PROBLEM! (?)

Jewish Transgressors and the Limits of Communal Responsibility

SHABBOS SHUVAH DERASHA, 6 TISHREI 5777 / RABBI ARIEL RACKOVSKY
“Rav Eliyashiv: No Shiva For Brother Of Rav Don Segal.” Yeshiva World News

Yisroel Segal – the brother of the Mashgiach Rav Don Segal Shlita was Niftar on the first day of Sukkos at the age of 68. Yisroel Segal was a journalist in the Israeli media for many years, and was well known throughout Eretz Yisroel as being extremely anti-Frum. He used every opportunity to attack Frum people – both, in the media and in books which he authored. Until the age of 20 he had learned in Ponevezh Yeshiva. After learning of the passing of his brother, the Mashgiach Shlita went to Maran Hagoen Rav Eliyashiv Shlita – who Paskened that no Shiva should be observed since he was a “Shana Upirush.”

“רבי אלישיב: לא שבעה על אחיך שנפטר ישראל עקב היות שנה ופירש
תלמוד בבלי מסכת שבועות דף לט עמוד א- דף לט עמוד ב
וכל עבירות שבתורה נפרעין ממנו וכאן ממנו ומכל העולם כולו. וכל עבירות שבתורה מכל העולם לא? והכתיב: וכשלו איש באחיו - איש בעון אחיו, מלמד שכל ישראל ערבים זה בזה התם שיש בידם למחות ולא מיחו
”שלו פירש

Babylonian Talmud, Shevuot 39a-b

‘For all transgressions in the Torah the sinner alone is punished (lit., collected from), but here [taking the name of the Lord in vain] the sinner and the whole world.’ — And for all transgressions of the Torah is not the whole world punished? Lo, it is written (Vayikra 26:37), And they shall stumble one upon another: one because of the iniquity of the other; this teaches us that all Israel are sureties one for another! There [they are punished], because it was in their power to prevent [the sin], and they did not prevent it.

Not My Problem?(!!) Jewish Transgressors and the Limits of Communal Responsibility
Rabbi Ariel Rackovsky
Congregation Shaare Tefilla
Ahabah the son of R. Zera learnt: Any blessing which one has already recited on behalf of himself, he can recite again on behalf of others, save the blessing over bread and the blessing over wine. These if he has not yet recited on behalf of himself he may recite on behalf of others, but if he has already recited them for himself he cannot recite them on behalf of others. Raba inquired: What is the rule with regard to the blessing for bread said over the matzah and the blessing for wine said in the sanctification? Do we say that since [the partaking of these] is obligatory, he can perform [the duty] for others, or have we here perhaps only an [optional] blessing, not an obligation? — Come and hear, since R. Ashi said: When we were at the house of R. Papi, he used to say the sanctification for us, and when his tenants came from the fields he used to make the sanctification for them. Our Rabbis taught: A man should not break bread for visitors unless he eats with them, but he may break bread for his children and the members of his household so as to train them in the performance of religious duties. In the reciting of [the blessing over] Hallel and the Megillah, even though he has already performed [the duty] for himself, he may perform it for others.

Rashi, Rosh Hashanah 29a

Even though one has already performed [the duty] for oneself, one may perform it for others – since all Israel are guarantors for one another with regard to mitzvah obligations.

Except for the blessings over bread and wine - and all other blessings on fruit and fragrances, which are not obligatory; rather, it is forbidden to derive benefit from this world without first blessing God. For that, the notion of a guarantor does not apply, as there is no individual obligation (lit., debt) in the first place -- neither to derive benefit nor to bless.
We do not conduct mourning rites for all those who deviate from the path of the community, i.e., people who throw off the yoke of the mitzvot from their necks and do not join together with the Jewish people in the observance of the mitzvot, the honoring of the festivals, or the attendance of synagogues and houses of study. Instead, they are like free and independent people like the other nations. Similarly, we do not mourn for heretics, apostates, and people who inform on Jews to the gentiles. Instead, their brothers and their other relatives wear white clothes; cloak themselves in white; and eat, drink, and rejoice -- for the enemies of G-d have perished. Concerning them, Scripture states: "Those who hate You, O God, will I hate" (Psalms 139:21).

Mishnah, Ma’aser Sheni 5:1
The boundaries of a vineyard [or field] growing fruit in its fourth year of planting (Revai -- which must be taken to Jerusalem to be consumed in purity) are marked with clods of earth; those containing fruit of the first three years of planting (Orlah -- which are forbidden to eat) are marked with mounds of clay; those of graveyards are marked with dissolved lime-dust. Rabban Shimon ben Gamaliel said: When is this the case? During the Sabbatical year. Conscientious [landowners] set aside coins and say: Any fruit gathered from this [vineyard or field] is hereby deconsecrated and its sanctity transferred to these coins.

