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Center for Modern Torah Leadership



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"Taking Responsibility for Torah"

TZARA'AT: THE EXCEPTION THAT PROVES THE RULE OF OBJECTIVITY IN HALAKHIC EXPERIENCE

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Many of Rabbi Yosef Dov Soloveitchik's most famous quotes emphasize the objectivity of *Halakbah*. By objective he means that it is capable of producing the same experience in just about every Jew (or perhaps every Jew of the same gender; the Rav is curiously silent about the significance of gender in his major philosophic works. See for example the interpretation of Genesis 1-4 in *Lonely Man of Faith*, which makes the existence of different genders vital but provides no clue as to how the genders differ). The Rav argued that religion must be objective in order to be worthy of intellectual study, and to enable community.

However, some promoters of *Mishpat Ivri* (the discipline of understanding *halakbah* so that it can function effectively as law in modernized societies) use these Rav quotes to argue that *Halakbah* insists on bright-line rules and precisely defined measurements in order to give laypeople the capacity to make decisions on their own. To my knowledge this idea appears nowhere in the Rav. But it is nonetheless stimulating and attractive.

The starkest antithesis to both ways of understanding the Rav may be found in the laws of *tzora'at* (a psycho-spiritual disease almost but not entirely unlike leprosy). Here the Torah emphasizes over and over again that the halakhic consequences of *tzora'at* depend entirely on the judgment of the *kohen* to whom the disease is brought. "The decree of Scripture is that the *tum'ah* of *negaim* and their *tabarah* occur only at the word of the Kohen" (Rashi to *Vayikera* 13:2). Even worse, the *kohen* makes his determination on the basis of color, which is perhaps the paradigmatic subjective experience, with perception of color depending on

individual physiology, cultural interest, and chromatic context. Here the Torah seems to revel in subjectivity. But is *tzora'at* the raw material from which we should generate halakhic theory, or is it the exception that proves the rule?

Yerushalmi Niddah (end of Chapter 2) offers a striking *hava amina* and then contrast.

ראת על הכר - מהו שתהא נאמנת לומר 'כזה ראיתי' או 'כזה?'

רבי בא בשם רב יהודה רבי חלבו רבי חייה בשם רבי יוחנן:

נאמנת לומר 'כזה ראיתי' או 'כזה', ותני כן: נאמנת. - ראת על הכר

יכול כשם שהיא מראה כתמה, כן תהא מראות נגעים?

תלמוד לומר: "והובא אל אהרן הכהן או אל אחד מבניו הכהנים"

If a woman saw (colors on a) cushion - is she believed to say 'I saw (a stain) like this' or 'like this'?

Rabbi Ba in the name of Rav Yehuda; Rabbi Chelbo and Rabbi

Chiyya in the name of Rabbi Yochanan:

If a woman saw (colors on a) cushion - she is believed to say 'I saw (a stain) like this' or 'like this'.

Perhaps just as she shows (a color analogous to) her stain, so too she should show her negaim?

Scripture writes "It must be brought to Aharon the kohen or to one of his sons the kohanim."

The Yerushalmi notices that *negaim* are parallel to *niddah/zavah* in that they involve halakhic rulings based on colors. It reasonably suggests that the standards for determining color should be the same in both areas. So just as in *niddah/zavah* we allow a woman to report her color experience to the *posek*, rather than requiring the *posek* to see the stain directly, so too we should allow the person afflicted with *tzora'at* to show the *kohen* a color that they experience as matching their *nega* rather than compelling them to expose their skin. (It may be that the *hava amina* is raised

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regarding **women** who have *tzora'at* because having a male *kohen* stare at a woman's skin seemed inappropriate.)

The Yerushalmi concludes that *niddah/zavab* and *negaim* are not parallel; the Torah requires the *kohen* to see the *nega* directly. But **why** aren't they parallel? Philosophically, if the laws of *negaim* welcome subjectivity by making the law depend on whether something has been seen by the *kohen* rather than on whether it exists objectively, why can't we allow the *kohen* to rely on someone else's subjective experience?

I think a broader and deeper contrast may be involved here. The core of the laws of *niddah/zavab* is the counting of days, and the Torah tell us "She counts *lab*" (*Vayikera* 15:28), which the Rabbis understood to mean that "She counts for herself," meaning that we trust the woman when she asserts that the correct number of days have passed.

In other words, the laws of *niddah* empower the object of the law to become an autonomous legal subject, whereas the laws of *tzora'at* compel the object of the law to become the legal object of another human being. Thus it makes perfect sense that the legal subject of *niddah/zavab* law can interpose her subjective experience even when—lacking training as a *yoetzet halakhab*—she is compelled to ask someone else for a legal ruling, while the object of *tzora'at* law has his or her legal fate determined by the undiluted subjective experience of the *kohen*, even if that means obligating a woman to expose her skin to a man, just as Miriam's *tzora'at* was immediately visible to her brothers.

Another detail of *hilkhot tzora'at* may also reflect how central the *kohen's* subjectivity is to the law. Sifra understands "one of his sons the *kobanim*" to mean "any one of his sons the *kobanim*," including those who are physically blemished. Rabbi Yosef Polak and others have argued that the exclusion of physically blemished *kobanim* from the Temple service reflects their status as *klei hamikdash*, Temple furniture, in other words the complete irrelevance of their individual personalities to their work. With regard to *tzora'at*, however,

their subjectivity is vital, and so there is no reason for external physical characteristics to affect their qualifications.

Now the story of Miriam teaches us that *tzora'at* is a consequence of speaking *lashon hora*. I suggest that an underlying evil of *lashon hora* is that it imposes the speaker's view of another human being on both the listener and the object of speech. It deprives the listener of the opportunity to make an unmediated judgment, and the object of the opportunity to present themselves as they would like to be seen. The Torah responds by compelling the speaker to undergo the experience of complete dependence on someone else's subjective perception.

Tzora'at is a punishment; therefore it must be an exception to how *halakhab* should be experienced rather than the rule. The Torah's ideal is for human beings to bring every element of their subjectivity to full expression within the objective framework of the law; *halakhab* provides the context rather than the content of religious experience.

This is a shift from the Rav, but I'm not sure how radical a shift. *Halakhic Man*, being uninterested in *psak*, expresses his subjectivity through his subjective formulation of the objective law, through *chiddushei Torah*. This allows him to believe that the experience of the law is objective. My argument is that the servant of Hashem expresses his subjectivity through the experience of the law. The religious actor may therefore believe that the content of the law is objective.

In the manner of the Rav — *lehandil* — I suggest that we should not see these visions as opposed. Our task is rather to live them in dialectical tension. Halakhic life should enable us to express every aspect of both our intellectual and our spiritual subjectivity, with the caveat that we should be very cautious about expressing them simultaneously.

We should also note, and perhaps draw strong practical conclusions from, the Ribono shel Olam's choice to teach the importance of halakhic self-determination in the context of women's experience, and specifically in the context of *niddah/zavab*. *Shabbat Shalom!*

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