other plagues and catastrophes? Why isn't COVID-19 another false positive for the commencement of the Messianic Era? What unique Messianic signs appear in the guise of COVID-19 that differentiate it from previous Messianic promptings?

Why should *Mashiach* arrive now when we have not reached the year 6000 in the Jewish calendar?<sup>1</sup>

## Background

A brief review of the following passage in *Talmud Bavli Sota* 49b sheds light on the objective ‘tell-tale’ signs of the imminent arrival of the Messianic Age.

The Talmud depicts the signs immediately preceding the advent of the Messiah:

1) **Insolence will increase**, meaning that honor will be contorted.<sup>2</sup> People will not respect each other, but rather display utter contempt. Overt disdain and hostility are evident in the polarization between the three branches of the United States Government— Executive, Legislative and Judicial— and bitter animus between the two warring political parties, Republicans and Democrats. To add insult to injury, Israel faces a fourth election prospect and appears to be once again at a deadlock.

Indeed, no politician will be able to reproach another because the overwhelming

---

<sup>1</sup> See the “Year 6000” article on Wikipedia.

<sup>2</sup> *Sanhendrin* 97a

---

David Schwarcz is a past president of Congregation Mogen David and a member of Adas Torah since 2011. He is of Counsel to the Law Firm Beilis & Polls, LLP.



majority are morally and legally compromised. When public figures or leaders are accused of committing serious crimes or immoral acts, they discredit such accusations by claiming that the accuser is either a 'right wing' conspiracy theorist or a 'left wing' radical. 'Identity politics', 'cancel culture' and 'virtue signaling' are employed as ruses to deflect, camouflage or even justify heinous conduct. A person is no longer judged by their actions or deeds, but rather by the political party they represent or with whom they identify.<sup>3</sup>

2) **The insatiable desires for luxuries will not be satisfied.** The world's wealth is concentrated in 1% of the world's population. The 25 richest people control the majority of the world's major industries.<sup>4</sup> This lopsided distribution of wealth inexorably devolves into accelerated class struggle. Acute economic disparity disrupts the world's financial systems, leading towards a collapse and ultimate restructuring of the flawed socio-economic system. The one who loves money is never satisfied with money, and whoever loves wealth is never satisfied with income.<sup>5</sup>

3) **The world's dominant power will aid the spread of non-belief.** Commenting on the *mishna* in *Sota* (49b) that "the government will turn to heresy and there shall be no rebuke," Melech Shlomo and the Tiferes Yisrael posit that in the Messianic era the world's dominant power will aid in the spread of non-belief. The concept of 'non-belief' is rooted in Nihilism, a philosophy that's understood as extreme skepticism about existence and religious or moral principles. The doctrine espouses that nothing actually exists and values are meaningless. Rejection of the established order or social system with its religious principles is an example of Nihilism.

Indeed, Nihilism is the view that there are no moral facts, that nothing is right or wrong, or good or bad. In contrast, Moral Relativism is the view that moral statements are true or false as relative to some standard or other, that things are right or wrong relative to religious moral standards, and different things are right or wrong relative to Confucian standards, but nothing is objectively right or wrong.<sup>6</sup>

In 1927, Martin Heidegger observed that Nihilism in various and hidden forms was already "the normal state of man" (*The Question of Being*). Other philosophers' predictions about Nihilism's impact have been dire. Outlining the symptoms of

<sup>3</sup> The bearers of truth will be unable to demonstrate the falsity of heretical views. See *Zekunin D'Nura to Seder Eliyahu Zuta* Ch. 16.

<sup>4</sup> See "The World's Billionaires" article on Wikipedia.

<sup>5</sup> *Koheles* 5:10

<sup>6</sup> *The Oxford Handbook of Ethical Theory* by David Copp (2005)



Nihilism in the 20th century, Helmut Thielicke wrote, “Nihilism literally has only one truth to declare, namely, that ultimately Nothingness prevails, and the world is meaningless.”<sup>7</sup> From the Nihilist’s perspective, one views life as amoral, a conclusion, Thielicke believes, that motivates such monstrosities as the Nazi reign of terror. Ominous predictions of Nihilism’s impact are also charted in Eugene Rose’s *“Nihilism: The Root of the Revolution of the Modern Age”* (1994). If Nihilism proves victorious—and it’s well on its way, he argues—our world will become “a cold, inhuman world” where “nothingness, incoherence, and absurdity” will triumph.<sup>8</sup>

Today, with the footsteps of the Messiah, Nihilism and Moral Relativism compete for the minds and souls of humanity. In the post-modern digital age, people cannot rely on information disseminated by major media outlets that are biased, let alone believe in moral principles derived from ancient religious texts. This pervasive skepticism gives rise to “culture clashes,” “identity politics” and “resignation.” People do not believe in principles or values, but rather they identify with a political group that expresses their personal feelings and beliefs.

The risk of non-conformity to the political and social beliefs of a dominant party may lead to severe adverse economic and social consequences for the ‘rebel.’ No man may reproach another in good faith because there is no objective standard to measure one’s conduct. Every act will be judged based on subjective personal standards.

In the *Zekunin D’Nura to Seder Eliyahu Zuta* (Chapter 16), the author, commenting on *Sota* 49b, says that one of the signs of the pre-Messianic era is “there will be no rebuke.” He opines that the bearers of truth will be unable and unwilling to demonstrate the falsity of heretical views.

4). **The truth will be absent.**<sup>9</sup> *Sanhedrin* 97b records a homiletic interpretation of the paraphrase of *Yeshaya* 59:15: “And truth was absent” in the Messianic era as the followers of truth shall be forced to conceal themselves or be scattered and fracture into disassociated groups.

This pre-Messianic sign of “Absence of Truth” is highlighted in Rav Yosef Dov Soloveitchik’s soaring and eloquent essay “*The Lonely Man of Faith*,” published in 1965. The essay, inspired by the Torah’s depiction of the two versions of the creation of Adam, both charged with their respective opposing missions, valiantly attempts to harmonize these two dueling forces within man.

<sup>7</sup> *Nihilism: Its Origin and Nature, with a Christian Answer*, 1969

<sup>8</sup> “Nihilism,” by Alan Pratt, *The Internet Encyclopedia of Philosophy*, ISSN 2161-0002 (<https://www.iep.utm.edu>)

<sup>9</sup> *Sota* 49b

The first version of Adam (Adam 1) is a technocrat charged with the pragmatic mission of employing his technical intelligence to populate the world, and develop social, economic, and political systems to support the advancement of the society. The Torah's second version of the creation of Adam (Adam 2) explores the purpose of existence. Through faith in God, man develops deep and intimate relationships with other human beings. Adam 2 thirsts for redemption, discipline, control over one's self, and even desire to be overpowered by God.

Because both personality types are willed by God, the human being must attempt the seemingly impossible—to be part of both communities, the utilitarian and the covenantal. Accordingly, God bids the human being to live in both communities at the same time, oscillating between creative, victory-bent man and humble, submissive man. A person cannot throw off either part of his or her personality. As Shakespeare aptly states, "And here is the rub:" The need to live in both communities means that the man of faith has no single home. Adam 1 is a wanderer, striking roots in one community, only to uproot himself and travel to another, in a continuous cycle. Indeed, Adam 2 must, by Divine mandate, enter Adam 1's community as well; complete redemption is unattainable.

The Rav emphatically points out that turmoil and sacrifice, not comfort and placidity, are, by Divine edict, the hallmarks of authentic religious life.<sup>10</sup>

Notwithstanding the praise and courage of Adam 1's valiant attempt to harmonize his dual and opposing missions, the Rav believes that Adam 1 is to blame for a new type of loneliness afflicting the contemporary faith community. People today not only ignore their spiritual mission to connect and even submit to a greater power, but they actually reject this mission as archaic. Modern man denies his dialectic nature by regarding himself as the totality of the human personality. Popular culture is narcissistic, arrogant, and ultimately demonic in its outright dismissal of the covenantal faith community.

Adam 1 (the majestic Adam) impulsively ignores the unique and strange transcendental experience that resists subservience to the cultural interests of Adam 2. This is not to say that contemporary Majestic Adam is an atheist or agnostic. Adam 1 may well attend a house of worship and participate vigorously in institutionalized religion. But, as the Rav astutely observes, "Adam 1 seeks a religion that caters to his interests; he is searching not for a faith in all its singularity and otherness, but for religious culture." Adam 1 demands religious serenity, not sacrifice; comfort, not

---

<sup>10</sup> Rav Joseph B. Soloveitchik, *The Lonely Man of Faith*, (Doubleday (2006)—pages 79-80.

commitment; an aesthetic experience, not a covenantal one.

With desperation, the faith community tries to bridge the chasm between the two communities by translating its spiritual, mystical and transcendental experiences into contemporary culture categories. But this effort, though valiant, ignores the “white elephant in the room.” One cannot substitute, transmute, or reduce pure simple faith into socially or politically acceptable categories. Indeed, faith cannot be measured by adherence to political correctness or subjective and arbitrary definitions of social justice.

Indeed, Adam 2’s faith community, in marked contrast to Adam 1’s post-modern society, says, “One man’s freedom fighter is NOT another man’s terrorist.”<sup>11</sup>

The hallmark of Adam 2’s covenantal community is that only God’s law can ground the required objectivity without which morality would deteriorate to subjectivism and relativism.<sup>12</sup>

Indeed, according to Adam 1’s philosophy, what makes an action right or good is not the fact that it is commanded by God, “On the contrary, it is commanded by God because it is right or good.”

Note that the emphasis of Adam 2’s faith-based community on the moral nature of Judaism also assumes the epistemological independence of the moral knowledge of Divine revelation. Had our moral knowledge been wholly derived from the Torah, we would have been in no position to morally evaluate its laws or to praise their moral message. Hence, God has endowed human beings with the capacity to know good and evil, right from wrong, without revelation. Another prominent feature of the view under consideration is the emphasis on the non-formalistic nature of the Torah suggesting (a) that *halacha* is not merely a list of decrees, but has some underlying goal(s) these decrees are meant to realize, and (b) that the interpretation and implementation of *halacha*, its general values and goals, in particular the moral ones, should involve consultation.

