

The Lesser of Two Evils: When Being Bad is the Best Option
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Rabbi Yaakov Yosef Herman was a legendary figure on the Lower East Side for the first decades of the 20th Century. A successful furrier, he and his wife Aidel were known throughout the Jewish world for their radical hospitality, but he was especially legendary for uncompromising observance. In her book “All for the Boss,” a book that has become a classic in certain circles, his daughter, Rebbetzin Ruchoma Shain of blessed memory, recounts her memories of her father, a man of unyielding principle whose rigid moral code prevented him even from kissing his children. Rabbi Herman went to extreme, even fanatical lengths to preserve religious standards in his family and his community; on one occasion, he interrupted Shabbos morning services at the Young Israel of Manhattan to protest a “Young Israel Dance” that was taking place that evening, banging on the table and demanding that either the word “dance” or “Young Israel” be struck from the sign, as the two could not coexist. On another occasion, he wore a sandwich board on Coney Island Beach that said, “Mixed Bathing is Prohibited by Torah Law!” As you can imagine, these missions were not well received by their intended targets. Another area of concern was the ubiquitous Shabbos violation on Orchard Street, which was teeming with business on Friday nights and Saturdays. Yaakov Yosef Herman came up

with the idea of placing an ad in the Yiddish newspapers, seeking lay people who were interested in furthering traditional Judaism in New York City. A few people answered the ad, and the *Agudas Baalei Battim* was formed. One Friday afternoon, he and the other volunteers gathered at the bottom of Orchard Street, and began to protest the Shabbos violation that occurred there. With Rabbi Herman at the head, they stopped by each pushcart on Orchard Street and explained politely but forcefully that it was a serious desecration of Torah law to work on Shabbos. According to Rebbetzin Shain, in very few cases did this work on the first day. Most of the time, he and his cohort were met with jeers, insults and threats of violence, yet Rabbi Herman was undeterred. Each subsequent Friday afternoon, he and the members of the *Agudas Baalei Battim* marched down Orchard Street, with the same reaction. When the group finally raised enough money, they began offering cash incentives, paying pushcart operators their expected revenue for the weekend in exchange for closing their carts. This approach worked, she said, and Orchard Street became a walking thoroughfare on Shabbos and Yom Tov.

This is a nice story, one evocative of the challenges facing observant Jews in America at the turn of the 20th Century. It is highly doubtful, however, that this state of affairs lasted long. Economic pressure and job insecurity often caused Jews to face the threat of losing their jobs, and their ability to feed

their families, if they didn't come to work on Saturday. In his book "The Promised City," Moses Rischlin describes a Lower East Side in which a vast majority of stores- nearly 60 percent- were open on Shabbos, as Ruchoma Shain described, in some cases brazenly displaying their wares even on the High Holidays. Shabbos violation went from being a source of income to a source of pleasure. Friday night became the primary night at the Yiddish theater, and Bowery musical halls were a hot destination for youngsters to let off energy accumulated during a week of work. Some attempted to balance their religious commitment with their economic obligation; the now ubiquitous *hashkamah minyan*, viewed in some circles as a sign of Sabbatical alacrity, was founded to accommodate those who wanted to attend shul before work.

As much as Shabbos violation was a widespread problem, there was another societal and halachic crisis of great significance, one tearing apart the fabric of American Jewry- one that we have no record of Yaakov Yosef Herman protesting. Allow me to read you a letter from the Jewish Daily Forward of 1910:

Worthy Editor,

My Husband— — — [here the name was given], deserted me and our three small children, leaving us in desperate need. I was left without a bit of bread for the children, with debts in the grocery store and the butcher's, and last month's rent unpaid.

I am not complaining so much about his abandoning me as about the grief and suffering of our little children, who beg for food, which I cannot give them. I am young and healthy, I am able and willing to work in order to support my children, but unfortunately I am tied down because my baby is only six months old. I looked for an institution which would take care of my baby, but my friends advise against it.

The local Jewish Welfare Agencies are allowing me and my children to die of hunger, and this is because my "faithful" husband brought me over from Canada just four months ago and therefore I do not yet deserve to eat their bread.

It breaks my heart but I have come to the conclusion that in order to save my innocent children from hunger and cold I have to give them away.

I will sell my beautiful children to people who will give them a home. I will sell them, not for money, but for bread, for a secure home where they will have enough food and warm clothing for the winter.

