

CENTER FOR MODERN TORAH LEADERSHIP

Center for Modern Torah Leadership



חירות ואחריות

www.TorahLeadership.org

"Taking Responsibility for Torah"

WHERE THERE'S A PRIESTLY WILL, IS THERE A HALACHIC WAY?

Rabbi Aryeh Klapper, Dean

Texts cannot defend themselves against interpreters who do not love them. And love is not enough. Only a relationship characterized by loyalty, integrity, and rigor can grant texts any degree of actual influence and genuine independence.

Rabbinic interpretation of Vayikra 13:2-3 seems to eviscerate the text. The Rabbis appear to seize legal powers that the text plainly grants to kohanim. They then apparently extend those powers in explicit defiance of the conditions set out in the text.

Jews who understand Chazal this way usually grant themselves the same unconstrained authority over texts that they assign to Chazal. They see Judaism as a government of people, not of texts. (One might describe them as believers in *daas Torah*, who differ from extremist *charedim* with regard to ends but not means.)

It is vital to see whether this understanding of the Rabbinic project meets our own standards of loyalty, integrity, and rigor. Were Chazal constrained by their relationship with the text of Torah, or not? Can we honestly describe ourselves as constrained by the same relationship?

Vayikra 13:2 says that if a person develops one of three types of skin lesions, which develops into a *nega tzaraat*, then

וְהוּבָא אֶל־אֶהֱרֹן הַכֹּהֵן
 אֹו אֶל־אֶחָד מִבְּנֵי הַכֹּהֲנִים:
 וְרָאָה הַכֹּהֵן אֶת־הַנֶּגַע בְּעוֹר־הָבָשָׂר
 וְשָׁעַר בְּנֶגַע הַפֶּה לָבָן
 וּמָרָא הַנֶּגַע עֵמֶק מִעוֹר בָּשָׂרוֹ
 נֶגַע צָרַעַת הוּא
 וְרָאָה הַכֹּהֵן וְטִמָּא אֹתוֹ:

He is brought to Aharon the kohen
 or to one of his sons the kohanim
 The kohen sees the nega in the skin of the flesh
 and the hair of the nega has turned white,
 and the appearance of the nega is deeper than the
 skin of the flesh,
 This is a nega tzaraat
 The kohen sees it
 and the kohen declares it tamei.

As Seforno perceptively points out, the subject of this law is the kohen; the person with the *nega* is the object. That is why the Torah describes the person as being **brought** to the kohen, rather than as **coming** to him. Many commentators and halakhists conclude that the person can even be brought to the kohen involuntarily.

Does the kohen/subject have agency? Can the kohen look away and not see the *nega* if he wishes, or evaluate the entire person rather

than just the *nega*? Must the kohen follow the Torah's prescription as to what sorts of *nega* becomes *tamei* and which not, or the decision be based on what the kohen "sees" as pastorally better for the person with the *nega*?

Mishnah Moed Katan 7a records a dispute between Rabbi Meir and "the Sages", identified by the Talmud as Rabbi Yose, as to whether a kohen should examine a *nega* during a festival. Both parties agree that in principle the *kohen* should do whatever will maximize joy during the festival, i.e. examine the *nega* if and only if the result will be the anxiety-relieving declaration of *tabor*.

But how can that be done with integrity? Rabbi Meir says that the legal consequences of *tum'ah* here are not triggered by the objective condition, but rather by the kohen's declaration. Therefore, the *kohen* should be silent if the only honest word he can speak is *tamei*, and let the joy of the festival continue unabated. Rabbi Yose, however, holds that one cannot seek a declaration of *tabor* without opening up the genuine possibility of a declaration of *tamei*. Therefore, better for the *kohen* to refuse to examine any potential *nega* during the festival, lest he be forced to declare it *tamei*, even though this leaves many people's festival joy diminished by the fear that they will be declared *tamei* immediately following the festival.

But is it really legitimate to adopt a "don't ask don't tell" policy regarding *negaim*? Don't all the standard mitzvah-lists count "carrying out the laws of *negaim*" as a duty?!

Talmud Moed Kattan 7b doubles down on yes.

לְמִימְרָא דְבַכְהָן תְּלִיא מִלְתָּא?!

אִין, וְהִתְנִיא (בְּנִיחוּתָא)

וְכַיּוֹם הָרֵאוּת בּוּ –

יֵשׁ יוֹם שְׁאֵתָה רוֹאָה בּוּ, וְיֵשׁ יוֹם שְׂאִי אֶתָה רוֹאָה בּוּ.

מִכָּאֵן אָמְרוּ:

חֲתָן שְׂנוּלֵד בּוּ נִגַּע –

נֹוֹתֵנִין לוֹ שְׁבַעָה יְמֵי הַמִּשְׁתָּה, לוֹ וּלְבֵיתוֹ וּלְכִסּוֹתוֹ.

וְכֵן בְּרַגְלִי, נֹוֹתֵנִין לוֹ שְׁבַעָה יְמֵי הָרַגְלִי,

דְּבָרֵי רַבִּי יְהוּדָה;

רַבִּי אוֹמֵר:

אִינוּ צָרִיךְ,

הָרִי הוּא אוֹמֵר

– צִוָּה הַכֹּהֵן וּפְנוּ אֶת הַבַּיִת –

אִם מִמְתַּנִּים לוֹ לְדַבֵּר הַרְשׁוּת – כֹּל שֶׁכֵּן לְדַבֵּר מִצְוָה.

Do you mean to say that it depends on the kohen?!