In other words, for Adam 2, applying *halacha* to concrete questions in a changing world is not a simple deduction from a list of premises on the basis of given rules

---

11 Postmodernism is an intellectual stance or a mode of discourse that rejects the possibility of reliable knowledge, denies the existence of a universal, stable reality, and frames aesthetics and beauty as arbitrary and subjective.

12 Walter S. Wurzbarger, *Ethics of Responsibility: Pluralistic Approaches to Covenantal Ethics* (Philadelphia: The Jewish Publication Society, 1994); Note, Rabbi Walter S. Wurzbarger (1920–2002) was the author’s philosophy professor at Yeshiva College from 1981–1985.

of inference, but rather it engages a complex weighing of *halachic* and meta-*halachic* considerations with an eye on the expected results of the various interpretative options on the lives of those involved and on the entire Jewish community.

In their rejection of a formalistic perception of *halacha*, Orthodox thinkers (*viz.* Adam 1) respond implicitly and at times explicitly to Christian and other Secular Humanists' allegations against Jewish legalism. To counter this allegation is a central goal of Wurzburger's book as cited herein, a goal which he makes clear in his opening lines: "It is generally assumed that traditional Judaism constitutes a purely legalistic religion that revolves exclusively around obedience to *halacha*. In this book, I hope to dispel this misconception and demonstrate that Jewish piety involves more than meticulous adherence to the various rules and norms of religious law; it also demands the cultivation of an ethical personality."<sup>13</sup>

As a result of Adam 2's mission to connect to God by cultivating an ethical personality, he finds himself forsaken, misunderstood, and at times even ridiculed. He therefore has no choice but to withdraw from society and form an insular community impervious to Adam 1's post-modern dystopic world. By withdrawing from Adam 1's community, Adam 2 is precluded from fulfilling his Divine edict to transform and perfect the material world under God's dominion.

Indeed, Adam 2 in his dejected and forlorn state of loneliness cannot escape the overwhelming urgency to harmonize his dual mission and he thus attempts to dialogue with Adam 1. Even if Adam 1 does not comprehend the message, speaking to Adam 1 brings relief to the tormented soul of the covenantal man, and helps cultivate a deeper and more complete understanding of Adam 2 and his respective goals.

5. **A total breakdown of the family unit and lack of leadership** will be a hallmark of the pre-Messianic era.<sup>14</sup> Specifically, the *mishna* in *Sota* (49b) avers that the "face of the generation is like the face of a dog." Rabbi Elchonon Bunim Wasserman, in his *Kuntres Ikvasa Demeshicha*, quotes an explanation directly heard from the Chofetz Chaim that the term "face of the generation" refers to the leaders of the generation that must render moral guidance to the people. But in the period preceding *Mashiach*, the ostensible leaders will first check to see if their views will be popular before issuing an order or policy, like a dog that looks back to see if his master follows.

In line with the foregoing depiction of pre-Messianic leadership, social influencers who formulate public policy based on social media popularity guide

<sup>13</sup> Wurzburger, *Ethics of Responsibility*, p.7

<sup>14</sup> TB *Sota* 49b

our political leaders. Indeed, the measure for successful leadership is based on the candidate's social media footprint and followers. It is the proverbial "tail wagging" of the dog. The total collapse of today's political and religious leadership compels men and women of faith to withdraw from society and seek refuge in a vibrant covenantal community. Even religion has been co-opted by social media technology companies to promote their political platform. Significantly, man of faith's alienation is not a result of society's technological pursuits but rather its immorality and indifference to man's quest for spiritual refinement. Withdrawal becomes attractive to some as a strategy for spiritual and ethical survival.

But merely surviving prevents one from thriving and accomplishing the dual mission of creating an earthly abode for God's presence. Therein provides the fertile ground for the emergence of *Mashiach* to pave the way for transformative change.

6. **The final stage: The epic battle of "Gog and Magog".** The prophet *Yechezkel* (*perakim* 38-39) describes a climactic battle instigated by Gog and/or Magog that will be waged against Israel and God. The defeat of Gog and Magog will precipitate the Messianic Redemption. The topic is shrouded in mystery. We are uncertain about the identity of Gog and Magog, whether Gog and Magog are the names of nations or individuals, whether this battle will be physical or spiritual, and even whether or not it has already occurred.

Since the Messianic Redemption is modeled after the Egyptian redemption, the battle of Gog and Magog should reflect the same process initiated in Egypt.

I submit that both redemptions are centered on a spiritual battle for the individual's freedom of expression. The *gemara* in *Berachos* 13a, citing the verse in *Yeshayahu* 43:18-19, "Do not recall former occurrences, do not contemplate earlier events... Behold, I am bringing forth a new (miracle) now it will sprout" interprets these verses as follows: Whereas the redemptions from other foreign dominions will not be recalled at all in the Messianic era, the Exodus from Egypt will still be remembered but its memory shall pale in comparison to the final redemption.

The *Beurei HaGra* and *Pachad Yitzchak* (*Pesach* sections 24 and 40) resolve the apparent contradiction in these verses by asserting that whereas the intermediate exiles of Babylonia, Mede and Persia were not followed by redemption, the Egyptian Exile and Final Exile are followed by redemption. More specifically, the Egyptian Exile was a preparatory stage to Israel's nationhood and receiving of the Torah, while the Final Redemption is preceded by a preparatory stage for global redemption. The Egyptian and Final Redemptions are the beginning and end stages of Messianic dialectic commencing with the national redemption (*viz.* the formation of Israel

as a nation with the Divine mission to perfect the world under God's dominion), then the interim period of self-negation of this Divine mission (*viz.* the four exiles—Babylonia, Persia/Mede, Greece, and. Rome,)<sup>15</sup> culminating in the full realization of this Divine mission via the global redemption, *Mashiach*.

Indeed, the Covenant between the Parts<sup>16</sup> (*Bris Bein HaB'sarim*) highlights this dialectical process through God's revelation to Avraham that his descendants will be exiled and oppressed in a foreign land for four hundred years. Unlike Avraham's revelation of the destruction of Sodom during which he pleaded to Hashem to save the remaining righteous people, here Avraham does not demand or pray that his descendants not be subjected to the 400-year exile and the accompanying oppression and afflictions.

The *Nesivos Shalom* distinguishes the Egyptian exile and the destruction of Sodom by asserting that the Egyptian exile was not a punishment for any national transgression, but rather a preparatory stage for the formation of the nation of Israel and the giving of the Torah.<sup>17</sup> As such, there was no need for Avraham to protest the imposition of the Egyptian exile as it was part and parcel of the redemptive process.

In order to understand this dialectical process, the reader should consider the German philosopher Georg Hegel's theory that history evolves in dialectical ways with successive phases of thesis, antithesis, and synthesis. This framework fits well with where we stand today, at the footsteps of *Mashiach*.

In the heady days of 1989, with communism collapsing and the Cold War seemingly over, the political theorist Francis Fukuyama declared that we were witnessing the "end of history" which had culminated in the triumph of liberal democracy and the free market.

Fukuyama was drawing on the ideas of German philosopher Georg Hegel, but of course, history didn't come to an end and, as recent events have demonstrated, the Cold War was sleeping, not dead.

Following the political convulsions of 2016-2021, we're at a different turning point which many are trying to make sense of. We can again turn to Hegel, but this time to his idea that history evolves in dialectical ways, with successive phases of thesis, antithesis, and synthesis.

Hegel implied that we should see history and progress not as a straight line but

<sup>15</sup> See Ramban, *Bereishis* 15:12

<sup>16</sup> *Bereishis* 15:8-21

<sup>17</sup> *Nesivos Shalom, Parshas Lech Lacha*, pages 88-89



rather as a zigzag, shaped by the ways in which people bump into barriers, or face disappointments, and then readjust their course.

The ‘thesis’ that has dominated mainstream politics for the last generation – and continues to be articulated shrilly by many proponents – is the claim that the combination of globalization, technological progress and liberalization empowers the great majority. This ‘thesis’ in the biblical context may refer to ‘Gog’, short form for ‘Google’, which represents the flow of data on the internet meant to be for everyone, but is instead dominated by a handful of mega-companies that sell our data without our conscious consent. Billboards that read your face not just for your age, gender, and ethnicity but also for your degree of attention, are symbols of this fusion of capitalism in which the public are only passive disempowered consumers.

The antithesis, as well as the rise of populist parties and leaders, is the argument that this technocratic combination merely empowers a minority and disempowers the majority of citizens. The ‘antithesis’ framed in the biblical context may refer to ‘Magog’ or ‘anti-Gog’ – the group that challenges these dominant forces that control global resources, media, technology, and commerce.<sup>18</sup>

‘*Mashiach*’ which is the synthesis then has to address the flaws of the thesis and the grievances of the antithesis, in fields ranging from education and health to democracy and migration, dealing head on with questions of power and its distribution, who has power, and who feels powerful.

At the very least, it’s clear that the central economic and technological promise of the thesis was not delivered for large minorities.

But the problem isn’t only economic. For two generations it seemed obvious that democracy was the only plausible governing model for advanced societies, and that its competitors (fascism, communism, authoritarianism) had been defeated for good. Now that confidence has been betrayed.