I, the unhappy young mother, am willing to sign a contract, with my heart's blood, stating that the children belong to the good people who will treat them tenderly. Those who are willing and able to give my children a good home can apply to me.

Respectfully,

*Mrs. P.**

Chicago

American Jewry faced an epidemic of desertion. The letter I just read a few moments ago was not unique; for years, the Forward published a column with such letters, from deserted wives to their deadbeat husbands; *the column ran weekly.*

In an article entitled, “*Send Me My Husband Who is in New York City*”: *Husband Desertion in the American Jewish Immigrant Community 1900-1926*, Reena Sigman Friedman notes the following remarkable statistics.

...The desertion of the breadwinner had become a fact of life for numerous immigrant Jewish families during this period. In 1905, 14.6 percent of the cash relief funds administered by the United Hebrew Charities were granted to deserted women, second only to that provided to widows and their children. The records of the United Hebrew Charities for 1909 indicate that, for every three applications for relief submitted by widows, two were received from deserted women. Jewish charitable organizations in a number of American cities expended considerable sums in their efforts to deal effectively with the desertion problem. In 1909, the budgets of Jewish charities in Chicago, Baltimore and New York City indicated desertion expenditures of \$11,660, \$3,000, and \$37,000, respectively. Finally, by 1911, the Jewish community acknowledged the seriousness of the problem by establishing a National Desertion Bureau, of nationwide and even international scope, with headquarters in New York City.

Indeed, the problem of Jewish desertion mirrored a widespread societal problem. In 1895, in Minnesota alone, 25,000 children were deserted.¹ What caused men to desert their families in such staggering numbers? Perhaps the same thing that caused people to shed Shabbos observance. M. Baranov, in an article from the Forward in 1910 quoted by Irving Howe in his “World of Our Fathers,” offered a profound psychological explanation:

World of Our Fathers by Irving Howe pg. 180

...The Yiddish world was full of discussions as to the reasons for desertion, and an article in a 1910 Forward by M. Baranov offered an explanation about as good as those that trained sociologists would later provide. Baranov wrote that most of these desertions occur among “the mass of uneducated young Jews.” The old ones come to America “with sacred traditions; the middle-aged Jews have rigid outlooks; the youthful istn [political activists] have principles. But the young men without spiritual roots are defenseless against American life.” And then, quite in the spirit of Durkheim, he continued:

In Europe they were not responsible for their lives; they lived within the framework of police regulations, religious ritual, teachings of relatives and neighbors. Every step was decided beforehand. Their road of life was narrow, but they could not get lost...In America young Jews are hurled into a world of

¹ The “Problem of Duty”: Family Desertion in the Progressive Era by Martha May in Social Service Review 62 (March 1988) pgs. 43-44

freedom-no fences, no police, no communal judgement. It's every man for himself. Nothing sacred; you can buy or sell everything for money. The aim of life is amusement; conscience and honor fall by the wayside...Such a young man gets married. In three or four years he has several children, who are a nuisance. His wife grows sickly. His wages are too low to allow him any fun. He fights with his wife, who doesn't let him out of the house. There are gay young girls out there, and carefree bachelors. The anarchists preach free love; the freethinkers guarantee there is no God and no punishment in the afterlife. The young man thinks, "I am a free person, who cares what they say," and one fine day he leaves home and forgets to come back. He becomes a missing husband.

The Dilemma

The proliferation of Shabbos violation converged with the desertion crisis to create a tragic, yet fascinating, body of Halachic literature. Consider the following two cases:

1. A man married a woman in the presence of a minyan of men, who were not valid witnesses. Subsequent to their marriage, he absconded with 100 rubles of hers, at the time a princely sum, leaving his wife broke and without recourse, for she had no *Get*.

2. A woman married a certain man in the presence of witnesses who ate non-kosher food, and violated Shabbos. One of the witnesses on the Ketubah was the brother in law of the groom, who is prohibited from signing a Ketubah. The husband and wife lived together for a month, and then he left her; he was now living in an insane asylum, and the doctors said there is no cure for his condition. A person who is not in full command of his mental faculties cannot halachically give a Get.

What are these women to do? Nowadays, when we speak of an *agunah*, a “chained woman,” we are often describing a woman whose husband *refuses* to grant her a divorce by giving her a Get. But the classic Talmudic case of an *agunah* is virtually identical to this one, in which a husband *disappears* or is otherwise unable to divorce his wife. The only way to permit her to move on with her life would be to invalidate the witnesses for the wedding, which is no easy feat. What are the issues at stake here?

