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"Taking Responsibility for Torah"

SBM 2023 WEEK 5 SUMMARY – A CLOSE SHAVE WITH ISSURIM

By Jacob Klein, edited by Rabbi Klapper

May a man who shave his beard with depilatory (acid) cream on Chol HaMoed, if he is accustomed to shave regularly? The late 18th century Rabbi Yechezkel Landau reports being asked this question at the outset of *Shu"t Noda BiYehudah* 1:0C13. However, in later responsa Rabbi Landau concedes that the *metzius*, the facts of the question, were subtly but significantly different than his initial presentation. He is openly, even aggressively, mysterious about his motivations for making those changes and then acknowledging them.

Rabbi Landau reports that his initial response was "Absolutely not!". Mishnah Moed Kattan 3:1 lists those who are permitted to shave on Chol HaMoed, essentially because they were unable to shave before Yom Yov. Talmud Moed Kattan 14a deduces that all others are forbidden to shave, and explains that the prohibition was instituted lest people put off shaving before Yom Tov and enter the holiday looking unkempt. The 12th century halakhic giant Rabbeinu Tam argued that people who actually shaved on Erev Yom Tov should therefore be exempt from this prohibition. However, an absolute halakhic consensus of contemporaries and successors rejected Rabbeinu Tam's leniency. Their strong *prima facie* case is that the Mishnah does not include such a person in its list of those exempt.

But Rabbi Landau abruptly reverses course. A figure so great as Rabbeinu Tam, he argues, deserves to have an effort made in his defense.

Here some background about Chol HaMoed prohibitions is needed. R. Klapper's starting point was that all *melakhah* that is Biblically forbidden on Yom Tov could also be Biblically forbidden on Chol HaMoed. However, the Torah gave the Rabbis discretion (*lo mesarkha bakatuv ela lachakhamim*) as to whether to maintain those prohibitions.

This formulation raises a challenge for the notion that shaving on Chol HaMoed is a Rabbinic prohibition. Since shaving on Yom Tov is Biblically forbidden, shouldn't the Rabbis simply have left the Biblical prohibition in place? We might need to say that the Rabbis permitted shaving (and perhaps many other kinds of *melakhah*) generally, and then made new decrees forbidding them in some but not all circumstances.

This approach makes post-Chazal developments challenging to fit into the framework of Chol HaMoed. Are

these developments *mutar* until proven *assur*, or *assur* until proven *mutar*? R. Klapper claimed that Noda BiYehudah seems to embrace the idea that these developments are *assur* until proven *mutar*, and nobody in our *shiur* brought any challenges to this presumption.

Rabbi Landau understands Talmud Moed Kattan 13a as establishing a blanket exemption from the general prohibitions of *melakhah* on Chol HaMoed; one may hire a worker who would otherwise not be able to buy food to do such work. This exemption applies to *melakhah* prohibitions maintained by default, but not necessarily to subsequent Rabbinic prohibitions.

We noted that this exemption's economic and social impact is interesting. It establishes several days a year when only the poorest Jews can be hired to perform many tasks. This is an economic opportunity for them, possibly at the cost of forcing them to expose their poverty in order to obtain the work. Rabbi Klapper reported that some people express discomfort with having halakhic prohibitions apply differently to the rich and poor, while others see that as intuitively necessary and justified. The question comes up most often nowadays with regard to *kashrut* and the principle that we are somewhat lenient in contexts of *hefsed merubeh*, great loss, but Chol HaMoed may be an even more interesting example of deliberately redistributive legislation. We also need to consider how poverty should be verified for these purposes: can/should one hire anyone claiming to be desperately poor, or may/must one demand access to tax returns, expense reports, etc.?

Rabbi Landau argues for Rabbeinu Tam that the permission to shave for those who shaved before Yom Tov is different in kind than the permission for those listed in the Mishnah, who were unable to shave. The Mishnah lists those who fell under the Rabbinic prohibition against shaving made to protect the honor of Yom Tov and are then exempted; those who actually shaved before Yom Tov do not fall under the Rabbinic prohibition at all.

Rabbi Landau then makes a somewhat counterintuitive claim. Rabbeinu Tam held that those who are exempted from the Rabbinic prohibition may shave themselves, or hire anyone to shave them; however, those who never fell under the Rabbinic prohibition may not be shaven by anyone but the desperately poor. Thus Rabbeinu

Tam can argue that the Mishnah leaves his case out because it involves a more limited permission.

However, Rabbi Landau continues, perhaps those who reject Rabbeinu Tam's distinction are actually more lenient than he is; they hold that *anyone* can hire a desperately poor barber to shave them on Chol HaMoed! Their rejection of Rabbeinu Tam was perhaps based on the mistaken notion that he permitted one who shaved before Yom Tov to hire any barber.