---

18 In the Chapter Three of the *Tanya* (authored by the saintly Rav Shneur Zalman of Liadi, 1745-1812) the Alter Rebbe explains that the human soul is divided in two— *sechel* (intellect) and *middos* (emotional attributes). The intellect includes *chochma*, *bina* and *da’as* (ChaBaD), whilst the *middos* are love of God, dread and awe of Him, glorification of Him, and so forth. ChaBaD [the intellectual faculties] are called “mothers” and source of the *middos*, for the latter are “offspring” of the former. The explanation of the matter is as follows: The intellect of the rational soul, which is the faculty that conceives anything, is given the appellation of *chochma*—the “potentiality” of “what is” or as referred to above a ‘Gog’ pure knowledge and “Mah -Gog” - the process of questioning, analyzing, and applying such data. When one brings forth this power from the potential into the actual, that is, when a person cogitates with his intellect in order to understand a thing truly and profoundly as it evolves from the concept which he has conceived in his intellect, this is called *bina*. These [*chochma* and *bina*] are the very “father” and “mother” which give birth to love of God, and awe and dread of Him.

In the old democracies where the forms have changed little since the 19th century, large minorities have lost faith not just in politicians and political institutions, but in democracy itself. This is particularly true among younger age groups.

For pessimists, there are plenty of other reasons to worry. It had previously been possible to point to the inexorable spread of science, facts, and evidence. But the rise of social media provides echo chambers of lies as well as truth, and popular politicians take pride in their contempt for consistency and accuracy.

It had also seemed obvious that the world was becoming ever healthier. But now we are seeing a growing risk of epidemics and pandemics, the threat of rising antimicrobial resistance which could threaten tens of millions of lives by the mid-century, in part an effect of a more connected world with far more travel.

After a period during which large parts of the world thought war was a thing of the past, confrontation between heavily armed, technologically advanced countries has become a serious prospect again, with Russia a belligerent aggressor around Europe, and China flexing its communist muscles.

The net result of these trends is anxiety and powerlessness. People were promised that the currents of change, economic, social, and technological, would make them feel powerful. Instead, they see decisions being made by corrupt political and corporate leaders ever further away from them. They feel marginalized, like observers, not participants.

### **Trust In Hashem**

The common response is to place our hope in politicians who claim that they can fix things. Our powerlessness is solved vicariously through faith, as has happened so often in human history.

So how should we react? What is a more constructive response to the current situation?

As the Talmud in *Sota* 49b concludes, we must seek inspiration from the One above to implement new policies and procedures that better serve humanity.

### **The Role of 'Mashiach'**

A new world order, organized in accordance with the Messianic vision, could restore the power of governance to the people whereby mutual cooperation in the areas of civic, economic, social, political, and educational platforms will be carefully and equitably organized and managed.

The citizens of the world would be empowered to take responsibility and pride in their families, communities, and the world at large.



The Nation of Israel will serve as a role model for the eradication of war, hunger, oppressive governments, corrupt leadership, and global monopolies. The world will no longer suffer from scarcity of resources, but rather material and spiritual abundance shall abound. And the world will recognize God as the source of all the good and plenty.

## **Conclusion**

The historical dialectical process spans 6000 years commencing with the inception of the world's creation and concluding with advent of the Messianic Era. The 6000 years can be broken down into three 2000-year epochs.

The first 2000-year epoch is marked by the Garden of Eden, the idyllic setting wherein Adam and Eve perceived truth and falsehood objectively until man and woman chose to engage in personal pleasure and desire as the ideal, thereby transforming the world into subjective realism. Subsequently, the battle between good and evil ensued. Humanity descended into the moral abyss that led to the generation of flood and the world destruction. The rectification commenced with the three Patriarchs and Matriarchs and Twelve Tribes, forming the nation of Israel.

The second 2000-year epoch ensued with the Egyptian exile, liberation from Egypt as one nation composed of Twelve Tribes, the giving of the Torah, entry into the land of Israel, and ending with the destruction of both temples.

The third 2000-year epoch commenced with the fourth exile, commonly referred to as the Roman exile, highlighted by the rise and fall of various empires and world powers. The Nation of Israel suffered an unending series of progressively worsening persecutions leading up to the Holocaust and the establishment of the State of Israel.

We now stand at the tail end of the third epoch and await the arrival of the Messianic era. The question that remains is whether the Nation of Israel can help the world realize the Messianic vision of freedom from alien forces of oppression and servitude, thereby redeeming humanity to serve its higher purpose of perfecting the world under God's grace and love.



# Tiferes Banim



Elisha Feldman

Elie Glazer

Elchanan Horowitz

Tzvi Kauffman

Yehuda Laitin

Aharon Marton

Shmuel Shemtov

Zev Wiesel



# Stable Connection: Zooming In On *Tefila B'tzibur*

ELISHA FELDMAN



אמר ריש לקיש אין הקב"ה מכה את ישראל אלא אם כן בורא להם רפואה תחילה.  
*When Hashem sends a punishment, He first creates a way to manage and overcome it. (Megila 13b)*

While during the Spring and Summer, we spent many difficult weeks sheltering at home, one of the things that made this somewhat manageable was the existence of Zoom. With Zoom we were still able to learn with our *rebbeim* and teachers at school, remain connected to our relatives and friends, and take part in activities with our shul, including the celebration of Bar Mitzvas.

Although there were times when we could not go to shul to *daven* with a *minyan*, many shuls could *daven* together with Zoom. Even though this is not considered a *minyan*, as you need ten people together in the same room, for many people *davening* together with Zoom enhances their *kavana* and makes their *tefila* more meaningful. But if one feels that *davening* on Zoom has no benefit to his *kavana*, is there any reason to join a Zoom *davening* or is it just as good to *daven* on your own?

The *gemara* in *Brachos* 7b has a lengthy discussion between Rav Yitzchak and Rav Nachman. Rav Yitzchak asked Rav Nachman why he did not come to the *minyan* at the yeshiva. Rav Nachman responded that he was not feeling well. Rav Yitzchak asked why he didn't make a *minyan* in his home. Rav Nachman responded that it was too difficult to find ten people. Rav Yitzchak still persisted:

---

Elisha Feldman is an 8th grade student at Yeshiva Aharon Yaakov Ohr Eliyahu.

ולימא ליה מר לשלוחא דצבורא, בעידנא דמצלי צבורא ליתי ולודעיה למה.

*Why didn't you ask the chazan to come and tell you when they are davening, so you would be able to daven in your home at the same time as the tzibur is davening?*

Rav Nachman responds, “who says that for a person who is unable to attend a *minyan* there is any reason to *daven* at the same time as the shul?”

Rav Yitzchak brings a source that it is important:

אמר רבי יוחנן משום רבי שמעון בן יוחי מאי דכתיב ואני תפילתי לך ה' עת רצון - אימתי עת רצון - בשעה שהצבור מתפלל.

Dovid Hamelech says in *Tehillim* “I will *daven* to You Hashem at a time that is favorable.” It seems that there are times which are more favorable than others. The *gemara* explains that this is referring to the time when the *tzibur* is *davening*. From here we learn that if one must *daven* alone, one should try to *daven* at the same time as the *minyan* in shul.

The Magen Avraham (O”C 90:17) discusses the case when the *tzibur* is *davening* one *tefila* and the individual is *davening* a different *tefila*. Would that that be considered *davening* at the same time as the *tzibur*? For example, on Rosh Chodesh, can one *daven musaf* at the same time that the *tzibur* is *davening shacharis*?

The Maharsha in *Brachos* explains that one should *daven* at the same time as the *tzibur*, because when Hashem sees a *minyan davening*, He looks at the community favorably. Even an individual who is not part of the *minyan* should take advantage of Hashem’s good feeling towards us and *daven* at that moment.

According to this explanation, it should not make a difference if the *tzibur* and the *yachid* are *davening* different *tefilos*. The *minyan* creates the *eis ratzon*, auspicious time, for the individual to *daven*. One could *daven musaf* at the time the *tzibur* is *davening shacharis* and it would still be an *eis ratzon*.

The Magen Avraham disagrees and says that the *eis ratzon* is only if the *tzibur* and *yachid* are *davening* the same *tefilos*. He cites a proof from a *gemara* in *Avoda Zara* 4b that says that if a person is not able to go to shul on Rosh Hashana, he should not *daven musaf* in the first three hours of the day. The beginning of the day is a time of *din* and one may not have enough merit to be *davening* alone. The *gemara* says that it would be all right to *daven shacharis*, since the *tefila* would be said at the same time as the *tzibur*, but most shuls do not *daven musaf* until later in the morning. Although the shul is *davening shacharis* at the beginning of the day, it is clear that if an individual *davens musaf*, it would not be considered as being done together with the *tzibur*.

According to the Magen Avraham, the benefit of *davening* at the same time as the *tzibur* would be that my *tefilos* join with the *tefilos* of the *tzibur*. Although I am not actually part of the *minyan*, my *tefila* will come before Hashem together with the *tefilos* of the *minyan*. Therefore, it would be necessary for the *tefilos* to be the same. If the *tzibur* is *davening shacharis* and the individual is *davening musaf*, the two different *tefilos* would not connect.

According to this explanation, we can consider whether it is necessary for an individual to connect to the *tefilos* of an existing *minyan*, or perhaps any time a group *davens* together, their *tefilos* go up to Hashem jointly, even if there is no *minyan*. Rav Asher Weiss published a *sefer* addressing questions that arose in the early days of the coronavirus. In one of his *teshuvos*, Rav Weiss discusses Zoom *davening* and brings a proof that it is not necessary to have an existing *minyan* in order to attain the benefits of *davening* with the *tzibur*. The Magen Avraham (589:4) says that an individual *davening* on Rosh Hashana should try to blow shofar at the same time as the shofar blowing in shul. Rav Weiss says that in contrast to *tefila*, where there is a concept of *tefila b'tzibur*, blowing shofar has nothing to do with a *minyan*; it is just a group of people performing a mitzva together. And yet we still see that an individual can join with the group to be part of their *tekias shofar*. Similarly, a group of people *davening* together will still be beneficial, even though there is no *minyan*.