First, Jewish marriage is effectuated by an act of betrothal, or *kiddushin*, in the presence of witnesses.

רמב"ם הלכות אישות פרק ג הלכה א

כיצד האשה מתקדשת, אם בכסף הוא מקדש אין פחות מפרוטה כסף או א שוה פרוטה, אומר לה הרי את מקודשת לי, או הרי את מאורסת לי, או הרי את לי לאשה בזה, **וּנֹתֵן לָהּ בְּפָנֵי עֵדִים**, והאיש הוא שאומר דברים שמשמען שקונה אותה לו לאשה והוא שיתן לה הכסף.

How is the bond of kiddushin established with a woman? If the man [desires to establish] the kiddushin by [the transfer of] money, [he must give] a p'rutah, either in coin or its worth.

[Before giving it], he tells her, "You are consecrated unto me...", "You are betrothed to me...", or "You become my wife through this." He must give her [the money or the item] in the presence of witnesses. It is the man who makes the statement that implies that he acquires the woman as his wife, and it is he who gives her the money.

At the same time, there is another principle in Jewish jurisprudence called a *chezkas kashrus*, or a presumption of reliability. This is a principle that can be found in many halachic realms, but has its source in the laws of the sanctification of the new moon, which, in the times of the Temple, was done based on verbal testimony.

רמב"ם הלכות קידוש החודש פרק ב: הלכה ב

דין תורה שאין מדקדקין בעדות החדש, שאפילו קדשו את החדש על פי עדים ונמצאו זוממין בעדות זו הרי זה מקודש, לפיכך היו בראשונה מקבלין עדות החדש מכל אדם מישראל שכל ישראל בחזקת כשרות עד שיודע לך שזה פסול, משקלקלו המינים והיו שוכרין אנשים להעיד שראו והם לא ראו התקינו שלא יקבלו בית דין עדות החדש אלא מעדים שמכירין בית דין אותן שהם כשרים ושיהיו דורשין וחוקרים בעדות.

According to the law of the Torah, there is no need to be precise regarding testimony about [the sighting of] the new [moon]. For even if the new moon was sanctified on the basis of the testimony of witnesses, and later it was discovered that those witnesses had perjured themselves,[the new moon] remains sanctified. Accordingly, in the early generations, testimony regarding [the sighting of] the new [moon] was accepted from any Jew [without further enquiry], for any Jew can be presumed to be an acceptable witness unless one knows with certainty that he is unacceptable. When the followers of Baithos began conducting themselves in a debased manner and would hire people to

testify that they had seen the moon when in fact they had not, the court decreed that it would accept testimony regarding [the sighting of] the new [moon] only from witnesses whom the court knew to be acceptable. Moreover, they would examine and question their testimony.

In essence, *chezkas kashrus* states that any person who observes Jewish law and offers testimony is fit to do so unless proven otherwise. A *chezkas kashrus* is an essential ingredient in a halachic life, because it allows us to carry out a religious life that can involve others, and that is free from the shadow of mistrust hanging over any interaction or event.

If a marriage took place and a woman's husband is nowhere to be found, the ability for this woman to move on with her life may rest on finding a reason to invalidate the testimony of the witnesses that would render any transaction or ceremony they witnessed retroactively invalid. For these purposes, the principle of *chezkas kashrus* may be diametrically opposed to the need to invalidate witnesses. In this case, there seems to be a simple answer: the witnesses were not *Shomer Shabbos*.

There is a Halachic catch 22 here. It is almost axiomatic that taking a liberal and non-judgemental approach to fellow Jews, regardless of their religious shortcomings, is the key to communal and religious growth of its members. In this case, that would mean allowing the witnesses, despite reports of Shabbos violation, to retain their *chezkas kashrus*. However, adopting this approach would represent a stringency on the back of this poor woman, for if Shabbos violation does not disqualify these witnesses, she remains married to her lowlife, deserting husband. It seems that, as far as the witnesses are concerned, being “bad” is the best option. However, was Shabbos violation, particularly in those days, grounds to invalidate the witnesses? Does Jewish law allow one person’s reputation to be impugned to save another? This was the question posed to Rav Sholom Israelson of Chicago, by Rabbi Mordechai Shlomo Silber of Minneapolis and, more extensively, in a correspondence with Rabbi Jacob Bauman of Los Angeles.

