

CMTL Pesach Reader 2021 Edition

Published by the Center for Modern Torah Leadership

Center for Modern Torah Leadership



חרות ואחריות

www.TorahLeadership.org

"Taking Responsibility for Torah"

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What Happened to Yosef's Other Children? Rav Yehuda Herzl Henkin z"l's Challenge to American Orthodoxy

January 1, 2021

Until the 19th century, Christians in Ottoman Egypt were required to wear special attire and pay special taxes. The rise of Egyptian nationalism under Muhammad Ali Pasha fostered a new Egyptian identity that included Copts, and members of the Coptic economic elite attained political and social prominence. Boutros Ghali became prime minister under King Fuad in 1908 and served until he was assassinated in 1910. Some weeks before his death, in a fatalistic moment, he called in his grandson Boutros Boutros-Ghali (later Egyptian Foreign Minister under Anwar Sadat, and UN Secretary General) and made him swear to bury him in Paris.

Not really, although the historical parallels to Jews in Ancient Egypt, and Modern Europe, may be instructive. But Boutros Boutros-Ghali's memoir *Egypt's Road to Jerusalem* does include the following, which may shed light on aspects of this week's parashah:

We left for Alexandria aboard a special train that had belonged to King Fuad. Every year at the start of the summer season the king had taken this train from Cairo to Alexandria, accompanied by all his cabinet members, making Alexandria for three months the second capital of Egypt. Then in September, they would return via the same train, with the same ceremony, to Cairo. For generations, every member of the Egyptian oligarchy had to own a second residence in Alexandria. As a boy, I was obsessed by such social niceties and humiliated because my family did not own a second residence in Alexandria but only rented a villa there. Every time I asked my father to buy a villa, he would ask me whether I preferred our second residence to be in Alexandria or in Europe. I would always reply "Europe!" "Then, do you see why we have no Alexandria villa?" my father would ask.

I was put in mind of this section last week by Rav Yehuda Herzl Henkin z"l's essay on Vayechi (the Hebrew is in *Shut Bnei Banim* vol. 4, p. 128, available on Hebrew Books and Sefaria; available in *New Interpretations on the Parsha*, but the translation below is my own). In honor of Rav Henkin z"l, I'll first provide the essay in full, with some comments of my own following.

Yosef certainly had sons aside from Ephraim and Menasheh, as in Yaakov's statement "*but your progeny whom you sired after them...*" (48:6). Even according to Rashi's opinion that this statement was made in future tense = 'if you sire more,' as Onkelos had translated, we must say that in the end such sons were born. Otherwise, why would the Torah tell us of things that Yaakov said which were purely theoretical?

At first glance the mystery is deep. There is not mention of additional sons of Yosef anywhere else in Scripture, nor in texts of Chazal. They do not appear in Parshat BaMidbar in the lists of the Children of Israel who exited Egypt, so it seems that they did not exit. They assimilated, remained in Egypt, and their traces were lost.

On this basis we can understand Yaakov's words:

"Now, your two sons that were born to you in the Land of Mitzrayim ere I came to you to Mitzrayim – they are mine. Ephraim and Menasheh, like Reuven and Shimon, will be mine. But your progeny whom you sired after them – they will be yours; they will be called under their brother's names in their homesteads."

Yaakov and his sons had portable wealth: silver and gold, flocks and cattle and camels. Just as they brought this wealth into Egypt, they would be able to bring it out. But Yosef, the one with authority over the land, had fields and vineyards, houses and palaces full of all goods – immobile possessions that could not be transported.

So this is what Yaakov meant by saying:

“Now, your two sons that were born to you in the Land of Mitzrayim ere I came to you to Mitzrayim – they are mine. Ephraim and Menasheh, like Reuven and Shimon, will be mine.”

Ephraim and Menasheh will be like the son of Yaakov for all purposes, and they will share in the estate of their grandfather equally with Reuven, Shimon, and their father's other brothers, whereas the wealth of Yosef will be inherited by Yosef's other sons and not by Ephraim and Menasheh. This is the meaning of *“they will be called under their brother's names in their homesteads”*: “called under X's name” means that one person takes another's place as heir, as in Devarim 25:6: “So the first-born to whom she subsequently gives birth will stand up under the name of his dead brother,” which is speaking about inheritance. Yaakov was concerned that if Ephraim and Menasheh would inherit their father, they would take possession of his wealth, and when the day of redemption came – they would not want to leave. This is what Yaakov sought to prevent in every way.

All the above (parshanut) was revealed in our beit midrash. It remains to ask: Why did Yaakov foresee that the remaining sons of Yosef would melt (into Egyptian society), and therefore he focused on saving Ephraim and Menasheh alone? Really it should be the reverse: If Ephraim and Menasheh, who were born and reached the age of educability while Yosef was by himself in Egypt, before the arrival of Yaakov and his brothers, nonetheless remained faithful to Israel and his Torah, then all the more so their younger brothers, who were born when they already had a grandfather in Egypt, (should have remained faithful)!

But it seems to me that this is not astounding, and there are several explanations for the matter:

- 1) When Yosef was by himself in Egypt, he took pains to educate Ephraim and Menasheh in the heritage of his father's household, because who other than him would do it? But after his family reached Egypt, he did not devote himself to the education of his other sons to the same extent, but rather relied on the family influence. However, this influence was not effective, because Yosef and his sons lived in Egypt's capital, the place of the king and officers, and not with Yaakov and his sons in the Land of Goshen.
- 2) Before his father and brothers arrived, Yosef felt alone and solitary in Egypt, as emerges from the names by which he called his two sons. He transmitted this feeling of alienation to Ephraim and Menasheh, and this was effective in enabling them to avoid blending into Egypt. However, after Yaakov's household arrived, Yosef felt expansive and relaxed in Egypt, and his younger sons felt even more this way, and therefore they blended in, and ultimately melted.
- 3) What is astounding is not that Yosef's other sons assimilated, since they were members of the elite in Egypt. The astounding thing is that Ephraim and Menasheh did not melt also. However, Ephraim and Menasheh saw and experienced the spiritual whirlwind that passed over their father when Yosef made himself known to his brothers and when Yaakov came to him in Egypt. These experiences left a deep impression in their souls and served as a shield against assimilation, which was lacking for Yosef's other sons.

The fundamental question Rav Henkin addresses is whether it is reasonable to expect Orthodox children in America to become authentic Jewish leaders. This is powerful stuff from a posek so vital to our community's development. We owe it a full hearing whether or not we end up agreeing. Rav Henkin himself made Aliyah in 1972.

The textual peg is why Yaakov grants Tribe status to Ephraim and Menasheh, who grew up without his influence, and preemptively denies it to any children of Yosef whom he would know from the cradle. Shouldn't it be the other way around?

Rav Henkin's third answer is that the two oldest children were witnesses to powerful identity-forming experiences with their father. Yosef was a baal teshuvah, and his family became baalei teshuvah with him. But later children would grow up knowing only the restrictions generated by those experiences, which were imposed on them rather than assumed autonomously, and would not find them meaningful. There are of course ways to avoid this trap, but Yaakov knew Yosef too well to believe that he would adopt them.

Rav Henkin's second answer is that Yaakov's arrival made Egypt home. This sounds like a charedi critique of Modern Orthodoxy, but historical context inverts that parallel. The most likely parallel to Yaakov's arrival in Egypt is the post WWII arrival of European Torah greats in America. Perhaps the worry is not assimilation of individuals, but assimilation of the community as a whole. Yosef's later children would superficially maintain their Jewish identity and Orthodox practice, but their values and their prejudices would become fundamentally Egyptian.

Rav Henkin's first answer is the most subtle and yet perhaps the most directly challenging. Yosef was a successful father when fully engaged, but it's also true that the village matters. You just have to make sure it's the right village.

Maybe the village that matters most is not where you live, which can be dictated by duty or economic necessity, but where you would **choose** to be, and with whom. Do you buy in Alexandria and rent in Paris, or buy in Paris and rent in Alexandria? In other words: Are you in Alexandria because you must be, or because your fundamental identity and desires are those of a royal hanger-on? Yosef's later children spent vacations in Goshen out of duty and necessity, but lived in Cairo by choice.

Rav Henkin's challenge applies to how we spend time just as much as it does to where we spend time.

What Is the Moral of This Dvar Torah?

January 8, 2021

In the realm of halakhah, Modern Orthodoxy celebrates theoretical pluralism. Beit Shammai are halakhically irrelevant (*eino mishnah*) when they disagree with Beit Hillel, and yet are *divrei Elokim chayyim* and therefore (equally?) worthy of our time and effort interpreting them.

However, public shiurim rarely focus on rejected halakhic positions. Even Beit Shammai's position is most often used as a foil to develop Beit Hillel's position by contrast. It is an especially safe foil, because everyone knows which way the halakhah must end up, even if they find Beit Shammai's position more compelling. The experience trains us to live comfortably with a certain amount of religious dissonance. If we accept Rav Chaim Vital's claim that the halakhah of Messianic times will follow Beit Shammai, the experience may even be flattering and affirming; our spiritual instincts are too good for this unredeemed world.

Beit Shammai's position is also safer than most because its rejection (according to the more popularly known Talmudic position) results from a Heavenly voice rather than from human reason, and because the Talmud explains Beit Hillel's triumph as a result of character. Indeed, since Beit Hillel's superiority is embodied in their willingness to cite Beit Shammai's position before their own, our willingness to explicate Beit Shammai's positions actually cements our identification with Beit Hillel.

So it makes sense that few public shiurim are devoted to making sense of non-Beit Shammai halakhic positions that the teacher thinks shouldn't be followed. I suspect that the more tenuous the authority of the approved position, the less generosity shown the rejected positions.

What about the realm of *hashkfof*? Do we see value in expounding the theological, moral, or ethical positions found in the Tradition that, in our opinion, should be rejected?

There are at least two ways to reject the premise of this question. One way is to deny that binding decisions exist in the realm of *hashkfof*. The other is to deny that important disagreements exist. (The first position is articulated at least with regard to ethics by Rav Yosef Dov Soloveitchik in *Halakhic Morality*, and the second by Rav Eliyahu Dessler in *Michtav MeiEliyahu*. Each of them acknowledges that many *hashkafic* positions are utterly incompatible with Torah; the discussion is only with regard to positions that have already made it into the Tradition.)

But let's suppose that the Tradition in fact contains hashkafic positions that should be rejected as guides for practice. Is there value in expounding those positions in and of themselves? (Full disclosure: I often teach Rav Dessler's position as a foil.) Or is that irresponsible?

This question often comes up for me in the process of preparing these essays, or my parshah shiurim. I generally start by reading through the parshah until I find a section that raises new questions for me, or old but disturbingly unresolved questions. Then I go through the commentaries on Al HaTorah and/or Bar Ilan, sometimes with supplements from paper books, until I find one that makes me rethink. But making me rethink doesn't mean that I'll end up agreeing with it. I might end up strongly disagreeing. Can I still base my essay or shiur on it? Can *divrei Torah* end with morals we disagree with? Or even that we're not sure whether we agree with?

The rest of this essay focuses on a Ramban that met the requirement above – it made me rethink – but I'm not sure yet how I'll feel about it when I'm done. I'm writing stream-of-consciousness to model the idea that there is value in thinking about challenging interpretations of Torah, and in sharing our understandings of such Torah, even if we won't necessarily agree, or at least not agree fully, with the hashkafic perspectives that emerge from them.

Ramban to Shemot 1:10 wonders why Pharaoh's campaign against the Jews was launched gradually and subtly rather than with sudden overwhelming force. He offers three reasons in the context of an overall vision of the narrative arc:

Pharaoh and the experts who advised him did not see fit to smite them with the sword, because

1) this would be a great betrayal, to smite without cause the nation that had entered the land at the command of a prior king

2) also, the populace would not have permitted the king to do such criminal violence, and he is consulting with them

3) furthermore, the Jews themselves were a numerous and strong people, and would have made full-scale war against him.

Instead, Pharaoh said *hava nitchakmah lo* – let us be clever so that the Jews will not realize that they are being treated with hatred. So he imposed a labor levy on them, which was standard practice for communities of resident aliens, as we can see from Shlomoh's practice in 1Kings 9:21. Then he covertly commanded the midwives to kill the male infants at birth, so that even the birthing mothers would not realize what they were doing. Then he ordered his entire people, "Every male that is born – you shall throw them into the Nile," meaning: He did not wish to order his executioners to kill them with the king's sword, or to have the executioners be the ones throwing them into the Nile, but rather said to his people: When anyone among you finds a male Jewish infant, throw him into the Nile, and if the father comes to the king or to the local official, they will tell him: "Bring witnesses and vengeance will be done to the perpetrator!" Once the king's "whip was untied," the Mitzriyim would search the Jewish houses, enter them at night ?as if they were strangers? and remove the children from them, which is what the Torah refers to by saying "And (Yocheved) was no longer able to hide (Mosheh)."

It seems that this situation was only briefly in force, as there was no such decree when Aharon was born, and after Mosheh's birth it seems to have lapsed. Perhaps Pharaoh's daughter out of her pity for Mosheh told her father not to behave so, or perhaps once it became known that the decree came from the king it lapsed, or perhaps it the decree was made specifically then on the basis of astrology, as per our masters (Shemot Rabbah 1:29). All this was done with cleverness toward them so that the criminality would remain unknown. This is the meaning of their saying to Mosheh our Teacher (Shemot 5:21), "You have given us a bad odor so as to give a sword into their hand," because now they will hate us more, and they will find grounds for accusing us of revolt and killing us openly in front of everyone rather than resorting to trickery.

Reason #3 is pragmatic – Pharaoh chose the gradual approach in the belief that it would prevent the Jews from taking up arms to protect themselves. This may have been good policy – it seems to have worked – although I can imagine situations in which the element of surprise is more valuable.

Reason #2 makes a claim about a rift between the ruling elite and the populace. Ramban does not explain why the populace would be less inclined to genocide against the Jews than the elite. Perhaps they had lingering gratitude for Yoseph's policies; or perhaps in general he believes that the common sense of the masses is less prone to immoral extremes than that of the elite. Or – and I think this most likely – genocidal extremism is generally rare, so that whichever group gets to that point first has to worry that the other won't go along.

Reason #1 interests me most. Ramban's language suggests that this was an internal constraint on Pharaoh, that he simply could not bring himself to commit so sudden a betrayal. The gradualism was necessary to overcome his own *yetzer hatov*. I'm not sure, however, that the best reading of the story indicates any psycho-moral development within the original enslaving Pharaoh.

Rabbeinu Bachya understood Ramban differently. He inserts the phrase *וְהָיָה זֶה לְמֶלֶךְ לְחִרְפָּה בְּתוֹךְ הָעַמִּים*, “because this would be a disgrace for the king among the nations.” This suggests yet a different external constraint. But I wonder to what extent he is correct that political leaders within one group are constrained by the moral disregard of leaders in another group, at least once they’ve reached an internal state consistent with the commission of genocide. I also wonder again whether gradualism is a better tactic than surprise for avoiding international condemnation – that doesn’t seem to be the lesson of Rwanda or Bosnia.

Finally, Ramban suggests that the directly genocidal technique of throwing babies in the river was short-lived, and offers as one possible explanation for its shortlivedness that Pharaoh was persuaded by his daughter to stop.

Overall, the message of Ramban seems to be that there were many people who could have prevented the enslavement of the Jews and killing of our sons. His daughter might have spoken up earlier; the populace might have maintained their moral revulsion; or the international community might have condemned him. At each stage, their opposition might have had not only a pragmatic but a moral impact. Perhaps this Pharaoh was incapable of hardening his heart?

But Pharaoh’s most subtle technique was at the second stage. He encouraged the Egyptians to victimize the Jews by promising them that the justice system would look the other way, while insisting to the Jews that they rely on the law to protect them. The Jews would not realize in time that the promise of justice was a mockery. Meanwhile, with the *מורא של מלכות* = the fear of government gone, the Mitzriyim may have gone further than even Pharaoh intended.

What do you think is the lesson of Ramban’s understanding of the process by which we were enslaved in Egypt? Would you “give this vort over” even if you disagreed with the lesson?

What Kind of Freedom Does the Torah Value?

January 15, 2021

The game of freedom is not zero-sum – there can be more freedom in the world, or less. It is not an altruist's game – giving up my freedom may diminish yours as well. Isaiah Berlin's distinction between "freedom from" and "freedom to" is essential but does not make the game semantic. In short, it's complicated.

Let's start with a God's-eye perspective. When G-d was all that existed, His "freedom from" was apparently absolute. The angels opposed the creation of humanity because the existence of another being with any degree of freedom would diminish His.

But G-d chose to create humanity anyway, because the absence of other free-willed beings limited his "freedom to." He could not express generosity. Possibly He could not be loved.

Rav Yosef Dov Soloveitchik argued that the Biblical story of Creation should be read as normative, with the premise that human beings are charged with being as like G-d as they can be. So: Just as He created, so too we must create.

Having read Nietzsche, the Rav also recognized the danger of this idea. What if human beings realize that to truly be like G-d they must be utterly autonomous, create their own norms? Why would they be wrong?

One answer is that human beings cannot truly be like G-d. *Imitatio dei* must always remain an aspiration; it cannot actually be achieved.

A second answer is that human beings by necessity live in the world that G-d created, and in which G-d exists. So we can never have the freedom that G-d had before Creation. We can never be the only free-willed being in existence. The fantasy of unbounded freedom is what led Kayin to murder Hevel, only to rediscover G-d.

The issue between these two answers may be a matter of Biblical interpretation. Must the normative story of Creation be interpreted in light of the subsequent 613 commandments? Or must the 613 commandments be understood in light of their normative preamble, the story of Creation? In other words: must we understand halakhah as a means for maximizing our freedom, or is it possible for halakhah, properly interpreted, to limit our freedom?

A third answer, which I prefer, is that the normative message of Creation is more complex, because G-d's creation **limited** His own freedom in one sense, and expanded it in another.

The existence of other free-willed beings (us) meant that G-d entered the sphere of ethics, that in a sense we can say that He acquired **duties** toward us. Duties toward others restrict the freedom of one's own will. This may be the underlying message of all the Rabbinic stories that portray Hashem observing the mitzvot.

On the other hand, by enabling Hashem to act ethically, to express *middot* such as *chessed*, Creation also expanded Divine "freedom to."

On this reading, the existence of mitzvot is not in tension with the norm of creation. Rather, mitzvot should be understood as opportunities to expand our "freedom to."

The challenge is that acknowledging the existence of a normative **obligation** always carries with it the *yetzer hora* to impose that obligation on others against their will. We are tempted to conclude that the mitzvot are ends in and of themselves, rather than opportunities to express human virtues.

It turns out that there are two religious paths to becoming a slave-owner.

The first is the Nietzschean/Fascist temptation, the belief that your freedom to obey G-d is limited to the extent that others have any capacity to limit your actions, and expanded by the capacity to have others do your will (and perhaps, that it is worth submerging your individual identity into a collective that is free from external constraints). This is true – but your “freedom to” is even more limited by the inability to relate to other free beings as free. Moreover, the effort to keep others subjugated will end up controlling your life, whether as an individual or as a society.

The second is the anti-Nietzschean/Communist/Puritan temptation, the belief that freedom is not intrinsically valuable at all, and certainly not as valuable as obedience to G-d. So it is better for others’ wills to be subordinated to mine, and thereby certainly to G-d’s, than for them to be left free, which risks disobedience to G-d.

These two paths are ideologically opposed, but perfectly complementary in practice. They parallel the first two explanations above of the relationship between Creation and Mitzvot.

The narrative of *yetziyat mitzrayim* might seem to be the antidote to these ideological poisons. Here the point is as clear as can be – G-d hates slavery, and He intervenes to end it. As Rashi famously points out, the Exodus is really a second Creation. Before Creation, there was no time, and time restarts at the Exodus, with a normative component. “This month/newness/*chodesh* must be for you the head of months; it shall be the first for you, of the months of the year.” But Rashi’s question is: Why then is the narrative of the first Creation necessary? I suggest: because otherwise we might not realize that creativity is intrinsically valuable.

But the narrative of Exodus can also be normatively misunderstood. We can argue that the story is not about generic freedom from *avdut*, but only about Jewish freedom from Gentile *avdut*. On this misreading, our goal is to become *avdei Hashem* in the sense of slaves rather than free-willed servants, and we are entitled to enslave others to increase our and their obedience to G-d. (Both *yitzrei hora at once!*) After all, the regulations of *avdut* follow almost immediately after the 10 commandments, with their preamble “I am Hashem your G-d Who took out of Mitzrayim, from the house of *avadim*. Is that to teach us to read the preamble narrowly?

The correct reading is that the juxtaposition is intended to emphasize that the entire framework of law, society, halakhah – all of which constrain some sorts of freedom – must nonetheless be understood as having the purpose of maximizing freedom, and interpreted accordingly. Sometimes the world leaves human beings very few choices, if any, to keep themselves and their families alive – with full awareness of the dangers (we call it *avdut!*), halakhah sets up a mechanism to ameliorate such situations and enable at least some degree of freedom in the present, and guarantee that the prospect of freedom is always there.

This reading is demonstrated by Yirmiyahu 34:13-14, which states that the law that an *eved ivri* must be freed embodies the covenant Hashem made with the Jews on the day He took them out of Egypt. Note that the law itself allows an *eved* contract to last six years, but the language of 34:9-10 implies that Yirmiyah demanded immediate manumission.

In the Yerushalmi (Rosh HaShanah 3:5), Rav Shmuel son of Rav Yitzchak argues, against Rashi, that the norm must precede creation. Shemot 6:13 states:

וַיְדַבֵּר יְהוָה אֶל-מֹשֶׁה וְאֶל-אַהֲרֹן
וַיֹּצֵאם אֶל-בְּנֵי יִשְׂרָאֵל וְאֶל-פַּרְעֹה מֶלֶךְ מִצְרָיִם
לְהוֹצִיא אֶת-בְּנֵי יִשְׂרָאֵל מִמִּצְרָיִם מִצְרָיִם:

*Hashem spoke to Mosheh and Aharon
He commanded them regarding Benei Yisroel and regarding Pharaoh King of Mitzrayim
to bring Benei Yisroel out of Mitzrayim.*

What was the content of this command? The laws of freeing slaves, as referenced by Yirmiyahu.

Some contemporary rabbinic commentators note that Yirmiyahu refers to the covenant being established on the day of the Exodus, whereas this verse apparently takes place long before. Their suggestion is that the command was given at the outset, even though it took binding effect only at the Exodus. The Jews had to know the meaning of G-d's intervention before it happened, and before they received the Torah.

אין בן חורין אלא מי שעוסק בתורה

ואין בן תורה אלא מי שעוסק בחרות

*No one is free except the one who engages in Torah,
and no one is a ben Torah unless they engage in maximizing freedom.*

The Halakhah of Equal Protection

January 22, 2021

The 14th Amendment to the United States Constitution declares that the relevant government authorities may not “deny to any person within its jurisdiction the equal protection of the laws.” The commitment stated in this post-Civil War amendment is now seen as a restatement of the fundamental American ethic. Unequal laws are unjust per se. They also undermine democracy by entrenching power in those the law privileges and denying it to those the law disfavors.

The Torah seems to state a similar ethic in at least four places:

Shemot 12:49

תֹּרַה אֶחָד יִהְיֶה לְאֶזְרָח וְלִגֵּר הֶגֶר בְּתוֹכְכֶם:

There must be one torah for the ezech, and for the ger, who is gar in your midst

Vayikra 24:22

מִשְׁפַּט אֶחָד יִהְיֶה לָכֶם כַּגֵּר כְּאֶזְרָח יִהְיֶה כִּי אֲנִי יְקֹנֶה אֶל-הֵיכָם:

There much one mishpat for you – the ger and the ezech alike

Bamidbar 9:14

... חֻקָּה אֶחָד יִהְיֶה לָכֶם וְלִגֵּר וְלְאֶזְרָח הָאָרֶץ:

... there must be one chukah for you and for the ger and for the ezech of the land

Bamidbar 15:15-16

הַקֹּהֵל חֻקָּה אֶחָד לָכֶם וְלִגֵּר הֶגֶר חֻקַּת עוֹלָם לְדֹרֹתֵיכֶם כַּכֶּם כַּגֵּר יִהְיֶה לִפְנֵי יְקֹנֶה:

תֹּרַה אֶחָד וּמִשְׁפַּט אֶחָד יִהְיֶה לָכֶם וְלִגֵּר הֶגֶר אֲתֶכֶם:

The kahal – there must be one chukah for you and for the ger who is gar;

It is an eternal chukah for all your generations;

you and the ger must be alike before G-d.

There must be one torah and one chukah for you and for the ger who is gar with you.