Even if we do not consider a group on Zoom to be *davening* with the *tzibur*, it may still be better than *davening* alone. In *Parshas Behaloscha* we learn of the mitzva of Pesach Sheini. If someone was unable to bring a *korban pesach* on Pesach, they were able to make it up on Pesach Sheini. The Torah tells us that a group of people who were *tamei* and unable to offer the *korban pesach* came to Moshe Rabbeinu with a request. “*Lama negara*, why should we lose out, we also want to bring a *korban pesach*.” Moshe Rabbeinu told them that he would ask Hashem, and Hashem gave them a second chance of bringing the *korban* on Pesach Sheini.

Rav Moshe Feinstein, in *Darash Moshe*, asks, what were these people expecting from Moshe Rabbeinu? The *halacha* is clear; if you are *tamei*, you cannot bring a *korban* and there are no exceptions. There is also no precedence in *halacha* of a make-up day, so it is unlikely that they were asking for a second chance. Rav Moshe explains that they hoped that although they could not bring the actual *korban*, there would be some way to participate. Maybe they could buy the *korban*, even though they wouldn't be able to eat it. They were asking Moshe to give them something to do, some way to be involved. Rav Moshe says that from this we can learn that if, for some reason, one can't perform the actual mitzva, they should find a way to do something

to connect to the mitzva. If a person can't sit in the *sukka*, he should still build one. This will demonstrate your love and attachment to the mitzva. Perhaps this is the benefit of joining a Zoom *davening*. Even though it is not a *minyan*, and may not even be a fulfillment of *davening* with the *tzibur*, it demonstrates that I really miss *davening* with a *minyan* and I am trying to do whatever I can. This will be a fulfillment of the ideal expressed in "*lama negara*."



# The *Halachos* of *Kedusha* Learned from the Story of *Korach*<sup>1</sup>

ELIE GLAZER



**P***arshas Korach* describes Korach's rebellion against Moshe and Aharon, which began when Korach accused Moshe Rabbeinu of taking all positions of leadership for his immediate family. In truth, Moshe had not made these decisions on his own; rather, he was simply following the instructions of Hashem.

To prove that he was following Hashem, Moshe Rabbeinu proposed a test to Korach. Aharon Hakohen would offer a *korban* of *ketores* and Korach and his 250 followers would do so as well, and they would see whose *korban* would be accepted by Hashem. Korach agreed and he and his followers came with pans filled with coals and they offered the *ketores*. Hashem chose Aharon's *korban* and sent a fire which burned Korach and his followers. Hashem then instructed Moshe to take the pans used by Korach and his followers, to thin them out, and to use them as a copper plating for the *mizbeach* in the *Mishkan*.

The *gemara* in *Menachos* 99a derives from here the rule of *maalin b'kodesh v'ein moridin*. If an item is *kadosh*, it cannot be put to use for something that has a lower level of *kedusha*; rather we must upgrade its use to a higher level. For example, the *retzuos*, straps, of the *tefillin shel rosh* cannot be used for the *tefillin shel yad* because the *tefillin shel rosh* has a greater *kedusha*. By contrast, the straps from the *tefillin shel yad* may be used for the *tefillin shel rosh*, as the *tefillin shel rosh* has more *kedusha*, and it would be an upgrade of *kedusha*.

---

<sup>1</sup> Delivered by Eliezer Yehuda Glazer on June 27, 2020 on the occasion of his bar mitzva. The Glazers are incredibly grateful to Rabbi Revah for preparing and teaching this material to Elie.

---

Elie Glazer is an 8th grade student at Yeshiva Aharon Yaakov Ohr Eliyahu.

Chazal seem to understand that Hashem directed that the pans be used for the *mizbeach* because they were *kadosh*, and since they were no longer being used for *ketores*, there was a need to upgrade their *kedusha*. However, this seems difficult because the Torah itself gives a different reason. The *pasuk* says:

ועשו אתם רקעי פחים צפוי למזבח כִּיהִקְרִיבֻם לִפְנֵי ה' ויקדשו ויהיו לאות לבני ישראל... למען אשר לא יקרב איש זר אשר לא מזרע אהרן הוא להקטיר קטרת לפני ה'... (במדבר יז:ג-ה)

... and let them be made into hammered sheets as plating for the *mizbeach*, for once they have been used for offering to Hashem, they have become holy, and let them serve as a warning to Bnei Yisrael... As a reminder that no non-Kohen should presume to offer incense before Hashem.

Hashem wanted us to remember the terrible consequences of *machlokes* and the pans were to serve as a permanent reminder of what befell Korach. Whenever people would see the plating of the *mizbeach*, they would remember the tragic story of Korach. If so, how did the *gemara* derive from this episode the rule of *maalin b'kodesh v'ein moridin*?

The *gemara* appears to have deduced this rule from a few extra words in the *pasuk*. The *pasuk* says:

כִּי הִקְרִיבֻם לִפְנֵי ה' ויקדשו.

*The pans were offered before Hashem and they became holy.*

If the pans were added to the *mizbeach* only to serve as a monument, it would be unnecessary to say that the pans were already holy. It seems that there was an underlying need for the pans to be used for something *kadosh*, since they were already holy. From here we see that *maalin b'kodesh v'ein moridin*.

The *mishna* in *Megilla* 25b presents another application of this rule:

בני העיר שמכרה רחבה של עיר לוקחים בדמיו בית הכנסת, בית הכנסת לוקחים בדמיו תיבה.

*If the people of a city sell the public square, they [must] use the proceeds to purchase a shul. [If they sell] their shul, they [must] use the proceeds to purchase an aron hakodesh.*

Rashi explains that this is based on the principle of *maalin b'kodesh v'ein moridin*. The city square was considered *kadosh* because people *davened* there occasionally; when it is sold, the proceeds cannot, therefore, be used for any purpose; rather, the

level of *kedusha* must be upgraded by using the funds to purchase a shul. Similarly, when a shul is sold, the *kedusha* should be upgraded by using the proceeds to purchase an *aron hakodesh*. The *mishna* in *Megilla* continues:

תיבה לא יקחו בית הכנסת בית הכנסת לא יקחו רחוב.

*If an aron hakodesh is sold, the proceeds may not be used to buy a shul, [because that would downgrade the level of kedusha. For the same reason,] if a shul is sold, the proceeds may not be used to buy a public square.*

The Chidushei Haran asks whether one may sell a shul and use the funds to buy another shul. By buying another shul with the proceeds, the level of *kedusha* has not been increased, but it has not been decreased either. Must the proceeds be used for something with a *greater* level of *kedusha*, or is it acceptable to use them to purchase something having an equal level of *kedusha*? Does *maalin b'kodesh v'ein moridin* mean we must increase the *kedusha*, or is it enough that the level of *kedusha* not be decreased?

The Ran says that the *mishna* itself has contradictory implications. The first half of the *mishna* states that if one sells a shul, he must buy an *aron hakodesh* with the proceeds. This implies that the proceeds may not be used to buy another shul. But the second half of the *mishna* says that if one sells a shul, he cannot buy a public square. This suggests that only downgrading the level of *kedusha* is problematic and that buying another shul would be permissible.

The Ran concludes that one must always raise an item's level of *kedusha*. If one sells a shul, he must use the proceeds to buy something more *kadosh*, such as an *aron hakodesh* or a *sefer Torah*, but he may not buy another shul. He brings a proof from a *gemara* later in the *perek*, which discusses whether one may sell an old *sefer Torah* and use the proceeds to buy a new one. The *gemara* says that since there is nothing more *kadosh* than a *sefer Torah*, it would appear to be permitted to sell a *sefer Torah* to purchase another one, since it would be impossible to upgrade the level of *kedusha*. Implicit in the *gemara* is that the proceeds must be used to buy something with a higher level of *kedusha* whenever it is possible to do so.

The Beis Yosef (*O"C* 157:4) quotes Rabbeinu Yonah who holds that it is not necessary to upgrade an item's *kedusha*. The key rule is *ein moridin*, not to *downgrade* an item's level of *kedusha*, but you may use the proceeds to purchase a new item having the same level of *kedusha* as the original item (e.g. to sell a shul and purchase another shul with the proceeds). The Shulchan Aruch brings both the opinions of the Ran and of Rabbeinu Yonah.

The *gemara* in *Menachos* 32a says that if someone has an old *sefer Torah* or an old pair of *tefillin* which is no longer usable because some of the words are worn out, he may not cut out some of the *parshiyos* and use them for a *mezuzah*. The *gemara* says:

ספר תורה שבלה ותפילין שבלו אין עושין מהם מזוזה לפי שאין מורידין מקדושה  
חמורה לקדושה קלה.

*One may not fashion a mezuzah from a worn-out sefer Torah or tefillin, as is it prohibited to change an object from a higher to a lower kedusha.*

This *gemara* stresses the problem of downgrading an item's level of *kedusha*, and does not mention anything about upgrading. The *gemara* arguably implies that it would be permissible to use the *sefer Torah* and *tefillin* for something that would have an equal level of *kedusha*. Furthermore, the *Nodeh B'Yehuda* (Y"D 174) states that, from the fact that the *gemara* only forbids a *mezuzah* to be made from an old *sefer Torah*, one could infer that one may make *tefillin* from it. *Tefillin* is certainly not more *kadosh* than a *sefer Torah* – at best it is equal – yet the *gemara* seems to indicate that it would be allowed, which suggests that it would only be a problem to downgrade an item's level of *kedusha*, and that it is not necessary to upgrade an item's level of *kedusha*. How would the Ran understand this *gemara*?

Even according to the Ran, who holds that one should always attempt to upgrade an item's *kedusha*, it is obvious that as long as the item can still be used for its original purpose, it is not necessary to exchange it for something better. Only when one intends to change the purpose of an item is he required to upgrade its *kedusha*.