Biography

Rabbi Israelson was born in Lithuania, and studied under some of the greatest Rabbis of his generation. His teacher in Kovno was Rav Yisrael Salanter, and he was ordained by the leading Halachic authority of his time, Rav Yitzchak Elchanan Spektor. In 1894, he came to the United States, serving first in Milwaukee, then moving to Toronto before ending up in Chicago. Rabbi Israelson was a colorful character, to say the least. If his own

writings are to be believed, suffered greatly as a Rabbi, receiving no respect and minimal remuneration in his role. In the preface to the work *Divrei Shalom* he writes that while it is customary for an author to thank the people of his city in the preface to a book, , he has no need to thank the people of Chicago who did not help him at all, financially or otherwise. He even apologizes to the paper he wrote the book on, for wasting it! *Divrei Shalom* is his work of Responsa, and is a fascinating insight into the state of American Jewry- and the American Rabbinate- at the turn of the century. Rabbi Israelson corresponded with other Rabbis of American communities, including Rabbi Jacob Bauman. Rabbi Bauman was born in Zagarow in Poland in 1870, and came to the United States, to Los Angeles, in 1907, where he lived until his death in 1940.

The Issues

In considering this thorny issue, Rabbi Israelson marshalled a number of sources that point in a lenient direction. The Torah tells us (Exodus 23:1):

שמות פרק כג פסוק א

לֹא תִשָּׂא שְׁמֵע שָׂוֵא אֶל תִּשָּׂא יְדִיךָ עִם רָשָׁע לְהִיט יַד חֲמָס.

You must not carry false rumors; you shall not join hands with the wicked to act as a malicious witness:

How do we define “wickedness”? The Shulchan Aruch sets forth some parameters.

סעיף א: רשע פסול לעדות, ואפילו עד כשר, שיודע בחבירו שהוא רשע, ואין הדיינים מכירים רשעו, אסור לו להעיד עמו, אף על פי שהוא עדות אמת (ל' הרמב"ם פ"י מעדות). ואצ"ל עד כשר שהוא יודע בעדות לחבירו, וידע שהעד השני שעמו עד שקר, שאסור לו להעיד.

סעיף ב: איזהו רשע, כל שעבר עבירה שחייבים עליה מלקות; ואצ"ל אם חייבים עליה מיתת ב"ד. ל"ש אם עבר לתיאבון, ל"ש אם עבר להכעיס.
הגה: עבר עבירה שאין בה מלקות, פסול מדרבנן (רבינו ירוחם נ"ב ח"ד).

סעיף ג: היתה עבירה שעבר מדרבנן, פסול מדרבנן.
הגה: וי"א בדבר מדבריהם, בעינן שעבר משום חימוד ממון (ר"י נ"ב ח"ד ותוס' פ' איזהו נשך ועיטור).

סעיף כג: הפסול מן התורה, שהעיד, עדותו בטלה אף על פי שלא הכריזו עליו בבתי כנסיות ובבתי מדרשות. והפסול מדבריהם, העדות שהעיד קודם שהכריזו עליו, כשרה.

Who is a wicked person? Per the Shulchan Aruch, it is anyone who transgresses a sin for which the punishment is lashes (and certainly one that is liable for the death penalty by Beis Din), whether that transgression is willful or the result of atavistic weakness. The violation that labels a person wicked can even be Rabbinic in nature, so long as it is widely known to be a sin, and not an obscure sin that no one thinks is problematic.

Based on the above, if the men who witnessed this wedding were all Shabbos violators, a compelling argument can be made that the wedding was never valid, and that this woman does not need a *Get* to move on with her life. However, a number of other texts seem to tell a different story.

The Eidim are Kosher

The Talmud (Sanhedrin 24b) describes the kinds of witnesses who are prohibited from rendering testimony, on account of their unseemly behavior.

תלמוד בבלי מסכת סנהדרין דף כד עמוד ב

משנה. ואלו הן הפסולין - המשחק בקוביא והמלוה בריבית, ומפריחי יונים, וסוחרי שביעית. אמר רבי שמעון: בתחילה היו קורין אותן אוספי שביעית, משרבו האנסיין חזרו לקרותן סוחרי שביעית. אמר רבי יהודה: אימתי - בזמן שאין להן אומנות אלא הוא, אבל יש להן אומנות שלא הוא - כשרין.