At least two mid-20th century scholars connected these verses to the promise of equal protection in a formally halakhic context, analysis of the principle that “*dina demalkhuta dina*” = “the law of the government is the law.”

Rav Chaim Regensburg, Rosh Yeshiva of HTC and Av Beit Din of Chicago, wrote in his article “Iyyunim al Zekhuyot Ezrachiyot” that

מכל זה נוכחנו שכלל גדול הוא במשפטים ובחוקים שבמדינה

שצריך להיות שוויון מוחלט בין כל התושבים והאזרחים.

“חֻקָּה אֶחָד יִהְיֶה לָכֶם וְלִגֵּר וְלְאֶזְרָח הָאָרֶץ”

היא אחת התכונות העיקריות של כל חוק ומשפט,

וחוק המשולל תכונה זו אינו חוק צדק.

From all this we have proven that a great principle of the chukim and mishpatim of a state is that there must be absolute equality among all the toshavim and ezechim.

“there must be one chukah for you and for the ger and for the ezech of the land”

is one of the essential characteristics of every chok and mishpat,

and a chok which lacks this characteristic is not a just chok.

Rav Efraim Fischel Weinberger of Tel Aviv wrote in his article “*Samkhut Hatzibbur Bivchirat Anshei Hamemshal L’Or Hahalakhah*” that

חק התורה

הוא נגד יצירת תחומים, הפליות ומעמדים שונים בעלי זכויות יתר.

כלל התורה הוא: “חוקה אחת יהיה לכם” ...

יוצא איפוא שחוקי המלכות והמדינה
מחייבים את האזרחים ויש להם תוקף
רק אם הם חוקים דמוקרטיים בלי כל הבדל כל שהיא בין אזרח לאזרח

The *chok* of the Torah

is against the creation of boundaries, discriminations, and classes with greater privileges.

The general principle of Torah is: "there must be one chukah for you" ...

*It therefore emerges that the chukim of the government and of the state
obligate the citizens and have force*

only if they are democratic chukim with no distinction at all among citizens ...

The claim that Halakhah mandates equal protection in the context of *dina demalkhuta* can be challenged in at least three ways. First, the halakhah of *dina demalkhuta* was articulated and maintained for a millennium in environments where the civil law discriminated against Jews. Second, Halakhah itself discriminates in various contexts between citizens (Jews) and resident aliens who are not Jewish, and even imposes some restrictions on naturalized citizens (converts). Third, Halakhah discriminates even among citizens in various contexts, for example on grounds of gender or lineage.

My focus here is on the first challenge. I'll briefly sketch two responses to the last two challenges, and a difficulty with each. But my focus is on the first challenge, and on a response to it that may be useful overall.

Response #1 – Equal protection applies specifically in the realm of *dina demalkhuta*, meaning laws developed via human reason. Divine laws need not meet the same standard.

The problem here is that the relevant Biblical verses relate to halakhah itself, and the diverse terminology (*torah, chok, mishpat*) suggests that they apply across all types of halakhah.

Response #2 – “Equal” does not mean “identical.” According to <https://constitutioncenter.org/interactive-constitution/interpretation/amendment-xiv/clauses/702>, “most laws are assessed under so-called ‘rational basis scrutiny.’ Here, any plausible and legitimate reason for the discrimination is sufficient to render it constitutional.” However, “laws that rely on so-called ‘suspect classifications’ are assessed under heightened scrutiny. Here, the government must have important or compelling reasons to justify the discrimination, and the discrimination must be carefully tailored to serve those reasons.” Within halakhah, we need to determine what constitutes a “rational basis” for discrimination; and whether halakhah has the equivalent of “suspect classifications.”

The problem here is figuring out what to do if existing laws seem not to meet the equal protection standard.

Moving back to the first challenge: A medieval halakhic consensus, beginning at least from Rabbi Yosef Ibn Migash among Sefardim (see his commentary to Bava Batra 55a) and perhaps from Rabbeinu Tam among Ashkenazim (see e.g. Talmidei Rabbeinu Peretz Nedarim 28a), held that *dina demalkhuta* applied only to laws that are כלליים/general rather than aimed at specific individuals, and that the government must be משוה מדותיו/relate to all equally. Rabbeinu Tam in some versions even bans laws that treat one מדינה /state within an empire differently from its peers. On this basis, Dr. Shmuel Shiloh in his excellent book *Dina D'Malkhuta Dina*, p. 110, asserts that

ברור, שכאשר מדובר בחוק השווה לכל נפש,
הכוונה היא, שהוא חל באופן שווה אף על היהודים.

*It is clear that when speaking of a chok that applies equally to all souls,
that the intent is that it applies in an equal manner even to Jews.*

Dr. Shiloh's statement is in conscious opposition to the late 15th century Rabbi Yosef Kolon, who wrote (Responsa Maharik 194):

וגם אין לומר דהכ' לא שייך למימר ד"ד כיון שהישראל פורע יותר מהכותי,
שהרי כת' המרדכי שם דלא אמרינן אלא כשהמלך משוה מדותיו
דודאי פשיט' דשפיר מקרי משוה מדותיו כיון שכל יהודי פורע בשוה דבר קצוב.

One cannot say that dina demalkhuta does not apply here because the Jew pays more than the nonJew, because the Mordekhai wrote there that "we say it only when the king relates to all equally," because it's obvious that "relates to all equally" is met when all Jews pay an equal fixed amount.

Dr. Shiloh concedes that

למרות ריבוי המקומות השנים בעיקרון השוויון,
נאמר דבר זה במפורש במקום אחד לבד.
בסיום אחת מתשובותיו כתנ הריטב"א כך:
והסכמת שופטי המלך בזה אינו מעלה כלום
אלא א"כ הוא חוק קבוע מן המלכו' על כל המלכות ואפי' על היהודיים
דקי"ל דינא דמלכותא דינא.

*despite the many places that teach about the fundamental principle of equality,
(that Jews and nonJews must be treated equally) is stated explicitly in only one place.*

*At the end of one of his responsa (#53), Ritva writes:
"the consensus of the king's judges in this matter is of no avail
unless it is a chok established by the government over the entire kingdom, even on the Jews,
because we hold dina demalkhuta dina."*

Dr. Shiloh understands this as a statement that *dina demalkhuta dina* applies only to laws that apply equally to Jews and nonJews. In my humble opinion, this is incorrect. The clause preceding Dr. Shiloh's quote is

למדנו מזה שדברים אלו הם כפי המנהג
we have learned from this that in these matters (the law) follows the practice.

Therefore, Ritva contends, the practice of non-Jewish courts is irrelevant to Jewish courts, unless the government has established this as a law that is binding even on Jews. The point is not that the law must apply equally to Jews – it's that there must be a law that applies to Jews, and not merely a convention of the state non-Jewish judicial system. Otherwise rabbinic courts are free to follow their own conventions.

Maharik's position is brought by Rav Yosef Caro in Beit Yosef (Choshen Mishpat 369), but not in his Shulchan Arukh, while Rav Moshe Isserles cites it in a gloss. So this issue may be a dispute between them as well.

What interests me is that Maharik and Dr. Shiloh each see their opposing positions as obvious despite a lack of explicit textual precedent. And I think they are both obviously correct! Maharik seems to me obviously correct historically that the Jewish community enforced taxes on themselves that were levied unequally. Dr. Shiloh seems to me obviously correct that this violates the fundamental consensus principle that law must be applied equally.

Rav Yekutiel Cohen, Av Beit Din of Ashdod, explains Maharik via Rav Shlomo Kluger's comment (Chokhmat Shlomo to Choshen Mishpat 369:8, available on Al HaTorah) that the equality standard applies only to citizens, not to resident aliens. Maharik assumed that Jews would always be considered aliens rather than citizens in non-Jewish polities. (Dr. Shiloh presumably rejects that assumption.)

According to Rav Kluger, we must say that the *ger* referred to in our equality verses is the convert, not the resident alien. But is it consistent with the spirit of these verses to discriminate against resident aliens without a rational basis for doing so?

Rabbi Cohen argues that there is a rational basis for such discrimination: alien minorities are often hated by the natives and require additional government services. Similarly, Ramban to Shemot 1:10 records that

Pharaoh began his campaign against the Jews by imposing a labor levy on us, “because it is the way of *gerim* in the land to offer a labor levy to the king.” Not coincidentally, Ramban limits the authority of *dina demalkhuta dina* to regulations that fall within the conventional practice of kings.

However, Responsa Ateret Paz (1:3 CM 4) puts Ramban’s explanation in a different context. After imposing the labor levy, Pharaoh escalates by asking the midwives to kill all Jewish male infants at birth. When they refuse, Pharaoh cites Maharik’s position that *dina demalkhuta* applies even to discriminatory laws! The midwives reply that it applies only to laws that meet the equality standard.

In other words, the legitimization of discrimination (sometimes? often? always?) leads to its expansion. But protests are more often effective when they reflect a moral consensus than when they oppose it. Perhaps the Jews could have successfully refused the labor levy, as the midwives refused the order to murder. Or perhaps disobeying what was seen as a legitimate tax would have turned all Egypt against them faster – in fact, Ramban suggests that popular outrage forced Pharaoh to cancel his general decree against male Jewish infants after only three months.

It seems to me that the equality standard functions in halakhah as an aspirational ideal. It is implemented only when doing so will not destabilize the rule of law, or alternatively, when it is violated so grossly that revolution is both justified and very likely to succeed.

Jews in the United States are blessed with full citizenship in a country that shares our moral aspiration of having the law provide equal protection to all human beings. The meaning of equal protection is not always clear, and reasonable people can disagree about the risks of various kinds of protest. But there should be no doubt of our Torah obligation to work toward the realization of this Torah aspiration.

My thanks to all those who participated in this week’s MLK Day Yom Iyyun, who helped me sharpen several of the ideas in this essay, although the work is far from complete.

What Does the Manna Teach Us About Economic Inequality?

January 29, 2021

A confession: I always thought the Torah's account of the manna falling from heaven made sense. I never noticed the contradiction between "Everyone gets what they want (or need)" and "Everybody gets exactly the same."

זֶה הַדְּבָרִי אֲשֶׁר צִוָּה יְקֹוֹק
לִקְטוֹ מִמֶּנּוּ
אִישׁ לְפִי אֹכְלוֹ
עֹמֶר לְגִלְגֵּלֶת מִסֵּפֶר נַפְשֹׁתֵיכֶם
אִישׁ לְאִשֶּׁר בְּאֹהֲלוֹ תִקָּחוּ:

*This is what Hashem commended:
Glean of it,
each man in accordance with his okhel
an omer per head, in accordance with the number of your souls
each man shall take for those who are in his tent.*

One can resolve this contradiction at the price of redundancy by understanding "each man in accordance with his *okhel*" as referring to "each man shall take for those who are in his tent," so that everyone gets the same. But this reading is hard to sustain in the next sentences:

וַיַּעֲשׂוּ בְנֵי יִשְׂרָאֵל
וַיִּלְקְטוּ
הַמֵּרְבֶּה וְהַמִּמְעִיט:
וַיִּמְדוּ בְעֹמֶר
וְלֹא הָעֲדִיר הַמֵּרְבֶּה וְהַמִּמְעִיט לֹא הִחְסִיר
אִישׁ לְפִי-אֹכְלוֹ לִקְטוֹ:

*Bnei Yisroel did so.
They gleaned,
the increaser and the diminisher.
They measured as/via an omer.
The increaser did not get extra
and the diminisher did not lose out.
Each man in accordance with his okhel they gleaned.*

Who are the "increaser" and "diminisher?" To be consistent, we must claim that they are men with larger and smaller households. They must measure an *omer* per person, not an overall *omer*. But then why would we expect the increaser to get extra, and the diminisher to lose out? And overall, why is it necessary for the Torah to explain at such length the simple idea that the manna was collected and/or distributed proportionally?

Leaving aside the literary issues: Why would it be good and proper for everyone to receive the same, rather than in accordance with their needs or wants?

Ibn Ezra and Avraham ben HaRambam stake out diametrically opposite positions.

According to Ibn Ezra, an *omer* per head was the maximum, but children got less. He does not explain whether **adults** received the same regardless of the size of their body or appetite, and his reading fits very poorly with "The increaser did not get extra and the diminisher did not lose out." (Chatam Sofer reaches Ibn Ezra's outcome by arguing that the term "*omer*" should be understood as a subjective volume measurement, based on each person's fingerwidth. This requires an assumption that fingerwidth directly correlated with bodysize.)

According to Avraham ben HaRambam, “This is one of the wonders of the manna and its wondrous signs, that it fed equally the adult and the minor, the strong and the weak, each one needing exactly an *omer* per head.”

Avraham ben HaRambam’s position seems to me much better literarily than Ibn Ezra’s. The Torah’s repetitions and paradoxes are intended to emphasize that the manna miraculously squared the circle by making an equal share satisfy everyone’s needs equally.

But I’m not sure what this reading *means*, what its message is. In real life, individual needs and desires differ. Avraham ben haRambam seems to think that the message is that we don’t really need more than just enough. (Rabag adds that we shouldn’t think it virtuous to get by with less than enough. The manna critiques both hedonists and ascetics.) This philosophy provides a demand-centric approach to inequality – let’s train everyone to recognize their true needs, because true needs are much less unequal than desires.

One can accept this reading but challenge the moral. Even if we all boil our needs down to be conceptually alike, some people’s basic needs will consume vastly more resources than others’, e.g, if they have certain medical conditions. The manna miraculously matched equality of income with equality of outcome, but what should we do in our world, where they don’t match?

So far we’ve only dealt with two axes – resources/wealth and needs/desires. But any serious treatment of fairness has to consider a third axis: just desserts. Is it obvious that all people deserve the same share of resources, or to have their needs/desires equally met? Even if we assume the propriety of “from each according to their abilities,” perhaps the proper formula is “To each a share of their needs proportional to the share of their abilities that they contribute.”

Rabbi Samson Raphael Hirsch may accept a version of this formula:

“However, it seems that the intent of the gleaners to glean, each in accordance with his quota, was an unalterable condition, because otherwise they would have been able to suffice – once the outcome of the first day became known to them – with collecting a minimal amount, as one way or the other, each person would receive sufficient for their needs, and no one would under any circumstances receive more than their quota.”

One wonders, however, at the psychological impact of this arrangement. This is make-work in the purest sense. In yeshivish terms, it strips away the illusion that human effort/*hishtadlut* has any direct relevance to results.

Mekhilta d’Rabbi Shimon bar Yochai may provide a slightly different approach.

אִישׁ לִפִּי אָכַל –
דֹּרְשֵׁי רִשְׁמוֹת אֹמְרִים:
מִיֵּכֶן שֶׁהָיָה בּוֹ בִּמְנָן
בְּזַעַת אַפֶּךָ תֹּאכַל לֶחֶם

each man in accordance with his *okhel* –

The expounders of reshumot say:

From here we learn that the manna contained within itself

by the sweat of your brow shall you eat bread

This may mean that G-d had a principled objection to providing human beings with food that required no effort on their part. If so, maybe a token, minimal effort was sufficient after the first day.

This suggests that G-d used the manna to create an egalitarian utopia. All needs were provided for equally, and with minimal effort. Having one’s needs provided for was a human right, not something one needed

to earn, and there was nothing one person could do to become more deserving than another of having his or her needs met. In our world, we should strive as best we can to recreate such equality.

What if someone wanted more?

We all know that the manna was an every-flavor bean. What if some people had much greater gustatory imaginations than others, and so they experienced the manna more pleasurably than others?

Ramban plays the Faucian skunk at the egalitarian picnic. He notes that *benei Yisroel* ask to return to Egypt where they “*sat over the fleshpot, and ate bread to satiety*,” and G-d responded with quail and manna – but there is no miraculous equalization with regard to quail.

ויתכן שהיו גדוליהם לוקטין אותו,
או שהיה מזדמן לחסידים שבהם,
וצעיריהם היו תאבים לו ורעבים ממנו,
כי לא יספר בשלל וילקטו המרבה והממעט
כאשר אמר במן.

*Plausibly the adult/great/powerful? among them would glean the quail,
or the quail would present themselves only to the pious among them,
and the youngsters would desire it and be hungry for lack of it,
because the Torah does not tell regarding the quail they gleaned, the increaser and the diminisher
as it said regarding the manna.*

Human beings do not live by bread alone, and the manna did not succeed in creating a society with no desires beyond needs, if that was its intent. G-d did not create a fully equal society – if Ramban’s second hypothesis is correct, He seems to have deliberately generated material inequality based on spiritual inequality.

Perhaps G-d deliberately created human beings as too complex for any notion of sameness to yield fairness. Yet the manna still teaches that sameness is part of the equation.

What Do Angels Look Like? And Other Questions About Halakhah's Understanding of Art

February 5, 2021

“How many angels can dance on a needle’s point?” is often cited as an example of pointless speculation. Wikipedia reports an academic consensus that the question was actually invented to needle certain schools of philosophy or theology, with Peter Harrison suggesting that “needle’s point” was a pun on “needless point.” But the perhaps genuinely important underlying issue was whether metaphysical beings occupy physical space at all. The only coherent answers are “none” and “infinity” (although Douglas Adams fans might argue for “42”).

“What do angels look like?” may seem similarly silly. But Rosh HaShanah 24b provides two possible Biblical sources for a prohibition against producing representations of angels. Shemot 20:4 (also Devarim 5:8) bans the making of representations of things “in the heavens above,” and Shemot 20:20 bans the making of gold and silver representations of things “with Me.” If we don’t know what angels look like, how can we know whether a particular representation is forbidden?

One possible answer is that they look like *keruvim*, the winged figures atop the Ark. But this answer seems paradoxical, as G-d commanded us to make the *keruvim*! This can be finessed by asserting that the prohibitions prohibit making **additional** images of angels. But that seems forced, and also 1 Kings 6:23 reports that King Shlomoh made two additional wooden *keruvim* for the Temple.

A second possibility is that angels look as described in the visions of Yechezkel, with multiple pairs of wings. But this also seems strange, as before Yechezkel, what did the prohibition mean? Also, do all angels look alike? Yechezkel himself seems to suggest otherwise.

The possibility that seems most compelling to me emerges from Ralbag’s Commentary:

וראוי שתדע כי צורת האדם לא יעברו על עשייתה אם לא היתה בולטת,
כי אינה תמונת האדם לפי מה שיורגש ממנו בזולת זה האופן,
וזה מבואר בנפשו;
ואולם צורת כוכבים ומזלות –
הנה יעברו עליה אף על פי שהיא שטוחה,
כי צורתם היא שטוחה לפי מחשבת האנשים.
וכן צורת מלאכי השרת,
אשר יסכימו האנשים בהם –
יעברו על עשייתה אף על פי שהיא שטוחה,
לפי שאין להם צורות ותמונות על דרך האמת.

*You should know that representations of human beings –
one does not violate by making them unless they stick up three-dimensionally,
because only in that manner are they temunot of a human being as perceived by human beings,
as is self-explanatory;
but representations of stars and planets/constellations –
one violates (by making them) even if they are flat (=two-dimensional),
because their actual form is flat according to the way people think;
so too, representations of ministering angels,
meaning representations that people agree regarding –
one violates by making them even if the representation is flat,
because they have no forms or images in the way of truth.*

Ralbag contends that since angels actually don’t look like anything, the prohibition must refer to whatever a particular society recognizes as a visual representation of an angel.

This understanding parallels Rambam's explanation in his Commentary to the Mishnah that prohibitions against representations of the sun, moon, and stars do not relate to the astronomical bodies as they appear to the human eye, but rather to zodiac-like images, which are entirely products of the human imagination.

The question then is why such representations should be forbidden.

A reasonable first step is to note that the prohibition against representing G-d seems also to be related to His not having "any form or image in the way of truth." Devarim 4:15-16 warns:

וְנִשְׁמַרְתֶּם מְאֹד לְנַפְשֵׁיכֶם
כִּי לֹא רְאִיתֶם כְּלִי-תְמוּנָה
כִּיּוֹם דִּבֶּר יְקֹנֶק אֵלֵיכֶם בְּחֹרֵב מִתּוֹךְ הָאֵשׁ:
כְּוִן־תִּשְׁחַתּוּן וַעֲשִׂיתֶם לָכֶם פֶּסֶל תְּמוּנַת כְּלִי־סֶמֶל
תְּבַגִּית זָכָר אוֹ נְקֵבָה . . .

*You must be exceedingly guarded for your souls
because you saw no temunah
on the day that Hashem spoke to you at Chorev from the midst of the fire.
Lest you destroy
and make for yourselves a pesel, a temunah of any semel
a tavnit of a male or a female . . .*

The simplest reading of the argument in these verses is that representations are forbidden because they entrench false ideas of G-d in human minds. Recall that *avodah zarah* originally meant "strange worship of G-d" rather than "worship of a strange god."

However, Devarim 4:19 seems to convey a different rationale.

וּפְתֹנֵי שָׁמַיִם עֵינֶיךָ הַשְׁמִימָה
וְרִאִיתָ אֶת־הַשֶּׁמֶשׁ וְאֶת־הַיָּרֵחַ וְאֶת־הַכּוֹכָבִים כֹּל צָבָא הַשָּׁמַיִם
וְנִדְחַת וְהִשְׁתַּחֲוִיתָ לָהֶם וַעֲבַדְתָּם . . .

*And lest you raise your eyes toward heaven
and see the sun and the moon and the stars, all the host of the heavens
and be led astray into sin, and bow to them, and worship them*

The suggestion here seems to be that conceiving of G-d as representable will lead to the worship of astronomical bodies. However, the causal chain is not clear.

The question that seems most pressing to me, and that none of these texts address explicitly, is whether the prohibition against physical representations is intended to constrain our thoughts and imaginations. Should making mental representations of G-d also be forbidden?

(I am leaving aside the halakhic questions of whether objects that create representations via optical illusions are forbidden, or images composed of energy, such as light-sculptures.)

The obvious difficulty with any such claim is Yechezkel. The magnificent poem An'im Zemirot suggests that we understand the prohibition as discouraging **unauthorized** mental representations of G-d. It therefore provides us with a handy list of Biblical, i.e. authorized descriptions. The problem is that the Torah seems to ban even, or perhaps especially, physical representations of the prophetic descriptions.

Moreover, if mental or verbal representations of G-d and angels are discouraged, we may end up with an irony according to Ralbag. If the prohibition accomplishes its purpose, and conversation and thoughts about G-d and angels become utterly aniconic, then there will be no "representations that people agree on." With regard to G-d, it may be that we prohibit even representations that are meaningful only to the

artist. But with regard to angels, Ralbag seems clear that only conventional representations are forbidden. Could each artist then freely produce their own representations?

In other words – can we argue that the ultimate purpose of the prohibition is to free us to think and create about angels subjectively without worrying that the results will be taken as objective representations?

Now imagine a society in which everyone agrees that a particular image corresponds to the word “angel,” but everyone also understands that the image is no more a representation than is the word “angel.” Are such images “agreed on” for Ralbag?

If the prohibition is against “making” rather than “having” representations, what if someone makes a representation that resonates with enough other people that it becomes conventional?

Part of what I’m wondering is whether there are images that human beings are hard-wired to recognize as angels, in a way that culture cannot extirpate. Even if the culture professes not to believe in the existence of angels, if we understand the term, we automatically associate it with certain images.

Here’s another thought experiment: What if a culture becomes convinced that angels look just like human beings (at least until they earn their wings)?

What about cultures that believe that angels are masters of disguise? So for example: According to Ralbag, “flat” paintings of human beings are permitted, but not of angels. What if I paint a scene of Avraham serving three men while they eat under a tree? What if I paint the scene but don’t title it?

Here’s the thing. Most of us live in Jewish cultures that are more-or-less post-Maimonidean in the sense that even non-philosophers instinctively agree that neither G-d nor angels “look like” anything in particular. My sense is that we also live in Jewish cultures that instinctively accept virtually every halakhic leniency regarding the production of images, as can be witnessed by the reaction to occasional efforts by halakhists to impose restrictions on kindergarten drawings of sunny days (or to my wife’s objection to a popular children’s siddur’s representation of G-d as a benevolently personified moon). It seems clear to me that these realities go hand-in-hand, and can best be justified by arguments along the lines of Ralbag above.

It also seems clear to me that such arguments often implicitly contend that all religious images are fundamentally kindergarten art. It does not take the religious representations produced by artists seriously. That does not seem to me sustainable. The unanswered halakhic questions I’ve raised throughout this essay are intended to at least raise the issue.

Chosenness and the Infinite Value of Every Human Being

February 12, 2021

At a public conference many years ago, a prominent Jewish intellectual explained to great acclaim why he no longer accepted the idea that Jews are “chosen.” Since all human beings are created *b’tzelem Elokim*, he argued, they are each infinitely valuable, and therefore, they must all be equally valuable. I raised my hand: Mathematicians, I asked, disagree about whether all infinities are equal. Would you have a moral problem with someone claiming that chosenness creates a “larger infinity?”