Mishnah Demai 3:5
One who gives [his tithed produce] to the innkeeper’s wife [for preparation as dinner] must tithe both that which he gives to her and that which she returns, because she is suspected of exchanging [her doubtfully tithed produce for that which he gave her]. Said Rabbi Yossi: We are not responsible for the actions of deceivers; he tithes only that which she returns to him.
Talmud Yerushalmi, Ma’aser Sheni 5:1 (28a)

[As regards] a vineyard in its fourth year [of growth]-[people] should mark its [boundaries] with clumps of earth. But [to mark the boundaries of a vineyard] in its first three years of growth, [people should use lumps of] clay. [To mark] a grave-[yard, people should use] lime dissolved in water, then poured [along the boundary]. Said Rabban Simeon b. Gamaliel , ``To what [case] do these [rules about marking off vineyard with a special status, apply? [They apply] during the Sabbatical year. [Since the produce of the seventh year is available for any Israelite to take, people must mark these special vineyards to alert others against taking consecrated fruit.]-During the other years of the Sabbatical cycle, let the wicked robber glut on it and die. {So the Talmud’s interpolation, but this sentence is lacking in the Mishnah itself. See Jastrow, Vol. II, p.714, s.v. lacat.} -But [to avoid this Sabbatical year problem altogether], conscientious people set aside coins and declare, `Any [grapes] plucked [from this vineyard by passers-by during this Sabbatical year] hereby are deconsecrated with these coins.'’’ R. Yose and R. Simeon b. Gamaliel each have made the same ruling. {See Y.Dem.3.5 for this entire unit. } For:``[One who gives (his tithed produce) to the mistress of an inn (for preparation as dinner) must tithe both that which he gives to her and that which she returns, because she is suspected of exchanging (untithed produce for that which he gives her).] {The first portion of the quote from the Mishnah has been added by the translator for clarity.} R. Yose said, `We are not responsible for the actions of deceivers. [He tithes only that which she returns to him.]’’’. And similarly, R. Simeon b. Gamaliel says, ``We are not responsible for the actions of deceivers.” It seems reasonable to assert that R. Yose would agree with R. Simeon b. Gamaliel, but R. Simeon b. Gamaliel would not agree with R. Yose. R. Yose would agree with R. Simeon b. Gamaliel, because he holds that we are not responsible for the actions of deceivers, [and we certainly do not need to mark fields so that, when they steal, they can avoid fields full of prohibited foods]. R. Simeon b. Gamaliel would not agree with R. Yose, [that one need not tithe produce given to an innkeeper]. [For even though the innkeeper will undoubtedly attempt to switch the produce
and thereby deceive the guest, still] it should not be the practice of a trustworthy person (haver) to dispense untithed produce from his possession.

Babylonian Talmud, Tractate Bava Kama 69a

The above text states: 'R. Johanan said: If a robber misappropriated an item and the owner has not abandoned hope of recovering it, neither of them is able to consecrate it: the one because it is not his, the other because it is not in his possession.' Could R. Johanan really have said this? Did not R. Johanan say that the halachah is in accordance with an anonymous Mishnah; and we have learnt: 'In the case of a vineyard in its fourth year, the owners used to mark it with clods of earth', the sign implying an analogy to earth: just as in the case of earth a benefit may ensue from it, so also the fruit of this vineyard will after being redeemed be permitted to be enjoyed. 'That of orlah used to be marked with clay', the sign indicating a similarity with clay: just as in the case of clay no benefit ensues from it (i.e., it cannot be cultivated), so also the fruit of orlah could not be enjoyed for any use whatever. 'A field of graves used to be marked with lime', the sign having the colour of white, like corpses. 'The lime was dissolved in water and then poured out' so as to make its colour more white. 'R. Simeon b. Gamaliel said: These practices were recommended only for the Sabbatical year,' when the fruits of the land are ownerless; but in the case of the other years of the seven year cycle, let the wicked stuff themselves with it till they die. The virtuous however used to set aside money and to declare that whatever has been gleaned from this [vineyard] shall be redeemed by this money.' Does not this contradict R. Johanan? Nor can you urge in reply that the Tanna who recorded the practice of the virtuous was R. Simeon b. Gamaliel, [and R. Johanan might therefore not have concurred with this anonymous view stated by a single Tanna] for did not Rabban b. Bar Hanah say that R. Johanan stated that whenever R. Simeon expressed a view in a Mishnah the halachah is in accordance with him...
湖区 היא חוה יאיר סימן קמב

