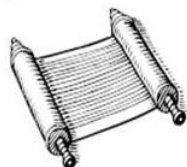


CMTL Yom Kippur Reader 2019 Edition

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Unless otherwise noted, all pieces are by Rabbi Klapper and published on the CMTL website or blog.

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Haftarat Shuvah

September 21, 2012

“For the ways of Hashem are straight, and the righteous will walk in them, but the posh'im will blunder in them.”

Rabbinic literature regularly concedes that Torah study does not guarantee proper behavior or even good character: “If he merits, it becomes an elixir of life for him; if he does not merit, it becomes an elixir of death for him.” The texts of the tradition cannot reliably defend themselves against corrupt interpreters, nor can they redeem the interpreters' corruption.

The concluding verse of Haftarat Shuvah suggests that this is also true of Torah practice, that the intrinsically straight Divine paths will mislead anyone crooked who enters them. This seems to be an antecedent for Ramban's famous notion of the “naval birshut haTorah”, the one who behaves disgustingly despite not violating any formal Torah prohibitions.

Making that connection requires us to identify the “paths of Hashem” with the Law, so that one can walk in them without truly following His Will, which extends beyond the Law. Talmud Nazir 23a considers this possibility, but seems to move beyond it, and instead reads this verse as referring to cases where the “path of Hashem” goes not only beyond the Law but even contradicts it. The conversation takes place via a series of dueling and sometime shocking parables, as follows:

Said Rabbah Bar Bar Channah said Rabbi Yochanan:

“What is the meaning of “For the ways of Hashem are straight, and the righteous will walk in them, but the posh'im will blunder in them”?”

A parable:

Two men who roasted their Paschal lambs.

*one ate it with intent to fulfill the mitzvah, but one ate it with intent to overeat;
the one who ate it for mitzvah-sake – “and the righteous will walk in them”,
but the one who ate it for gluttony-sake – “but the posh'im will blunder in them”.*

Resh Lakish said to him:

You call such a one a rasha?! Granted that he did not do a choice mitzvah, he nevertheless ate a Paschal lamb!? Rather,

A parable:

*Two men, each having their wife and their sister with them;
this one found his wife (in his bed)
but this one found his sister (in his bed)
the one who found his wife - “and the righteous will walk in them”,
while the one who found his sister - “but the posh'im will blunder in them”.*

How is that comparable?! We spoke of one path, but here there are two paths!? Rather

A parable:

Lot together with his two daughters.

*They intended (their incest) for mitzvah-sake - “and the righteous will walk in them”,
He, who intended simply to sin - “but the posh'im will blunder in them”.*

Perhaps he also intended for mitzvah-sake?!

Said Rabbi Yochanan . . .

The first parable assumes that the Divine Path is the law, here the obligation to eat a Paschal lamb. Resh Lakish, however, cannot see fulfillment of the law as a blunder. (Tosafot note that gluttonous eating may not fulfill the law, and accordingly offer distinctions, but in my humble opinion Resh Lakish deals only with intent, not actuality.) The first parable offered, however, seems bizarre and off-topic – the posheia is

caused to commit a sin by doing something never intended, and thus the person is not in any way following the Divine path. The second parable moves to a case in which the law is being deliberately violated, but for a worthwhile cause – here the conclusion is that the Divine path in fact sometimes contradicts the Law, but that the *posh'im* will blunder when they follow it against the Law since they will not have pure intentions, and thus will be justified neither by form nor by the intent of their action. Meiri, relating back to the previous phrase in our verse, suggests that “*posh'im*” will always perform the law by rote rather than out of understanding, and accordingly their violations of the law cannot be attributed to a realization that the purposes of the law are here better accomplished in the breach.

Read this way in Biblical context, the last line of the haftarah – and of Sefer Hoshea – suggests that repentance can happen in two ways – either by accepting ourselves as so flawed that our only behavioral option is complete obedience to law, or else by improving ourselves to the point that we can violate the law when necessary in perfect submission to the true Divine Will. My experience is that those who declare themselves capable of following Divine Will against Halakhah turn out to be radically deficient in self-awareness, with tragic consequences. But the recognition that the law is more binding than ever in our day, that we legitimately have less room than in the past for the ad hoc exception or civil disobedience, should drive us to redouble our efforts to minimize the gap between Will and Law. To the extent that the Orthodox community has instead sought to deny that Will has any meaning other than Law, i.e to deny that currently dominant halakhic interpretations are legitimately subject to practical and ethical critique, repentance is urgently necessary.