MISHNA: And these on the following list are the ones who are disqualified by the Sages from bearing witness due to their unseemly behavior, as they are considered wicked individuals guilty of monetary transgressions: **One who plays with dice [bekubbiyya] for money, and one who lends money with interest, and those who fly pigeons, and merchants who trade in the produce of the Sabbatical Year, which may be eaten but may not be sold as an object of commerce. Rabbi Shimon said: Initially, people would call them: Gatherers of the produce of the Sabbatical Year. Once the tax collectors grew abundant they would then call them: Merchants who trade in the produce of the Sabbatical Year, as the Gemara will explain. Rabbi Yehuda said: When are the people listed above disqualified from bearing witness? It is when they have no occupation but this one. But if they have an occupation other than this one, although they also make money by these inappropriate means, they are fit to bear witness.**

The Baalei HaTosafos, on this passage of Talmud, assert that all the violations described in the Mishnah are Rabbinic in origin, and the reason

the violations are mostly Rabbinic in nature is that none of the violators actually think they are transgressing a sin, and certainly don't think they are transgressing a biblical sin. This is true with regard to an interest bearing loan, for example, into which both parties entered willfully: no one thinks this is a prohibition, because all parties consent to the transaction (it is, in fact, an egregious sin). The Baalei HaTosfos use the self definition of the parties involved as the barometer for their level of culpability. But it is not only self definition that is the barometer of severity. The Talmud (Sanhedrin 26a) says that the frequency of violation in society also can change the status of the sin. According to Rav Shimon, the severity of the sin of trading in Shemittah produce was lessened, certainly as a violation worthy of invalidating testimony, when it became rampant. Indeed, the Talmud (26a) describes a shift in attitude and terminology toward those who carry out commerce with produce of the Shemittah year, a biblical prohibition. The Talmud describes several kinds of Shemittah violators:

- Those who hoard *shemittah* produce for themselves
- Those who conduct business with *shemittah* produce
- Those who offer the poor to gather produce for them.

The Talmud debates which of these categories represents a violation that disqualifies a person from testimony, and then reaches a startling conclusion: Once land tax collection became ubiquitous and rigorously enforced, most of these violations were no longer considered worthy of

invalidating testimony. Indeed, the sage Yannai even *permitted* this practice just so people would be able to save their property from repossession in the *Shemittah* year. The only disqualifying validation left was that of deliberately conducting business with *shemittah* produce.

תלמוד בבלי מסכת סנהדרין דף כו עמוד א

אמר רבי שמעון: בתחילה היו קוראין אותן אוספי שביעית. - מאי קאמר: אמר רב יהודה, הכי קאמר: בתחילה היו אומרים אוספי שביעית כשרין, סוחרין פסולין. משרבו ממצאי מעות לעניים, ואזלי עניים ואספי להו, ומייתו, חזרו לומר אחד זה ואחד זה פסולין. קשו בה בני רחבה: האי משרבו האנסים? משרבו התגרין מיבעי ליה! אלא: בתחילה היו אומרים אחד זה ואחד זה פסולין, משרבו האנסין, ומאי נינהו - ארנונא. כדמכריז רבי ינאי: פוקו וזרעו בשביעית, משום ארנונא. חזרו לומר: אוספין - כשרין, סוחרין - פסולין.

The mishna teaches that **Rabbi Shimon said: Initially people would call them: Gatherers of the produce of the Sabbatical Year.** Once the tax collectors grew abundant they would then call them: Merchants who trade in the produce of the Sabbatical Year. The Gemara asks: **What is he saying?** What is Rabbi Shimon teaching in this statement? **Rav Yehuda says this is what he is saying: Initially the Sages would say that gatherers of the produce of the Sabbatical Year, i.e., those who gather a large quantity of produce of the Sabbatical Year for themselves, are fit to bear witness, but merchants who trade in the produce of the Sabbatical Year are disqualified.** **Once those who would offer money to the poor to gather produce for them grew abundant, and the poor would go and gather the produce for those who hired them and bring it to them, then gathering a large amount of produce of the Sabbatical Year was considered a business. The Sages then said that both this category, gatherers of the produce of the Sabbatical Year, and that category, merchants who trade in the produce of the Sabbatical**