...והנה טעמא דרשב"ג דהלעיטהו לרשע וימות ........
ולשון זה הדמשמות פשוטי דאך בה מנהגו אלא דאך דה猕ורא מאמריו איכן בהל"ל יש לע דוד אמרים
שיעבור רכ הבכל שחלותיך רשכג ממנה דריך לדפשו איש_Buffer היש ויאד יחטף הזא מוותריי לע כל איש ישראל
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shr"ת湖区 יאיר סימן קמב

The rationale of Rabban Shimon Ben Gamliel is “let the wicked glut on it and die,” as explained in the Baraita cited in Bava Kamma 69a. I am deeply incredulous about this expression; the literal meaning is that in general we need not warn a person about to transgress one sin when they are committing other transgressions as well, and the implication is that we are even allowed to force (lit., force-feed) an established evildoer to sin. How could this be? We are taught to warn every Jew when they may be about to commit an inadvertent sin and to do whatever we can to prevent deliberate sin?! One might suggest that in this situation, he will be considered wicked if he eats the food and we therefore have no obligation to warn him on this specific matter, and we don’t actually force him to sin. Nonetheless, a basic difficulty remains: One suspected of violating one transgression is not necessarily suspected of violating other sins, and certainly not those that are more severe, and certainly not those that involve the commission of two sins at once. Here, too, a person might be deterred from theft by the added prohibition of orlah...whoever can provide a balm for my malady shall be called a great healer.
Yosef Achituv (1933-2012)- “‘Stuff his face with it and let him die’: Refraining from Saving Others from Sin,” *Techumin* 9 (5748) [1988], pp. 159-60.

Rabbi Perla attempted to deal with the question posed by the Chavvot Yair. He opened with a poetic flourish: “I know of myself that I am no healer, let alone a great one. Nonetheless, I see a great person, but not the force of his question.” R. Perla raises the possibility that the disagreement between R. Shimon ben Gamliel and the Sages expresses a fundamental Tannaitic dispute about the essence of the obligation of collective responsibility. If this is the case, one might suggest that according to R. Shimon b. Gamliel, there is no collective responsibility at all. After all, so long as collective responsibility exists, we could not, under any circumstances, ignore the wicked and leave him to his evil devices.

Guarantorship itself, generally speaking, has two sides. On the one hand, The guarantee confers a responsibility and establishes a right of intervention into the affairs of the one who receives the guarantee; on the other hand, as is well known, it obligates the guarantor to repay the debt of the borrower who receives the guarantee. Similarly, in our context, all of the “guarantors” are responsible for the actions of everyone else in society, and can be punished for their fellow’s sinful acts if they do not protest. Thus, preventing the wicked from sinning is also in the self-interest of the entire community, that they not bear the burden of the other’s sin or be punished on the wicked person’s account.

The essence of guarantorship is predicated on the possibility of objecting. Whoever is able to object or prevent or prevent others from sinning but failed to do so, becomes responsible for that sin as a guarantor - as if he or she had committed the sin themselves. Conversely, whoever is powerless to object to the sin is not jointly responsible. R. Shimon ben Gamliel’s statement, “in the other years of the Sabbatical cycle, let him stuff himself and die” is based on this as well: Since one is powerless to object to violations of the sins of robbery and theft, collective responsibility no longer applies. Accordingly, R. Shimon ben Gamliel maintains that collective responsibility does not apply even when another sin is committed concomittantly with robbery or theft, such as orlah -- and even though one would have been able to protest or prevent that sin.
Commentary of R. Solomon Sirilio (1485-1554) to Yerushalmi Demai, 3:3

...As Rabban Shimon ben Gamaliel said: “...in the other years of the Sabbatical cycle we do not delineate,” since they do not have a right to touch [the fruit], they are thieves, and “you may let the wicked stuff themselves with it till they die.” And the more sins [that they commit], the better, as it will cause the sinner to die faster [on account of his/her sins]...