Moreover, the Ran might also agree that it would not be required to upgrade an item's level of *kedusha* in all cases in which it is used for a different purpose. Only when the item is **sold** does the Ran require the proceeds to be used for something with a higher level of *kedusha*. Selling a *davar sheb'kedusha* like a shul is inherently degrading. The sale would only be permitted if ultimately a greater *kedusha* results. For example, selling a shul to buy a *sefer Torah* would not be considered degrading because the sale would have produced a higher level of *kedusha*. By contrast, selling a shul to buy another shul, where there is no net gain in *kedusha*, remains a degrading act. When, however, an item is not sold, but merely repurposed to make something else having an equal level of *kedusha*, the Ran might agree that the first item is not being degraded. For example, since there is nothing inherently degrading about using a worn *sefer Torah* to make *tefillin* – if we accept the premise of the *Nodeh B'Yehuda* that they share an equal level of *kedusha* – the Ran would likely not object to such a use.

# Count Your Blessings

ELCHANAN HOROWITZ



**P**arshas Ki Sisa begins with the mitzva of *machatzis hashekel*.  
 כי תשא את־ראש בני־ישראל לפקדיהם ונתנו איש כפר נפשו לה' בפקד אתם ולא  
 יהיה בהם נגף בפקד אתם. (שמות ל:יא)

*When you take a count of the Israelite people according to their numbers, each shall give Hashem a ransom for himself on being counted, that no plague may come upon them through their being counted.*

Rashi explains that when you want to take a census to know the population of *Bnei Yisrael*, you should not count them directly. Instead, each person should give a half-shekel coin to the *Beis Hamikdash*, and then you can count the *shekalim*. Rashi explains that counting people can lead to *ayin hara*, an evil eye, but counting them through the coins and donating them to the *Beis Hamikdash* would prevent this.

The *mishna* in *Yoma* 22b says that when there were many *kohanim* who wanted to do the *avoda* in the *Beis Hamikdash*, they would make a lottery to choose which *kohanim* got to do the *avoda*. The *gemara* describes that the *kohanim* gathered in a circle and the *kohen* in charge would randomly say a large number, several times bigger than the amount of *kohanim* there. They would count around the circle, and the one who the number ended up with was chosen for the *avoda*.

The *gemara* adds that when they were counting, they would not actually point to the *kohanim* directly, but rather each *kohen* held out his finger, and they would count their fingers. The *gemara* explains:

אסור למנות את ישראל אפילו לדבר מצוה.

*It is forbidden to count Jews, even for the purpose of a mitzva.*

In order not to violate that prohibition they would count fingers, not the actual

---

Elchanan Horowitz is an 8th grade student at Yeshiva Aharon Yaakov Ohr Eliyahu.

*kohanim*. The *gemara* brings the source for the prohibition to count Jews from a *pasuk* in *Shmuel I*:11:8, *vayifkideim b'bazek*. When Shaul Hamelech wanted to see how many soldiers were in his army, he told each soldier to give a broken piece of pottery and he counted the pieces of pottery. Why didn't he just count the soldiers directly? From here we see that it is forbidden to count Jews directly, but it is permitted to do so indirectly. Similarly, in the *Beis Hamikdash* they would not be allowed to count by pointing to the *kohanim* themselves, but rather by counting the *kohanim's* fingers.

The Maharsha in *Yoma* asks why the *gemara* brings a source to forbid counting from *Neviim* when it could have brought a clear source from *parshas Ki Sisa*? It is of course better to bring a source from the Torah itself. The Maharsha answers that the *pasuk* in the Torah could not serve as a source because it may be that the *pasuk* in *Ki Sisa* is limited only to that generation which had just sinned with the *Egel*, and the half-shekel was primarily to serve as an atonement. It is only from the story with Shaul that we see that it is always prohibited to count directly.

However, the answer of the Maharsha is difficult. The *gemara* in *Brachos* 62b tells us that Dovid Hamelech made a census and directly counted all *Bnei Yisrael*. The *gemara* says that Dovid Hamelech forgot the *pasuk* in the Torah of *Ki sisa es rosh Bnei Yisrael*, and because of his mistake an *ayin hara* and a plague befell *Bnei Yisrael*. From this *gemara* we see that the *pasuk* in *Ki Sisa* was not just said to that generation but applies always. If so, why did the *gemara* in *Yoma* not bring the *pasuk* in *Ki Sisa* as a source of the prohibition of counting?

We can ask another question. If the reason for not counting is that counting causes an *ayin hara*, what difference does it make if I count directly or indirectly? The *ayin hara* is created by focusing on the amount of people, and however they are counted, I still know the number of people. The way the Torah says to do it is understandable, because the coins were donated to the *Beis Hamikdash* and the merit of *tzedaka* can protect us from an *ayin hara*, but why would counting pottery or fingers be different then counting people directly?

There is another difficulty with the *gemara* in *Yoma*. The lottery didn't involve counting people at all. They just counted around in a circle until the number they picked was reached. It may very well be that the kohen counting would not even realize the actual amount of people that were in the circle. If the total is not even known, why should there be any *ayin hara* at all?

The Sfas Emes explains that there are two separate prohibitions of counting. One is the prohibition in *Ki Sisa*, but that only applies if you count the entire nation. Knowing the count of the whole *Bnei Yisrael* may cause an *ayin hara* and the only

way to prevent that would be to collect from each person a half-shekel and donate it to the *Beis Hamikdash*. However, counting a group is not necessarily a danger of *ayin hara*. That would not be included in the *pasuk* of *Ki Sisa*, and the source is the story with Shaul Hamelech. Perhaps the reason not to count would be that to assign someone a number is to dehumanize them and turn them into data. Therefore, Shaul did not count the people directly and instead counted the pottery shards. Similarly, in the *Beis Hamikdash* they did not want to point to a kohen and call him by number so instead they used his fingers. Since the reason not to count is not because of *ayin hara* it would be allowed as long as you were not directly counting the person. So if you are counting the whole *Klal Yisrael* it's necessary to give a half-shekel, but if you are counting a group it is okay as long as it is done indirectly.





# The Two Types of *Megillas Esther*

TZVI KAUFFMAN



**S**habbos Parshas Beshalach is called *Shabbos Shira* because the laining includes *Az Yashir*, the *shira* that Klal Yisrael sang after *Krias Yam Suf*. *Az Yashir* is read with a different tune than the rest of the laining. And not only is it read differently, it is also written in the Torah in an unusual format, with a lot of space between each phrase of the *shira*. The *gemara* in *Megilla* 16b says that *Az Yashir* should be written *ariach al gabei leveina*, a half a brick on top of a full brick. This means it is written like a brick wall, with a few words, then empty space then a few words again, and this alternates from line to line.

The *gemara* says that this format is not only used for *Az Yashir*, but is used every time there is a *shira* in *Tanach*, with two exceptions. One of the exceptions is the list of the ten sons of Haman, which are written in *Megillas Esther*. The *gemara* says that although the hanging of Haman's sons is also considered a *shira*, they are written differently than *Az Yashir*. They are written *ariach al gabei ariach uleveina al gabei leveina*, bricks on top of bricks and half-bricks on top of half-bricks, which means the words are on top of each other and the spaces are on top of each other. The names of the ten sons of Haman are written in two columns with the empty space in the middle. The *gemara* explains *shelo tehei tekuma lemapalasan*, that the followers of Haman should not have a way to climb back up. It is difficult to climb a straight column, and writing the names of Haman's sons in such a way symbolizes that our enemies should remain defeated.

The *gemara* brings two other *halachos* which pertain to the ten sons of Haman in the *Megilla*. One is that the letter *vav* in *Vayzasa*, the last of the ten sons, should be written larger than a usual *vav*. This symbolizes a large tree and indicates that the ten sons were all hung on the same tree, one underneath the other. The other is that the

---

Tzvi Kauffman is a 7th grade student at Yeshiva Aharon Yaakov Ohr Eliyahu.

ten sons of Haman should be read with one breath, which indicates that they all died at exactly the same time.

The Rambam in *Hilchos Megilla* 2:12 mentions the *halacha* that the ten sons of Haman must be read in one breath, but, as the Maggid Mishna points out, he does not quote the *halachos* of the format for writing the ten sons and the big *vav* of Vayzasa. Why does he omit them?

I would like to share with you an answer from the Brisker Rav.

We know that there are two parts to the Torah, *Torah Sheb'ksav* and *Torah Sheb'al Peh*. The *Torah Sheb'ksav* includes the twenty-four *sefarim* of *Tanach*, the Torah, *Neviim* and *Kesuvim*. The *Torah Sheb'al Peh* is the Oral Torah, the *mishna* and the *gemara*, which were ideally meant to be studied by heart.

Because *Torah Sheb'ksav* is supposed to be written down, there are *halachos* of how to write a *sefer Torah* or a *sefer* of *Tanach*. This means that we can just use a printed version of the Torah and *Neviim* if necessary, but for the *sefer Torah* or *sefer Nach* to have *kedusha*, it must be written in a specific way: with parchment, special ink and by a *sofer*.

*Megillas Esther* is one of the twenty-four *sefarim* of *Tanach*. In order to have a kosher *Megilla* to lain from on Purim, one would think that it would have the same criteria required when writing any other *sefarim* of *Neviim* or *Kesuvim*. However, the *gemara* tells us that to use a *Megilla* on Purim it requires additional *halachos*, beyond what is required in writing a regular *sefer* in *Nach*. This would mean that if I had a complete collection of all the scrolls of *Tanach* I could not automatically assume that I could use the *Megillas Esther* for Purim. I would have to first make sure that it was written with the additional *halachos* required for use on Purim.

What about the opposite? May I use my *Megillas Esther* which I bought for Purim to complete my collection of the *Tanach* scrolls? We would assume that I could. After all, *Megillas Esther* is one of the *sefarim* of *Tanach*, and it would seem that the mitzva is to read this selection of *Tanach* on Purim. However, the Brisker Rav suggests that the mitzva of reading the *Megilla* on Purim is not related to the fact that it is part of *Tanach*.