Should I Feel Guilty for Wearing Comfortable Shoes on Yom Kippur?

October 7, 2011

I mentioned to one of my classes yesterday that Tish'a B'av and Yom Kippur were, back in the days before I found comfortable shoes, my "happy feet days", when I could wear massage sandals in public. I still prefer Crocs to shoes in any case. Some of the students were very disturbed – doesn't this undercut the whole purpose of the leather-shoe prohibition?

This question also been asked to and by prominent rabbis over the years, with varying results. Very likely an authoritative rabbinic would rewrite the prohibition to cover many non-leather shoes, but until then, I'm good with it being largely symbolic.

But this begs the underlying question – should one seek to suffer on Yom Kippur? My sense is that this is not the Rabbinic spirit – we eat well the day before, not just enough to enable agonizing survival. But I want to take a somewhat lengthy excursus examining the origins of a contrary position, which sees suffering on Yom Kippur as a crucial good.

¹Responsa Siach Yitzchak # 300 records a fascinating Yom Kippur custom:

*With regard to the custom of the Sefardim who set a table for Yom Kippur.
Now I have heard from truth-tellers whose speech is reliable,
that the custom of our Sefardic Jewish brothers who live in Turkey,
that on the sacred day of Yom Kippur they set up before the eve of that holy day
a table full of delicacies and sweets and fine quality fruit and confections,
and on that holy day,
I imagine before Mussaf, but I have heard after Mussaf,
they go from the shul to their houses for a few minutes, gaze at the table and stare at it intently, and say
"This is the day on which Hashem has commanded human beings to afflict their nefesh,
it is Yom HaKippurim,
and we are restrained from chas vechalilah eating or drinking",
and then return to the synagogue to pray the liturgy of the day.*

Rabbi Weiss' initial reaction is amazement that this would not be forbidden; aren't they tempting themselves to eat? However, he has great faith that Turkish customs were instituted by competent rabbis, and in addition has a report of (a presumably Ashkenazi) holy Rabbi Frishelman who had a similar custom when Yom Kippur fell on Shabbat, although that custom seems to have been intended to apologize for the absence of a Shabbat meal. As a result, he searches for and finds a variety of justifications.

The coolest of these is the ruling in Shulkhan Arukh OC 275:16 that one may recite the second chapter of Masekhet Shabbat (Bameh Madlikin) by candlelight on Friday night, *because* it mentions the prohibition of reading by candlelight on Shabbat lest one adjust the flame, and therefore will prevent you from adjusting the flame. Similarly, Rabbi Weiss argues, one may stare at food on Yom Kippur if one simultaneously recalls the prohibition against eating. This seems questionable to me, as Bameh Madlikin inevitably and intrinsically mentions the prohibition, whereas one might accidentally see the table outside the context of this particular custom, and thus come to eat. On the other hand, perhaps no halakhic justification is needed at all, as there are no technical violations – no work is actually done on Yom Kippur, and there is no formal prohibition against seeing food on Yom Kippur.

The more interesting questions are psychological and theological – what does this custom seek to accomplish, and are we in sympathy with its aims? Here Rabbi Weiss comes up with a Talmudic source that seems directly on point, and the obvious source of this custom: as he presents it, Talmud Shabbat

¹ R. Yitzchak Weiss, 1873-1942

115a records that Rav Yochanan permitted cracking nuts on Yom Kippur afternoon, and engaging in a parallel operation on pomegranates, *mipnei agmat nefesh*, to heighten the agony of the day.

Rabbi Weiss does not mention any other interpretation of that text here. However, in responsum #196, he refers to the position of Baal Hamaor that these actions are permitted *mipnei agmat nefesh*, so as to *prevent agmat nefesh* following Yom Kippur, when one would be permitted to eat but otherwise still be delayed by these preparations. This interpretation seems to me clearly superior to the one in Responsum 300 – indeed, when I first saw R. Weiss' claim in #300, I assumed that he created it in a desperate effort to justify the Turkish practice. Why would the rabbis permit preparing from Yom Kippur for a weekday, which is generally prohibited, for this purpose? Did they not have available more effective and less halakhically problematic ways of heightening the pain of fasting, such as this Turkish minhag? And since when is heightening the pain of fasting a religious desideratum?