Rabbi Menachem ben Solomon Meiri (1239-1306)

And all of these matters were during the Sabbatical year, in which the hand of all was allowed to touch (take anything that we see); however, in the other years of the cycle, when it is forbidden to touch (take) them, we do not fix things for those who commit sins. Rather, if they touch them—“Good!”—let them be enmeshed in sin, and eat that which is forbidden...
A question came about a city in an independent province in the south of Greece that was ruled by a particular monarch who permitted the Jewish people to observe their religion. In this community, there was an ancient agreement with the force of excommunication against mixed dancing, save for a man and his wife or a brother and a sister. The agreement was for a five year period and, if the elites of the city council did not decide against its renewal prior to the conclusion of five years, it would be in effect for another five years. In this way, it lasted for a long time. One day, a group of some 15 young men came before the city council and requested that they cancel the agreement at the conclusion of that five year period. The members of the city council learned from some sources that there were several young men who were not chosen by God, who transgressed this prohibition and were dancing with non-Jewish women, and Jewish women who were prohibited to them by the agreement. Upon learning this, they thought that it might be better to accede to the wishes of these young men and cancel the agreement at the conclusion of that time period, so that they will not transgress the agreement. After all, even though the matter was not brought to a Rabbinic tribunal and there were no formal witnesses, the matter was evident even without proof. They thought that if they insist on this matter and try and found out which “Satan” it was who danced with a forbidden woman against the agreement and they would punish him, declaring him to be excommunicated, it would become known to the local government, for according to their rules there is nothing wrong with this behavior. Therefore, they thought it might be best to cancel this agreement so that the transgressors would not be violating an agreement and risk excommunication. They also considered the other argument, which was that it might be best to uphold the agreement in order to save those who, as a result of the agreement, were careful not to engage in this kind of behavior and would do so once the agreement was cancelled, and I was asked what to do.

My answer is that I have examined the various sides to this question and, despite the weakness of my knowledge, I say that agreements should not be cancelled to prevent the stumbling block of an excommunication from those who violate it deliberately, for we want to thwart the foolish.

Rabbi Chaim Yosef David Azoulay (1724-1806), Responsa “Yosef Ometz” 103
Rabbi Eliezer Yehuda Waldenberg (1915-2006), Responsa “Tzitz Eliezer” 15:18

Is it permitted to give directions to a driver who, on Shabbat, asks for directions? By giving these directions, he will enable the driver to reach his destination quicker, and in doing so will stop his automobile less frequently, and he [the driver] will be saved from many instances of Chillul Shabbat...

In light of that which we had said, it seems obvious that in our case we should say, with certainty, that we are not responsible for the sins of those who transgress the Shabbat in public such that we should reduce the violation they are committing. This is certainly true here, because we are not completely preventing him from violating the Shabbat altogether, in which case we would unquestionably say “Force feed it to him and let him die.”
This is particularly true in our scenario, where the desire to reduce the violation of Shabbat requires showing the person a way to continue violating Shabbat. Therefore, aside from the principle that this is not the behavior of a faithful Jew, there is also the concern that by virtue of these directions, the transgressor will become further accustomed to his transgressions because of the assistance he is receiving in doing so...

With regard to the question you asked, it seems to me that, as a matter of practical Jewish law, there is no obligation to provide such a person with directions, and there is even a prohibition involved in assisting transgressors by showing the driver who is violating Shabbat how to arrive at his destination...

...Therefore, the case you describe is the most classic case in which, as a matter of Jewish law, one is required to ignore the transgressor who is asking the directions, and instead fulfill the dictum “Force feed it to the wicked and he will die.” We only provide assistance to sinners of the kind that a spirit from heaven will rest on them or they will give their hearts to repentance and to refraining from violating Shabbos, for we are not interested in the death of the wicked- only in their return from their ways, so they may live.
Avishai Ben Chaim, “Rav Don”- Ma’ariv, April 13, 2008

R. Don did not attend his brother’s funeral, nor did any other Haredi family member. Contrary to rumors, he didn’t sit shiva when his brother stopped being religious, but he insisted that he would not sit shiva for him when he died. However, R. Don meticulously examined his brother’s final media interviews, futilely searching between the lines for any hints of repentence. He even sent a query to Rav Elyashiv asking whether some of his brother’s statements could be construed as having indicated a change of heart.

His close associates explain the reason for this is the unequivocal halacha that one does not sit shiva for a relative who “studied and abandoned [the Torah].” But it is clear that we are once again seeing the famous, unyielding stubbornness of R. Don. It is nearly impossible to find any other instances of Haredim who chose not to sit shiva for relatives who had left the faith. Tevye the Dairyman is hardly an exemplar.

Rav Elyashiv answered in the negative - Israel had not repented. R. Don likewise did not budge. The brothers who parted ways in the course of their lives could not be reconciled even at death.