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WHO GETS TO DECIDE WHAT'S "SHABBESDIK?"

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Is halakhic sophistication always a virtue?

Mishnah Demai 4:1 states that "One who buys fruits from someone who lacks legal credibility with regard to tithing, and then forgot to tithe them (before Shabbat) – may ask the seller about them on Shabbat, and eat them on the basis of his assurance." Why should it matter whether the seller is asked before or after sundown? Bartenura explains that whereas halakhically sophisticated Jews know that honesty and holiness are unrelated, *amei ha'aretz* (=halakhically unsophisticated Jews) regard lying as a violation of the sanctity of Shabbat. Therefore, while the weekday rule is that only those who observe an area of halakhah have credibility regarding it, one can extend halakhic credibility to *amei ha'aretz* on Shabbat even regarding laws they violate themselves.

Netziv (Haamek Davar 35:1-3) cites other examples in which halakhah takes the religious intuition of the unlearned into serious account. In each case, these intuitions may be more constructive socially than scholarly interpretations based on analytic rigor. Why, then, is law generally determined by scholars rather than by popular practice?

One of the classic intra-Jewish sectarian debates is whether or not one may allow a useful fire to burn in one's house over Shabbat. The Prushim (=Pharisees or Rabbanites) said yes, and the Sadducees said no. The underlying interpretative issue is whether to translate "תבערו" in 31:3 as "do not light a fire", or rather as "do not allow a flame to burn". Our practices of lighting Shabbat candles and of eating cholent are in part demonstrations of loyalty to the Perushi position.

Ibn Ezra records, in amusing emotional detail, a controversy he had with a Karaite (whom he calls a Sadducee) about this verse. He took the devil's advocate position that lighting fires should only be

forbidden on Shabbat day, "ביום השבת", and challenged the Karaite to disprove him. The Karaite failed to do so (over a period of months, with many back-and-forths). Ibn Ezra concludes that "I have mentioned all this, because an intelligent person can explain Scripture in many ways, which is why we need with regard to all commandments the Kabbalah, Masoret, and Torah Shebe'al Peh¹, as I said when beginning this book". Every text can be read plausibly in ways that are nonetheless false; the only way to exclude them is on the basis of received tradition. The contextual implication is that one need not disprove the Sadducee position regarding fire on Shabbat; if the Rabbinic position is possible, it is necessary.

But why should this be so? Rabbinic tradition itself records innumerable legal disputes. Once a dispute arises, both positions are treated as reasonable, and final legal decisions result from interpretive choices rather than Heavenly voices. No specific rabbinic choice is presumed correct. Since nothing about the Sadducee interpretation of תבערו conflicts with rabbinic hermeneutics, there seems no intellectual basis for intellectually privileging the Prushi position. Presumably this is true of many other Sadducee/Prushi disputes.

Many responses to this challenge start from Rambam's assertion that Mosheh received from Sinai a broad interpretative substratum that is never subject to controversy. But the more difficult problem to solve is not how one knows where Tradition comes from, but rather why one can have faith that it has been accurately transmitted. Granting Divine origin, and Mosaic perfection, wouldn't misunderstanding have crept in the moment Mosheh transmitted his knowledge? Wasn't this why Mosheh resisted Yitro's suggestion that his authority be diffused?

¹ I don't know the specific referent of each of these three terms for Ibn Ezra, or even whether they refer to separate aspects of tradition.

Rambam (Introduction to Mishneh Torah) argues that Mosheh set up a near-perfect pedagogic system, with repetition and reinforcement at every level, so that at least for one generation the Oral Torah could be preserved pristine. Netziv, however, acknowledges the inevitability of misunderstanding, commenting wryly that “even in that generation of knowledge, there must have been a few *amei haaretz*, let alone women²”.

Netziv goes further. He suggests that Mosheh, and later Yehoshua, was well aware of these misunderstandings, but where they tended to legal stringency, he did not seek to uproot them. In other words, from the very beginning there was a practical popular tradition alongside the intellectual tradition, which differed substantively from it. This is similar to what my teacher Dr. Haym Soloveitchik has famously called “mimetic Judaism”, but with two key qualifications:

- 1) It is explicitly acknowledged that the mimetic tradition arose out of folk intuition, rather than seeing it as evidence of lost scholarly positions.
- 2) the mimetic tradition was tolerated only when it was stricter, not when it was more lenient.

Dr. Soloveitchik argues that there is a particular historical reason that the intellectual tradition today (or at least in the late 20th century) tends to stringency, namely the diminishing power of affective religious experience in the halakhic community. “Having lost the touch of His presence, they seek now solace in the pressure of His yoke.” He does not suggest that intellectual traditions are inherently or necessarily more stringent than mimetic traditions. (In a version of this essay published several years ago, I wrote that “In the long run, I contend, those who wish to make significant changes toward ‘leniency’ are better off supporting the primacy of the intellectual over the mimetic. This may be particularly true with regard to issues of women’s place in ritual, and it is perhaps time that advocates of such changes acknowledged this.” I think the contention has now been largely verified.)

Netziv contends that the populace in Mosheh’s time adopted the interpretation of תבערו that eventually became the Sadducee position. He is well aware that

this popular tradition eventually turned noxious and generated a position that denied the legitimacy of the Rabbinic intellectual position. Was Mosheh then wrong to permit it? Netziv might have adopted the approach (perhaps following the midrash cited by Rashi on “*naaseh Adam*”) that mistakes are inevitable, and one cannot tell which current mistakes will cause real problems in the future.

Instead, I suggest, he argues that Shabbat is a uniquely subjective mitzvah, which Mosheh was commanded to explain in a fashion that gave experiential discretion even to those with limited intellectual comprehension. Therefore, in this case the category “misunderstanding” may be inapplicable. Verses 35:1-3 represent Mosheh’s explanation of Shabbat in broad categories to those incapable of more precise comprehension, and their subsequent understandings were personally legitimate. Possibly the Sadducee position represented one such understanding. Netziv even argues that it was true intellectually with regard to the construction of the Mishkan.

Over time, it became urgently necessary to oppose that understanding. Why? Perhaps because the mimetic tradition began to see itself as exclusively valid, and delegitimated the intellectual tradition. Another possibility is that the Sadducee position in the end turned out not to be a stringency, but rather, after the first generation, became a felt burden that diminished the positive mitzvah of enjoying Shabbat, and diminished rather than increased the feeling of holiness.

Netziv himself suggests that the legitimacy of subjective interpretation only applied to the first generation, and thereafter the very same text was properly appropriated for the exclusive use of the intellectual tradition. Nonetheless, it seems likely to me that Netziv preserves the value of experiential discretion with specific regard to Shabbat, and that, accordingly, Halakhic rulings with regard to such issues as oneg Shabbat, uvda d’chol, and other issues of “Shabbasdikness” should be made with great deference to mimesis and with a deep appreciation of subjectivity taking precedence over the desire for consistent rules.

Shabbat shalom!

² This is not the place to discuss Netziv’s attitude toward women’s learning and intellectual capacity; a good place to start are the various contemporary discussions of the depiction of Netziv’s wife Rayna Batya in his nephew’s autobiographical *Mekor Barukh*.