Ultimately, Rabbi Landau concludes this responsum by permitting those who shaved before Yom Tov to hire desperately poor barbers to shave them on Chol HaMoed. He then adds that this is especially so for those who must appear in the society of Gentile nobles, since a. they are accustomed to shaving daily, so that going eight or nine days without shaving will cause them physical pain, and b. they will be mocked if they appear with stubble. Note that the initial question made no mention of noble society, and also that only the initial question mentions the use of depilatory cream as the method of shaving.

Rabbi Landau's lenient conclusion drew widespread disagreement, and Rabbi Yitzchak Lampronti even claimed in his *Pachad Yitzchak* that Rabbi Landau had withdrawn it. But the opposite is true; Rabbi Landau actively defended it in several later teshuvot.

One of those teshuvot is *Noda BiYehudah* 2:YD80. The questioner, Rabbi Wolf Boskowitz, suggested a clever way to permit close shaves for Jews all year round. A beraita on Talmud Nazir 40b defines the prohibition as against *gilnach* that also involves *hashchatah*. Hashchatah, or total destruction, requires a razor (so that the hair is cut below the skin); *gilnach* may require the hair to have attained a certain length. One could first scissor-cut the beard, leaving no hair long enough that cutting it would be considered *gilnach*, and then shave with a razor.

Rabbi Landau harshly rejects Rabbi Boskowitz's proposal on what seemed to us insubstantial grounds. Then, to put things in technical terms, he gets weird and clams up, saying that he will not reply to any further correspondence about the issue "for a reason that I keep to myself", and that Rabbi Boskowitz should forcefully object to anyone who in practice follows the reasoning outlined in his question. Then, after more harsh rhetoric about the destructive effects of Rabbi Boskowitz's proposal, he concludes by offering a substantive concern that the initial scissor-cut will not cut every hair to the extent necessary, or that people will delay the razor-cut to the point where some hairs grow back.

In NBY 2:OC99, Rabbi Landau responds to his in-law's critique of his willingness to follow Rabbeinu Tam's *da'at yachid* in NBY 1:OC13. The critique contends that Rabbi Landau should not have publicized the leniency even

if he really believed it, because for a great rabbi to follow a position that was previously rejected by consensus would destabilize halakhic authority in many other areas.

Rabbi Landau responds that his defense of Rabbeinu Tam needs no defense, but concedes that he had thought twice about publishing the leniency. Indeed, he had told the actual questioner that his answer was a one-time *hora'at sha'ah* based on the unique circumstances presented. However, the reason for his ambivalence was not a concern for the destabilization of halakhic authority on other questions; he dismisses that concern out of hand. Rather, his concern was that Jews who generally shaved themselves daily with razors, in violation of halakhah, but who nonetheless did not shave on Chol HaMoed, would now shave on Chol HaMoed as well. But, Rabbi Landau concludes, "for a reason that I keep hidden with me", he decided that publishing his leniency was actually a great mitzvah. He repeats this contention forcefully when his in-law seeks to continue the conversation (NBY 2:OC100).

We noted the importance of understanding that people's relationship to halakhah is not necessarily consistent from the perspective of halakhah, so that for example a person who daily ignores the prohibition against shaving with a razor nonetheless holds meticulously to the prohibition against shaving on Chol HaMoed, even though the latter caused physical suffering and invited social ridicule.

Rabbi Mosheh Sofer (*Shu"t Chatam Sofer* 1:OC154) somewhat self-mockingly declares that "I will go as a talebearer and reveal the secret" that Rabbi Landau refused to disclose. He contends that Rabbi Landau in fact accepted Rabbi Boskowitz's argument, perhaps with a different standard of hair-length, on the Biblical level. Rabbi Landau therefore held that publishing his responsum was desirable precisely *because* people who shaved daily with razors would now do so on Chol HaMoed as well, and therefore keep their beards short enough that they would not end up violating any Biblical prohibition(s) in their first post-holiday shave.

In Rabbi Sofer's explanation, (which we accepted for lack of an alternative), Rabbi Landau was seeking to improve the halakhic scorecard of the Jewish people by subtly influencing behavior, even though he was changing nothing about the religious attitudes of the population. Specifically, he was publicizing a specious permission of the Rabbinic violation against shaving on Chol HaMoed in order to diminish violations of the Biblical prohibition against shaving generally. This raises important questions about the purposes of psak and the extent to which transparency in psak is a halakhic value.

Shabbat shalom!

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