He brings two proofs to this. The first is the *gemara* in *Megilla* 7a that cites the opinion of Shmuel that *Esther* is not part of *Tanach*. However, even Shmuel agrees that there is a mitzva to read *Megillas Esther* on Purim. It is clear that at least according to Shmuel there is a concept of a *Megilla* independent of it being part of *Tanach*.

The second is the *gemara* in *Bava Basra* 16a that says that the *Anshei Knessess Hagedola* in *Eretz Yisrael* wrote *Megillas Esther*. Rashi asks why we attribute the

authorship of the *Megilla* to them and not to Mordechai and Esther, and explains that although Mordechai and Esther may be the actual authors, it could not be included in *Tanach* unless it was written in *Eretz Yisrael* and it therefore had to be rewritten by the *Anshei Knessess Hagedola*. Before they got to *Eretz Yisrael* the *Megilla* was not part of *Tanach*, despite that fact that there was still a mitzva at that time to read the *Megilla*.

According to the Brisker Rav, there can be two types of *Megillas Esther*. There is a *Megillas Esther* that may be written as part of a collection of the books of *Tanach*. This *Megilla* would be required to be written on parchment like the writing of *sefer Yehoshua* and *Shoftim* but could not necessarily be used on Purim. There is also a *Megilla* written to be used on Purim. But since the mitzva on Purim is not to read a section of *Tanach*, we cannot assume that the *Megilla* for Purim would have all the requirements needed to have the *kedusha* of one of the *sifrei Tanach*.

We can now answer why the Rambam left out the *halacha* of making the big *vav* and the format of how to write the ten sons of Haman. The Rambam understood that these requirements were only needed if one was writing a *Megilla* to have the *kedusha* of a *sefer* of *Tanach*. The *mesora* of making some of the letters bigger or smaller is something which we find in the writing of *Tanach*. Similarly, the format of writing a *shira* is clearly a *halacha* when writing *sifrei Tanach*. The Rambam understood that these *halachos* were not necessary for writing a *Megilla* to read on Purim since it does not have to have the *kashrus* of a *sefer* of *Tanach*. Therefore, he did not reference this *halacha* in *Hilchos Megilla*. However, the *halacha* of reading the ten sons of Haman in one breath is clearly a *halacha* that dictates how to read the *Megilla* and therefore the Rambam quotes it in *Hilchos Megilla*.



# Blessings and Beauty - *Brachos* on *Hidur Mitzva*

YEHUDA LAITIN



ת"ר מצות חנוכה נר איש וביתו, והמהדרין נר לכל אחד ואחד, והמהדרין מן המהדרין... מוסיף והולך.

*The basic mitzva of Chanuka is to have one candle per family. If you want to enhance the mitzva, you light one candle per family member. If you want to do the mitzva in its most optimal form, you would add a candle per night. (Shabbos 21b)*

**R**av Akiva Eiger, (*Teshuvos*, #13) discusses a person who started lighting the *menora* on the eighth night, and when he was half way through, remembered that he had not yet made a *bracha*. Can he still make a *bracha* on the remaining candles? On the one hand, a *bracha* has to be recited before you perform the *mitzva*, and since he had fulfilled his basic obligation after the first candle, it is too late to say a *bracha*. On the other hand, since he still has not fulfilled the *hiddur mitzva* of lighting eight candles, perhaps he can still say a *bracha*.

Rav Akiva Eiger quotes the *Pri Chadash siman* 672 about a person who lit the *menora* on the fifth night, thinking it was the fourth night, and only lit four candles. The *Pri Chadash* rules that if he realized that it was the fifth night and wanted to add a fifth candle, he would not make a *bracha* on it, as we do not make a *bracha* on a *hiddur mitzva*.

It would follow that in our case, where you forgot to make the *bracha* until you were halfway through, since all you have remaining is *hiddur mitzva*, you would not make a *bracha*.

---

Yehuda Laitin is a 7th grade student at Yeshiva Aharon Yaakov Ohr Eliyahu.

However, Rav Akiva Eiger says that it seems clear that we **do** make a *bracha* on *hiddur mitzva*. We said that the basic mitzva of *menora* requires only one candle per family. That means that after the father lights, the whole family has already fulfilled the basic mitzva. So when the other family members light, it is only fulfilling the *mehadrin* of a *menora* per person. Nevertheless, everyone makes a *bracha*. According to the Pri Chadash that we don't make a *bracha* on *hiddur mitzva*, why do the other family members make a *bracha*?

To answer this question, Rav Akiva Eiger offers a new interpretation of the *hiddur* of one *menora* per family member. The simple explanation is that the first person who lit has exempted the entire family, and anyone else who chooses to light is only fulfilling a *hiddur*. However Rav Akiva Eiger suggests that if you intend to light on your own, we assume you are having in mind not to be *yotzei* with the *hadlaka* of your father, but with your own *menora*. Since you had in mind not to be *yotzei* with the first *hadlaka*, you have not, as of yet, fulfilled the mitzva, and you are now required to light a *menora*. Although you could have been *yotzei* with the first *hadlaka*, now that you did not, your *hadlaka* is no longer just a *hiddur*, but is necessary and would require a *bracha*.

However, Rav Akiva Eiger proves that this understanding is not correct. The *halacha* is that we are not allowed to use the candles of the *menora* for any other purpose. Certainly, we cannot light a match from the flame of the *menora*. However, the *Mechaber* in *Shulchan Aruch* O"C 674 *paskens* that we can use one candle of the *menora* to light the other candles. Since I am not using the light of the *menora* for my own purpose, but rather to light another candle of the *menora*, it is not considered to be degrading the light of the *menora*. The Rama disagrees, as the first candle is obligatory, and the rest are only *hiddur*, and to light a *hiddur* from an obligatory candle would still be degrading the *menora*. It is clear from the Rama that all the other candles besides for the first are only *hiddur*, and from the Rama it seems that this is true even on the first night. Had Rav Akiva Eiger's premise been correct, on the first night, all the candles lit would be obligatory and not *hiddur*, and there would be no reason to forbid lighting one for the other.

If so, we are back to our question. If the Pri Chadash maintains that we do not make a *bracha* on a *hiddur mitzva*, why do all family members make a *bracha*?

The truth is that if you look at the Pri Chadash, he himself raises the issue that at times we do make a *bracha* on *hiddur* and at times we don't. The Terumas Hadeshen discusses how someone who is travelling on Chanuka should light the *menora*. The *gemara* says that if he is married, he can rely on the *menora* that his wife will light at

home and he does not have to light on his own. What if he would like to light his own *menora*? He says that he can fulfill the mitzva of *mehadrin* and light with a *bracha*. We see that even though all the traveler is fulfilling is a *hiddur mitzva*, he still makes a *bracha*. The Pri Chadash says that there is a difference between this *hiddur* and the *hiddur* of five candles on the fifth night, but does not explain why should they be different.

Why would we not make a *bracha* on a *hiddur mitzva*? The obvious explanation would be that since I am not required to perform *hiddur mitzva*, I cannot make a *bracha* on it. How can I say “*asher kidshanu b’mitzvosav v’tzivanu*,” I was commanded, if I am not required to do beyond the basic mitzva? But perhaps this is not the reason. Even though fulfilling *hiddur* is not a requirement, it would still be correct to say *v’tzivanu* since I am obligated in the mitzva itself. Perhaps the reason we do not make a *bracha* on *hiddur* is because we only make a *bracha* on an actual mitzva. The reason not to make a *bracha* on *hiddur* is that *hiddur* is only an accessory, an appendage to a mitzva, and on an accessory we do not make a *bracha*.

If this is the reason, we can differentiate between the *hiddur* of lighting extra candles per night, and the *hiddur* of one *menora* per person. When a person is lighting five candles, the first candle is the actual mitzva of *hadlakas ner Chanuka*. The remaining four candles are not the mitzva itself, but are only there to enhance the mitzva, by adding symbolism and beauty. They are only an accessory to the mitzva, and on an accessory we do not make a *bracha*. However, when each family member lights, or when the traveler lights on his trip, they are not coming to add to the initial *hadlaka*. Rather, they are saying that despite the fact that they have fulfilled their mitzva already with the first *menora*, they would like to have a *hadlaka* of their own. Although they are not obligated, by lighting on their own, they are trying to perform the actual mitzva of *hadlakas neiros*. This is not a mere accessory, and it therefore warrants a *bracha*.





# Wearing Tzitzis Without Techeiles

AHARON MARTON



**A**t the end of *parshas Shelach*, we are given the mitzva of *tzitzis*. The Torah says:  
ועשו להם ציצת על כנפי בגדיהם לדרתם ונתנו על ציצת הכנף פתיל תכלת.  
*And they shall make themselves tzitzis on the corners of their garments,  
and they shall place on the tzitzis of each corner a blue thread. (Bamidbar  
15:38)*

The mitzva of *tzitzis* requires wearing two different strings, white strings and blue strings. Nowadays, most people only wear the white strings, because the tradition of how to dye the *techeiles* strings was forgotten over the ages. Even though we are only performing half of the mitzva, the Rambam in *Hilchos Tzitzis* 1:4 tells us

תכלת אינו מעכב את הלבן, והלבן אינו מעכב את התכלת, כיצד הרי שאין לו תכלת  
עושה לבן לבדו.

*The mitzva of techeiles and lavan are independent. Therefore, if one only  
has lavan strings, he can wear just the white strings, and he will still be  
performing a mitzva.*

This is the basis of the practice of most people to wear a four-cornered garment with only *lavan* strings, even though we are obligated to have both *lavan* and *techeiles* strings. Although we are not fulfilling the complete mitzva, we will still be rewarded for the part of the mitzva which we are able to do.

However, the Shaagas Aryeh in *siman* 32 questions our practice. If the Torah says that a four-cornered garment must have both *techeiles* and *lavan* strings, how am I allowed to wear one without *techeiles*? While it may be true that I am fulfilling a mitzva by wearing the *lavan* strings, at the same time I am violating the requirement to wear

---

Aharon Marton is a 7th grade student at Yeshiva Aharon Yaakov Ohr Eliyahu.