Year, are disqualified. The children of the Sage Raḥava had a difficulty with this explanation, as accordingly this phrase: Once the tax collectors grew abundant, is inaccurate; the mishna should have stated: Once the merchants grew abundant. Rather, Rabbi Shimon's statement should be explained differently, as follows: Initially the Sages would say that both this category, gatherers of the produce of the Sabbatical Year, and that category, merchants who trade in the produce of the Sabbatical Year, are disqualified. Once the tax collectors grew abundant it was permitted to gather the produce of the Sabbatical Year. And what tax did they collect? *Arnona*, which was a heavy tax on property collected both during the Sabbatical Year and in other years, placing pressure on those observing the Sabbatical Year. As Rabbi Yannai proclaimed: Go out and sow the fields during the Sabbatical Year due to the *arnona* that you must pay. Once this happened, the Sages then said: Gatherers of the produce of the Sabbatical Year are fit to bear witness, as they were no longer viewed as transgressors, but merchants who trade in this produce are still disqualified.

The Baalei HaTosfos ask a simple question. If, indeed, this is a biblical violation, how can “taxes” be an excuse for violating it?

תוספות מסכת סנהדרין דף כו עמוד א

משרבו האנסיין ומאי נינהו ארנונא - וא"ת ומשום ארנונא התירו לחרוש ולזרוע דהויא איסורא מדאורייתא וי"ל דמיירי בשביעית בזמן הזה דרבנן אי נמי י"ל דפקוח נפש הוא ששואל להם המלך מס ואין להם מה יפרענו ומתים בתפיסת המלך והכי איתמר בירושלמי משום חיי נפש.

They suggest two answers:

1. Like the earlier Tosafos, the observance of Shemittah nowadays is only Rabbinic in nature, and therefore violating it is only a Rabbinic violation.
2. The king's demand for a land tax represents *pikuach nefesh*, as failure to pay it often results in death.

These sources seem to mitigate against invalidating the testimony of the Shabbos violators. First of all, if rampancy of a violation lessens its severity, certainly *chillul Shabbos* would fall under this definition. Secondly, many people are not aware of the intricacies of the laws of Shabbos, and don't realize that their actions even constitute a Shabbos violation. What about *pikuach nefesh*, or a threat to a person's life? In America of the turn of the century, where *parnassah* was at a premium and it was exceedingly difficult to earn a living, was working on Shabbos considered *pikuach nefesh*?

The Rabbis Speak

Rabbi Bauman and Rabbi Israelson both weighed in this issue, debating one fundamental point: how did these two Rabbis view American Jewry, its current state and its direction?

In a rejoinder to Rabbi Israelson, Rabbi Jacob Bauman offered his anecdotal experience, which was that rampant violators were not motivated by religious rebellion, but rather by fear for their lives. They were convinced they would die if they didn't work on Shabbos. Even if they were lucky enough to secure a job, the pay was paltry and hunger pawed relentlessly at the door. Rabbi Bauman asserted that many such people were thoroughly observant "in the old country" and remained reliable and observant Jews in every area save for their Shabbos violation. Surely this should be a mitigating factor that would not invalidate the witnesses?

Further proof for Rabbi Bauman's liberal view of Shabbos violators may be adduced from Rav Yehoshua Falk Katz's commentary on the Shulach Aruch, *Sefer Meirat Einayim* (Choshen Mishpat 34:57). Rav Katz says that if a person violates Shabbos (or any other sin) several conditions must be met before they are disqualified from testimony:

- We must know with certainty that they know it's Shabbos
- We must know with certainty that they know that the action they are performing violates Shabbos
- We must warn them that this action will invalidate them as witnesses going forward. If they know that this would be the consequence, perhaps they would not violate it.

None of these requirements for disqualification had been met such that the Shabbos violators could be called *resha'im*, or wicked people. In this case, Rabbi Bauman suggested that we must extend the benefit of the doubt, and without sufficient ground to impugn the testimony of another Jew, they would retain their *chezkat kashrut*, their presumption of reliability.

Rabbi Akiva Eiger makes a similar assertion in his comments regarding the acceptance by a Beit Din of the testimony of those who are clean shaven. He points out that the common practice of accepting such testimony arose from the inability of Battei Din to ascertain the method by which a clean shaven person achieved that status- whether it was by a depilatory or a razor, or some other method. While the Beit Din could not make such a distinction, everyone else knew that it was through a razor, and they assumed Beit Din knew as well. In this way, the practice became widespread to accept such testimony, even as the violation was widespread as well.