A little research showed, however, that Rabbi Weiss had a long tradition behind him. Ramban, Rashba, Ritva, Meiri, and others record this as Rashi's position, although each of them promptly and strongly reject it in favor of the interpretation of Baal HaMaor. And closer to our day, Arukh HaShulchan OC 611:8 adopts this interpretation without comment. But none of these sources make any effort to address the religious and psychological issues.

They are addressed, however, in the 14th century work Kaftor VaFerach's discussion of the ongoing religious implications of the destruction of the Temple. Kaftor VaFerach records a widespread custom for Diasporans to come to Jerusalem on festivals *mipnei agmat nefesh*, meaning to increase the agony of the day. This custom, he says, is parallel to the permission of Shabbat 115a of smashing nuts. He then notes the position of Baal HaMaor and rejects it out of hand: why would the Sages permit preparing on Yom Kippur for afterward, which is forbidden on every holy day, especially when universal Jewish custom for ages has been to prepare before Yom Kippur for afterward?!

*“Rather, as Yom Kippur goes toward evening, the suffering increases,
and thus afternoon is a time when the deed of fasting is greatest,
and lefum tzaara agra (the reward is proportionate to the suffering).”*

Indeed, he concludes, the Sages did not merely permit engaging in this food preparation on Yom Kippur afternoon; they mandated it! Kaftor VaFerach properly cites Eruvin 61a as evidence that the phrase “they permitted” can mean “they mandated”.

Siach Yitzchak was therefore correct that the Turkish minhag he reports is well grounded in the masoret. At the same time, I remained unconvinced that it was accurately grounded. The Talmud in the last chapter of Yoma explicitly rejects the idea of actively causing ourselves suffering on Yom Kippur – that is why halakhah forbids wearing leather shoes rather than mandating self-flagellation or sitting outside in the cold. Furthermore, the Talmud records various Sages' attempts to mitigate the fast by constructing nonleather shoes, or cooling themselves with fruit, etc., and later minhagim include the use of snuff in place of food. So I hoped I could demonstrate that “*mipnei agmat nefesh*” in fact meant “to prevent *agmat nefesh*”, rather than “to heighten *agmat nefesh*”.

Alas, I was sadly disappointed in this hope. The three other uses of the phrase in Chazal - Megillah 28a, Yerushalmi Megillah 3:1, and Masekhet Semakhot 8:7 – all plainly mean “to heighten”. I began to wonder whether Baal HaMaor's reading was plausible. Happily, I then found a citation of Rashi himself (Shut Rashi 258) as banning the recitation of *tzidduk hadin*, the justification of Divine judgment in the face of a death, on Shabbat or Yom Tov, *mipnei agmat nefesh*. So ironically, it now seemed that the first use of it to mean “to diminish *agmat nefesh*”, is in Rashi, who is the source of the position that it means “to heighten *agmat nefesh*” in our context.

And on reflection, and even having read Kaftor VaFerach, I still found the idea that Chazal permitted food preparation on Yom Kippur in order to increase the pain of fasting both psychologically and halakhically

implausible. So I decided to take a closer look at the Rashi. Here is what I see as the crucial section, as it is printed in the Vilna Shas Shabbat 114b-115a, with Rashi's comment inserted.

אמר רבי חייא בר אבא אמר רבי יוחנן
יום הכפורים שחל להיות בשבת - מותר בקניבת ירק,
דשבות לאו איסורא דאורייתא הוא, אלא דרבנן,
והכא משום עגמת נפש, שמתקן ואינו אוכל, והרי קרוב לעינוי -
שרי, ודווקא מן המנחה ולמעלה,
שהוא שואף ומצפה לעת אכילה, ואיכא עגמת נפש טפי.

Said Rabbi Chiyya bar Abba said Rav Yochanan:

*Yom Kippur that falls on Shabbat – one is permitted to be konev vegetables
since a shevut is not a Biblical prohibition, but rather rabbinic,
sohere, because of agmat nefesh, in that he is preparing but not eating, so it is near to inui –
it is permitted, but only from the minchah and on,
when he is yearningly anticipating the time of eating, so there is more agmat nefesh.*

On first reading, this Rashi seems explicitly to say that is cited in his name, that we permit *kenivah* so as to heighten *agmat nefesh*. But a closer look reveals a peculiar use of language. Rashi says that “here, because of *agmat nefesh*, in that he is preparing but not eating, so it is near to *inui*” – what does the phrase “near to *inui*” add to “because of *agmat nefesh*”?