*techeiles* strings. Just like it is forbidden to wear a *talis* without the white strings, it is equally forbidden to wear a *talis* without the *techeiles* strings. Wouldn't it be better to not wear a *talis* at all rather than wearing a *talis* and violating a mitzva?

To justify our practice, the Shaagas Aryeh brings a *gemara* in *Yevamos* 90b that says that when there is a pressing need, *Chazal* can legislate a *takana* that will violate a mitzva of the Torah. For example, when Rosh Hashana falls out on Shabbos, *Chazal* tell us not to blow the *shofar* in order to avoid carrying it on Shabbos in a place where there is no *eruv*. Although there is a commandment to blow *shofar* on Rosh Hashana even when it falls on Shabbos, *Chazal* can tell us not to fulfill that commandment.

The *gemara* then qualifies that *Chazal* can only tell us to violate a mitzva when it is *shev v'al taase*, a passive violation, but not *kum v'aseh*, an active violation. For example, *Chazal* cannot tell us to eat non-kosher. Not blowing *shofar* is just a passive act of skipping a mitzva. But eating *treif* is actively violating the Torah, and *Chazal* are not empowered to allow it even if there is a compelling reason.

The *gemara* cites several examples where *Chazal* instructed us to passively violate the Torah. One of the examples is *sadin b'tzitzis*, putting *tzitzis* on a four-cornered garment made of linen. Our *taleisim* are mostly made from wool or cotton, but even if we wear a linen *talis*, there is a mitzva of *tzitzis*. The *gemara* discusses how we can put *tzitzis* on a linen *talis*. The strings of *tzitzis* are generally made from wool and tying wool strings to a linen *talis* would be a violation of *shaatnez*, the prohibition of wearing wool and linen together. The *gemara* says that to avoid *shaatnez*, the white strings may be made from linen instead of wool, but the *techeiles* string must be made from wool. We now have a dilemma - on the one hand, I have a mitzva to put *techeiles* strings on my linen *tallis*, but on the other hand, I am prohibited to wear *shaatnez*. The *gemara* says that one should wear the *techeiles* strings even though it would be *shaatnez*. This is because we say *asei docheh lo taasei*, the fulfillment of an *asei*, a positive mitzva, overrides the violation of a *lo taasei*, a negative commandment. One would be permitted to violate *shaatnez* in order to fulfill the mitzva of *tzitzis*.

Despite this conclusion, *Chazal* say one should not put wool *techeiles* strings on a linen *talis*. The reason is that wearing *tzitzis* is required only by day. At night, when there is no mitzva to wear *tzitzis*, it would be forbidden to wear the linen *talis*, since there would be no positive mitzva to override the prohibition of *shaatnez*. Practically, you would always have to remember to take off the *talis* before nightfall. Since it would be easy to make a mistake and to continue wearing the *talis* at night, *Chazal* forbade wearing *techeiles* strings even during the day. The *gemara* cites this as another example of *Chazal* mandating a passive violation of the Torah.

Tosafos *d"h kulhu nami* asks why not wearing *tzitzis* should be considered an active violation, not a passive violation? The Torah says that the only way you can wear a four-cornered garment is if it has *tzitzis* which consist of *lavan* and *techeiles*. That would mean that it is forbidden to wear a *talis* without proper *tzitzis*. One who puts on a *talis* that does not have *tzitzis* is actively violating the Torah. *Tzitzis* is different than not blowing *shofar*, which is passive, just not doing the mitzva, but with *tzitzis* it is an act of wearing a garment against the way the Torah mandates.

Tosafos answers by redefining the mitzva of *tzitzis*. Initially Tosafos understood that the Torah is saying that you can only wear a four-cornered garment if it has *tzitzis*. If so, wearing a *talis* without *tzitzis* would be a direct transgression of the Torah. But from the *gemara* it is clear that this is not correct. The mitzva of *tzitzis* is that when you are wearing a four-cornered garment, you now have a mitzva to put *tzitzis* on the garment. According to this interpretation, there is nothing wrong with putting on a garment without *tzitzis*. Once you put on the garment, you are then commanded to put on *tzitzis*. But not putting them on would only be a passive violation, just not doing the mitzva. Therefore, *Chazal* have the ability to tell us not to wear *techeiles* if it could lead to a violation.

Tosafos Harosh in *Yevamos* says that Tosafos's definition of the mitzva of *tzitzis* has a practical application. What if someone discovers on Shabbos morning that some of his *tzitzis* ripped and are *pasul*? He cannot fix them on Shabbos because replacing *tzitzis* requires tying a knot, which is forbidden on Shabbos, and let's say there is no other *talis* available at shul. May he wear his *talis* with the *pasul* *tzitzis*? Tosafos Harosh says that he can. He explains that according to Tosafos's conclusion there is nothing wrong with putting the *talis* on. Once he puts on the *talis*, he will now have a mitzva to tie on the *tzitzis* strings. However, that is impossible, since it is forbidden to do so on Shabbos. Since there is no possibility of tying on the strings, he will be considered an *ones*, one who is violating a commandment against his will. An *ones* is not considered to be a violation of *halacha*, therefore he would be allowed to keep his *talis* on. This would only be true on Shabbos, where one cannot tie on *tzitzis*. During the week one would immediately be required to find new *tzitzis* to tie onto his *talis*.

The Shaagas Aryeh explains that wearing a *talis* today without *techeiles*, even during the week, is like the case discussed in the Tosafos Harosh of a *talis* with *pasul* *tzitzis* on Shabbos. Only when one puts on the *talis* does one become required to put on the *techeiles* strings. But since *techeiles* is unavailable he is an *ones* and would be allowed to continue to wear the *talis*. In this case he is an *ones* all week long, since the *techeiles* is always unavailable.



# Saying a *Bracha* on a *Minhag*

SHMUEL SHEMTOV



It is well-known that on Hoshana Raba, the seventh day of Sukkos, we take five *aravos* and hit the earth with them. This is and has been the practice of all Jewish communities outside of the *Beis HaMikdash*, in remembrance of a distinctly different *arava* ceremony that was practiced in the actual *Beis HaMikdash* every day of the *chag*.

The *gemara* in *Sukka* 44a brings a *machlokes amoraim* as to the source of this practice outside of the *mikdash*. Rabbi Yochanan holds it was a “*yesod neviim*,” an actual *takana* of the prophets, and Rabbi Yeshoshua ben Levi holds that it is only a “*minhag neviim*,” a custom of the prophets. Yet according to both opinions, taking the *arava* on Hoshana Raba outside of the *Beis HaMikdash*, even *bizman hazeh*, is not optional. If so, what is the *nafka mina*, the practical difference, between the two opinions?

The *gemara* later explains that if the taking of the *arava* is a *minhag neviim*, but not an actual *takanas neviim*, then no *bracha* would be recited. Rashi understands that we could not say a *bracha* because we cannot use the *loshon* of “*v’tzivanu*,” that Hashem commanded us to take the *arava*, if its source is only a *minhag*, and not a *takanas neviim*. If the taking of the *arava* is an actual *takanas neviim*, on the other hand, a *bracha* would be recited as we do with other *mitzvos d’rabbanan* since Hashem commanded us to “*Lo tasur min hadevar asher yagidu lecha*,” not to stray from the thing which the Rabbis tell you.

Tosafos learn from this that we should not recite a *bracha* before saying the incomplete *chatzi hallel* on Rosh Chodesh, which the *gemara* in *Taanis* teaches is only a *minhag*. However, Rabeinu Tam disagrees with the comparison of taking the *arava* to reciting *chatzi hallel* on Rosh Chodesh. Rabeinu Tam explains that the taking of the *arava* is only a “*tiltul*,” an insignificant action, and due to only being “*tiltul*” and a

---

Shmuel Shemtov is in the seventh grade at the Los Angeles Cheder. This article is based on the *pshetel* prepared for Shmuel’s recent *bar mitzva* and *siyum* of *masechta Sukka*. Special thanks to his father and his father’s *chavrusa* Rabbi Avraham Tuvia Brander for their assistance.

*minhag*, it is not significant enough to warrant a *bracha*.

Reciting *hallel*, on the other hand, according to Rabeinu Tam, is no worse than any *krias haTorah*, and is therefore significant enough to warrant a *bracha*, even if it is only a *minhag*. Although Rabeinu Tam tries to bring a proof from the second day of Yom Tov, which he holds is also a *minhag*, he abandons his own proof.<sup>1</sup> The Ran learns unlike Rabeinu Tam that *Yom Tov Sheni* was an actual *takana*, so there is no problem of reciting a *bracha* according to all opinions.

The Rambam (*Hilchos Brachos* 11:16) states that a *bracha* should not be recited on any *minhag*, including *netilas arava*, which is a *minhag neviim*, and all the more so on *chatzi hallel*, which is a *minhag chachamim*. *Lich'ora*, it appears that the Rambam is following Tosofos's understanding of Rashi that a *bracha* cannot be said on any *minhag* because a *minhag* is not included in the *lav* of *lo tasur*. However, the Brisker Rav on the Rambam brings several proofs that the Rambam holds that even a *minhag* is included in the *lav* of *lo tasur*. If so, then why does the Rambam *pasken* that a *bracha* cannot be recited on a *minhag*?

Further, unlike the Ran, the Rambam writes that *Yom Tov Sheni* is a *minhag*, not an actual *takana*. Even so, the Rambam agrees that we say a *bracha* on *achilas matza* and *marror*, and on *krias hallel* on *Yom Tov Sheni* of Pesach. How can the Rambam *pasken* that we do not recite a *bracha* on a *minhag* and that *Yom Tov Sheni* is a *minhag*, and yet rule to recite *brachos* on *achilas matza*, *marror*, and *krias hallel* even on *Yom Tov Sheni*?