Rabbi Israelson was unimpressed with these arguments. First, the Tosafot in Sanhedrin, describing the violation of *Shmeittah*, is not analogous to our scenario, describing the violation of Shabbos. The laws of *Shemittah* are somewhat obscure and not everyone knows them well enough to determine if a particular action violates the *shemittah*, whereas someone who goes to work on Shabbos *knows* they are violating a biblical (albeit widely ignored) prohibition. Furthermore, the penalty for violating Shabbos is more severe

than that of violating *shemittah*, which is an *issur lav*- a regular Torah prohibition that perhaps carried the punishment of lashes, but is not a capital offense, like violating Shabbos. Furthermore, the Rambam (Eidut 12:1) writes that if you know a person is sinning willfully, there is no need to provide a warning before disqualifying that person's testimony in the future.

All these sources mitigate against Rabbi Bauman's desire to validate these witnesses; according to Rabbi Israelson, violating Shabbos renders you a non-kosher witness in Jewish law. Rabbi Bauman viewed American Jews as a fundamentally righteous group who made poor yet understandable decisions. Their own self definition was never anything other than traditional and observant, and if they could bifurcate their religious lives, we could do the same with our view of them. However, Rabbi Israelson found naive at best, and closer to delusional, the notion that American Jews retain any kind of *chezkas kashrus*. For Rabbi Israelson, their clean-shaven visage told the story of religious scofflaws, eager to cast aside the mantle of Torah. Only the rarest of individuals in America- like Rabbi Yaakov Yosef Herman and his family- stayed observant, so a vanishingly small number of people could retain their presumption of reliability. Even those who commit acts on Shabbos they don't know are prohibited are not let off the hook. Rabbi Israelson was willing to concede that they may not be

automatically invalidated, but to say they retain a presumption of reliability was incomprehensible to him.

Analysis and Application

I believe there are several important messages to take away from this fascinating piece of American Jewish and American Halachic history.

In 2016, Rav Yochanan Sofer, the Erlau Rav, passed away at the age of 93 in Jerusalem. For seven decades, Rav Sofer, a fifth generation descendant of the Chatam Sofer, presided over the Hungarian Chareidi Kehilla and Yeshiva he built in the heart of Katamon, far from the strongholds of Chareidi Judaism in Jerusalem of Meah Shearim and Geulah, where so many of his counterparts lived. It was in this neighborhood that he developed close relationships with those who inhabited a different ideological space than he did. After his passing, Rav Benny Lau, Rabbi of Kehillat Ramban and one of the prominent voices on the left of the Israeli religious Zionist world, wrote a eulogy of Rav Sofer in which he told a wonderful story.

Many years ago, a delegation from the Erlau Rav came to Rav Benny Lau's home a few days before Shavuot to register a protest against some progressive innovations Rav Lau introduced into his community, ones that perhaps we might view as innocuous but that the Rav viewed as a breach,

especially as the Erlau Yeshiva and Kehillat Ramban are neighbors. That meeting ended inconclusively, but the next morning, Rav Benny went with trepidation to the Rav's home, to receive a blessing in honor of the upcoming Yom Tov. Rav Benny entered the Rav's study, and explained that he had come for a blessing, and was once again greeted by that piercing stare. With great trepidation, Rav Benny asked the Rav's permission to give him a virtual tour of the diverse neighborhood that is Katamon, including all sorts of alternative communities and plenty of Jews who are increasingly disaffected from Judaism. Finishing the "tour," he said that his role entails a heavy responsibility, and asked the Rav's blessing. The Rav looked at him with his piercing blue eyes, and then closed them, sunk into deep thought. The tension was thick in the air, and after a minute that seemed like an eternity, he opened his eyes, and with a twinkle in them, he said, "HaRav Lau, I want to wish you that you should merit to lead your community on the path of Torah, and to succeed in doing the least possible damage!" That's my motto as a Rabbi; it should be *every* Rabbi's motto...From that moment forward, no protest, no anger were directed at Rav Lau; the Erlau Rav sent Rav Lau *mishloach manot* every year for Purim and sent blessings and attended every Lau family Simcha. And while he did not like certain things that happened in Rav Lau's community, he praised warmly that which he did.