No one else present was interested in my question, and I don’t know enough math to pursue the analogy in depth. I myself am deeply committed to the absolute ontological equality of all human beings. I recognize that distinguishing among infinities is dangerously similar to an Orwellian declaration that “Some people are more equal than others.” I follow Rav Yaakov Kaminetsky z”l’s argument in his commentary to Avot that Judaism would be irredeemably racist if not for the possibility of conversion, which proves that “chosenness” relates to a responsibility that can be voluntarily assumed by nonJews. (Rabbi Kaminetsky plainly excluded any understanding of conversion as effecting a miraculous ontological shift.)

Nonetheless, the distinction inherent in my question matters. There is a moral gulf between those who assume the infinite value of each human being, and then build particularist pride on top of that, and those who seek to build pride by diminishing others.

I have seen both in Jewish contexts. During my year in yeshiva, a rabbi at an affiliated institution – a man with many admirable traits – regularly gave allegedly inspirational lectures filled with comments that diminished the humanity of nonJews. These lectures seemed to me to have an almost visibly corrosive impact on the souls of his students. But I also acknowledge that some Chabad shluchim strike me as superb examples of treating each human being as infinitely valuable without compromising on their belief in Jewish superiority. The world would be a much better place if everyone cared for each other on quotidian matters the way those shluchim care for nonJews.

This issue arose for me this week in the context of Netziv’s explanation of *naaseh v’nishma*.

In Shemot 24:3, we read:

וַיָּבֹא מֹשֶׁה וַיְסַפֵּר לָעָם אֶת כָּל־דִּבְרֵי יְהוָה וְאֵת כָּל־הַמִּשְׁפָּטִים
וַיַּעַן כָּל־הָעָם קוֹל אֶחָד וַיֹּאמְרוּ
כָּל־הַדְּבָרִים אֲשֶׁר־דִּבֶּר יְהוָה נַעֲשֶׂה:

Mosheh came and recounted to the nation all of Hashem’s words and all the regulations.

The entire nation responded in one voice, saying:

All the words that Hashem spoke – we will do (= naaseh).

Four verses later, we read

וַיִּקַּח סֵפֶר הַבְּרִית וַיִּקְרָא בְּאָזְנוֹי הָעָם
וַיֹּאמְרוּ

כָּל אֲשֶׁר־דִּבֶּר יְהוָה נַעֲשֶׂה וְנִשְׁמָע:

(Mosheh) took the scroll of the covenant and read/proclaimed (it) in the ears of the nation.

They said:

All that Hashem spoke – we will do and we will heed (=naaseh venishma)

Netziv raises three questions. First, if the Jews already committed to doing “All the words that Hashem spoke,” what more was Mosheh seeking to accomplish by reading the “scroll of the covenant” to them? Second, why is only the first response attributed to “the entire nation?” Third, what does “we will heed” add to “we will do?”

Grouping the questions makes clear that the overall structure of the answer will be: Mosheh read the scroll of the covenant so that some (but not all) of the nation would add “we will heed” to “we will do.”

Netziv formulates the distinction between “doing” and “heeding” as follows: “Doing” means performing the actions that G-d commands, but “heeding” means performing them **with the intention** that G-d commands. Netziv believes that the intention that G-d commands is that one perform them entirely for His sake, rather than because they accord with nature or human reason.

Netziv constructs the following timeline. In the Ten Commandments and immediate aftermath, G-d makes clear to the Jews that he insists on their studying Torah and engaging in worship (*torah va'avodah*), but he does not mention *gemilut chasadim*, the third pillar holding up the world. Why?

שהרי בטבעם המה בני אברהם יצחק ויעקב גומלי חסדים

Because by their nature they are children of Avraham, Yitzchak, and Yaakov, practitioners of chasadim

Because *chessed* was natural to them, when the Jews respond “All the words that Hashem spoke – we will do,” they cannot be referring to *chessed*, because they would have done *chessed* even without the Divine command. Mosheh then reads to them the “Scroll of the Covenant,” which Netziv identifies with Genesis, to explain that the Three Forefathers performed *chessed* for G-d’s sake, and not just by nature. The elite of the nation understood the point and responded “We will do **and we will heed**” to emphasize their acceptance of the requirement for motivation.

I am not comfortable with reading elite/mass distinctions into the narrative here (although I must acknowledge that Netziv is far from alone in doing so). I find it frankly disturbing that he understands “*naaseh venishma*” as reflecting the attitude of only the elite. But my interest this week is his apparent claim that Jews are genetically more predisposed to *chessed* than are nonJews.

This is the kind of claim that can easily be turned to evil. *Chessed* is natural to Jews, but not to nonJews; therefore nonJews do not share at least one of G-d’s thirteen attributes; therefore they are not truly created *b’tzelem Elokim*; and so on.

Which is why it is so absolutely vital that Netziv notices the danger, and moves to preclude it. Even though his textual interpretation here in no way depends on any claim regarding nonJews, he adds a sentence in:

שהרי בטבעם המה בני אברהם יצחק ויעקב גומלי חסדים

וגם כל האוה”ע –

על חסד נבנית העולם

Because by their nature they are children of Avraham, Yitzchak, and Yaakov, practitioners of chasadim and so too all the nations of the world (are natural practitioners of chasadim) because the world was built (by G-d) through chessed

He adds this in to prevent anyone from reading his argument in the ways above. All human beings must share every aspect of G-d Who created the world.

The problem is that that all distinctions can become invidious; and that malicious or insensitive students may try to dismiss such clarifications as disingenuous apologetics for the censor. So if we are to legitimate such rhetoric or theology in our midst (even without agreeing with it), we need to set clear **halakhic and hashkafic** boundaries that, if breached, will demonstrate that human life is not being given infinite value.

Here are my suggestions.

First, the status of *tzelem Elokim* must not be subject to any notion of “greater” or “lesser.” All human beings are created *b’tzelem Elokim*, period.

Second, it must be a given that Jewish and non-Jewish physical lives are in practice absolutely equal infinities. For example, in a pandemic, one cannot suggest that Jews be given priority for care, or for immunization, or that even that Jewish self-care responsibilities are greater because of some non-equivalence.

One of the tiny, fleeting comforts of this terrible time has been the broad acceptance within Orthodoxy that the disease is a human problem and that how to respond is a problem of human ethics. Even those whose practical decisions seem to show a willful disregard for human life at least do so without obvious prejudice. May that merit help bring us to a time of much greater comfort.

Pledges and Allegiances

June 5, 2020

The Nazirite is an ersatz High Priest. Taking a vow of nezirut forbids one to cut one's hair or become tamei even for relatives, and just like a High Priest), and to drink wine (parallel to a priest who is actually performing Temple Service). Through the institution of nezirut, the Torah provides an outlet for those who cannot be satisfied by merely fulfilling what is required of them, or who cannot handle having G-d require more from someone else.

Is providing this outlet an ideal, or rather a concession? Is the nazir a laudably ambitious spiritual striver, or an obsessively hypercompetitive soulthlete?

Talmud Nedarim 9a-10a offers a wonderfully nuanced meditation on this question. We'll start at the end and meander our way to the beginning.

The last unit of the sugya centers on a beraita:

ר' אלעזר הקפר ברבי אומר:
וכפר עליו מאשר חטא על הנפש –
וכי באיזו נפש חטא זה?
אלא שציער עצמו מן היין.
והלא דברים ק"ו:
ומה זה שלא ציער עצמו אלא מן היין – נקרא חוטא,
המצער עצמו מכל דבר – על אחת כמה וכמה!
מכאן:
כל היושב בתענית נקרא חוטא
The great Rabbi El'azar HaKappar said:
"and this will atone for him from his sin against a nefesh" –
What nefesh did the nazir sin against?
It must be that he afflicted himself by denying himself wine.
This generates a kal vachomer:
If the nazir, who only denied himself wine, is called a sinner,
one who denies himself everything – all the more so!
From here (we derive):
Anyone who fasts is called a sinner.

Rabbi El'azar HaKappar presumably was in favor of fasting on Yom Kippur. But he nonetheless calls voluntary asceticism a sin. Perhaps it smacks of ingratitude for G-d's Creation.

The Talmudic narrator, however, calls foul. The verse "and this will atone for him from his sin against a nefesh" refers to a *nazir* who accidentally violated his vow by becoming *tamei*. Isn't that violation the sin, rather than the original oath?

There are too many scribal variants in the line that follows to know whether the challenge is answered here. However, the question plainly resonated with someone. Here's how I know.

Yerushalmi Nazir 1:5 reports the following story:

אמר שמעון הצדיק:
מימי לא אכלתי אשם נזיר אלא פעם אחד
שעלה אחד אלי מדרום
וראיתיהו
דמות יפה עינים וטוב רואי קווצותיו תלתלים
ואמרתי לו:
בני, מה ראית להשחית השער הנאה הזה?!

נומא לי:
 ר', רועה הייתי בעירי, והלכתי למלאות את השאוב מים,
 וראיתי את הבוביא שלי בתוך המים,
 ופחז יצרי עלי ובקש לאבדני מן העולם.
 אמרתי לו:
 רשע, מה אתה מפחז בדבר שאינו שלך?! עלי להקדישך לשמים?
 וחבקתיו ונשקתיו על ראשו
 ואמרתי לו:
 בני, כמותך ירבו עושי רצון המקום בישראל
 עליך הכתוב אומר איש או אשה כי יפליא לנדור נדר להזיר לה'
Said Shimon the Righteous (and High Priest):
In all my days, I never ate the asham-sacrifice of a nazir except once
when someone came to me from the south
I saw him –
beautiful eyes, good-looking, with curly locks –
and I said to him:
“My son,
What inspired you to shave this beautiful hair (as required at the end of the nezirut term)?”
He replied:
“Rebbe,
I was shepherding in my city, and I went to fill the trough with water,
and I saw my reflection in the water,
and my (evil) inclination seized me and sought to wipe me out of the world,
so I said to it:
‘Wicked one,
you are seizing via something that is not yours? It is my obligation to sanctify you to Heaven!’”
I hugged him and kissed him on the head
and I said to him:
“My son,
May those who do the Will of the Omnipresent like you multiply in Israel!
Regarding you Scripture said: If a man or woman swears an oath of nezirut to G-d.”

Essentially the same story appears in the Bavli, except that this is the only *asham*-sacrifice of a *nazir* **who became tamei** that Shimon haTzaddik ever ate from. The addition of “who became *tamei*” lets the story match the context of the verse. But it seems now that Shimon HaTzaddik regarded only those *nezirim* who became *tamei* as sinners. And why would the handsome southerner’s origin story be relevant to the issue of *tum’ah*?

The Talmudic narrator responds via a sharp observation about human nature. People mean it when they take a vow of *nezirut*, and they accept the required privations without regret – until something goes wrong, and they have to start over. Shimon HaTzaddik thought that every other *nazir* who had become *tamei* had regretted their original oath.

Understand that the *nezirim* who made it through without becoming *tamei* were just lucky – they too would have regretted their oaths had they become *tamei*. They had a cost-benefit calculation in mind when making their oath. Their motive for becoming *nezirim* was at least partly ego-gratification rather than truly “for G-d.” Yet Shimon HaTzaddik did not consider them sinners. Maybe we see the oath as channeling and sanctifying their evil inclinations rather than as indulging them.

That is a fine line indeed. A third beraita presents the issue squarely:

חסידים הראשונים היו מתאווין להביא קרבן חטאת,
 לפי שאין הקדוש ברוך הוא מביא תקלה על ידיהם,
 מה היו עושין?

עומדין ומתנדבין נזירות למקום, כדי שיתחייב קרבן חטאת למקום;

ר' שמעון אומר:

לא נדרו בניזיר

. . . כדי שלא יקראו חוטאין,

שנאמר: וכפר עליו מאשר חטא על הנפש.

The Early Pietists were desirous of bringing a chatat-sacrifice (which atones for accidental sins), because the Holy Blessed One never causes missteps through them (so they never sinned accidentally).

What would they do (to satisfy their desire)?

They would arise and voluntarily vow nezirut to the Omnipresent, so as to become liable for a chatat-sacrifice to the Omnipresent.

Rabbi Shimon said:

They did not take a nazir oath

. . . so as not to be called sinners,

as Scripture says: “and this will atone for him from his sin against a nefesh” –

The Early Pietists were frustrated by their lack of access to a category of religious experience. Moreover, G-d deliberately sets out to deny them this experience (as a reward!). But they found a loophole in His defenses. The *nazir* brings a sin-offering even though taking the oath is not prohibited. So they took the oath, according to the anonymous first position in the *beraita*.

Rabbi Shimon denies this. What sort of Pietist sees sating their own spiritual appetite as justifying actions for which the Torah requires atonement?

This brings us back to the sugya's opening *beraita*, which records a dispute between Rabbi Meir and Rabbi Yehudah. Rabbi Meir believes that oaths are best never taken; what justifies taking the risk of nonfulfillment, which is a *deoraita* violation. But Rabbi Yehudah says that the opportunity to fulfill a vow justifies the risk of non-fulfillment.

I suggest that Rabbi Yehudah affirms the religious value of autonomy. He understands why the experience of serving G-d through a self-imposed obligation can add something to the experience of serving G-d by obeying His entirely heteronomous commands. Rabbi Meir may have rejected autonomy altogether. More likely, he read Halakhic Man and believed that all of Halakhah reflects human autonomy, because the law is formulated by human thought.

In the long-term, this sugya may be a useful “safe space” for thinking about whether and how we consider motives when people express a desire for religious experiences that are within halakhah but beyond their personal halakhic obligations. In the short-term, it can be a spur to thinking about whether and how to make public pledges about anti-racism in response to the horrifying killing of George Floyd.

I am leery of pledges – I like to be free to do the objectively right thing rather than being constrained by subjective commitments. There will always be costs that I had not sufficiently considered, and there's often some element of grandstanding. Often we don't really mean to make an unqualified and absolute commitment, and our exceptions eventually generate cynicism rather than inspiration. Fairly generic public pledges may be stalking horses for more extensive campaigns or ideologies I disagree with.

Most of all, I don't want to create the misimpression that opposition to racism is imposed on Torah and Halakhah rather than deeply expressive of them.

On the other hand, pledges create human connections. People from radically different walks of life often trust each others' pledges more than they trust each other's overall moral systems.

Public pledges also create accountability. Putting commitments in nonHalakhic form makes it much harder to hide behind the wonderful complexities of our tradition.

Finally, pledges create pressure on others to do the same, and change the default settings of people without strong opinions.

Connections, accountability, and pressure are emphatically needed with regard to racism in the Orthodox community.

Balancing all these considerations, and with full credit to Uri l'Tzedek for creating an admirable anti-racism pledge, I wish to state the following:

There is a halakhic obligation to object and reprove when Orthodox Jews make racist statements in one's presence.

There is a halakhic obligation to object and reprove when Orthodox community policies discriminate on the basis of race, whether implicitly or explicitly.

If you catch me failing to live up to these obligations, please hold me accountable.

Dialogue: Should Torah Be Nonpartisan?

June 12, 2020

Edited transcript of a conversation this week between the middle-aged Centrist Orthodox politically moderate rabbi of a midsized shul and two wonderfully difficult congregants.

Aharon and Miriam: Rabbi, we're wondering if you plan to tell us which candidates or party to vote for in the coming election. We understand that politics are really tangled, so there's often a really good Torah basis for either side. But surely this year the choice is clear! Even though we disagree about which side to choose.

Rabbi: The task of a public scholar is to make Torah relevant, but not partisan.

Miriam: Why shouldn't Torah be partisan, if one side is closer to Torah than the other?

Rabbi: The Orthodox community is politically diverse. If we make Torah partisan, then some of our members will turn away from Torah, or else we will split the community.

Aharon: If Torah cannot tell people what to do about the major human issues of the day, what use is it? If Orthodox Jews will turn away from Torah rather than obey it, what sort of Fear of Heaven does our community have?

Rabbi: I'm very glad you asked that question. Certainly Torah can and should tell people what to do about specific issues. But a political party or candidate has positions about lots of issues. All I'm saying is that Torah doesn't tell people to support all the positions of Party A or Candidate B just because Torah supports some of their positions.

Miriam: That isn't a sufficient response. Part of the job of Torah is to tell us how to weigh and balance various values, isn't it? So if Candidate B is right about the more important issues, then you should tell us to vote for her. It sounds to me like you're using Torah to cover up for unwillingness to risk the shul's tax exemption.

Rabbi: I can't deny that the tax exemption has crossed my mind. But I'm less worried about losing it than about keeping it dishonestly.

Miriam: Then give it up voluntarily! Or make a clear division between when you're speaking as the rabbi of the shul and when you're speaking privately. For example, I want to make clear that I'm not asking you because of your position, but rather because of my profound respect for your Torah wisdom.

Aharon: Me too!

Miriam: And if you're worried about members leaving, I think you're being slippery. You know full well that taking a position on some issues will be understood as partisan no matter how much you insist that you aren't telling people how to vote.

Rabbi: I'm sure you're right about that.

Aharon: So are you going to avoid taking positions on those issues? Even if they're the most important issues?

Rabbi: Thank you for holding me accountable to my own ideals. I don't think I could live with myself if I was just being cowardly. But I still feel very uncomfortable attaching Torah to one political side or the other, and I'd like help figuring out why.

You know how deeply I believe that halakhah is not meant to turn people into religious automatons who simply obey orders. They have to take responsibility for their own Torah choices. I also say all the time

that Torah scholars have no special knowledge or authority over facts. It feels like telling people how to vote violates both those principles. I think my job is to explain to people what I see as the values and principles the Torah holds dear, and let them decide how those play out in the real world.

Yes, I pasken about kashering dishwashers, and about mechitzah height, and even life-and-death issues. But only where detailed halakhic knowledge is essential, or where the community needs a single standard, or in the rare case that I think a person has the right to defer responsibility.

Miriam: That sounds awfully noble, but I'm not convinced. But let's leave voting aside for the moment. I'm sure a lot of people have asked you how to balance the pikuach nefesh risks of the pandemic against the moral necessity to protest. Did you pasken for them?

Aharon: Also, even if you don't want to pasken, what are you doing, yourself, in public? It would be ridiculous to claim that leading by example deprives other people of their autonomy.

Rabbi: I understand that some people have a very hard time accepting that it could be permitted to attend a mass demonstration at the same time that we're saying that shuls have to stay closed, and permitting only small outside minyanim.

Shuls are closed because a community like ours is very vulnerable to rapid spread, and many of us live with people in high-risk categories. Gathering together isn't just risking our lives, it risks the lives of other people. People who attend demonstrations that don't absolutely maintain social distancing should not be attending minyan at all. The same goes for anyone in their households.

But attending demonstrations is arguably a way of saving lives, and correcting radical injustice on the societal level, especially a society that one participates in, benefits from, and has responsibility for, legitimates assuming a certain amount of risk to oneself. So if people are convinced that the demonstrations can have such results (whether I agree or disagree), I tell them to minimize the risk to themselves and maximize results as best they can. But they must be extraordinarily careful not to expose others who have not voluntarily assumed any risk.

My household has high-risk people, so it's hard for me to justify attending any public gathering. I believe that otherwise, like many of my colleagues, I would be joining protests that observe social distancing.

But let me challenge you for a moment. Demonstrations are a physical risk, but they may be less of a social risk than taking stands within our community, especially when that puts us in conflict with people who generally share our political or religious views. As Dumbledore said, standing up to our friends often requires more courage than standing up to our enemies.

I am absolutely comfortable saying that Torah requires Democrats and Republicans to treat every human being with dignity. This is true in direct dealings and in how we speak about others when they are not present, and with regard to both individuals and groups. Can you tell me what you are doing to make this happen within our community, and within the Orthodox community?

Miriam: I've been sharing like mad on Facebook some amazingly powerful stories and statements from Jews of color who love our community but nonetheless have sometimes felt excluded or disparaged. Also divrei Torah emphasizing that support for equal civil rights is a religious obligation, and statements from politically conservative thought-leaders about how ongoing racism undermines our vision of American exceptionalism.

Aharon: I committed to not being silent when people in my community say or share things that, to me, violate the principle that all human beings are created *b'tzelem Elokim*. But it's really hard – I have a lot fewer “friends” than I did last week, and now I'm a little bit glad that I won't be going to an extended family party for a while. I know that some of my friends who made the same commitment are afraid they'll have to confront teachers they revere. What about you?

Rabbi: One of my teachers coined the term “sustainable hypocrisy” for the idea that people and communities should try to establish public images just a little better than they actually are, and then try to live up to them. This works if the image is just a little better, but not if the gap is large. I’m very happy that so many Orthodox organizations have made statements about committing to eliminating both gross and subtle racism within our ranks, but the gap is too large right now. I’m working to shrink it.

Here are two concrete measures that I think can be implemented soon:

1) having every school and shul put accountable policies in place to ensure that no one is ever asked to prove their Jewishness because of how they look. I can’t tell you how many upsetting stories I have heard about admission interviews or about shul guests. I want to stress the accountability – right now these stories often go nowhere because there’s no safe address for complaints.

2) making clear at every level and in every context, from pre-school to kiddush club, that we view making racist comments as a violation of Halakhah. Statements by organizations or university presidents can too easily be dismissed as exercises in public relations. We need to translate them into consensus halakhic guidelines for shuls and schools with the imprimatur of major poskim. I resist formal sanctions for any but the most blatant or repeat offenders; but our positions and policies should be crystal clear.

Obviously there is much more to do. But if we can establish accountability and Torah rigor in core contexts, we’ll be in much better shape to address the harder questions about both our present and our past, and to provide serious Torah resources for thinking about partisan issues.

Our time together is almost up. Does one of you have a relevant question or comment about this week’s parshah?

Miriam: Well, Aharon and I were discussing, just before you came in, how this week’s parshah is always a gut-check for me because of what happens to Miriam, and maybe – I know this isn’t how most of the rishonim understand it – because she wasn’t welcoming to someone who looked different, and came from a different culture. I wonder how Mosheh Rabbeinu’s children were treated – maybe that’s why they never became communal leaders.

Rabbi: Yeyasher kochekh. A sobering thought to leave on. I look forward to our next conversation.

This dialogue is a work of ideological fiction. Any resemblance to actual persons, living or dead, is coincidental but artistically encouraging.

Permission to Forbid: New Gezeirot in the History of Halakhah

March 18, 2021

Originally published in *The Lehrhaus*

Imagine if a new technology enabled all 39 *melakhot* to be done on Shabbat without violating any existing halakhic prohibition. How should our *poskim* respond?

Discussions of halakhic innovation often revolve around an asserted need for new leniencies. But it stands to reason that changed circumstances will require just as many new stringencies, and that the authority to make changes must apply both ways. If today's halakhists are judged incompetent to issue new stringencies, they are unlikely to succeed in implementing new leniencies.

Rabbinic *gezeirot* function to “build a protective fence”¹ around the Torah by forbidding actions that might lead to violations of Torah prohibitions. New circumstances yield new threats and require new *gezeirot*. However, in *Yabia Omer* 1:16, Rav Ovadiah Yosef zt”l writes, “It is well known that our teachers the *rishonim* and *aharonim* have stated broadly that we may not decree *gezeirot* based on our own judgment.” Rav Ovadiah cites six sources to directly substantiate this principle. My purpose here is to reopen the discussion based on an analysis of those sources and to compare Rav Ovadiah's approach with that of Rav Moshe Feinstein zt”l.

Rav Ovadiah addresses the issue of whether to forbid reading by the light of an electric lamp on Shabbat. The Mishnah (*Shabbat* 11a) teaches that one may not read by the light of an oil lamp. The Talmud explains (*Shabbat* 12b) that the concern is lest one violate the prohibition against kindling by tilting the lamp to improve its draw. This concern plainly does not apply to electric lamps. Therefore, the *gezeirah* does not apply to reading under electric lamps, just as reading by the light of fireplaces is permitted. However, because electric lamps can be turned off very easily, one can argue plausibly that reading by them **should** be forbidden, and that the Talmudic rabbis **would** have forbidden this had such lights existed in their time.

Rav Ovadiah's first source regarding the appropriateness of new *gezeirot* is a responsum of Rabbi Israel Bruna (*Shu”t Mahari Bruna* #108), one of the leading *poskim* of fifteenth-century Germany. Mahari Bruna discusses whether a woman who immerses while wearing a loose ring on her finger is permitted to resume intimacy with her husband. Immersion is valid only if the water can reach all the woman's skin, and the concern is that if we permit loose rings, women will come to wear tight rings that obstruct the water's access. He notes that Ramban and Rashba disagreed about whether *halakhah* requires removal of a loose ring in advance (*lekhatilah*) of immersion, but he asserts that “after the fact (*bediavad*), no one disputes that from the day that the Talmud was sealed, no *gezeirah* was initiated that we do not find in the Talmud, as Rabbeinu Asher (Rosh) wrote in *Shabbat* Chapter 2 regarding the ‘convulsion of the Geonim.’” Because the Talmud did not ban immersion with a loose ring, Mahari Bruna rules that the woman is permitted to resume intimacy with her husband.