The Brisker Rav on the Rambam offers an interesting answer. He explains that the Rambam distinguishes between the “*etzem hacheftza*” of a *minhag* and a mitzva. The Rambam *paskens* in the third *perek* of *Hilchos Megilla v'Chanuka* that we do not say a *bracha* on *chatzi hallel* because it's a *minhag* and not a mitzva. Although full *hallel* is a mitzva, *chatzi hallel* is in itself a *chiddush* that came about only as a *minhag*, as there was never a mitzva to recite *chatzi hallel* at anytime. Its entire existence is only a *minhag*.

*Yom Tov Sheni*, on the other hand, is full of the same mitzvos as *Yom Tom Rishon*, such as *achilas matza* and *marror*, and *tekias shofar*. The *chiyuv* to say it on *Yom Tov Sheni* may be only a *minhag*, but the *etzem cheftza* that we do, the eating of the matza or *marror*, is a mitzva, no different from the mitzvos we perform on *Yom Tom Rishon*.

On Chanuka, we light the *menora* both in our homes and in our shuls. The mitzva *d'rabbanan* is to light our *menoros* in (or just outside) of our homes. But the

<sup>1</sup> See, however, the *Gilyon HaShas*.

Shulchan Aruch *paskens* that in addition to lighting at home, the custom is to also light in our shuls to further publicize the miracle of Chanuka and the *brachos* are recited on the shul lighting even though it is only a *minhag* according to everyone. The Mishna Berura and Be'er HaGola state that we can recite a *bracha* on the shul lighting of the *menora* even though it's just a *minhag*, just as we recite a *bracha* on *chatzi hallel* on Rosh Chodesh.

That explanation goes well with the Rama. However, the Mechaber *paskens* like the Rambam that we do not recite a *bracha* on *chatzi hallel*. How can he *pasken* that we do not recite a *bracha* on *chatzi hallel* but we do recite a *bracha* on the *minhag* of lighting the *menora* in shul?

Perhaps we can answer along the lines of the *chakira* of the Brisker Rav. Lighting the *menora* in shul is the same *maase* and *chefzas hamitzva* as lighting in our homes. It could be comparable to the *mitzvos* of *Yom Tov Sheni*, where the *etzem mitzva* is the same, but the *chiyuv* happens to have come to be as a *minhag*, unlike *chatzi hallel* which is really a new *briya* formed from a *minhag*. Although the Brisker Rav does not specifically address the lighting of the *menora* in shul, this could be a possible answer to why even the Mechaber *paskens* that the *brachos* are recited on lighting in shul, even though it is only a *minhag*.





# No Intention And No Addition

ZEV WIESEL



**T**he *mishna* in *Eruvin* discusses the *halacha* if a person finds *tefillin* on the street on Shabbos in a city with no *eruv*. If there is no *eruv* he cannot carry them home, but on the other hand he can't leave the *tefillin* lying on the street. The *mishna* says that we allow him to put them on and wear them while walking home, because *tefillin* can be considered like clothing. Just as wearing clothing is not considered carrying on Shabbos, so too, wearing *tefillin* in the normal way is not considered "carrying."

The *mishna* then presents a slightly different case: What should he do if he finds more than one pair of *tefillin*? In this case there is a *machlokes*. The *Chachamim* say that he should put on one pair, wear it home, and go back to get the other pair. *Rabban Gamliel* says that he can put on both pairs at once and wear them home together.

The *gemara* explains that *Rabban Gamliel* holds that there is enough room on your head and arm to fit two pairs of *tefillin* properly, and therefore wearing two pairs of *tefillin* would still be considered like wearing clothing. The *Chachamim* agree that there is enough room; however, if you wear two pairs of *tefillin* at the same time you are violating the prohibition of *bal tosif*, adding to a mitzva. For example, if a person wears ten strings on his *tzitzis* instead of eight, or shakes five species on Sukkos instead of four, he violates *bal tosif*. So too, if he wears two pairs of *tefillin* instead of one he will violate *bal tosif*.

Why does *Rabban Gamliel* allow him to wear two pairs of *tefillin*, and not consider it a violation of *bal tosif*? The *gemara* answers by raising a question:

מצות צריכות כונה או אין צריכות כונה?

*Do mitzvos require intent or do they not require intent?*

To perform a mitzva, is it enough simply to do the required action, or is it

---

Zev Wiesel is a 7th grade student at Yeshiva Aharon Yaakov Ohr Eliyahu.

necessary to also have *kavana*, intent, to do the mitzva? For example, on Sukkos we have a mitzva to take a *lulav* and *esrog*. What if I picked up the *lulav* and *esrog* with no intent to perform the mitzva? Have I fulfilled my obligation or not?

If you must have *kavana* for the mitzva, and you did not have *kavana*, you would not fulfill your obligation. However, if *mitzvos ein tzrichos kavana*, you would fulfill your obligation since you did the action that constitutes the mitzva.

The *gemara* explains that this *machlokes* applies to *bal tosif* as well. If *mitzvos ein tzrichos kavana* – the mitzva only requires doing the action – then wearing *tefillin* even without *kavana* would be an act of a mitzva. Therefore, if you wear an extra pair of *tefillin*, even without *kavana*, it would violate *bal tosif*. However, if *mitzvos tzrichos kavana*, then it is only a mitzva if you have *kavana*. Therefore, wearing an extra pair of *tefillin* without *kavana* to fulfill the mitzva would not be considered an act of a mitzva and would not be a violation of *bal tosif*. The *Chachamim* hold *mitzvos ein tzrichos kavana* and therefore would never permit a person to wear two pairs of *tefillin* at once. However, *Rabban Gamliel* holds *mitzvos tzrichos kavana*, and we can allow him to wear two pairs of *tefillin* so long as he does not have *kavana* to do a mitzva.

Rabbi Aryeh Leib Ginzburg, the author of the *Shaagas Aryeh*, asks a question on this *gemara*. The *rishonim* say that the opinion holding *mitzvos ein tzrichos kavana* would agree that if you have specific *kavana* not to fulfill a mitzva you are not *yotzei* the mitzva. For example, we are careful when we take the *lulav* and *esrog* on Sukkos to hold the *esrog* upside down until after the *bracha*. This is because if we hold the *esrog* correctly, according to the opinion of *mitzvos ein tzrichos kavana* we would have fulfilled the mitzva immediately, even before we make the *bracha*. However, the Mishna Berura suggests taking the *esrog* normally having in mind not to fulfill the mitzva until after the *bracha*. As another example, when we are asked what night of *Sefiras Haomer* it is, we answer with last night's count if we have not yet counted. We do not reply with tonight's count because according to the opinion of *mitzvos ein tzrichos kavana* we would have been *yotzei* the mitzva and would no longer be able to count *Sefiras Haomer* that night with a *bracha*. In this example as well, the Mishna Berura suggests that we can answer with the correct count and simply have in mind not to be *yotzei*.

So, Rabbi Ginzburg asks, why can't we use the same solution in our *mishna* in *Eruvin*, to wear both pairs of *tefillin* and simply have in mind that we do not want to perform a mitzva? Since all opinions agree that if you have in mind not to be *yotzei*, you have not done the mitzva, it should follow that all agree that you would not violate *bal tosif*!

Rav Shlomo Heiman answers by examining the concept of *kavana* and why it is necessary to fulfill a mitzva: Is the essence of the mitzva the *maase mitzva*, the action taken, i.e. putting on *tefillin*, shaking the *arba minim*, and it is necessary to have *kavana* to “get credit” for the *maase mitzva*? Or does an action only become a *maase mitzva* if you have the required *kavana*? If this alternative view is correct, and you do a *maase mitzva* without awareness that you are doing it, it’s not simply that you do not get credit for a mitzva you did, rather there was no *maase mitzva* at all.

Rav Shlomo explains that the *gemara* says that someone who does a mitzva without *kavana* is considered a *misasek*, an action done without thought, like brushing by a light switch on Shabbos and causing the light to turn on. This is not considered an *aveira* since the action was not done with any thought. Similarly, a *maase mitzva* done without any awareness of doing a mitzva is not a *maase mitzva* at all.

What of those who hold *mitzvos ein tzrichos kavana*? They certainly hold that a mitzva without *kavana* is considered a mitzva. But what if you had specific *kavana* not to be *yotzei*, in which case we said that everyone agrees that you are not *yotzei* the mitzva. We can again ask, is it as if you did not do the *maase mitzva* at all, or did you do the *maase mitzva* but it does not count since you did not want it to count as your mitzva? In our case of the *tefillin*, it makes sense to say that you did the *maase mitzva* but it does not count. Since this opinion holds *mitzvos ein tzrichos kavana*, that means that the *maase mitzva* itself is considered the mitzva, even with no *kavana* at all. It follows that even if you had *kavana* not to be *yotzei*, you still did the *maase mitzva*, but it does not count as a fulfillment of your obligation. This is substantiated by the words of Tosafos who say that if you have *kavana* not to be *yotzei* you are not *yotzei* because of the concept of “*bal karchach lo nafik*,” you cannot be *yotzei* a mitzva against your will. Tosafos seems to be saying that it is a mitzva, but Hashem will not count it because you don’t want to use the *maase mitzva* to fulfil your obligation.

With this idea Rav Shlomo answers the Shaagas Aryeh’s question. To violate *bal tosif* you must do the *maase mitzva* twice. If *mitzvos tzrichos kavana* and you did not have *kavana*, it is considered as if you did not do the *maase mitzva* so you are not violating *bal tosif*. However, if *mitzvos ein tzrichos kavana*, even if you have *kavana* not to be *yotzei*, you have still done the *maase mitzva*. Therefore, it would not help to wear two pairs of *tefillin* and have in mind not to be *yotzei*. Although you would not be *yotzei* the mitzva of *tefillin*, you have still done the *maase mitzva* and are therefore still violating *bal tosif*.