I tentatively suggest the following. Several lines above, Rashi distinguished the obligation generated by the word “shabbaton” with regard to Yom Kippur from the obligation that it generates with regard to Shabbat.

ואף על גב דכתיב ביה נמי שבתון שבות,
לאו ממלאכה הוא
אלא מכל דבר המעכב מלהתענות,
מדסמיכין לועניתם.

*as even though Scripture also writes shabbaton shevot regarding Yom Kippur,
that does not refer to resting from melakhah
but rather to resting from anything that interferes with being afflicted,
since it is juxtaposed with “v’initem”.*

With regard to Shabbat, the obligation is to abstain from *melakhah*-like actions; with regard to Yom Kippur, the obligation is to abstain from *inui*-preventing actions.

With that background, we can note that a problem with Baal HaMaor's reading is that the *agmat nefesh* prevented by allowing vegetable preparation occurs *after* Yom Kippur, not during, which intensifies the issue of preparing from *kodesh* to *chol*. Kaftor VaFerach, however, refers to heightening the suffering on Yom Kippur.

But maybe Rashi says both. In other words – Rashi says that the *motive* for allowing this preparation is to prevent *agmat nefesh* after Yom Kippur, which has no religious purpose – people should be able to eat immediately. At the same time, food preparation is generally prohibited on Yom Kippur because it is an adjunct of eating, it is an act that contributes to *inui*-prevention, and so falls under *shabbaton*. But, Rashi says, in the afternoon, when hunger hits its peak, food preparation is actually “near to *inui*”, it makes the affliction sharper, and therefore it does not technically violate “shabbaton”. So we permit it technically because it causes immediate *agmat nefesh*, and is therefore *karov leinui*, so that we can prevent eventual *agmat nefesh*.

Now this still leaves open whether, according to Rashi, one should be able to put on comfortable nonleather shoes – wouldn't that violate Shabbaton? But it does not put Rashi on record supporting the Kaftor VaFerach's claim that the more suffering the better.

Moreover, we have other religious models in which mitigating Divinely ordained suffering is a good deed – medicine, for example, and charity. And no contemporary I'm aware of seriously suggests that women should forgo epidurals so as to better experience “with travail you will birth children”, or that farmers should forgo labor-saving equipment to better fulfill “by the sweat of your brow etc.” So perhaps the development of massage sandals and the like so as to make Yom Kippur easier is part of the work of Redemption.

Correct Belief and Moral Luck

May 6, 2016

Why aren't all true beliefs self-evident to everyone? Perhaps the answer is weakness of character or willful ignorance. We evade the truth about the world in order to avoid facing truths about ourselves, or to gain this-worldly pleasures and avoid this-worldly pains. I suspect that every religion/ideology has adherents who make these assertions about everyone who doesn't accept their beliefs..

Yet almost every believer – including baalei teshuvah and converts – wonders at some point whether holding true beliefs is just a matter of spiritual luck, of being born in the right place at the right time to the right people. But how can we be held responsible for bad luck, or rewarded for good luck? If belief matters at all, what room is there for Divine justice?

Parashat Acharei Mot opens by describing the rituals that a Kohen Gadol must perform before entering the Holy of Holies, if he wishes to survive the experience. (This was regardless permitted only on Yom Kippur, although Chokhmah Adam cites R. Elyahu of Vilna as arguing that Aharon, the first Kohen Gadol, was permitted to enter on any day.) Performing the ritual was no guarantee of survival; during the Second Temple, many High Priests died in their first year of service. (although likely without a rope tied around them to pull them out in case of death; see the ever-remarkable Dr. Ari Zivotofsky's article at <https://www.ou.org/torah/machshava/tzarich-iyun/tzarich-iyun-the-kohen-gadols-rope/>).

Finally, the people did not rely on G-d to eliminate the unworthy; according to Mishnah Sukkah 4:9, they stoned a Kohen Gadol with their etrogim one Sukkot when he seemed to be following Sadduceean halakhah.

The ritual involves an incense offering, which is mentioned twice. In 16:2 we read: כי בענן אראה על הכפרת which can be read as requiring the cloud of incense to be present from the moment of entrance, but in 16:13 we read:

ונתן את הקטרת על האש לפני יקוק וכסה ענן הקטרת את הכפרת אשר על העדות ולא ימות

which indicates that the incense was set on fire in the Holy of Holies itself.