Yet I am puzzled by Rav Ovadiah's citation of this responsum with regard to electric lamps. A decree against reading by electric lamps declares that something should not be done; it does not invalidate something that has been done. It is therefore parallel to a decree against immersing while wearing a loose ring. Since Mahari Bruna is open to prohibiting women from immersing with loose rings, even though the Talmud did not, he should therefore also be open to prohibiting reading by electric light.

Mahari Bruna's distinction between an initial decree (*lekhatilah*) and invalidating a ritual after the fact (*bediavad*) also seems inconsistent with the Rosh he cites as support, which is also Rav Ovadiah's second source.

Rosh (to *Shabbat* 2:15) cites the Geonim as follows: “We do not practice saying [a *berakhah* specific for fast days] in the evening [*amidah*], or even in the morning [*amidah*], lest he be seized by illness or

¹ See, e.g., *Mishnah Avot* 1:1.

convulsion and eat something, making it turn out that he was a liar in his prayer.” Rosh responds: “I am astonished: How could the Geonim initiate a *gezeirah* after Rav Ashi sealed the Talmud?!” The issue here is *lekhatilah* – should one or shouldn’t one say the *berakhah*? This is parallel to forbidding immersion while wearing a loose ring, and it is *not* parallel to invalidating an immersion after the fact. The Geonim presumably did not decree that one who says the *berakhah* must repeat the *amidah*. I am therefore at a loss to explain why Mahari Bruna cites Rosh as supporting his claim that post-Talmudic rabbis are restricted only from making *bediavad* decrees.

Regardless, Rosh seems to support Rav Ovadiah’s principle by stating an absolute rule against new decrees, albeit implicitly conceding that the Geonim rejected this rule. However, we can interpret Rosh’s rule more narrowly. Rosh and Mahari Bruna both deal with decrees that apply to situations already considered by the Talmud. The question before them is whether to initiate a prohibition when, facing the same circumstances, the Rabbis of the Talmud chose not to prohibit. Rosh’s rule may therefore be irrelevant to the issue of whether post-Talmudic authorities can make decrees in response to entirely new circumstances, such as electric lamps.

This distinction between precedented and unprecedented circumstances emerges clearly from Rav Ovadiah’s third source, Radbaz’s commentary *Yikar Tiferet* to Rambam (*Hilkhot Terumot* 1:22). Radbaz discusses a dispute between Rambam and Raavad as to whether grains grown outside the Land of Israel become rabbinically obligated in *terumot* and *ma’asrot* when brought to Israel. Radbaz explains that Rambam held that “we should not initiate *gezeirot* based on our own judgment, since [such a decree] is not mentioned anywhere. Indeed, in the Yerushalmi they discussed this Mishnah at great length and never mentioned [the possibility] that [these grains] would be rabbinically obligated!” Radbaz explicitly frames Rambam’s argument against such a decree in terms of acting where our predecessors chose not to.

Rav Ovadiah’s fourth source, Maggid Mishneh (to *Hilkhot Hametz u-Matzah* 5:20), similarly addresses whether later rabbis can make new decrees when addressing the same circumstances as their predecessors. He understands Rambam as permitting the baking of *matzot* with oil or wine or honey added to the dough, because the combination does not rise faster than a dough with only water in it. Raavad limits this permission to *zerizim* (people eager to fulfill mitzvot punctiliously), but he forbids it to ordinary folks. Maggid Mishneh responds on behalf of Rambam: “But I say: We may not decree *gezeirot* based on our own judgment.” People certainly considered baking with these additives in the time of the Talmud.

Similarly, Rav Ovadiah’s fifth source, again from Radbaz (*Shu”t Radbaz* 1:149), also addresses a case of unchanged circumstances. Radbaz there considers whether a woman who experiences a *hargashah* (sensation associated with becoming *niddah*), but then inspects herself and finds no blood, should be considered a *niddah* under Rabbinic law. He responds that “we should not initiate *gezeirot* based on our own judgement in circumstances where our predecessors did not decree.” The phenomenon of *hargashah* without finding blood of course also existed in Talmudic times.

Note that Radbaz and Maggid Mishneh each introduce the rule against new *gezeirot* to explain why Rambam permits where Raavad forbids. This suggests that Raavad (like the Geonim cited by Rosh above) may not agree with even our narrow understanding of the rule, and he might permit making new *gezeirot* even when circumstances have not changed significantly.²

However, Rav Ovadiah’s sixth source, Rabbeinu Nissim [Ran] (cited in *Shu”t HaRivash* #390), at first glance supports the claim that we cannot make new decrees even in response to new circumstances. Ran responds to a rabbi’s request that he ban a community’s practice of announcing real estate sales at Shabbat davening. These announcements served the public policy purpose of establishing a presumption of legitimate ownership (if no one came forward to contest the sale). This public good certainly suffices to override the general prohibition against speaking of business matters on Shabbat. Ran notes, however, that the Mishnah (*Beitzah* 36b) forbids *batei din* (halakhic courts) from adjudicating on Shabbat even in

² Raavad generally sees himself as continuing Geonic tradition, so this historical conjunction would not be surprising.

cases of public need, lest they come to write. Shouldn't the same consideration forbid this practice? Ran responds that we should not extend that prohibition to this case "because we only have those [*gezeirot*] listed by Chazal, and we should not originate *gezeirot* on our own." Here is a new practice, and yet Ran rules out making a new *gezeirah*.³

Yet the key phrase here is "those [*gezeirot*] **listed** by Chazal." To what list is Ran referring? Rabbinic literature contains no comprehensive list of *gezeirot* that we can check to see if it includes a decree against announcing real estate sales on Shabbat. Rather, Ran must be referring to the Mishnah in *Beitzah* (36b), which includes a **list** of activities prohibited on Shabbat and Yom Tov despite their being "something of a mitzvah" (*reshut*),⁴ among them the convening of a *beit din*. The Talmud (*ibid* 37a) identifies writing as the concern behind the prohibition. Ran explicitly classifies these announcements as *reshut*. His argument against banning these announcements is that the Mishnah intended its list to be exhaustive, and therefore with regard to the specific question of banning a *reshut* that might lead to writing, "we only have those [*gezeirot*] listed by Chazal." This argument has no relevance to a general rule against new decrees.

Thus, none of Rav Ovadiah's six sources explicitly supports a rule against initiating new *gezeirot* in unprecedented circumstances, and several of them implicitly acknowledge that the Geonim and Raavad allowed new *gezeirot* even in preceded circumstances. Nevertheless, a broader restriction against new prohibitions may have developed after Radbaz. Such a development may be revealed in the many sources that Rav Ovadiah cites later in his responsum. Moreover, there may be practical reasons making such decrees impossible today. For example, making *gezeirot* might require a degree of public acknowledgement and deference that is not given to any contemporary halakhist or group of halakhists.

Rav Moshe Feinstein (*Igrot Moshe* OC 4:50) also addresses the question of whether new *gezeirot* are possible in response to new circumstances. His concern is not electric lamps, but rather the potential of electric timers to completely transform the Shabbat experience: "It is obviously forbidden to permit this, because via such timers one could do all the forbidden categories of labor on Shabbat, and [run] all factories, and there could be no greater devaluation of Shabbat." Rav Moshe adds, "It's clear that had this device existed in the times of the Tannaim and Amoraim, they would have forbidden this."

Rav Moshe is less certain "that we cannot forbid what the Sages did not forbid, and that one may not derive further prohibitions from their decrees, even against things that are rationally more stringent." Even if we cannot, he insists that anything not prohibited by Hazal, "even though this was because the case didn't exist in their time, and thus there is no actual prohibition, nonetheless one should not permit it, since it is something that it would be appropriate to forbid." The circumlocutions in this responsum are striking and astonishing: "forbidden to permit," "appropriate to forbid," and so forth. Clearly, Rav Moshe felt that something goes seriously awry when *halakhah* cannot effectively rebuild its fences in response to new circumstances.⁵

The authority to issue new permissions or create new obligations is not necessarily subject to the same rules as the authority to forbid. One can construct a theoretical system⁶ that gives contemporary halakhists the authority to make new decrees freeing *agunot* without simultaneously enabling them to ban putting televisions on Shabbat timers. Maybe that authority could also enable regulating publicly owned corporations and responding effectively to the existence of a Jewish state. But it seems far more intuitive to connect the issues practically, and even to claim that permitting what would otherwise be forbidden requires more authority than forbidding what would otherwise be permitted. Therefore, advocates for creative halakhic legislation should recognize that the authority to issue new decrees will

³ Real estate sales existed in the time of Hazal, and therefore one might argue that here as well Hazal **chose** not to ban announcing them, so Ran also is not relevant to the question of new technologies. But since the practice of announcing them did not exist, this seems to me an overreach.

⁴ The Mishnah uses the term *reshut*, which Rashi here defines as *ketzat mitzvah* ("something of a mitzvah").

⁵ The validity of Rav Moshe's discomfort is independent of the question of whether one shares his intuition about the negative implications of timers for the Shabbat experience.

⁶ For example, by distinguishing between *gezeirot* and *takkanot*.

almost certainly go both ways, and that generating the authority to permit may require granting the authority to forbid. My hope is that this essay opens space for serious discussion of the extent to which we wish to grant that authority.

Judaism and Libertarianism?

(Note: A shorter version of this essay was published as the Preface to Running in Good Faith? Observant Judaism and Libertarian Politics, by Dr. Allan D. Krinsky, available at <https://www.academicstudiespress.com/cherry-orchard-books/running-in-good-faith>)

Judaism contains an astonishing number of laws – 613 separate categories, each with tens, hundreds, or even thousands of sections and subsections. We are proud of the comprehensiveness of our legal system, or Halakhah; a favorite Jewish story tells how the Khazar king was persuaded to convert by the fact that we have an extensive legal framework for restroom conduct. These people, he realized, were serious about applying religion to everything.

Libertarianism, by contrast, seeks to minimize law to the bare necessities. Every law is by definition an infringement of autonomy. At first glance, Judaism and Libertarianism have radically opposed sensibilities.

But this opposition may be only seeming. Libertarianism sees human beings as free to impose any sort and number of obligations on themselves; the objection is only to imposing them on others. Moreover, some schools of libertarianism allow law to play a bigger role in smaller communities, where people have the realistic option of moving out, and where their individual voice plays a much larger and more direct role in deciding what laws should be made. In other words, libertarian concerns apply to **enforceable** law, and especially to law that is enforced by the threat of official violence.

Much of Halakhah is not law in that sense. Whole categories of Jewish law have no formal enforcement mechanism, and in fact are defined by the halakhic system to be outside the penal jurisdiction of human authorities. Moreover, the formal enforcement mechanisms of Jewish law are deliberately impractical and impracticable. For example, the only punishment listed for many violations is death, but Rabbi Akiva and Rabbi Tarfon state that “Had we been on the Sanhedrin, no one would ever have been executed”. Furthermore, capital punishment cannot be carried out in the absence of a court meeting in the Sanhedrin’s office in the Temple, and the Temple has been a ruin for two millennia, while Halakhah endures.

On the other hand, Halakhah has developed many “informal” enforcement mechanisms. By informal, I don’t mean that they are ad hoc, or administered by vigilantes rather than by duly constituted authorities. Rather, I mean that they are rooted in a general claim that enforcement by whatever means necessary is legitimate, rather than by claims for the legitimacy of enforcing specific laws.

Does that general claim demonstrate non-libertarianism? I contend not. Here’s why.

For the two millennia immediately preceding 1948, Jews had very limited autonomy over themselves (and what authority they had was almost entirely local). Enforcement of Jewish law on the Jewish community was sometimes formally compelled by Gentile authorities, and sometimes forbidden. Decisions about enforcement were always heavily influenced by what we might call the Jewish community’s “foreign policy” rather than by concerns for domestic tranquility or individual self-actualization. It is difficult to see those decisions as derived from or reflecting any general positions about political theory.

Moreover, Jews had no authority whatever over Gentiles, and the concept of a joint Jewish-Gentile polity guided by Judaism was almost inconceivable.

Why should that matter? Judaism does not understand its legal aspects as universally binding or applicable. So the internal enforcement practices of Jewish communities have no necessary implications for evaluating the political practices of Gentile or pluralistic communities. The question of enforceable law in such communities requires entirely separate treatment.

Jewish law for Gentiles is formally much less expansive than that for Jews. The standard framing is that it includes only seven categories, known as the Seven Noahide Commandments, as opposed to the 613 categories for Jews. It is common and reasonable to think of the Noahide commandments as representing the bare necessities of governing relationships among human beings.

Within that framework, halakhah offers very little guidance as to how much government is necessary. For example, the commandment known as “dinim” requires the establishment of a viable criminal justice system. But for what crimes? Here is the powerful formulation of the great late 19th century halakhist Rabbi Meir Simchah of Dvinsk, in his Torah commentary Meshekh Chokhmah to Exodus 24:3:

*Know that Noachides are commanded regarding dinim (Sanhedrin 56b)
and the position of the medieval authorities is that this refers to laws that appeal to human reason,
but to coerce and compel regarding the statutes and commitments of Torah
Is justified only on the ground that “All Jews are arevim/guarantors for each other” (Shavuot 39a and others),
so that if one transgresses, one damages their friend and their entire community,
and therefore a rabbinic court is justified in coercing and judging the transgressor
of the commandments of Hashem the Blessed,
as without this it would be inappropriate for one person sheyit’arev (to mix into) another
person’s relationship with their Creator.*

Meshekh Chokhmah’s formulation seems fully consistent with a libertarian credo for Gentile society. Only laws that command rational consent may be enforced. No human society has the right to compel any human being to submit to a notion of the good that is not universally demonstrable, unless disobeying the law poses a genuine substantive threat to the wellbeing of the society.

Meshekh Chokhmah’s argument is built around his distinction between Jewish society, in which every Jew is an *arev* for every other, and non-Jewish society, in which there is no basis for being *mit’arev*, becoming an *arev*, for another. In a Jewish society, since G-d will hold each person accountable for the other’s transgressions (perhaps the use of *avar* for transgress is also connected), enforcement falls under the community’s right of self-defense. Non-Jewish societies are theologically atomistic, and so enforcement would be wrong.

This claim is obviously overstated. The Bible is replete with examples of G-d holding non-Jewish societies accountable as a whole, from the Flood and Tower of Babel generations through the Canaanites through the eschatological prophecies of Jeremiah. What Meshekh Chokhmah must mean is that Jewish societies are necessarily, mandatorily, judged as a group on all axes of value, whereas Gentile societies have the option of individualism.

We can square the issue as follows: Gentile societies have the option of mutual religious or moral responsibility, and therefore of enforcing the law beyond libertarian limits, only when they act on the basis of a universally (within that society) acknowledged set of values. The difference between Jews and Gentiles is that the Torah binds all Jews to a set of values on the basis of a particularist Revelation rather than on the basis of a universally accessible epistemology.

A pluralistic society by definition does not have a universally agreed set of values. According to Meshekh Chokhmah, it would therefore be wrong for Jews, or any other particularistic group, majority or minority, to seek to have their own values enforced in a pluralistic society. Judaism and libertarianism are not only compatible when it comes to American politics; Judaism mandates something like a libertarian political ethos.

However, Meshekh Chokhmah’s argument requires that the Seven Noahide commandments be derivable from universal reason. Any such claim is problematic in our morally atomized modernity, and certainly so with regard to the Noahide commandments. For example, they include prohibitions against cursing G-d,

adultery, and eating the flesh of live animals. The first of these seems to be an imposition of religious restrictions, the second of sexual restrictions, and the third of ethical restrictions. that do not command universal consent in our days. Moreover, the list of seven is almost certainly not comprehensive, and in any case, is probably at a much higher level of generality than the 613 Jewish categories, including as many as perhaps 400 of the latter. So Meshekh Chokhmah's political distinction between Noahide and Jewish halakhah seems difficult to sustain.

I suggest that Meshekh Chokhmah would encourage enforcement of a Noahide law only where at least one of two conditions are met:

1. the values behind the law enjoy the universal assent of the society it will be enforced in
2. the law is essential for the functioning of human society

On this reading, Meshekh Chokhmah would not support enforcement of Noahide laws within a society where they do not appeal to reason, except where they meet a libertarian standard of necessity.

Moreover, at least some voices in Jewish tradition see values pluralism as the natural and healthy state of society. One of Meshekh Chokhmah's greatest contemporaries, Rabbi Naftali Tzvi Yehudah Berlin (NeTZiV), powerfully embedded such a vision in his comments to the Tower of Babel story. The Biblical text opens with a description of the Babel society as "of one language, and uniform words". NeTZiV understands this to mean "of uniform values", and argues that such a situation could come about only in a totalitarian society that rejected or executed anyone who disagreed with its values. He builds on a Rabbinic tradition that Abraham was thrown into a furnace for maintaining monotheism in despite of the culture's mandated idolatry. NeTZiV argues that G-d intervenes by fragmenting the society because He rejects coerced uniformity.

Let me concede that this celebration of nonconformity seems alien to the spirit of Maimonides' Laws of Kings, which appears to mandate hegemonistic Jewish enforcement of Noahide Law in the Messianic Era. As my son in-law Yehudah Gale commented to me, because there are so few other extended and even close to comprehensive treatments of the Noahide laws in Jewish tradition, Maimonides' has become the default setting. In areas of Halakhah which have been continually practiced, his influence is much more limited, because many more alternatives are available. In light of the modern Jewish experience in both Israel and in the United States, it may be a desideratum to subject his writings in this area to the kind of intense reevaluation and critique that the greatest halakhists have brought to his rulings in matters that have been practiced throughout. This would bring his influence in this area of halakhah in line with its still extraordinary significant imprint in other areas, and might also generate very different understandings of his underlying presumptions and principles.

Libertarianism sometimes suffers in Orthodoxy because of its association with the militant atheism of Ayn Rand. The attitude of Modern Orthodoxy specifically has been colored by the attitude of my teacher who was the teacher of all Israel, Rabbi Aharon Lichtenstein of blessed memory. Rabbi Lichtenstein argued that Rand's philosophy is the antithesis of Orthodoxy because she rejects as anathema the "commander-commanded" relationship between G-d and human beings, which he saw as the essence and core of Judaism. Readers of The Fountainhead will recall that its hero's climactic achievement is a temple architecturally designed to banish thoughts of any transcendent Being above humanity.

Many friends of mine went through an "Ayn Rand" phase in high school, and it often seemed to damage their souls. Her rhetoric endorsing "egoism" and "selfishness" was often misunderstood – in many ways she invited this misunderstanding - as licensing radically excessive self-esteem and utter disregard for others. Rabbi Lichtenstein's disdain was likely rooted in empirical experience as a teacher of adolescent males.

I am very glad that I first read Rand in college, which I think made me less vulnerable to the worst of her ideas. Like my teacher (and incomparably closer student of Rabbi Lichtenstein) Rabbi Michael

Rosensweig, I see the opposition between Rand and Judaism less totalistically, and that her critique of religion has much to offer us.

Rand adapts Nietzsche's critique of Christian altruism as "slave morality" in a very interesting way. She argues that altruism, defined as "action done for the sake of the other rather than for one's own sake", generates a sense that the other is obligated to do the same, or more, for you. If I lend you a quarter on Monday for the soda machine, and then on Thursday find myself short 30 cents for the same machine, I will feel that you **owe** me the slightly larger loan. Also, I may tend to find myself short more often, as I come to count on your presence.

At its worst, then, altruism is a deliberate means of creating dependence and submission; at best, it creates a false sense of obligation that constrains the person initially "helped" to act for the sake of the "helper". Acting for any motive other than authentic self-interest is immoral.

But – and this is a large "but" – Rand defines authentic self-interest in Kantian terms, as acting in accordance with one's nature as a rational being. Rational self-interest includes the well-being of others for whom one cares, and the maintenance of a society that one would wish to live in if everyone behaved in accordance with your own values. Each of her novels valorizes a character engaging in what appears to be self-sacrifice, but is actually self-fulfillment, because acting to maintain the happiness or life of the other is essential for their own rational self-conception. Rand assumes that a rational person cares deeply – for their own sake – about the well-being of those they care about.

Rand thus offers a very Jewishly emended version of Nietzsche. A famous (at least *prima facie*) point of divergence between Judaism and Christianity is that Jesus formulates the Golden Rule positively - "Do unto others as you would have others do unto you" – whereas Hillel formulates it in the negative: "What is hateful to you, don't do to your friend". I suggest that Hillel adopts the negative out of concern for the Randian critique. We recognize that the decision not to harm another is not 'altruistic', but rather a decision made out of our sense of what sort of person we want to be. We don't think the other party has an obligation to reciprocate – they merely retain the same obligation they always had to act in accordance with their own rational self-conception. By offering his formulation in the negative, Hillel conveys that all of Halakhah's interpersonal obligations should be understood similarly as actions done for the sake of maintaining one's own self-conception as a rational being, rather than for the sake of the other.

Recognizing that Judaism acknowledges the moral risks of altruistic actions may also yield a more sophisticated and nuanced understanding of Halakhic charity law, one which reveals affinity with an additional aspect of libertarian thought.

Presentations of Jewish charity law generally cite two overall frameworks. The first of these is Maimonides' 8 Levels of Charity, and the second is the Mishnaic prescription for each community to maintain a *kanun vetamchui*, a daily soup kitchen and weekly food pantry.

These two frameworks appear at first glance to have radically opposed attitudes toward the intersection of charity and dignity.

Maimonides' 8 Levels focus on preserving the dignity of the recipient. The highest level is to allow the recipient to regain their independence, by finding them a job or offering them an interest-free bridge loan. The levels below that seek to ensure that one or both of the giver and recipient does not know the identity of the other, or to minimize the connection in other ways. The common theme is ideally to prevent the reality of dependence, or failing that, to minimize the psychological impact of dependence.

By contrast, the daily soup kitchen and weekly food pantry maximize the psychological impact of dependence and the indignity of poverty. They are means-tested so that each gift is exactly enough to survive until the next gift. The daily allotment suffices only until the morrow, the weekly until the next week.

The plain explanation for this disparity is that the 8 Levels relate to individual charity, ideally within an extended family, and the kitchen/pantry to communal charity. With regard to individual charity, halakhah recognizes the possibility of genuine altruism, in Hillel's terms, or decides that the benefits of altruistic action are worth the costs. It therefore focuses on containing those costs. With regard to communal charity, it seems that the suspicion of altruism, and for that matter of dependence, are much greater. Halakhah therefore restricts it to the bare minimum, and seeks to increase the dignity costs so that dependence will be radically discouraged.

In short, Halakhah is certainly not Randian. But its charity regulations take her critiques into careful account.

The evidence we have presented so far affirms that halakhic Judaism is compatible with the negative formulation of libertarianism. By negative formulation I mean something similar but not identical to Sir Isaiah Berlin's distinction between "freedom from" and "freedom to". Negative libertarianism opposes coercion because it is unjustified and unlikely to be beneficial, and is suspicious of altruism because it can foster dependence and diminish dignity.

I want to turn now to positive libertarianism, which relates to freedom not as a default but rather as a good.

The strongest post-Biblical Jewish statement I have found in this regard is in Rabbi Shlomo Goren's "Human Freedom in the Light of the Torah":

"The essential point of departure in the historic experience of the redeemed Jewish nation, when it left the furnace of slavery in Egypt, the solid foundation of our social outlook that serves as motivation, justification, and telos, because of which and for the sake of which all events of this world came to be, those prior to the Exodus and those following it, and which compelled G-d to alter the orders of nature, and to work the array of open and concealed miracles of that era, so as to root it in human consciousness, is the Torah of Israel's sacred recognition of human freedom, in all the life-conditions of individual and public life, and in all social and national conditions, because the human being was created in the *tzelem Elokim*. Every subordination of one human being to another, whether willing or coerced, injures the purity of his connection to Divinity and his obligations to Heaven, forms an obstruction between the human being and his Creator, and an obstruction to attaining faith in the Above's overall direction of the world. Furthermore, domination and subordination among human beings is antithetical to the possibility of accepting the higher lordship of the Divinity, because only one who is free in body and soul, not subordinated to external ideas, or to external laws and statutes, can subordinate himself to the Divine eternal ideas, and accept upon himself the true Yoke of the Kingdom of Heaven. This is made clear by the words of the Yerushalmi cited below, that accepting the mastery of flesh and blood leads to breaking away from the Kingdom of Heaven, and constitutes abjuration of the Second Commandment of the Ten Commandments: "You must not have other gods before Me". We also find in Mishnah Avot 3:14 establishment of the elevation of the human being in this world, as Rabbi Akiva states: "Dear is humanity because it was created in the Mold; additional belovedness in that he was informed that he was created in the *tzelem*."