Yes, and a beraita says accordingly:

And on the day that there is seen in it (Vayikra 13:14)

–

There is a day that you examine it, and a day that you don't examine it,

On this basis they said:

A bridegroom who develops a *nega* –

we give him the seven days of feasting – to him, to his house, and to his clothes.

Similarly, on a festival we give him the seven days of the festival

in the opinion of Rabbi Yehudah;

Rebbe said:

This (source) is unnecessary

Vayikra 14:36 says (regarding house-tzaraat)

The kohen commands, and they empty the house

[before the kohen comes to examine the nega] –

if one delays (examination) so that the person can do something optional (saving his property),

then certainly one can do so for the sake of something that is a mitzvah (such as marriage- or festival-joy).

At this sugya's end, at least according to Rebbe and perhaps according to all opinions, it appears that the Rabbis interpreted the Torah as giving kohanim the **discretion** to refuse to implement the *halakhah* of *nega* when they saw it as competing with a more important value. A very similar move can be found in a beraita on Berakhot 19b which gives the Rabbis discretion to overrule the obligation to return lost objects because “sometimes you must look away, and sometimes you must not”. They choose to exercise that discretion in situations where the finder would think it beneath their dignity to recover their own identical object.

The formulation of this discretion may be vital. A rule can be suspended for the sake of a conflicting value, but only if the value of the rule is genuinely maintained, if it is not universally suspended. There is *metahalakhah*, but it must not drown *halakhah*. The Torah almost never tells us explicitly how to choose among laws when they conflict, or between laws and values. *Halakhah* sometimes codifies the hierarchy purely abstractly, and sometimes adopts a more granular approach.

Another interpretive move rips the power of *nega*-discretion away from the kohanim. Sifra, the Midrash *Halakhah* on Vayikra, points out that “*one of his sons the kohanim*” is redundant – aren't all of Aharon's sons kohanim, and aren't all *kohanim* Aharon's sons? It appears to conclude that all Israelites are permitted to examine a *nega*; a *kohen* is needed to declare the judgement, but need have no part in making it.

Mishnah Negaim 3:1 similarly presents the *nega-examination* as a sort of Kabuki theater:

הכל כשרים לראות את הנגעים, אלא שהטומאה

והטהרה בידי כהן:

אומרים לו: אמור 'טמא!' והוא אומר: 'טמא!' אמור

'טהור!' והוא אומר: 'טהור!'

All are fit to examine *negaim*, but *tum'ah* and *taharah* are in the hands of the kohen:

They tell him: Say 'Tamei' and he says 'Tamei!'; Say 'Tahor!' and he says 'Tahor!'

Suddenly, the kohen is a puppet, with no agency at all. His only role is to say what he is told to say by the authorities, whom it seems reasonable to identify with the rabbis.

The situation grows more complicated when we turn to Talmud Arakhin 3a.

הכל כשרין לראות את הנגעים –

לא תוויי מאי?

לא תוויי שאינו בקי בהן ובשמותיהן.

והאמר מר: אינו בקי בהן ובשמותיהן – אינו רואה את

הנגעים. !?

אמר רבינא:

לא קשיא: הא דמסברי ליה וסבר, הא דמסברי ליה ולא

סבר.

“All are fit to examine *negaim*” –

to include whom?

To include one who is not expert in them and their categories.

But a Master said: One who is not expert in them and their categories must not examine *negaim*. !?

Said Ravina:

There is no difficulty: This is where he can understand it when explained, this is when he can't.

Why would a puppet need to understand what he is saying? The simplest reading, that of Rosh but probably not of Rambam, is that the kohen is not actually a puppet. What the rabbis tell him to say has to make sense to him, or he simply won't do it.

Rav Yaakov Emden (Sheilat Yaavetz 1:138, opposed by Beit Yitzchak YD1:55) argues that the kohen's discretion was always limited to cases where there was genuine doubt. If the kohen refuses to examine a *nega* that is obviously *tamei*, the declaration when it is actually examined takes effect retroactively. In his vision, one can imagine that the role of the experts is to tell the kohen **whether or not he has discretion**.

Moreover, most halakhists rule that the kohen cannot make his declaration unless he is actually looking at the *nega*. This means that the Rabbis' apparently radical transformation of *one of his sons the kohanim* into “all are valid for examining *negaim*” is, in the end, not radical at all, and could easily be accomplished without any textual reinterpretation whatsoever. The ruling cannot be made unless the *nega* has been brought to a kohen, and the kohen's determination has to abide by the rules. What the Rabbis have done is to

acknowledge that this rule can often conflict with halakhic obligations of joy, or with reasonable human expectations of economic stability.

formulate discretionary features that can diminish such conflicts, yet without changing any of the rule's elements; and

ensure that this discretion cannot be exercised by either the kohen or themselves without accountability.

This seems to me a potentially generalizable description of much Rabbinic work, and compatible with a loving relationship characterized by loyalty, integrity, and rigor.

Moreover, it seems to me a reasonable and useful starting point for evaluating present halakhic programs. Much work would of course have to be done defining terms such as discretion, preservation, and accountability, and many others. In the end it is a text, and as such cannot defend itself against interpreters who do not love it. But perhaps some will.

Shabbat Shalom!

The mission of the Center for Modern Torah Leadership is to foster a vision of fully committed halakhic Judaism that embraces the intellectual and moral challenges of modernity as spiritual opportunities to create authentic leaders. The Center carries out its mission through the Summer Beit Midrash program, the Rabbis and Educators Professional Development Institute, the Campus and Community Education Institutes, weekly Divrei Torah and our website, www.torahleadership.org, which houses hundreds of articles and audio lectures.