Rabbinic law understands verse 13 as primary, and thus requires the incense to be brought into the Holy of Holies still unlit; Sadducee law took verse 2 as primary, and required it to be lit before entry.

All this is necessary background for a fascinating and surprising narrative found on Yoma 19b

This happened: A Sadducee (High Priest) prepared (the incense-offering) outside (the Holy of Holies) and then brought it in (already lit).

When he exited, he was greatly joyous.

His father met him and said: "My son, even though we are Sadducees, we are in fear of the Pharisees".²

*He said to him: **All my days I was pained by this verse: "For in a cloud I will be seen above the ark-cover" – when would it come to my hand that I might fulfill it? Now that it has come to my hand – should I not fulfill it?!***

They said: It was not many days until he died, and was thrown on a trashheap, and maggots came out of his nose.

Some say: He was struck down as he exited,

for R. Chiyya taught a beraita: Some sort of sound was heard in the Courtyard, for an angel came and smacked him on his face, and his brother kohanim entered and found a palm(print) like that of a calf's

² In context, the father seems to be saying that the son should be cautious lest the Pharisees physically assault him. However, see Niddah ??, which opens the possibility that the father was suggesting that the Sadducees respected the Rabbis and would not necessarily follow their own positions when they conflicted with Rabbinic law.

foot between his shoulders, as Scripture says: “and their feet – a straight foot, and the palm of their feet like the palm of a calf’s foot”.

On its surface this narrative is just straightforward propaganda. The Sadducee’s devotion to his law is contrasted negatively with his father’s caution/respect, and leads to his horrible, possible supernatural death. There seems no basis for sympathy.

However, this story is a linguistic echo of a more famous story from Berakhot 61b.

When R. Akiva was taken out to be executed it was the time of Keri'at Shema. They were combing his flesh with metal combs while he accepted the Yoke of the Government of Heaven.

His students said to him: Rebbe, thus far?

*He said to them: **All my days I was pained by this verse: “with all your life-force” – even if He takes your spirit – when would it come to my hand that I might fulfill it? Now that it has come to my hand – should I not fulfill it?!***

He extended the word “echad” (one) until his life-force departed on that word.

A voice emerged from Heaven saying: Fortunate are you, R. Akiva, whose life-force departed with “echad”.

The ministering angels said before the Holy Blessed One: This is Torah, and this is its reward? “From the dead, O Hashem, from the dead . . .”?!

He replied: Their portion is in life.

A voice emerged from Heaven saying: Fortunate are you, R. Akiva, who is reserved for the life of the World to Come.

I suggest that the story about the Sadducee is deliberately framed as a response to the Rabbi Akiva story. Here are three possible implications of the parallel:

1. (PreModern) – Rabbi Akiva and the Sadducee both die horrible deaths for the sake of their understandings of Torah. Rabbi Akiva is praised by the ministering angels; the Sadducee is killed by an angel. Blessed are those who have the character and will to understand Torah properly.
2. (Modern) – Rabbi Akiva and the Sadducee have identical characters; they are equally virtuous. What a pity that and tragedy that the Sadducee was trapped by circumstances into believing in falsehood, so that a man with the potential to be Rabbi Akiva was instead tossed onto the trashpile of history.
3. (PostModern) – Who killed the Sadducee, and who reported hearing the Heavenly voices at Rabbi Akiva’s martyrdom? Since the Rabbi Akiva story proves that dying a horrible death is no evidence of Divine disfavor, why is it significant that the Sadducee was left unburied (and wasn’t that a human choice, just as the Roman chose to torture Rabbi Akiva?)

I suggest that a viable Modern Orthodoxy needs to be able to hold all three of these readings in mind. We need

1. firmness in our truth, with gratitude to G-d for having allowed us to see that truth;
2. the ability to appreciate that many of us deserve little or no credit for recognizing that truth, and that belief is not evidence of individual character, nor is lack of belief evidence of individual lack of character; and
3. the ability to avoid triumphalism and confirmation bias when evaluating interpretations of Torah.