Rabbi Goren argues that human freedom is the religiously central concept of Judaism. He reads Exodus universally rather than particularistically, as about G-d's hatred of human slavery rather than about his redemption of the Jewish people. He then generalizes the concept of slavery to all forms of interhuman subordination. Finally, he argues that such subordination is always and by definition invidious because it infringes on the nature of human beings as created in the *imago dei*. G-d is free to work His own Will and therefore human beings can fulfill their nature only in freedom. (How Rabbi Goren reconciles this conception with human obligations toward G-d is a topic for a different discussion; again, we are not Randians.)

Rabbi Goren roots his theological claim in the halakhic rule that “A worker can renege on a contract at midday”, which is equivalent to a ban on enforcing specific performance. The Talmudic discussion of this rule on Talmud Bava Metzia 10a illustrates his claim beautifully. The Talmud sets up five categories of employment:

- a. workers who choose their own tasks and are paid for their products
- b. workers who are paid for their time, and perform work of their employer’s choosing
- c. workers who contract themselves for a period of time, and can end the contract at will
- d. workers who contract themselves for a period of time. and accept wages in advance, and can end the contract only by returning a pro-rated amount of the advance
- e. workers who contract themselves for a period of time and are bound to specific performance

Category e is banned as pure slavery. Categories b-d are conceptualized as permitted attenuations of slavery: the practical consequence is that workers on the clock are legally “the hands of their employers” for the purposes of acquiring lost objects, and presumably for a variety of other economic purposes. Workers in category are not slaves at all; their hands are their own. Nonetheless, Talmud Bava Metzia states that there is a dignity cost to being an employee rather performing the same work in one’s own direct interest, such that a person has a valid moral complaint against someone who caused them to be an employee even for the same work and at the same profit.

Judaism thus sees the capacity to do what one wills as a prime good and as imitation dei. This plainly amounts to a libertarian ethos.

There is a long way between ethos and policy. Certainly Judaism is not bound to any policy prescriptions advanced by a political party or movement. But it is fair and valuable to approach the question of what Judaism has to say about current policy issues with a recognition that Judaism shares crucial ideological ground with libertarians.

The Temple's Sophistication and the Chumrot of Pesach

by Rabbi Francis Nataf (CMTL Guest Faculty)

Coming to the end of our frantic efforts to get rid of the chametz in our homes, this week's parsha reminds us that this would be nearly non-existent in the Temple. For, as we read once again, the standard mincha (meal) offerings were to be matza year-round. And even on the special occasions when chametz was called for, it was never incinerated on the altars (hence eliminating the most difficult part of getting ready for Pesach – cleaning ovens!)

On the face of it, this fits in with our general understanding of the Temple as a place in which we are bound to a higher standard. The various discussions about chametz make us aware that there is something spiritually problematic about this food. While the Torah does not want to push us to the point of eliminating it all the time everywhere, it is willing to do so in this realm of higher sanctity. The notion of a higher standard in the Temple would perhaps also explain why the lulav was waved in the Temple for the entire festival of Sukkot, whereas it was only waved one day outside of it. (The practice we follow today of waving it the whole week was a rabbinic enactment to remember the Temple practice.)

While I believe the above is true, the theory requires us to explain why it sometimes seems like the opposite. For example, shatnez is famously found in the clothes of the Kohen Gadol (and possibly the other priests as well). Moreover, while building the Temple famously ground to a halt on Shabbat, this was not true of the actual Temple service. On Shabbat, the priests would slaughter the sacrificial animals just like they would on any other day (and there were even more communal sacrifices on Shabbat than during the week).

Perhaps the reason for our confusion is our automatic assumption that more is always better. Rather – based on our earlier observations – while that seems to be the case regarding the prohibition of chametz and the commandment to wave the lulav, it is apparently not the case when it comes to shatnez or prohibited work on Shabbat.

In that case, one of the things that seems to come out from the Temple service is that more is not always better. In place of this simplistic formula, the Torah calls us to examine every issue in context. One way to understand this is to compare it to the quantities of ingredients used in different recipes. It is obvious that even the tastiest ingredients can spoil something if they are used beyond their proper measure. And – more importantly for our purposes – that measure will differ greatly from one recipe to another. What that means is the value of something is always relative to its context. Accordingly, the Torah wants us to understand that, just like recipes, our actions are also (and likely much more) complex. That being the case, there can truly be too much of a good thing even when it comes to mitzvot.

However the Torah is hardly trying to let us off the hook by encouraging us to conclude that “everything is relative.” Rather, the Torah's recognition of complexity calls us to study it in greater depth so as to understand the nature of its values and how they interact with one another. Perhaps this is one of the reasons the Talmud concludes that the strength of the rabbi that permits something is greater than the one that prohibits it. The reason may not be intrinsic to the value of permissibility. Instead, it is because such a rabbi is more likely to have understood the concept in question on its own merits and in its particular context.

This brings us back to the coming holiday. Although there is a strong basis for our propensity to be more stringent on Pesach than we are during the rest of the year, we should not turn that into a blanket attitude in which stringency is always followed, regardless of the other values at stake. Of course, neither should this be read as a blanket call for leniency. It is simply an appeal for greater sophistication in how we apply the appropriate stringency for this special holiday.

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Making Seder Out of the Zoom Seder Controversy

By Rabbi Shlomo Zuckier (SBM '12)

Originally published in *The Lehrhaus*

April 7, 2020

Introduction

The crisis precipitated by the novel Coronavirus and the distancing measures in its wake have led to a flurry of halakhic decisions, many of which reflect deep questions of Jewish law and values. Placing any system under stress serves to reveal its tensions and gaps, and Halakhah is no different.

Possibly the most acute example of this appears in the case of Zoom *Sedarim*, which featured a controversy starting around Rosh Hodesh Nisan on both sides of the Atlantic. As we will see, these discussions are complex, as several different scenarios are being discussed, and a variety of halakhic and meta-halakhic issues are at stake – the halakhic status of electricity, questions of unity and diversity in halakhic decision-making, and the phenomenology of virtual reality.

The goal of this article is to make some *seder*, some order, out of the controversy, to separate out the various issues at hand and emphasize both new trends as well as consensus views that emerge from the discussion. The decisions presented on a variety of issues reflect in many cases surprising developments or applications of Halakhah, and we will find several cases of unlikely alliances between divergent parties.

Recap of Events

The debate began with the pronouncement of the “Association of Rabbis of the *Maghreb* in Israel,” a group of fourteen Moroccan rabbis who asserted that, in order to allow families to include grandparents in their *Seders* this year as usual, despite social distancing, it would be permissible to set up a Zoom call before *Hag* and include the larger family together in one festive *seudah*. The response was immediate and powerful: it was attacked by current Ashkenazic Chief Rabbi of Israel David Lau and even more forcefully by former Sephardic Chief Rabbi Shlomo Amar. Rabbi Yitzchok Zilberstein, a major decisor for the *Haredi* world, penned an objection as well. Several rabbis retracted their endorsement of the original position almost immediately, and the decision was reissued with a mere seven of the original fourteen signatories. Rabbi Yosef Tzvi Rimon offered an alternative – having a Zoom pre-*Seder* on the afternoon of *Erev Pesah* to sing holiday tunes with extended family prior to logging off and holding a classical *Seder* with the smaller group in the room – a suggestion that has gained much traction, echoed by both Israeli and American colleagues.

In America, while some have addressed the question of using Zoom to facilitate multi-generational *Seders*, most of the discourse surrounds a different issue, those who live alone and for whom being isolated for three days might lead to mental health challenges. In cases of danger to life there is an uncontroversial permission to violate the usual rules of Yom Tov; the question here has primarily been what exactly is included in *pikuah nefesh*, life-saving measures.

Speaking generally, then, there are really two separate discourses going on – an Israeli discussion over family unity and preserving the multi-generational *Seder*, and an American discussion over preserving life through cellphones, Zoom meetings and other virtual means. This is at least partially a function of circumstance: the calendar outside Israel this year features a so-called “three day Yom Tov,” over 72 hours without electronic communication, a real challenge for some who are isolated physically and may have a history of mental health challenges. One wonders whether certain deep-seated cultural differences may play a role as well: Israel, and particularly its sizable Sephardic community, is very committed to the *hamulah*, close familial kinship, and especially joint religious experiences. As some of the written decisions indicate, it is not clear that everyone will partake in a *Seder* if it does not include the extended family. On the other side, Orthodox communities in the United States are increasingly weakening the stigma of mental health and raising publicly more halakhic issues in that vein.

I would like to consider here three different debates or shifts that have occurred as a part of these discussions, and to analyze what underlies these debates.

Zoom *be-Seder*?

The dispute here does not feature much purely halakhic discussion aside from one major, longstanding debate. On both sides, the Israeli decisors have rarely invoked technical halakhic considerations in their decisions, preferring to focus on the broader policy concerns: will people follow the details and scope of the permissive view? Will this lead to disunity among rabbinic decisors? Will this facilitate increased observance and health?

The major halakhic debate lurking in the background is the question, first raised in the late nineteenth century, as to how electricity should be viewed by Halakhah. All agree that the use of electrical appliances is prohibited on Shabbat, but there are four different theories that have been offered as to why this is the case. Everyone knew electricity must be prohibited, but they just didn't know what the precise basis of the prohibition would be. The approaches, discussed at length in many volumes, can be roughly summarized in bare-bones fashion as follows:

1. *Eish* – Electricity is like a fire in the wire, prohibited due to the *melakhah* of *Eish*.
2. *Boneh* – The use of electricity, which entails building circuits and empowering electronic appliances, entails the completion of a building project, prohibited due to the *melakhah* of *Boneh*. This view is most closely associated with the Hazon Ish.
3. *Derabanan/Molid* – Electricity is not biblically prohibited, but it entails a rabbinic prohibition (or possibly a “strong *minhag*,” in some formulations), possibly because it creates something new. This is the view attributed to R. Shlomo Zalman Auerbach, and is also the most prevalent view among responsa today.
4. *Makkeh be-Patish* – Since using electricity involves a constructive, creative act, it is included in this “catch-all” *melakhah*. This view is championed by R. Asher Weiss.

There are many differences between these views in their application on Shabbat. Possibly the most significant difference between these views applies in connection with Yom Tov. Since fire is permitted to be used on Yom Tov for a purpose, those who see electricity as *Eish* may generally use it. This is not only the view of many Moroccan decisors, but of other Sephardic and Ashkenazic *poskim* as well, most prominently the *Arukh ha-Shulhan*. (Several students of Rabbi Joseph B. Soloveitchik have related that it was his practice to turn on and off lights on Yom Tov, as well.)

Over the past half-century, the consensus view has been primarily to follow approach 3, which gives a fair amount of flexibility in applying the prohibition of electricity on Shabbat, although it also means it is generally prohibited on Yom Tov. To a significant degree, Moroccan and other decisors have minimized communal reliance on the opposing position, despite still accepting it “*me-ikkar ha-din*,” as the basic law. There seems to have been a preference for uniform communal standards: if Moroccan and other Sephardic Jews use electricity on Yom Tov while their Ashkenazi neighbors are told not to, that would weaken that prohibition and create an unusual communal dynamic. (Consider the parallel scenario of *kitniyot*, where Israel has seen a trend in recent years of *Ashkenazim giving up the practice*.)

The question is, what happens in a moment of crisis? Is there room to rely on that permissive position once again? The Moroccan rabbis' decision asserted that, with the proper safeguards, they could rely on it. In a scenario with the computer set up before Yom Tov (so adjusting it hopefully wouldn't even be necessary), very clear statements that this be done only in extreme circumstances like this year for those who need it, and a clear purpose serving the sanctity of the day, they saw fit to allow Zoom *Seders*.

Those representing the opposing view have generally not attempted to delegitimize the halakhic position itself, but instead to raise policy questions surrounding it that serve to render the position moot. Several of these are raised by the original *pesak* and parried, only to be resurrected by its critics, including concerns of a slippery slope and the argument that using Zoom is *uvdin de-hol*, a weekday-like activity.

In addition to these policy questions, the main animating force behind the Israeli discussion is how to apply the widespread view among some Moroccan and Ashkenazi decisors of the previous generation that electricity may be used on Yom Tov for one's holiday needs. It is for that reason that the attacks on that decision, as well as the retractions, invoked considerations such as "rabbinic unity," "the nature of halakhic decision-making," and the like. While several of the opposing arguments refer in a general sense to issues of Jewish law that permitting Zoom raises, they generally do not make sustained halakhic arguments (with the exceptions largely stemming from American decisors). This can be attributed to the fact that, at least before one gets to the meta-halakhic issues, all agree that there is a strong argument to be made in the Moroccan tradition to permit Zoom *Seders*.

In fact, one argument offered against the Zoom *Seder* by an Israeli decisor, when considered closely, reveals the difficulty of using meta-halakhic categories. Rav Yitzchok Zilberstein, a prolific author on halakhic topics, was asked by his brother-in-law and acknowledged *gadol* R. Chaim Kanievsky to offer a response to Zoom *Seders* stemming from the *Haredi* world. His response draws primarily on a responsum by Rav Moshe Feinstein disallowing use of timers to set automatic activities to take place on Shabbat because that entails *zilzul* Shabbat, a denigration of the day. Hosting a Zoom *Seder*, even if set up before Yom Tov, he argues, would similarly serve as a denigration of Yom Tov. The problem with this position is that *ziluta* is inherently a subjective thing; the greatest proof to this is that, at least in American observant communities, the use of timers and "Shabbos clocks" is widespread, relying on several positions that disagree with Rav Moshe. Presumably this shift away from Rav Moshe's decision is at least partially due to the fact that as various technologies became more ubiquitous and less jarring, they became less of a denigration to Shabbat for them to happen automatically.

Thus, one might raise the question that, while Rav Zilberstein's decision works to prohibit Zoom on Yom Tov today, it might not work at some future point when automated videos are more widespread and less of a denigration to the day. Consider the fact that many shuls have rotating screens running all Shabbat giving the day's schedule, which would have felt antithetical to the spirit of the day just 25 years ago.

And yet, one can turn the question of technology's relentless advance around, as well: even if one might theoretically find a permissible way to use Zoom on Yom Tov, would the day still offer the experience we have come to associate with it? Or has the phenomenon of "twenty-four hours without screens" merged with the identity of Yom Tov (and Shabbat) to such a degree that such a distinction is not possible? This question might reveal a tension between technical and experiential ways of approaching Yom Tov here, a distinction to which we will return below.

The meta- and para-halakhic arguments deployed against the Moroccan permissive ruling thus argue against relying on that decision, but generally do not attack its fundamental basis. As reliance on electronic appliances and communication becomes more central to day-to-day life, these broader arguments might militate either for greater stringency (to distinguish Shabbat from weekdays) or, alternatively, greater leniency in applying existing halakhic categories to use of Zoom and similar applications.

Zooming to Save Lives

Across the pond, the discussion in the United States regarding use of Zoom to support those in danger has also been an interesting one. Once again, the core halakhic issue has been laid out long ago – this case in consensus rather than debate. As the *Talmud* and *Shulhan Arukh* set out, when a person's life is endangered, even if only doubtfully so, one may – and must! – violate Shabbat or Yom Tov without any

worry. The divergences among different opinions thus hinge on questions of where to draw the line, as well as how exactly to implement and publicize this permissive ruling.

As to the extent of *pikuah nefesh* that would justify performance of *melakhah*, Rav Hershel Schachter published an important and fairly wide-ranging permissive position. He writes that it is permitted to violate Yom Tov through whatever means would be helpful, not only in a case where there is certain risk to a person's life (through self-harm), but even in a case where there is a minor possibility of risk. Furthermore, even in cases that don't carry any risk to a person's life, but would potentially lead to significant downgrading of one's mental health ("losing one's mind"), it is permitted to violate Yom Tov by whatever means necessary, including phone or Zoom calls to the relevant individuals. This is a permissive position, although it draws upon earlier principles, both that of the aforementioned *Shulhan Arukh* and the position of the Soloveitchik family that loss of mental health qualifies for *pikuah nefesh* as well. Rabbi Yoni Rosensweig went into even greater detail in delineating specific scenarios and where he would see the threshold of health risks permitting the violation of Yom Tov.

Maybe the most significant shift is one focused on messaging rather than content. Rav Schachter's important decision was originally communicated to rabbis with the stipulation that it not be publicly disseminated, presumably based on the fear that it might be misconstrued or misapplied. Days later, presumably after consultation with rabbis and others regarding the risks, the same decision was publicized in fleshed-out form for public consumption.

His decision was followed by a similar ruling by Rav Dovid Cohen, more squarely in the Haredi American world, also endorsing use of technology in cases of risk. Just yesterday, Rav Mordechai Willig suggested that all rabbis be accessible by phone to congregants who may be in crisis over Yom Tov. Presumably the decision by all these rabbis to publicize their ruling in this way was made with the understanding that the risk of publicizing the *pesak* and having it be misunderstood was dwarfed by the risk of not having enough people be aware of the permissive position, which might lead to them endangering their lives.

Is Zoom for Real?

One other set of discussions taking place primarily in America relates to the way that one classifies the use of electronic communications. This discourse builds upon but extends beyond the various positions noted above as to why electricity is prohibited on Shabbat. It focuses on the question of how to understand virtual communication, as part of the broader phenomenological question of how to understand and classify virtual reality, which is becoming more and more pressing each day. In a sense, these questions are relevant not only because it is necessary to consider the nature of Zoom and other technologies in evaluating their halakhic permissibility, but also because the world we live in has migrated communication almost exclusively to the medium of texting, e-mail, WhatsApp, Zoom, and other virtual means. This shift in experience can be seen as a question not only of Halakhah but of phenomenology as well.

This question of how to evaluate technologies in this vein carries countless ramifications. For example: Is sending someone a text message, or writing on a computer screen, considered a form of "writing" that is prohibited on Shabbat? If one hears a *berakhah* over Zoom, is it proper to say Amen? Can one fulfill *mitzvot* through virtual modes of communication?

There are essentially two views of this issue of how to view virtual reality from the perspective of Halakhah: a realist and a formalist view. Do we take seriously these new experiences with technology and say that, in real terms, typing a text on a computer or phone accomplishes the same goal of writing letters and is to be considered "*Kotev*?" Or do we say that, formally applying the halakhic categories, the text needs to be written on paper with some form of ink (see *Shabbat 104b*), and this does not qualify, at least not in full form?

As should be clear, this is not a question of leniency versus stringency – it runs in both directions, and is primarily a question of phenomenology and definition of categories. Every legal system has to define and

redefine its categories as it faces new realities. With the shift in human interaction, and the corresponding new halakhic realities, this question of defining virtual reality emerges. (And, of course, it is possible to distinguish between different scenarios and emerge with complex views that depend on the particular category at hand. Still, there is a certain commonality among the examples that make them worth exploring together.)

This question first arose recently not in the context of Pesah but a month prior, right before Purim, when Rav Schachter wrote, drawing upon a position of Rav Moshe Feinstein, that those in quarantine with no other option could listen to the Megillah via Zoom or a phone call and fulfill the commandment in that way. This presumes that listening to the *Megillah* through a virtual medium qualifies as “hearing it” rather than serving as a detached experience.

There is another hint of a realist view in Rav Schachter’s distinction between phone calls and Zoom meetings. He asserts that, in cases that do not rise to *pikuah nefesh* but have some other overriding reason to allow contact (such as helping someone carry out their *Seder* despite lacking other options), it is possible to start a phone call before Yom Tov and continue it over the *Seder*. (He is very hesitant in embracing this option, and suggests that every alternative option be considered.) However, he asserts, one should not have a Zoom meeting, because that would violate *Roshem*, a subcategory of the prohibited action of *Kotev* (writing), as participating in a video means one is broadcasting a particular picture. While, he asserts, it is not prohibited to look into one’s own computer, because that is “like a mirror,” communicating that image to others over Zoom qualifies as *Roshem*. The difference-maker between a case of turning on one’s own camera and the scenario of sending it to others is presumably based not on electronic differences but on experiential ones – the real effect of having others see one’s video at a distance, qualifies as the prohibition of *Roshem*.

There are limits to this realist view, however: while one can “hear” or “write” from a distance, one cannot form a virtual quorum; presence is still lacking, as Rav Schachter spells out in another recent decision. Presumably there are distinctions to be made between the various categories. As technologies advance and new questions emerge, we will have to wait and see how various decisors treat each scenario.

The Israel-based decisors do not raise these issues. Presumably, part of this is attributable to their views on how to apply *Roshem*. But one might also see an opposition to the realist approach reflected here.⁷ Additionally, some of the Israeli *teshuvot* go out of their way to note that one cannot fulfill the *mitzvot* of the *Seder* by hearing it over Zoom – virtual presence is insufficient. Generally speaking, the formalist approach will continue applying the previous, technical categories – use of electricity and the like – and not consider emergent categories such as *Roshem*. This seems to characterize both sides of the Israeli discourse fairly well.

On the other hand, Rav Schachter has found some unlikely allies in conceptualizing virtual communication as “real” – Rabbi Ysoscher Katz of Yeshivat Chovevei Torah and two rabbis of the egalitarian halakhic Yeshivat Hadar, Rabbis Ethan Tucker and Aviva Richman.

R. Katz published a primer giving practical advice as to how to use Zoom over Yom Tov for those at mental health risk. While generally following the guidelines that R. Schachter did, R. Katz asserts that both activating a new Zoom session and turning on a computer may be prohibited biblically, which has implications for how one might try to use a *shinui* in doing so, where possible. This argument has not, to my knowledge, been asserted by any of the many articles that have discussed this issue (although see now the recent position publicized by Eretz Hemdah). R. Katz notes further that, in cases where there is no risk, using Zoom on Yom Tov “is not merely a biblical or Rabbinic prohibition; it is, in fact, much worse... [it] will undermine the core essence of Shabbat and *chag*.” Related to his realist view of technology, R. Katz makes an appeal based on the nature of the day and the human experience of interaction with

⁷ Additionally, Rav Eliezer Melamed of Yeshivat Har Bracha, who allows saving Kaddish and *Barkhu* over “virtual *Minyanim*” (a topic for another occasion!) does so on the basis that there is no prohibition of taking God’s name in vain in doing so, but not that there is any constituting of a *Minyan* in doing so.

technology as something that should be prohibited, and severely so, regardless of one's views of the technicalities of electricity. It appears that R. Katz is self-aware of his phenomenological stance; he argued several months ago that "once the definition of what is considered 'doing' changes, our understanding of what constitutes a 'melacha' has to change as well."

The Hadar article regarding Zoom goes in several other interesting directions. It not only invokes "writing" as potentially prohibiting several scenarios including use of chat functions, saving a recording, or possibly having one's image be seen (the last in agreement with Rav Schachter), but it also suggests some new potentially forbidden activities involved in using Zoom. One is the issue of *Hashma'at Kol*, making noise, which is not usually applied for transmission of regular human speech. Most surprising is the invocation of the prohibition of *Tehum*, the prohibition to walk outside of one's area on Shabbat and Yom Tov. While applying this category is "admittedly more of a metaphoric concern" as no one is moving, the article argues that "part of Shabbat and Yom Tov is remaining local and making do with the things and people who were in your spatial civilization when you began Shabbat." (One reading this line hears echoes of a critique of the Conservative movement's *teshuvah* permitting driving to *shul* on Shabbat.)

While I don't think arguments of this type have been offered in halakhic sources in the past, and I don't see them gaining traction within Orthodoxy in the future, this view does reflect a similarly realist conception of technology. If on Shabbat one is meant to interact only with one's local geographic community, that should remain true for interaction through technology as well.

This realist view appears in a different context in the letter, as well. Specifically, Rabbis Tucker and Richman are open to the possibility of fulfilling various verbal and aural obligations at the *Seder* over a Zoom or phone call, although they assert it is better for one to not rely on this and rather recite those texts oneself, if possible. This reflects that same realist approach, although applied here for the sake of a leniency.