In a halachic life, and in life in general, we are often faced with paths that lead to equally unsatisfying results. In this case, leniency regarding a view of Shabbos violators, per Rabbi Bauman, leads immediately to this woman being chained to a dead marriage and an AWOL husband, while advocating for this woman leads to the disposal of large sections of the Jewish community, per Rabbi Israelson. Truly, being bad was the best option here, and when being bad is the best option, the deciding principle must be the path that will cause the least harm, that will hurt the fewest people, that will inflict minimal spiritual and psychic damage.

But there is another lesson we can learn here. We cannot overstate the challenge this case posed, as it represented a clash of worldviews: adopting an ecumenical approach to Jews of varying levels of observance meant that this woman, who is in need of a solution to enable her to move on, would be stuck without one. On the one hand, we cannot legislate community standards based on individual, difficult cases. Focusing on the needs of this woman means writing out of a communal halachic framework an entire group of Jews. On the other hand, there is a danger in thinking too broadly. A dear friend and colleague of mine once encountered an acquaintance on the street in Manhattan who works for a major Jewish organization, which also has a presence on college campuses. This acquaintance had been focusing his efforts on private colleges in the New York area. My friend told

him, “You know, you really should be expanding your programming to public colleges.” His interlocutor said, “You’re right! I was at Queens College- do you know how many Jewish students there are there?” My friend replied that he did not. “There are 1000! And that’s not even including Persians and Bukharians.” My friend didn’t miss a beat; he does not pull punches. “Why *don’t* you count them? They are Jews, they are members of Jewish communities, they affiliate with synagogues...” This communal professional was a little taken aback, and was certainly not prepared for what my friend said next. “You’re actually a racist!” There are people who are exceedingly concerned about the future of Judaism, who spend their days and even their professional lives Asking Big Questions and pondering broad, big picture issues relating to the future and the direction of the Jewish community. Yet, when it comes to the concerns of actual, real Jews- or when it comes to the needs of certain groups of Jews they disagree with, find culturally unappealing or consider unenlightened- they are callous, indifferent and massively uninterested. When the needs of a community and the needs of an individual are in tension, do we side with *klal Yisroel* or with *Reb Yisroel*? Do we take the side of *a Jew* or do we go with *the Jews*? These are all difficult questions, for which there is no ready answer, but which we cannot refrain from contemplating.

But there is one final lesson. At the center of the debate between Rabbi Israelson and Rabbi Bauman regarding the status of American Jews is one fundamental question. How important is self definition? This is relevant to observance, but it is also relevant to character. If people *consider* themselves to be fully observant and connected Jews, yet their actions don't match that definition, is it their self perception or intention that counts, or their actions? We are blessed to live in a community in which truly wonderful people, paragons of *chesed* and *tzedaka*, people who give every free moment of their lives, and in many cases their professional lives, people who enrich our community in every sense of the word- yet they do not don tefillin, eat at non kosher restaurants and violate Shabbos in various other ways. Yet some of these people identify as Modern Orthodox Jews. That's wonderful, isn't it? Surely it is self identification that counts, rather than the actual contours of their religious lives, over which we pass no judgement. Or is it? The challenge of the debate between Rabbi Bauman and Rabbi Israelson is that we might have to think about differently. Because while self perception may be a defining feature for Rabbi Bauman, Rabbi Israelson felt that this was a very poor barometer by which to adjudicate halachic matters. At a certain point, self definition may transition from the positive, to the aspirational, to the delusional. And perhaps religious behavior is a bad example, because we typically adopt a live and let live approach to other people's religious lives. What about other behavior?

People can lie, steal, commit breaches of trust and morality, but *think* they are decent and even wonderful people. Yet in judging the character of others, we tend to use a double standard. Consider the words of former president George W. Bush delivered right here in Dallas, in July of 2016:

“Too often we judge other groups by their worst examples while judging ourselves by our best intentions.”

Are we as forgiving with other people, other groups, other communities, as we are with ourselves? We are all too ready to ascribe to malice what can easily be attributed to stupidity or a lapse in judgement; we have pitchforks at the ready for infractions that we would expect forgiven were they committed by us. If we know we are trying our best, isn't it possible others are doing the same?

Conclusion

In just a few days, we will stand before God as individuals and as a community. Let us commit to judging each other as we judge ourselves, to doing the least damage and to balance the sometimes conflicting values of community and individual in ways that are minimally damaging and maximally fair to both. May God inscribe us all to a blessed and healthy new year.