Conclusion

The halakhic debates over Zoom and Pesah, when dissected into their component parts, bring to light deep-seated debates on a variety of halakhic and meta-halakhic issues. Questions of the halakhic status of electricity as well as its phenomenology and the ramifications of offering differential decisions for various groups and doing so publicly or privately, all shape various parts of this debate. When one boils down the questions that divide between the various positions, rather than the standard "right wing versus left wing" explanation, one finds a distinct set of differentiating factors:

1. What are one's views about the halakhic status of electricity on Yom Tov, both in theory and in practice? This largely breaks down along communal lines, between Moroccan rabbis (along with some Ashkenazi precedents) and the mainstream view.
2. To what extent is one thinking locally or globally in deciding these halakhic issues? For example: Should one worry about implications for different communities? The "slippery slope" extending this permission to future scenarios? For what Yom Tov and Shabbat might look like in the future? Is it better to keep a decision "under wraps" or to disseminate it, and what are the stakes?
3. Is one a realist or a formalist regarding virtual reality technology? Does hearing over Zoom constitute actual halakhic hearing? Does commenting online or projecting one's image over Zoom constitute halakhic writing? Can one fulfill various *mitzvot* like the *Megillah* or parts of the *Seder* virtually?

Amid the great challenges posed by the novel Coronavirus, we find fascinating new developments and halakhic disputes coming to the fore as well. The changes to daily life, caused by advances in technology and exacerbated by social distancing, present both new realities and new halakhic questions. This debate over Zoom *Seders* lays bare several of these issues, all of which have yet to be fully resolved. Although

there is widespread agreement on some of the practical rulings this year, the divergent reasoning employed by the various decisors makes it clear that tensions still remain and that we can expect these fundamental questions to continue rearing their heads for years to come.

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Why Does Moshe Survive?

by Sarah Robinson (SBM '12)

Andy Warhol's "The Shot Marilyns" (1964) shows 4 headshots of Marilyn Monroe with predictably different colorings in her background, hair color, lip or eyeshadow. Though each quadrant can be studied individually, the viewer is meant to see all four together. Though Warhol's intention was to make a cultural critique about how Americans consume media and celebrities, this painting is a useful tool when thinking about how we can learn Tanach.

When we learn Tanach, we first learn each narrative, each picture frame, individually. Many scholars like Robert Alter and Judy Klitsner have popularized a literary method of Tanach study which encourages the reader to then consider how this narrative can be in conversation with parallel stories, namely, stories which share a similar narrative arc, language, or themes. The comparison motivates a new, creative read: how the two narratives are in conversation with each other. Robert Alter calls this the "Type Scene" while Judy Klitsner calls this process "mining" and "undermining" two narratives.

One such example of this inter-biblical conversation is the miraculous birth narrative. The gist is basically this: God promises children; the couple tries to conceive; they can't; the couple prays to each other or HaShem; the husband conceives a child through a maidservant but the family dynamics become chaotic; eventually, after this long and arduous journey, HaShem eventually gifts the couple a child. It's a miracle. Each has its own unique framing in the Warhol painting, but it's essentially the same story. Examples include the matriarchs and patriarchs in Genesis and Channah and Elkanah in Samuel. We could list many more.

However, Moshe's birth story breaks this paradigm. Bnei Yisrael have no trouble at all conceiving. Actually, the population is exploding! "ובני ישראל פרו וישרצו במאד במאד ותמלא הארץ אותם" (Shmot 1:7) The trouble is that Pharaoh is irrationally scared; he's worried that the Israelites will ally with another nation to threaten Egypt's safety (Shmot 1:10). Pharaoh eventually "solves" this problem by legalizing and forcing infanticide -- throwing the Jewish baby boys into the Nile.

Chazal want Moshe to remain paradigmatic with the other miraculous birth narratives. If in the other birth stories the miracle is that the couple can conceive at all, so see how the midrash in Sota 12a shoehorns Moshe into this construct:

תנא: עמרם גדול הדור היה, כיון שאמר פרעה הרשע כל הבן הילוד היאורה תשליכוהו, אמר לשוא אנו עמלין! עמד וגירש את אשתו, עמדו כולן וגירשו את נשותיהן, אמרה לו בתו: אבא קשה גזירתך יותר משל פרעה...וכו'
"It was taught by the Tanaim: Amram was a leader of the generation. When the evil Pharaoh decreed that 'all the baby boys should be thrown into the Nile' (Shmot 1:22) Amram cried, 'We're suffering for nothing!' He got up and divorced his wife and others followed suit. His daughter Miriam said, 'Father, your decree is harsher than Pharaoh's, etc.'"

The midrash here suggests that Amram and Yocheved separated when Pharaoh made his decree for infanticide. If separated, it would be impossible to bear a child, no? Thus the challenge for Amram and Yocheved to conceive was emotional, not physical.

There's a part of me that wants to empathize with Amram's dejection and hopelessness in this midrash. If children symbolize legacy and a hopeful future, who would want to bring a child into the world while Hitler is destroying it? But, then a miracle happens -- Miriam, a feisty 6 year old girl convinces her parents to reunite. Hence, this midrash is constructing a miraculous circumstance around Moshe's conception -- just like the matriarchs and patriarchs.

While most infertility stories center on the couple's dysfunction or reliance on HaShem, with Amram and Yocheved, that is not the case. Now reunited, bearing the child is the easy part. Instead, the psht narrative will focus on this: how can we keep the baby alive?

When Yocheved can no longer hide Moshe, she puts him in a basket and places it in the reeds (clearly similar to how God saves Noah from the flood in an ark). For years I wondered, “what in the world is she thinking?!” I thought it was a cruel irony that she put the basket above the very waters where all the other dead babies were buried. Moshe’s life hung, quite literally, in the balance. Just above him -- life, and just beneath him -- a mass grave. The thing separating the two -- a current of water. Why put Moshe’s basket *there* of all places?!

Recently, when I was in Israel, I was rafting down the Jordan and the reeds along the riverbank were very tall. It then occurred to me that the reeds could both secure and camouflage the basket! And loud crickets could muffle the sound of a baby’s cry! So if Yocheved was trying to hide Moshe -- her plan wasn’t so bad after all.⁸

But the plan falls apart. Pharaoh’s daughter goes down to bathe and she spots the basket! And she asks her maidservant to bring it over! And she sees an Israelite baby boy crying!

What should she do now? The law says she should grab the infant and drown him. But on the other hand, this innocent child did nothing wrong -- other than being born an Israelite. I feel my heart racing. What will she choose?

She has compassion for him -- “ותחמול עליו” (Shmot 2:6). She keeps him alive and eventually adopts him as her own child; the Netziv explains that the name Moshe literally means “son” in Egyptian. But why? If there’s anyone in the world who should have drowned the baby -- it would be Pharaoh’s daughter! This midrash in Sota 12a asks the question quite well:

ותרא את התיבה בתוך הסוף, כיוון דחזו דקא בעי לאצולי למשה, אמרו לה: גבירתנו מנהגו של עולם מלך בשר ודם גוזר גזירה אם כל העולם כולו אין מקיימין אותה, בניו ובני ביתו מקיימין אותה, ואת עוברת על גזירת אביך
'And she saw the ark in the reeds' when her servants saw that Bat Pharaoh wanted to save Moshe they asked her, 'Our Mistress, it is the practice of the world that a king of flesh and blood makes a rule and everyone follows it and certainly the king's children follow it. And *you* transgress your father's rule?'

The midrash imagines a conversation between Bat Pharaoh and her maidservants where they inquire why she chooses to disobey her father and keep the baby alive. As Rabbi Asaf Bednarsky says -- midrash can be עומק פשוטו של מקרא, the heart of the plain reading of the text. The Torah left a lacuna and this midrash constructs a possible conversation to fill it, thus raising an excellent question to the reader. Really, this is a serious pshat problem! Why does Bat Pharaoh be part of the miracle to keep the baby alive? Sure, I would expect Moshe’s mother and sister to risk their lives to save Moshe; that’s no surprise. But what could compel a powerful Egyptian woman, part of the royal family living in Pharaoh’s palace to save this boy?

There are a number of midrashim which suggest all sorts of miraculous things which compelled Bat Pharaoh to save Moshe -- ranging from an intervention of Gavriel the angel, to Moshe healing Bat Pharaoh’s tzaraat, to Moshe exuding the Shechinah (see Shmot Rabbah 1:23 and 1:24). These midrashim indicate that Bat Pharaoh would have otherwise drowned Moshe, but thanks to a miracle, she abruptly changed her mind to save him instead.

Rav Hirsch suggests a gorgeous pshat alternative. Though, Yocheved and Bat Pharaoh’s lives couldn’t have been further apart (Israelite/Egyptian, slave/free, powerless/powerful, etc.), they do share this in common: they are women who feel an impulse to have compassion for the child, even at great risk and danger for their own lives. This is why, Rav Hirsch suggests, that the words “רחם - womb” and “רחמים -

⁸ For intellectual honesty, I should note that some parshanim suggest that Yocheved placed the basket in the reeds, intentionally, because she *wanted it to be found* by Bat Pharaoh. Thus explaining why Bat Pharaoh immediately sees the basket and then is eager to adopt Moshe.

compassion” share the same 3 letter root -- because bearing and caring for children induces our ability to be compassionate.⁹

The womb is the only organ, aside from perhaps breasts, whose purpose is to nurture and enable life. Thus, explains Rav Hirsch, the etymological connection between רחם and רחמים hints to a profound symbolic connection. Phrased differently, Bat Pharaoh saved Moshe because she allowed her human impulse for compassion to dictate her choices; she didn’t let her father’s tyrannical rules ossify her heart.

This compassion then substantiates why Chazal’s claim in Sota 11b “בזכות נשים צדקניות נגאלו ישראל ממצרים” -- it is in the merit of righteous women that Israel was redeemed from Egypt.”

This Dvar Torah is based on the teachings of Dr. Yael Zeigler from Machon Hertzog and Matan.

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⁹ This is not to say that all women are compassionate by dint of their sex; there are, unfortunately, plenty of terrible, evil mothers. And men who lack a womb aren’t heartless; there are plenty of compassionate men too.

Karpas: Another way to tell the yetziat mitzrayim story

by Sarah Robinson (SBM '12)

Like any other Shabbat and Yom Tov, the Seder begins with Kiddush. Typically we would then wash our hands with a blessing in anticipation of blessing and eating bread. Yet the seder intentionally asks us to wash -- though without a blessing. And we eat -- though it's a vegetable dipped in saltwater. These parts of the seder are known as Urchatz and Karpas.

Why the change?

Though every day we have a mitzvah to *remember* that God took us out of Egypt (זכר יציאת מצרים), on this night we have the special mitzvah on this night to *narrate and tell* the story of how we were freed (סיפור יציאת מצרים). How should we accomplish this mitzvah? Our rabbis tell us that we need to do it in a question-and-answer format. So this change in Urchatz and Karpas is intentionally designed to bait children into asking questions. Hopefully if we can encourage basic questions about shallow things like “why aren’t we making hamotzi now?”, we’ll eventually encourage more profound and important questions about our transition from idolatry to monotheism, from slavery to freedom.

Great, so we got the children to ask. But we’re still left with the question: why dip a vegetable into saltwater?

The rationalist answer I heard from Rav Reuven Cohen is probably right. He suggested that Chazal had Karpas at the beginning of the Seder because it’s meant to be a light appetizer. His first proof is solid-- our Pesach Seder was created in the post-Churban era and modeled after the Symposium and Karpas comes from the Greek 'karpos' meaning ‘a fresh raw vegetable.’ A second proof comes from Megillat Ruth. When Boaz invites Ruth to join his meal, he says 2:14 “וְטָבַלְתָּ פֶתֶךָ בַּחֲמֶזֶק” -- and you should dip your bread in vinegar.” Rabbi Cohn thought the Seder’s vegetable and Ruth’s pita bread were essentially the same. Phrased differently, Rabbi Cohn suggested that we begin the seder with Karpas because both then and today -- people like starting their meal with a salad.

But that answer doesn't resonate with me. I find it underwhelming. Every food and every action at the seder is replete with meaning. You’re telling me the goal was just to have a salad? It’s got to be more than that. And even if you’ll say, “it’s meant to symbolize the pain of slavery!” then I should only have the saltwater; why bother dipping the vegetable?

I’d like to share a magnificent drash from Rabbenu Manoach. Listen carefully. It hinges on the meaning of the word כרפס itself. What does this word mean?

The word “כרפס” is a hapax legomenon, a word which appears only once in Tanach. It is used in Megillat Esther when describing Achashverosh’s lavish party -- that the furnishings were of “חור כרפס ותכלת” (Esther 1:6). So what did the furnishing look like? I’ll follow Marcus Jastrow’s translation based on the gemara Megillah 12b that the upholstery was made of “stripes of fine linen and wool.” Thus, “כרפס” means “stripes.” This translation is also fitting to how Rashi uses the word כרפס in his explanation to בראשית לז:ג. There, Rashi explains that Yosef’s coat were stripes of כרפס.

So far so good -- upholstery in Achashverosh’s palace and Yosef’s coat have כרפס/stripes. So how does this connect to our Seder?

Think about what happened to Yosef’s coat. His brothers stripped him of the coat, thought to kill him, but settled on selling him into slavery. The brothers then dipped Yosef’s כרפס coat into the blood of a goat and presented it to their father -- insinuating that he had been killed by a wild animal when, in fact, he was alive and enslaved in Egypt. This sale caused a cascade of many other episodes which, eventually, brought our people down to Egypt and our enslavement there.

Think of it like the Ramban's מעשה אבות סימן לבנים -- what happened on a micro scale to our forefathers in Genesis eventually happened on a macro scale to our nation in Egypt. Just like the beginning of Yosef's enslavement began with the dipping of a כרפס coat into blood, our enslavement on this night begins with a dipping. Indeed, we must see ourselves as though we are leaving Egypt!

Rav and Shmuel famously disagree as to how we should מתחיל בגנות ומסיים בשבח -- begin with condemnation and end with praise. This is why in Maggid we transmit two versions of our national narrative. One version is theological and begins our story as polytheists and eventually becoming monotheists. The other begins as slaves and end as free people. Two possible ways to build a narrative arc.

What I like most about Rabenu Manoach is that he is basically suggesting a third possible narrative arc -- begin the exodus narrative with the brother's hatred and sale of Yosef into slavery by dipping the vegetable into saltwater. Though he doesn't say so explicitly, I'd venture that Rabenu Manoach would then say how the narrative arc ought to end: in unity, with brothers and sisters, arm in arm, marching toward their freedom.

Thank you Ms. Raizi Chechik, Head of School at Manhattan Day School, for teaching me this torah.

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Crossing the Waters with Faith

by Rabbi Jason Strauss (SBM '12-'14)

January 29, 2021

Originally published on the author's blog

Recently, in the news, there has been renewed discussion of honoring the memory and legacy of Harriet Tubman by imprinting her likeness on the \$20 bill, replacing President Andrew Jackson. There are criticisms of this plan by people on the right and the left but one major benefit of this discussion is that it raises the story of Harriet Tubman in the public consciousness. She was a slavery abolitionist and political activist as well as a war hero during the Civil War. But she is probably most well-known as a redeemer of the enslaved from bondage in the South, a courageous person who personally led 70 men, women, and children to safety from slavery through the Underground Railroad. During a raid she led in the Civil War, the only operation led by a woman during that time, she and the African-American Union soldiers under her command helped 750 former slaves escape the South.

In a 2019 biopic about her life, entitled *Harriet*, there is one particular scene that caught my attention because of its relevance to the Torah. After escaping from a plantation herself and establishing herself as a free person in Philadelphia, Harriet Tubman returns to the South repeatedly to help other Black people along the Underground Railroad to safety in the North. The first group of people she redeems is from the plantation on which she was born, including many members of her family. When the plantation owner realizes what happened, he chases after them and hires slave catchers to help him retrieve the escaped slaves.

At one point, they realize they cannot go the way Harriet had planned and she leads them through the forest to the bank of a river. The people with her do not see how they could cross the river without a boat, especially given the fact that among them were elderly people and young children. One man insists that he will not try to cross the river, that he did not leave his family behind on the plantation just to drown. Instead, he starts to lead the group in a different direction, despite the fact that he does not know the safe way to freedom.

Before they have left, though, Harriet stuns the group by closing her eyes in prayer and stepping into the river by herself, walking until the water reaches her neck. She stops there, prays for help from the “Father in Heaven” to cross safely, and walks through the remaining width of the river with the water never reaching above her chin. As they see her rising from the water, the group quickly follows her through the river and they all emerge safely on the opposite bank. Later in the movie, she is given the nickname “Moses.”

In the Talmud, there is a very similar story. We already know from the text of the Torah that there were those in the Jewish camp, trapped between the waters of the Red Sea and an Egyptian army in hot pursuit, who complained to Moshe that he seems to have led them to their inevitable deaths and that they would have been better off in slavery:

הַמִּבְלִי אֵין־קִבְּרִים בְּמִצְרַיִם לְקַחְתָּנוּ לָמוֹת בְּמִדְבָּר מֵהָיָא עָשִׂיתָ לָנוּ לְהוֹצִיאָנוּ מִמִּצְרַיִם: הֲלֹא־זֶה הַדָּבָר אֲשֶׁר דִּבַּרְנוּ אֵלֶיךָ בְּמִצְרַיִם:
לֵאמֹר חָדַל מִמָּנוּ וְנַעֲבֹדָה אֶת־מִצְרַיִם כִּי טוֹב לָנוּ עֲבֹד אֶת־מִצְרַיִם מִמָּתְנוּ בְּמִדְבָּר:

“And they said to Moses, ‘Was it for want of graves in Egypt that you brought us to die in the wilderness? What have you done to us, taking us out of Egypt? Is this not the very thing we told you in Egypt, saying, ‘Let us be, and we will serve the Egyptians, for it is better for us to serve the Egyptians than to die in the wilderness!’”

In one interpretation of the story found in the Gemara in Masechet Sota, חז"ל, the Rabbis, suggest that in that moment, the Jewish People were divided about what to do. Rabbi Yehuda says that the tribes were all

insisting that they would not be the ones to descend into the waters of the sea. Suddenly, Nachshon ben Aminadav, of the tribe of Yehuda (Judah), jumped into the sea and walked until the water reached his face. Just like Harriet Tubman in the movie, he prayed, citing verses from Psalms 69, that he reach dry land safely. According to the Gemara, at the moment, as Nachshon reached a depth where he could not walk any further and live, Hashem says to Moshe, who was deep in prayer, "How could you just stand there while my dear one is drowning in the sea? Instruct the Children of Israel to march!" Moshe then raised his staff and the waters split, allowing the Jewish People to follow Nachshon to safety across the sea.

There are two questions that beg for explanation from this story, especially in light of the parallel to the *Harriet* film. First of all, in the movie, Harriet Tubman, "Moses" herself, is the one to jump into the river and cross, inspiring the rest of the group to follow her. Why didn't the real Moses, משה רבינו, do the same? Why was it left for Nachshon ben Aminadav to do? Second, asks the Or Hachaim, Hashem's response to Moshe's prayer, which is found not only in the Talmud but in the Torah itself, is strange. He criticizes Moshe for praying and says that Moshe should tell them to march. Where was he supposed to tell them to go? Shouldn't he himself have split and walked into the sea and then they would follow him?

Professor Nechama Leibowitz quotes the Meshech Chochmah, Rav Meir Simcha of Dvinsk, as proposing the following answer. It appears that the reason Moshe was not the one to jump in the water is that Hashem intended for that to be the case. He intentionally wanted Moshe to encourage the Jewish People to choose to enter the sea on their own. Until this point, they had been following him blindly, as sheep follow a shepherd. Moshe stood before them and defended them from every danger and as they saw him emerge safely, they decided to do so, as well, just like in the movie. But in this case, Hashem insisted that the Jewish People enter the sea based, not on their observation that it's safe, but on trust in Moshe and in G-d.

Rav Soloveitchik explains that this is why the Jewish People sing after they cross the sea but do not sing on the way out of Egypt. In Egypt, they played no active role in their own deliverance; they were entirely passive, taking steps to freedom only when told to do so. They huddle in their homes during the plagues and do not take their redemption into their own hands. On Pesach, during the Seder, we emphasize that the process of redeeming Israel from Egypt is entirely from Hashem, not due to human intervention. Now, at the Red Sea, G-d says that this cannot continue. He will split the sea, He will wage the war against Egypt, but Moshe is wrong to say "וְאַתֶּם תַּחֲרִישוּן", that they should be silent and passive. They needed to do something to bring themselves closer to freedom, to have אמונה, trust in G-d and His servant Moshe. Rabbi Shmuel Goldin similarly writes that what they needed to have was not only faith in Hashem and Moshe but also in themselves, something that would never develop if Moshe were the one to jump into the ים סוף, the Red Sea, first.

The pandemic has proven, or perhaps exacerbated, the weak state of trust the American people have in institutions, in science, doctors, and government officials. Trust in the pharmaceutical industry, in the FDA, in our leadership is so damaged that to get people to take the vaccine, many people are waiting for individuals they trust to get the Covid vaccine first. I've heard of many stories in which people said that they only got the vaccine because Dr. Anthony Fauci or their favorite politician was willing to do so. They waited to see their personal Moshe, the shepherd they were willing to follow, take the leap first.

This is not sustainable. For us to be a free, independent, and healthy society, we must rebuild trust in our leaders and institutions. We must aim for the level of trust that Nachshon ben Aminadav had. He knew that if Moshe led them to the sea, certainly the sea would not spell his doom. We need to be able to have similar trust in the plans of our leaders. Moreover, the pandemic has done much harm to trust in Hashem. We need to do introspection, to consider when we are hesitating to take necessary leaps of faith in our lives due to lack of אמונה, lack of trust in Hashem. May He help us find that אמונה in Him and help us

rebuild faith in each other and in our society, as well, so that we can emerge from this pandemic quagmire stronger than before.

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Moses in the Teiva: An Act of Hope or Despair?

by Rabbi David Fried (SBM '10)

January 16, 2020

Originally published in *The Lehrhaus*

The Talmud (*Sotah* 12a) presents a very different picture of Moses' family than what seems to emerge from a simple reading of the book of Exodus:

Amram...when he saw that the wicked Pharaoh decreed, "Every son that is born you shall cast into the Nile," he said, "We are struggling in vain." He arose and divorced his wife...His daughter said to him, "Abba, your decrees are worse than Pharaoh's. Pharaoh decreed only on the males, but you decreed on the males and the females. Pharaoh decreed only in this world, but you [decreed] in this world and the world to come. Pharaoh, who is wicked, there is a doubt whether his decrees will be fulfilled or not. You, who are righteous, your decrees will certainly be fulfilled..." He arose and brought back his wife.¹⁰

The image is of parents who had lost hope, who had despaired of any purpose of having children in face of Pharaoh's cruel decree. But this presentation seems to contradict the description in the Torah itself of parents who made every effort to hold onto their baby for as long as possible:

The woman conceived and bore a son; she saw that he was good, and she hid him for three months.¹¹ When she could hide him no longer, she got a wicker basket (*teiva*) for him and caulked it with bitumen and pitch. She put the child into it and placed it among the reeds by the bank of the Nile" (Exodus 2:2-3).¹²

Far from despairing, the special basket they make to save the life of the baby seems to display a degree of hope far in excess of what the average Israelite in Egypt had at the time.

It is true that the verses in the Torah mention only the mother building and placing Moses in the *teiva*. One might plausibly suggest that the Talmud is picking up specifically on Amram's absence from the story to highlight his lack of hope in comparison with the rest of the family—his daughter who convinced him to remarry and have more children and his wife who attempted to save their son's life through the *teiva*. However, since the Talmudic passage makes no explicit contrast between husband and wife—only between father and daughter—I think it is fair to assume that the two parents were on the same page.¹³ Under this assumption, though, the contradiction remains when reading the Torah verses in tandem with the Talmudic passage: the two parents who had despaired of all hope for future children also hopefully built a *teiva* to save their son.

It may be that the Talmud understands that Amram and Yokheved's hope, which resulted in constructing the *teiva* for Moses, only emerged after the conversation with their daughter Miriam. As the Talmud portrays, these parents had given up all hope of having future children to the extent that they separated. But once their daughter Miriam inspired them to reunite and not despair of future children their hope was rekindled, to the extent that they built a *teiva* on the small chance that it could save their son's life, as the verses in the Torah convey. However, no textual source is brought to support the notion that Miriam was the source of their hope. More importantly, a subsequent passage in the Talmud indicates that if Miriam had indeed inspired them to hope once again, this hope was rather short-lived:

[Miriam] said, "In the future, my mother shall give birth to a son who shall save Israel." When Moses was born, the entire house filled with light. Her father arose and kissed her on the head. He said, "My daughter, your prophecy has been fulfilled!" When he was cast into the Nile, he arose and smacked her on the head and said to her, "My daughter, where is your prophecy [now]?" This is the meaning of the verse,

¹⁰ All Talmudic translations are my own.

¹¹ *New JPS* translation with modifications.

¹² *New JPS* translation.

¹³ I believe the Torah mentions only the mother because she did the physical actions of acquiring the *teiva*, putting the baby in it, and carrying it to the river, while the Talmud mentions only the father because they saw him as the patriarch and default decision-maker for the family. Therefore, neither should be taken to imply that the other parent was not in agreement with the decisions being made.

“His sister stood at a distance to know what would be done to him (Exodus 2:4).” [She wanted] to know what would be in the end with her prophecy.¹⁴

This passage provides the first hint of a textual source for the understanding that Miriam had more hope in her brother’s ability to survive than her parents did. “His sister stood at a distance to know what would be done to him.” It was only his sister, only Miriam, who stood there to see what would happen, who had hope that he might encounter a fate other than death. Where were his parents? They had seemingly lost hope. But how could that be? How could the parents who made him the special basket to protect their son in the river suddenly lose hope that it might be effective?

We tend to take for granted that the purpose of the basket was to protect the life of baby Moses. After all, what else would be the purpose of such a thing? The Torah even hints at this by calling it a *teiva*, the same word used for Noah’s ark (Genesis 6:14), which protected him from the waters of the flood. But maybe this wasn’t the function of the basket. Archaeologist Richard Freund writes:

Walking through the Cairo Museum on my last trip to Egypt, I noticed on display small baskets for infants that were generally thought of as “burial baskets.”...The mother of Moses placed him in a burial basket and then placed the basket in the Nile as a cheap and meaningful burial for a child that Pharaoh had ordered to be “cast into the Nile.”¹⁵

Yokheved and Amram were not trying to save Moses with the basket. If we follow Freund’s theory, they were actually trying to give their son a decent burial. They sought to preserve his humanity by giving him the burial that was denied to the other Jewish baby boys who were just tossed in the river. But actually saving his life was beyond what they could imagine. The Torah may be hinting to the reader that the basket would ultimately save his life by using the word *teiva*, but at the time that it was made the only one who realized its life-saving potential was Miriam. Moses’ parents put the basket in the river. They said what they presumed to be their final goodbyes and went home, having despaired of the life of their child. Only the young Miriam stayed behind. Only she believed there might yet be hope for her baby brother.

It is likely that the authors of these passages in the Talmud were more familiar with ancient Egyptian burial practices than a more modern reader would be. Once we understand that the basket was never intended to save Moses’ life, the contradictions between the Talmud and the simple reading of the text disappear. His parents were not hopeful and optimistic as we initially thought. While Miriam was able to convince them to remarry and try to have more children, they never believed that a wicker basket could save their son from his fate. They had indeed despaired of protecting their son from Pharaoh’s cruel decree, and so they “buried” him in the basket and left him in the river. Armed with this knowledge, along with the textual anomaly of only the young Miriam waiting to see what would happen, the rabbis of the Talmud were able to creatively imagine what the rest of the story might have looked like in a way that gives us deep insight into the different responses of Moses’ family members to this seeming tragedy. The rabbis show us the striking contrast between Miriam’s extreme hopefulness and trust in God and her parents’ more pragmatic and accepting approach to life’s unfortunate circumstances. With this new understanding of the *teiva*, the Talmud’s story fits beautifully with the text of the Torah and brings the internal dynamics of Moses’ family to life.

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¹⁴ Sotah 13a.

¹⁵ Richard Freund, *Digging Through the Bible* (Lanham: Rowman & Littlefield, 2009), 58.

Nissayon at Marah: The Transition from Mental 'Avduth to Heruth

by Eli Shaubi (SBM '12)

April 2021

Originally published in *The Habura*

A parable I frequently use in describing the Tora, is that it is akin to a workout regimen for the muscle of free-will. What distinguishes man from the animal is man's potential to *choose* his actions, as opposed to having his base instincts dictate his actions to him. The actualization of that potential is what is meant by man's *selem*.¹⁶ Man may choose to neglect that regimen and allow his muscle to atrophy, at which point he is essentially no different from the animal. Or he may become a prophet, our equivalent of a world-class athlete.

As slaves in Egypt, Pharaoh commanded us to perform *his* will, for *his* own personal benefit at our expense; we were slaves to his will. Exercising *our* will, therefore, would take the form of insubordination: refusing to obey his command, breaking the chains of bondage, and demanding freedom.

As servants of God, in comparison, His will, as expressed in the Law, is for *our* benefit. The Law, therefore, represents *our* will as much as it represents His. As such, exercising *our* will takes the form of obeying the Law and performing His commandments.

The commandments, as opposed to our base instincts, are an imposed, external directive, and our performing them is a product of us *choosing* to perform them. Our animalistic drives, on the other hand, internally pervert our mental focus, such that without refocusing, we let them dictate our actions to us. Acting on our drives, therefore, is the *relinquishing* of choice,¹⁷ the very thing that makes us human. One measure of our humanity, therefore, is our ability to perform His commandments, while the opposite may be measured by the extent to which we fail in performing our will.

Much like Pharaoh enslaved us to act against our will, the atrophy of our free-will "muscle" also enslaves us to act against our will. In the latter, however, it is we who enslave ourselves, as a product of our own choices. This is the *heruth* that the Tora provides us: freedom under the Law. In fact, it is this principle of choice, and of man's potential in making himself a *real* human, that is the foundation for having a Tora altogether.¹⁸

With this in mind, we may contemplate the interim period between the Exodus and the reception of the Tora at Mount Sinai, and examine what steps were taken in making the transition from *'avduth* to *heruth*.

Israel's first encampment, after three days of walking through the desert, was in Mara,¹⁹ followed by several other encampments. Scattered throughout are several *nissayonoth*, by which God "challenges" Israel (and by which they, sometimes, "challenge" him, much to Moshe's chagrin). At Mara, the Tora states: וַיֵּאמֶר יְהוָה אֶל־מֹשֶׁה הִנְנִי מִמַּטֵּיר לָכֶם לֶחֶם מִן־הַשָּׁמַיִם וַיֵּצֵא הָעָם וַיֵּאָמְרוּ אִישׁ אֶל־אֶחָיו הֲיֵשֶׁת לָנוּ מִן־הַיָּד הַזֹּאת וַיֹּאמֶר יְהוָה אֶל־מֹשֶׁה הִנְנִי מִמַּטֵּיר לָכֶם לֶחֶם מִן־הַשָּׁמַיִם וַיֵּצֵא הָעָם וַיֵּאָמְרוּ אִישׁ אֶל־אֶחָיו הֲיֵשֶׁת לָנוּ מִן־הַיָּד הַזֹּאת (=There, did [God] establish for [Israel] *hoq wu-mishpat*, and there, did He 'challenge' them.) To what *hoq* and *mishpat* is the Tora here referring, and what does *nissayon* mean in this context?

Again later, with regards God's giving Israel the manna: וַיֵּאמֶר יְהוָה אֶל־מֹשֶׁה הִנְנִי מִמַּטֵּיר לָכֶם לֶחֶם מִן־הַשָּׁמַיִם וַיֵּצֵא הָעָם וַיֵּאָמְרוּ אִישׁ אֶל־אֶחָיו הֲיֵשֶׁת לָנוּ מִן־הַיָּד הַזֹּאת וַיֹּאמֶר יְהוָה אֶל־מֹשֶׁה הִנְנִי מִמַּטֵּיר לָכֶם לֶחֶם מִן־הַשָּׁמַיִם וַיֵּצֵא הָעָם וַיֵּאָמְרוּ אִישׁ אֶל־אֶחָיו הֲיֵשֶׁת לָנוּ מִן־הַיָּד הַזֹּאת (=Adhonay said to Moshe, "I am now going to bring down

¹⁶ See MT Hilkhoth Yesodhe ha-Tora 4:8, where the *selem* is presented as only referring to the *shura* of the human who is *shalem be-dha'ato*. The *selem* is not the *nefesh* itself, which is present in all men, but is rather *surat ha-nefesh*. That is, the *selem* does not exist in people a priori, but is rather acquired as one develops his mind. What all men possess is the *potential* to acquire that perfection.

¹⁷ See Guide 3:8, where Rambam explains that all disobedience and sin is consequent upon man's *matter*, whereas all his virtues are consequent upon his form.

¹⁸ See Guide 3:32, and Hakham Jose Faur's *Homo Mysticus*, p. 131.

¹⁹ See Numbers 33:8, where Mara is actually listed as Israel's fifth encampment since leaving Ra'meses in Egypt. The previous encampments occurred in the interim period after Pharaoh had allowed Israel to leave, but before his decision to chase after the nation, prior to the parting of the Sea. In this sense, those encampments are all pre-Exodus encampments, Mara being the first to occur after completely leaving Egypt's grip.

sustenance for you from the skies, and the nation shall thereupon go out and gather the daily portion on its day, so that I may ‘challenge’ them, as to whether they will follow my instruction or not.”) What does “challenging” mean in this context?

This question is strengthened when we examine that the same phrase is used with regards to Avraham at ‘Aqedhath Yishaq: וַיִּחָלֶה אֱלֹהִים נֶפֶשׁ אֶת־אַבְרָהָם (=God “challenged” Avraham), followed by, כִּי עַתָּה יָדַעְתִּי כִּי־יִרָא אֱלֹהִים אֶתְּךָ וְלֹא חֲשַׁכְתָּ אֶת־בְּנֶךָ אֶת־יִחִידְךָ מִמֶּנִּי: (=For now I know that you are God-fearing, having not spared from Me your one and only son). Are these “challenges” necessary for God to know something that He did not know previously? That, of course, is preposterous. Maimonides, in Guide 3:24, solves this riddle for us. He writes:

“Know that the purpose and meaning of every *nissayon* that is mentioned in the Tora is none other than to make known to man what it is that he ought to do, or what convictions he must have. The meaning of a *nissayon*, then, is that some action be done, when the intent is not for *that* particular action, but rather that it be an example to be emulated and repeated.”

A *nissayon* is not concerned with the actual act in question, be it offering Yishaq or the gathering of the manna. The act is merely a representation of the *choice* behind that proper act, that is to be *habituated* in the mind of the person, such that the choice may be repeated in similar contexts.

The way in which the Tora strengthens the “muscle” of free-will is by commanding individuals to perform actions that go *against* one’s nature. By nature, man is wont to eat what he likes and have sex whenever he likes, as those are physically enjoyable to him. The Tora commands man to exercise his will, such that he not be a slave to his nature, but rather *ben horin* to act as he wills, as we explained above. **The *nissayon*, then, is a “challenge” in the sense that it is a moment of choice.** It is not a test for God to know what man will choose, but rather an opportunity for man to choose to be free or to be a slave.

²⁰ Thus Maimonides states:

“The meaning of *nassothekha* can also be ‘to habituate you’, as in His saying (Devarim 28:56): הָרְגָה בָּךְ: [וְהַעֲנֵה אִשָּׁר] לֹא־נִסְתָּה כַּי־גִלָּה [הַצָּג עַל־הָאָרֶץ מִהַתְעַנֵּג וּמִרָד] (= [The pampered and delicate woman,] whose sole was not habituated/accustomed [to stepping on land, being so delicate and tender].)”

We may now understand the purpose of the interim period between the Exodus from Egypt and the reception of the Tora at Sinai. The several *nisyonoth* mentioned therein, served the purpose of presenting Israel with an opportunity, a moment of choice, in which Israel could be habituated in some proper choice. But in which kind of choice? Let’s relook at the *pesuqim*, first Shemoth 15:25-26 at Mara:

(כ) וַיִּצְעַק אֶל־יְהוָה וַיִּנְרְהוּ וַיִּנְרְהוּ עֵינָיו וַיִּשְׁלַח אֱלֹהִים מַיִם וַיִּמְתְּקוּ הַמַּיִם שָׁם שָׁם לֹא חָק וּמִשְׁפָּט וְשָׁם נִסָּהוּ:
(כו) וַיֹּאמֶר אֶם־שָׁמוּעַ תִּשְׁמָע לְקוֹלוֹ יְהוָה אֱלֹהֶיךָ וַהֲנִיֹּשׁ בְּעֵינָיו תַּעֲשֶׂה וְהִצַּלְתָּ לְמִצּוֹתָיו וְשִׁמְרָתָּ כָּל־חֻקָּיו כָּל־הַמִּצְוֹת אֲשֶׁר־שָׁמַעְתִּי בְּמִצְרָיִם לֹא־אֲשִׁים עֲלֶיךָ כִּי אֲנִי יְהוָה רַפְּאֵד:

And then, Shemoth 16:4, regarding the manna:

(ד) וַיֹּאמֶר יְהוָה אֶל־מֹשֶׁה הִנְנִי מִמְטִיר לָכֶם לֶחֶם מִן־הַשָּׁמַיִם וַיֵּצֵא הָעָם וַיִּקְטְלוּ דְּבָרִיּוֹם בְּיוֹמוֹ לִמְעַן אֲנִסְנוּ הַיָּלֶךְ בְּתוֹרָתִי אֶם־לֹא:

Both *nisyonoth* served the same purpose: to habituate Israel in *performing His commandments*. The *content* of the commandment, at this point, is irrelevant, so much so that in the first instance, the Tora does not even bother telling us what the command was, beyond simply stating *hoq wu-mishpat*. What matters is that the people of Israel, after a long bondage in Egypt, begin exercising their free-will muscle once again, in preparation for the reception of the Tora.²¹ R. Abraham Maimonides sheds light on this in his comment to Shemoth 15:25:

²⁰ Likewise, a *nes*, in addition to “a banner”, can mean “a milestone” in one’s life.

²¹ Similarly, Maimonides placed *Hilkhoth De’oth* prior to *Hilkhoth Talmudh Tora* in the *Mishne Tora*.

“The ‘challenge’ of The Waters of Mara was to make clear to them that for the path of adhering to the Tora, one need be capable of struggle [against one’s instincts] (*mujāhada*)²² and breaking loose of habits. ²³ ‘*Ve-sham nissahu*’ bears two possible explanations: The first is that [*lenassot*] has the meaning of habituation, whereby the meaning [of the verse] would be that ‘There, they became habituated in struggle, restraint, and trust.’”

The process of bringing freedom to Israel is a long and difficult one, and they fail several times (as in the case of the manna, about which Moshe is swift in rebuking them). It contains numerous steps on the way, each step presenting a new opportunity, and a new moment of choice on the path to true *heruth*. That choice is the difference between real life and death, as Moses tells us at the end of the Tora (Devarim 30:15-20), “See, I have placed before you today, life and goodness, or death and badness... You shall choose life, so that you may live.”

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²² *Mujāhada*, literally “struggle”, is defined by R. Abraham in his *Kifāya* (Rosenblatt, 2:312) as: “That a person’s mind and intellect overcome one’s desires and nature.”

²³ Because all habituation in certain choices, requires breaking loose of prior habits.

Queen Esther's Seder Night

by Zachary Beer (SBM '20)

It oftentimes feels like there's a familiarity to history. We seem to experience some similar events again and again, no matter what the historical setting. This feeling is certainly apparent in Jewish history. As Ramban, or Nachmanides, famous wrote “מעשה אבות סימן לבנים”, the acts of the fathers are a sign to the signs.

Although they predate Ramban, the sages of the Gemara take this idea even further. As they write, many events in Jewish history are not just similar, but occurred at similar times in the year, stating:

רבי יהושע אומר בניסן נברא העולם בניסן נולדו אבות בניסן מתו אבות בפסח נולד יצחק בראש השנה נפקדה שרה רחל ורחל בראש השנה יצא יוסף מבית האסורין בראש השנה בטלה עבודה מאבותינו במצרים בניסן נגאלו בניסן עתידין ליגאול
Rabbi Yehoshua says: In Nisan, the world was created; in Nisan the Patriarchs were born; in Nisan the Patriarchs died; on Passover, Isaac was born; on Rosh HaShana Sarah, Rachel, and Hannah were remembered by God [and conceived sons;] on Rosh HaShana Joseph came out from prison; on Rosh HaShana our forefathers' slavery in Egypt ceased; in Nisan the Jewish people were redeemed from Egypt; in Nisan in the future, the Jewish people will be redeemed in the final redemption.
(TB Rosh Hashana 11a)

This idea is also true regarding two of Judaism's greatest stories of redemption- those of Purim and Pesach.

In both, a Jew ends up in the royal palace by some happenstance- Be it by floating down the river or winning a beauty contest. In their new royal roles, they have the ability to be shielded from the existential threats to their people- In the form of Pharaoh and Haman.

However, these two leaders, Esther and Moshe chose to step up in moments of crisis, intervening and risking their own lives. This point of action would, in both cases, lead to the redemption of the Jewish people.

These two events also lead to revelation as well. In the case of the Exodus, it was at Sinai. In the case of Purim, the Talmud describes that:

“וַיִּתְנַצְּבוּ בְּתַחֲתֵית הָהָר”, אָמַר רַב אֲבִדִּימִי בַר חֲמָא בַר חֲסָא: מִלְּמַד שֶׁשָּׂפָה הַקְדוּשׁ בְּרוּךְ הוּא עָלֵיהֶם אֶת הָהָר בְּגִיגִית, וְאָמַר לָהֶם: אִם אַתֶּם מְקַבְּלִים הַתּוֹרָה מוֹטָב, וְאִם לֹא — שֵׁם תִּהְיֶה קְבוּרַתְכֶם. אָמַר רַב אֲחָא בַר יֶעֱקֹב: מִכָּאן מוֹדְעָא רַבָּה לְאוֹרְיֵיתָא. אָמַר רַבָּא: אִף עַל פִּי כֵן הָדוּר קִבְּלוּהָ בִּימֵי אֲחַשְׁוֶרֶשׁ, דְּכַתִּיב: “קִיְמוּ וְקִבְּלוּ הַיְּהוּדִים” — קִיְמוּ מִה שֶׁקִּיְבְּלוּ בָּרָא.

And Moses brought forth the people out of the camp to meet God; and they stood at the lowermost part of the mount” (Exodus 19:17). Rabbi Avdimi bar Hama bar Hasa said: The verse teaches that the Holy One, Blessed be He, overturned the mountain above the Jews like a barrel, and said to them: If you accept the Torah, excellent, and if not, there will be your burial. Rav Aha bar Ya'akov said: From here there is a substantial caveat to the obligation to fulfill the Torah. Rava said: Even so, they again accepted it willingly in the time of Ahasuerus, as it is written: “The Jews ordained, and took upon them, and upon their seed, and upon all such as joined themselves unto them” (Esther 9:27), and he taught: The Jews [willingly] ordained what they had already taken upon themselves.
(Shabbat 88a)

There are many other parallels, but there is one glaring difference that makes these stories differ.

In the Passover story, the Israelites celebrate Passover for the first time, at the original Seder, on the fourteenth day of Nisan. It is on this night that the firstborn of Egypt are slain by God, and the people are finally let go.

However, in the Purim story, something else is going on that night . As the Midrash describes:

ותאמר אסתר לקהשיב אל מרדכי (אסתר ד, טו), אמרה לו לך כגוס את כל היהודים הנמצאים בשושן וצומו עלי ואל תאכלו ואל תשתו שלשת ימים, אלו הן י"ג וי"ד וט"ו בניסן.

שלח לה וקרי בהם יום ראשון של פסח, אמרה לו זמן שקישראל, למה הוא פסח. מיד שמע מרדכי והודה לדבריה, הלא הוא דכתיב: ויעבר מרדכי ויעש ככל אשר צוהה עליו אסתר. תמן אמריו שהעביר יום טוב של פסח בתענית.

And Esther said to respond to Mordechai: She said to him, "'Go and gather all of the Jews that are present in Shushan, and fast for me - do not eat or drink for three days' - these are the 13th, 14th, and 15th of Nissan." He (Mordechai) sent to her, "Behold, in them is the first day of Pesach." She said to him, "The Elder of Israel, what is Pesach for?" Immediately, Mordechai understood and conceded to her words. That is [the meaning of] that which is written, "Mordechai passed and did like everything that Esther commanded him." There they say, that he passed the holiday of Pesach in a fast.

Rather than being saved on the first day of Pesach, on the night of the seder, the Jewish people were fasting, hoping for redemption.

Instead they found redemption a mere day later.

As the Megillah records, on the evening of the fifteenth day of Nisan, Esther invited Ahasuerus and Haman to her party. However, it goes out of its way to note one particular dish served.

ויאמר המלך לאסתר במשתה *היין* מה-שאלתך ויגתו לה ומה-בקשתך עד-חצי המלכות ותעש:

At the *wine* feast, the king asked Esther, "What is your wish? It shall be granted you. And what is your request? Even to half the kingdom, it shall be fulfilled."
(Esther 4:6)

Much like at the Seder, wine was central to Esther's meal. It was through this meal that the redemption of the Jews began.

Esther's meal, perhaps, represents the original "Second Seder" in Jewish history. She did not recount the story there necessarily, but rather reenacted it in exile, acting as Moses while her husband and Haman took on roles a Pharaoh.

It was after this Seder that-

בלילה ההוא נדדה שנת המלך

On that night the king could not sleep...
(Esther 6:1)

Not merely could Ahasuerus not sleep, but on that very night, the second Seder night, God himself could not sleep, as the sages record. God remembered His intercession on behalf of the Israelites centuries ago, and knew He had to act once again.

We have faced one Passover in the midst of pandemic, and now we are to face another. Hopefully our Seders, both those of the original Exodus and of Esther alert the Holy One, blessed be He to our great needs down on Earth. And may God, like in Egypt and Persia intercede on our behalf.

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מצה ומריבה

מאת יעקב קרויזר (SBM '19)

חסיד אחד בא עם אשתו לפני רבי משה מקוברין, וביקש להתגרש. האיש הקפיד, כמנהג החסידים, שלא לאכול בפסח "מצה שרויה", שנרטבה במים או במשקה אחר. אולם האישה לא הסכימה להקפיד על מנהג חסידי זה והכשילה אותו באכילת מצה שרויה.

הרבי לא נענה לבקשתו של החסיד, וגזר עליו להשלים עם זוגתו. וכך סיפר הרבי לאותו חסיד:

"יודע אתה כי מורנו הרבי מאפטא היה מקפיד מאוד לאכול בפסח רק 'מצה שמורה' – מצות מהודרות שהקמח שממנו נוצרו נשמר בקפדנות בשמירה מיוחדת עוד משעת הקצירה של החיטים, כדי שלא יבוא במגע עם מים ויחמיץ. מצותיו המהודרות של הרבי היו נאפות במיוחד בערב החג, והן נשמרו עטופות במפה בביתו. פעם אחת, בערב הפסח באו גבאי צדקה לבקש מצות בשביל עניי העיר. הרבנית, שהיתה טרודה בעיסוקיה לקראת החג, נתנה להם בלי משים את המצות השמורות המיוחדות לבעלה הרבי. רק לאחר זמן מה ראתה מה קרה, והנה המצות אינן נבהלה הרבנית ולא ידעה מה לעשות וכיצד תאמר זאת לבעלה. לבסוף, לקחה מצות פשוטות שאינן 'שמורות', הניחה אותן בתוך המפה, במקום המצות המהודרות, ולא גילתה לבעלה שכך עשתה. כך ערך הרבי מאפטא את הסדר עם מצות פשוטות, שאינן שמורות.

לאחר חג הפסח בא גם אל הרבי מאפטא זוג נשוי. גם במקרה זה רצה האיש לגרש את אשתו בגלל שזו סירבה לבשל לו מאכלים שאינם מכילים 'שרויה'. אז קרא הרבי מאפטא לאשתו הרבנית ושאל: 'אמרי לי את האמת, אילו מצות הגשת לשולחן בליל הסדר?'

שתקה הרבנית ולא ידעה מה לומר.

'אינך צריכה לחשוש', הרגיע אותה הרבי, 'אמרי לנו.'

'הגשתי מצות פשוטות', השיבה לבסוף האישה.

כששמע זאת, פנה הרבי מאפטא אל האיש ואמר לו: 'אתה רואה, בני? אני ידעתי כי מונחות לפניי מצות פשוטות בליל הסדר, אך התנהגתי כאילו איני יודע זאת, כדי לא לבוא לידי 'קפידה', לכעס ומריבה. ואתה רוצה לגרש את אשתך רק בגלל מנהג חסידים?'

כך פייס אותם הרבי מאפטא, והם חיו מאז בשלום."

בסיפור זה פייס גם רבי משה מקוברין את הזוג שבא לפניו, והם שבו לביתם בשלום.

יום לַיְבֻשָּׁה נֶהְפְּכוּ מְצוּלִים - דבר תורה לשביעי של פסח מאת יעקב קרויזר (SBM '19)

זֶךְ שׁוֹכֵן מְעוֹנָה
קוֹמֵם קֹהֵל עֲדַת מִי מָנָה
בְּקָרוֹב נֶהֱל נִטְעֵי כָנָה
פְּדוּיִם לְצִיּוֹן בְּרָנָה
(ר' יוסף טוב עלם)

יום לַיְבֻשָּׁה נֶהְפְּכוּ מְצוּלִים
שִׁירָה חֲדָשָׁה שֶׁבָּחוּ גְאוּלִּים
(ר' יהודה הלוי)

שביעי של פסח הוא היום שבו נהפכו מצולות הים ליבשה ונאמרה שירת הים, שאותה נקרא בקריאה התורה בחג. ר' יהודה הלוי בפיט המפורסם כינה את שירת הים 'שירה חדשה' ובכך הוא מהדהד את המהלך המדרשי פרשני הארוך שחזרו את קריאתם של חז"ל במסכתא דשירתא שבמכילתא דרשב"י.

על פתיחת השירה, "אז ישיר משה" (טו, א [ב]), מעיר הדרשן: "יש אז לשעבר ויש אז לעתיד לבא" – השירה ההיסטורית עשויה להתפרש גם לעתיד לבוא, אולי בהתאם לאמונה שרוח הקודש שרתה על בני ישראל בזמן ההוא, "[...]ראתה שפחה על הים מה שלא ראו ישעיה ויחזקאל" (טו, ב [ב]). ובהמשך לכך, הביטוי "השירה הזאת" מתפרש כמבחין בין שני סוגים של שירה בתוך עשר השירות שמזהה המדרש, תשע הראשונות הן שירות היסטוריות, לשעבר, שאחריהן חזרו השעבוד, הגלות והצרות, ואילו העשירית לעתיד לבוא היא 'שיר חדש' שאחרי תבוא תשועת העולמים. אולם, ההבחנה הזו אינה רק מפרידה בין האירועים, היא גם מחברת ביניהם: "אלהי אבי וארוממנהו – אמרה כנסת ישראל לפני הקב"ה: רבונו של עולם לא על נסים שעשית עמי בלבד אני אומר לפניך שיר וזמרה, אלא על נסים שעשית עמי ועם אבותי ועושה עמי בכל דור ודור" (שם), "ויהי לי לישועה – היה לי ויהיה לי, היה לי לשעבר ויהיה לי לעתיד לבא" (שם [א]).

חז"ל קוראים את שירת הים לא רק לזמנה, לשעבר, אלא גם לכל דור ודור, אלו שהיו ואלו שיהיו – ומתוך כך הם פוגשים בפערים שבין הטקסט לבין ההווה, בין תודעת הגאולה של ה'גאולים' בשיר ובין המציאות שאינה בהכרח גורמת לנו לפרוץ בשירה. אחד מן הרגעים שבו הפער הזה מתבטא בצורה החריפה ביותר הוא דרשתו של רבי יוסי הגלילי על הפסוק המסיים, "ה' ימלוך לעולם ועד":

"ר' יוסי הגלילי אומר: אילו אמרו ישראל על הים 'ה' מלך לעולם ועד' לא היתה אומה ולשון שולטת בהן לעולם, אלא אמרו 'ה' ימלוך לעולם ועד' לעתיד לבא". במקום הקריאה הפשוטה הרואה בפסוק שבח או תפילה שמלכות ה' תמשיך לעד (שבח או תפילה שאותם לא ראה הדרשן כמתקיימים בזמנו), רבי יוסי מדייק בלשון 'ימלוך'. השירה הנבואית מלמדת שיהיה זמן שבו ה' כביכול לא יהיה מלך (אחרת מדוע יהיה צורך להתפלל שימלוך?), אילו היה נאמר 'ה' מלך' בזמן הווה הרי שהיו נמנעים החורבן והגלות. הדרשה הזו נעה בכיוונים מקבילים והפוכים, מחד – היא תולה את המצב הנכחי בשירת העבר, כמעט מאשימה את ישראל היוצאים ממצרים; מאידך – היא מספקת הסבר להווה מתוך המסר הנבואי של העבר. מתוך מבט אל שני הכיוונים עולה תמונה מעניינת: 'השירה הזאת' הופכת ל'שירה חדשה', שירת הים לא רק נותנת פשר לסבל בהווה, היא מעניקה תקווה לעתיד – כשם שנגאלנו על ים סוף (דיינו!), כך עתידים אנו להיגאל בכל עת צרה ומצוקה. אולי בשל כך מיד לאחר דרשת רבי יוסי הגלילי עוברת המכילתא לתפילה מפיטת (שאולי היתה ממקורות ההשראה של ר"י טוב עלם בפיט החותם את ליל הסדר במסורות אשכנז):

"על עמך צאן מרעיתך זרע אברהם אוהבך בני יחידך יצחק עדת יעקב בנך בכורך גפן שהסעתה ממצרים וכנה אשר נטעה ימינך – ה' ימלוך לעולם ועד" (טו, יז [ה])

Sacrifices in Pods

by Rabbi Judah Kerbel (SBM '15)

Most of us will look back on Pesach a year ago and remember the unusual and disconcerting loneliness that characterized what is normally a joyous, social holiday. Some people were literally by themselves; others who were normally accustomed to filling their seats with family and other guests were left with just immediate family. “All who are hungry come and eat” meant perhaps helping others acquire food but could not entail inviting people in their homes. It was not how we are used to celebrating Pesach.

Although many people have not gathered with anyone for the last 52 weeks, there was a form of gathering that some people actually experimented with after the most extreme shelter-at-home guidelines were lifted. One might call this a “pandemic bubble” or “pod.” The idea is that this is a small, exclusive group of people who can safely interact in close contact. They form a community by gathering, eating, celebrating, even living together. They do not expose themselves to others. Especially for people without families of their own, it provides for social interaction while forging trust between the members to keep each other safe. While this is not the kind of community that we might call *kehilla*, perhaps the best Hebrew word for this is *chabura*.

Two *korbanot* that are significant on this Shabbat, the *korban pesach* and *korban todah*, share some striking similarities and dramatic differences. On the one hand, it is the Shabbat of Parashat Tzav, the *parasha* in which we learn about the *korban todah*, the thanksgiving offering (Vayikra 7:12-15). On the other hand, it is the 14th of Nissan, the day on which the *korban pesach* would be offered if we were at the Beit Hamikdash. Bringing these two together may seem like a paradox because the Torah tells us in two places (Shemot 12:15; Shemot 34:25; and Devarim 16:3) that the *korban pesach* may not be sacrificed so long as one possesses *chametz*. *Chametz* is apparently anathema to the *korban pesach*. This holds true for most other sacrifices as well, although it is emphasized by the *korban pesach*. Yet, the *korban todah* is the only sacrifice that in fact **requires** *chametz*! It seems, therefore, that these two sacrifices should come into no contact whatsoever.

However, the two are closely related. Rabbi Baruch Simon (*Imrei Barcu*h, Parashat Tzav, Maamar 8), explains that the *korban pesach* is essentially a *korban todah* to thank Hashem for the miracles performed upon leaving Egypt. The Gemara (Berachot 54b) brings four situations in which one brings the *korban todah*: those who safely return from sea travel, those who traverse deserts, those who recover from illness, and those who are freed from prison. The Maharal of Prague notes that in fact, B’nei Yisrael were rescued from those same situations. First they were saved from the plague of boils and taken out of the bondage of Egypt altogether. Once God rescued them in that sense, God wanted to include the other two forms of salvation, so God took them *דרך המדבר ים סוף* (Shemot 13:18) - they were taken through the desert to the Sea of Reeds (and of course, the splitting of the sea was a most significant event). *If this is the case, why are these two sacrifices so similar in nature yet diverge significantly in terms of the requirement to include or exclude chametz?*

In order to understand the key features that define these *korbanot*, it is important to point at first that these *korbanot* are necessarily consumed in *chaburot*, our proverbial “bubbles” or “pods.” When it comes to the *korban pesach*, this is required by the Torah:

שמות פרק יב. ג-ד

(ג) וַדְּבִרוּ אֶל כָּל עַדְתֵּי יִשְׂרָאֵל לֵאמֹר בַּעֲשׂוֹר לַחֹדֶשׁ הַזֶּה וַיִּקְחוּ לָהֶם אִישׁ שֶׁהָלַבִּית אֶבֶת שֶׁהָלַבִּית: (ד) וְאִם יִמְעֹט הַבֵּית מִהֵיוֹת מִשָּׁה וַלְקַח הוּא וּשְׁכֵנוֹ הַקָּרֵב אֶל בֵּיתוֹ בְּמִקְדָּשׁ נִפְשֹׁת אִישׁ לִפִּי אֲכָלוּ תִכְסּוּ עַל הַשָּׂה:

Shemot 12:3-4

Speak to the whole community of Israel and say that on the tenth of this month each of them shall take a lamb to a family, a lamb to a household.

But if the household is too small for a lamb, let him share one with a neighbor who dwells nearby, in proportion to the number of persons: you shall contribute for the lamb according to what each household will eat.

It is fascinating that one of the first *mitzvot* given to B'nei Yisrael is communal in nature, not individual. "Communal" can mean a few different things. In theory, it might just be the community of the family. If they are able to finish the lamb together without outside help, they may do so. But one may not allow part of the *korban* to remain unconsumed; therefore, each household must plan in advance and include as many people as necessary to be able to finish it. Conversely, only those who will eat from the lamb may be counted as part of the *chabura*. It is subject to debate in the Mishnah in Pesachim whether an individual may have a whole lamb to him/herself. Rabbi Yehuda does not allow it, while Rabbi Yossi does. Rambam writes that in theory, if one could eat the whole lamb themselves, it would be permissible, but we try to avoid that.

When it comes to the *korban todah*, the Torah does not say explicitly that people must eat it together. However, it must be consumed in one day, like the *korban pesach*. In *Ha'amek Davar*, Netziv explains that this is so that many people will come together to eat it. Since it is way too much for one individual to eat in one day, necessarily others will be invited to partake in the celebration. They will also have a *chabura*.

From here, we can establish the similarities and differences between these *korbanot*, noted by Rav Amnon Bazak (*Starting Point*, vol. 2, p. 28-29).

The reason why these *korbanot* must be consumed quickly, suggests Rav Bazak, is that gratitude diminishes over time. Deep emotions emanate from the heat of the moment. Whether experiencing euphoria or anger, those feelings may be expressed with little inhibition at the moment an event occurs, while we tend to return to an equilibrium over time and lose passion. When it comes to gratitude, says the Torah, we cannot allow that to happen. Gratitude is too important to not be expressed properly. As time wanes, gratitude dissipates, and we have lost an important opportunity to properly thank those to whom we are indebted. The quantity and quality of gratitude can diminish. In the pandemic world, gratitude is essential. While it may be difficult to experience gratitude during a pandemic, with its many costs, gratitude helps boost our happiness and increases our resilience. For those of us who are alive and healthy this Pesach, we have a true "shehechiyanu" that we arrived at this moment in good health. Those in particular who were חולים שנתרפאים, ill who recovered, were fortunate to experience the salvation of Hashem. For those of us who are able to celebrate Pesach in a manner in which we were not able to last year, we can be grateful for the ability to share in a *chabura* with others. Let us not let the moment pass over to express our gratitude for where we are right now. While that is true each and every day, the Pesach seder is a special time to recognize the *genut*, despair we sometimes experience, but come to a point of *shevach*, praise to God for our miracles. Perhaps at Shulchan Orech, before we arrive at our regular table conversation, we can use the opportunity to reflect on gratitude. Eating the *korban todah* and *korban pesach* quickly ensures we "maintain the momentum" of gratitude.

Rav Bazak also emphasizes the importance of communal thanksgiving. He writes, "people who share the food of their thanksgiving sacrifices are likely to share their feelings of gratitude to God. This creates a public thanksgiving." Perhaps gratitude is something that can be latent inside us but we do not realize it until we verbalize it. Some people today do this through "gratitude journals," and we do this as well in our personal *amidah*. But the *korban todah* teaches us that gratitude carries extra power in communal settings. The more people we invite to share in our gratitude, the bigger a statement we make. We increase the sanctity of God's name by spreading gratitude to God among the masses. If we make a *seudat hoda'ah*, some sort of thanksgiving meal or event, for many people, we will likely put more love and energy into planning that even than something we just do for ourselves. Perhaps we might hire live music, while celebrating alone might just involve playing music from a phone if at all.

Likewise, with the *korban pesach*, we are sharing in communal gratitude and redemption. While, as the Maharal says, we may have experienced all four situations for which we give a *korban todah*, we did so as a community, not as individuals. Therefore, says Rav Soloveitchik:

“The pesach differs from all other sacrifices because it is a symbol of chesed, freedom. The Torah calls the paschal lamb ‘a lamb for each parental home, a lamb for each household’ because freedom expresses itself in the realm of bayis, of community, of being together. Bayis is a new category which was revealed to the Jews as they gained their freedom.”

It is noteworthy that the instructions for the *korban pesach* come in between the plague of darkness and the plague of the firstborns. The plague of darkness is characterized by loneliness. Individuals could not see each other for three days. An essential characteristic of redemption, then, is communal and social bond. We try to avoid following the opinion of Rabbi Yossi regarding eating the *korban pesach* alone. Being part of a *chabura* is essential to what it means to experience freedom. Last year, many of us had to follow Rabbi Yossi, and this year, some of us still will. And that it is okay; it is still a *korban pesach*. The Torah gives us tools to be Jews even when we are alone. But those of us who are celebrating with others have a unique opportunity to appreciate what it means to eat *matzah* and *maror* with others. A seder “pod” can sing together beautifully to thank God for all miracles: present, past, and future. It further demonstrates the importance of reaching out and including others when we safely can, while also demonstrating the essential role each individual plays in the *chabura*. Each individual must eat a k’zayit of the sacrifice; it shows how much we depend on each other, especially as we support each other through the pandemic.

We are left with the question: why does a *korban todah* include *chametz* while the *korban pesach* not only does not include *chametz* but also cannot be in possession of its consumer? *Chametz* classically represents pride and ego. Perhaps we can suggest the *korban todah* is fundamentally an individual’s offering that is shared with others. People who bring that offering are celebrating their own fortune and also bring themselves into the sphere of gratitude. Those who celebrate with this individual focus their energy on that person. But the *korban pesach* is fundamentally a communal experience. Everyone who consumes a *korban pesach* equally experienced leaving Egypt. In that case, we are emphasizing less of ourselves and more of the community. Both of these have their time and place. Sometimes, we need to focus on ourselves, our well-being, and our own experience of gratitude. Other times, we need to be focused on community and society. We need to see the experiences of others, even as we experience something similar. Every single global citizen has experienced the world of COVID-19 in some fashion or another, but we need to make space to understand how each person has been impacted in unique ways.

It is my hope and prayer that everyone enjoys a meaningful Pesach this year and is able to find space for gratitude. It is my hope and prayer that not a single Jew will be alone for *seder* next year, whether in our homes in *galut* or in our *chaburas* in a rebuilt Yerushalayim, savoring the *korban pesach*.

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Did Egyptian Daughters Die During the Plague of the Firstborn?

by Davida Kollmar (SBM '14, '16-'17; MA '16)

January 19, 2018

As an oldest child whose father is also a firstborn, I always wondered why he had to fast on Erev Pesach for Taanit Bekhorot and I didn't. It is commonly assumed that the reason why firstborn men fast is to commemorate the fact that they were saved during Makkat Bechorot and were not killed along with the Egyptian firstborn. So does the common practice of women not to fast indicate that the firstborn Egyptian women were saved?

Shemot 11:4 and 12:29 tell us that every Mitzri בְּכוֹר dies during the plague. בְּכוֹר is masculine, but this by itself is not sufficient evidence, as the Torah often uses the masculine when not specifying gender.

Rav Ovadiah Yosef in Yechaveh Daat 3:25 discusses whether women should fast on Taanit Bekhorot. He quotes opinions both ways and cites Midrashic proof for both sides, beginning with the side that says women should fast:

ונראה שסוברים כדברי המדרש (שמות רבה פרשה י"ח סימן ג'):
ויד כל בכור במצרים ראשית אונים באהלי חם – שאפילו נקבות בכורות מתו,
חוץ מבתיה בת פרעה, שנמצא לה פרקליט טוב, וזה הוא משה שנאמר בו ותרא אותו כי טוב הוא ע"כ.
אולם מדרשים חלוקים הם בדבר, כי בשמות רבה (פרשה ט"ו סימן י"ב) איתא:
שה תמים זכר – על שם שהוא הרג בכורי מצרים וחס על בכורי ישראל ע"כ.
וכתב בחידושי הרש"ש שם:
משמע מכאן שלא נהרגו אלא בכורים זכרים ולא נקבות, וחולק המדרש הזה על הפסיקתא שאומר שגם בכורות נקבות מתו. וכן הוא
בשמות רבה לקמן.

It seems that they hold like the Midrash (Shemot Rabbah 18:3):

And he smote every firstborn in Egypt, the first-of-their-strength in the tents of Cham – [the redundancy of firstborn and first-of-their-strength teaches] that even the firstborn women died, except for Bityah the daughter of Pharaoh, because she had a good advocate, Moshe, as it says: And she saw him, that he was good.

But other Midrashim disagree, because in Shemot Rabbah (15:12) it says,

An unblemished male sheep – [the Pesach sacrifice is male] because he killed the firstborn of Egypt and took pity on the firstborn of Israel.

Rashash writes in his novellae there:

This implies that only male firstborns were killed and not females, and this Midrash disagrees with the Psikta that says that female firstborns also died, and also with the Shemot Rabbah below.

In summary, some Midrashim say that the daughters were killed, and others that say they were not. Neither position cites direct or compelling evidence. Are there deeper reasons for saying that the women were killed, or that they were not?

Let us assume that each of the Ten Plagues were Middah KeNeged Middah, in some way poetic or actual justice. Makkat Bekhorot is nonetheless unique in that the reason for the plague is stated in the Torah:

שמות ד:כא-כג

וַיֹּאמֶר יְקֹנֶק אֶל מֹשֶׁה בְּלִקְתָּהּ לְיָשׁוּב מִצְרִימָה רְאֵה כָּל הַמִּצְרִיִּים אֲשֶׁר שָׁמָּה בְּיָדָהּ וַעֲשִׂיתָם לָפָנַי פְּרֹעָה וְאֲנִי אֶחְזֹק אֶת לְבֹו וְלֹא יִשְׁלַח אֶת הָעָם:

וְאָמַרְתָּ אֶל פְּרֹעָה כֹּה אָמַר יְקֹנֶק בְּנִי בְּכִרִי יִשְׂרָאֵל:

וְאָמַר אֲלֵיךְ שְׁלַח אֶת בְּנִי וְיַעֲבֹדֵנִי וְתִמְאֵן לִשְׁלַחוֹ הִנֵּה אֲנִכִּי הִרָג אֶת בְּנֵה בְּכֹרָה:

Shemot 4:21-23

Hashem said to Mosheh, When you go to return to Egypt, see all of the wonders that I put in your hands and do them before Pharaoh. I will harden his heart and he will not send out the nation.

And you should say to Pharaoh, “Thus said Hashem, ‘My firstborn child is Israel. And I say to you: Send out My child and he will serve Me! If you will refuse to send him out, behold I will kill your child, your firstborn.’”

The firstborns of Egypt are killed because Egypt oppressed the firstborns of Hashem. But what does it mean to be Hashem’s firstborn? Rashi gives two explanations:

בני בכרי – לשון גדולה, כמו (תהילים פט כח) אף אני בכור אתנהו, זהו פשוטו.
ומדרשו: כאן חתם הקב”ה על מכירת הבכורה שלקח יעקב מעשו:

My firstborn child – [firstborn] is an expression of greatness, as it says (Tehillim 89:28): “And I will make him a firstborn” (since physical birth order cannot be changed, this proves that bechor can refer to acquired greatness.) This is the Pshat.

The Drash is: Here Hashem put his stamp of approval on the sale of the firstborn-ness that Yaakov bought from Esav.

I suggest that Rashi’s two explanations tie in to the dispute about whether the daughters were included in the plague of the firstborn.

According to his Midrashic explanation, the term בכור here is used in a technical legal sense, meaning the child who inherited land and who performed priestly services. It seems likely that women were excluded from the plague. However, according to Rashi’s Pshat explanation, women would be included in the plague, because G-d referred to the entire Jewish people as His firstborn.

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Arami Oved Avi: Disgrace and Praise for our Times

by Aliza Libman Baronofsky (SBM '06)

Originally published in “IRF Passover Readings”

The Mishna in Pesachim (10:4) tells us:

מתחיל בגנות ומסיים בשבח, ודורש מארמי אוֹבֵד אָבִי, עד שיוגמר כל הפרשה כלה:

He begins with disgrace and concludes with praise. And he expounds from “Arami Oved Avi” (Deuteronomy 26:5, deliberately not translated), until he concludes the entire section.

This mishna introduces a narrative arc that is required for the Seder: we must begin with something negative before concluding with something positive. In media as varied as novels, plays and scripted TV, it is generally understood that no conclusion can be as satisfying as when it is preceded by adversity. Which adversity we must discuss is subject to rabbinic dispute, with the rabbis grappling over whether it is spiritual disgrace (our forefathers were idolaters) or physical (we were enslaved).

The narrative genius of the Haggadah is that it marries both approaches. It reads “Arami Oved Avi” as both physical and spiritual subjugation:

צא ולמד מה בקש לבן הארמי לעשות ליעקב אבינו: שפרעה לא גזר אלא על הזכרים, ולבן בקש לעקר את הכל. שנאמר: ארמי אוֹבֵד אָבִי, ויגר מצרימה ויגר שם במתי מעט, ויהי שם לגוי גדול, עצום ורב.

Go out and learn what Lavan the Aramean sought to do to Yaakov, our father; since Pharaoh only decreed [the death sentence] on the males but Lavan sought to uproot the whole [people]. As it is stated (Deuteronomy 26:5), “An Aramean was destroying my father and he went down to Egypt, and he resided there with a small number and he became there a nation, great, powerful and numerous.” (Sefaria translation)

This translation of אָבִי אַרְמִי אוֹבֵד is familiar to us from its annual repetition—The idea that “An Aramean [Lavan] was destroying my father” is followed by the idea that Lavan tried to erase the Jewish future through assimilation, which is followed by the Jews going down to Egypt.

But this translation is particularly troublesome for those who prefer to read the Bible according to its simplest interpretation, particularly the medieval commentators Ibn Ezra and Rashbam. The words אַרְמִי אוֹבֵד אָבִי are in fact terribly difficult to parse: First, if the Aramean is the subject of the sentence, why does it say “He went down to Egypt” when it was not Lavan (the Aramean) but rather Yaakov who went down? Second, אוֹבֵד is incorrectly conjugated to say “was destroying”; Ibn Ezra insists it ought to be “מאבד”.

The translation that won out did so for a reason – because the Jews who told the story of the seder had substantial experience with external threats. They could easily understand the nefarious Lavan and the spiritual dangers he posed, as well as the peril in being subject to foreign rulers’ whims. Reading the text this way made the story engaging and even more satisfying. An external enemy can be defeated.

Many translations of Deuteronomy adopt the opinion of Rashbam by translating the phrase as “My father was a wandering Aramean.” The key features here include making “my father” the Aramean and thus the subject of the sentence as well as making “oved” an adjective rather than a verb. Rashbam believes that the Aramean was Avraham, who was indeed wandering, with proof that the word “oved” is used that way elsewhere in Tanakh.

In contrast, Ibn Ezra attempts to address the same issues by telling us that the verse should be translated as “My father [Yaakov] was a poor Aramean”, using a verse from Mishlei to show that “oved” can mean poor and that having lived in Aram, Yaakov can plausibly be called Aramean.

The Torah scholar Nehama Leibowitz, z”l, did much to popularize the commentaries of Rashbam and Ibn Ezra in her writings on Parshat Ki Tavo. She notes the importance of interpreting the verse in its Biblical context, as it comes to us from a speech given by a pilgrim bringing first fruits to the Temple. Calling their

commentaries “more plausible,” she writes: “The story thus begins with wandering and ends with its converse: permanent settlement.”

In our era, we can see the appeal of this interpretation. Many of us know struggles that don’t come with an antagonist to vanquish. Aren’t we all poorer for a year without social interaction, travel, time with family? Many of us thought last year was our Passover of “גְּנוּחַ” - adversity, which we hoped would be followed by the praise of this year’s return to normalcy and glory.

The adversity that our forefathers and our foremothers faced is printed in the Torah in part to give us strength as we face our own struggles. This Passover, we are not all in the same place, physically or spiritually. We have not yet reached our ‘permanent settlement.’ Some of us feel truly lost and wandering without our old habits and routines. We feel impoverished when we see others getting scarce vaccine appointments as we wait our turn. Let us think of our personal journeys as we read the Arami Oved Avi, thinking of the challenges we face and trusting that God will deliver us, too, from the bondage of this global pandemic.

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