We need to be grateful for our spiritual luck, to believe in Divine justice, and to leave it to G-d to resolve the tension between our gratitude and our belief. *Shabbat shalom!*

Two Sons, Two Sins, Two Goats

by Betsy Morgan (SBM 2013, 2014)

May 6, 2016

(Vayikra 16:1)

וַיְדַבֵּר ה' אֶל-מֹשֶׁה, אַחֲרֵי מוֹת, שְׁנֵי בְנֵי אַהֲרֹן—בְּקִרְבָּתָם לְפָנֵי-ה', וַיָּמָתוּ
*God spoke to Moshe after the death of Aharon's two sons,
as they sacrificed/came near to God, and died.*

After the death of Aharon's sons in Parashat Shemini, Parshiyot Tazria and Metzora dealt with other matters, and (in America) there have been two additional weeks of break from the regular Torah reading because of Pesach. How helpful of the Torah to reorient us to pertinent events so that the subsequent verses flow naturally!

(Vayikra 16:2-3)

וַיֹּאמֶר ה' אֶל-מֹשֶׁה, דַּבֵּר אֶל-אַהֲרֹן אַחִיר, וְאַל-יָבֹא בְּכָל-עֵת אֶל-הַקֹּדֶשׁ . . . וְלֹא יָמוּת
בְּזָאת יָבֹא אַהֲרֹן, אֶל-הַקֹּדֶשׁ: בְּפֶר בֶּן-בְּקָר לְחַטָּאת, וְאֵיל לְעֹלָה
*God said to Moshe, speak to your brother Aharon to not come at any time into the Holy . . .
and (thus) he will not die . . .*

Thus should Aharon come to the Holy: with a calf for a sin offering, and a ram as a burnt offering.

It seems the death of Nadav and Avihu was only mentioned as a transition. But what is the nature of this transition?

1. Literarily, these laws, which describe the Yom Kippur service in the Temple, occurred after the death of Nadav and Avihu, which has been distanced in the text by other laws. Thus, it makes sense that the Torah would orient the reader before starting the new topic.
2. The topic of priests' death is returned to, to point out that they died from inappropriate action regarding the Mishkan, and Aharon too will die if he enters the Holy of Holies, where God dwells. There is, however, one exception: on Yom Kippur, when performing the service, Aharon is allowed to enter the Holy of Holies. God then describes the Temple service to be performed on Yom Kippur. So the subject of the death is a stepping stone to arrive at last to the real topic of Yom Kippur with its laws and services.
3. There is a substantive relationship between the death of Nadav and Avihu and the service of Yom Kippur, and Aharon's development is the center of it.

I prefer to read this the third way.

The story starts in Shmot 29, when God spends 46 verses telling Moshe how the consecration of the Mishkan and Kohanim will be done – describing donning the correct garments, and the order and procedure for various sacrifices. Vayikra 8 is when these events begin, the sacrifices prepared and brought, the priest washed, dressed, anointed, and thus consecrated.

On the eighth day of this consecration there are a new set of sacrifices to be brought, with the people of Israel watching in order that they see the “glory of God” (Vayikkra 9:6). One of these sacrifices is a calf. Rashi (9:2) comments upon the verse telling Aharon to take the calf

להודיע שמכפר לו הקב"ה ע"י עגל זה על מעשה העגל שעשה

To inform that God would grant atonement through this calf for the sin of the (golden) calf that he made

Later verses corroborate this reading, categorizing this sacrifice as a sin offering “to atone for [Aharon] and for the nation” (Vayikra 9:7). How fitting, that a calf once a symbol of betrayal straying and waywardness, now the ultimate display of devotion to God. Aharon, once at the heart of a dire

disappointment, became enabled to publicly transform failure into worship, sealing his consecration with atonement. Aharon blesses the assembled nation and they do indeed see the glory of God. A fire descends upon the altar and consumes the burnt offering and the nation as witnesses sing and bow in awe (Vayikra 22-24).

At the climax of the consecration of the Mishkan and the priests who serve in it, Nadav and Avihu do what was not prescribed by God. They offer a strange fire, and are consumed by God in the eyes of all. The message in this case is immediately clear: one cannot assume to know the correct way to serve God in the Mishkan. Those who fail to comply are unfit for the service.

But there is an additional failure present in these actions. At the very moment that Aharon is atoning for his and the nation's sin of the golden calf, a gesture of misplaced faith, his sons act out in another desperate attempt to worship. Aharon once again fails to stop misplaced religious ecstasy. At Sinai, and then again during the consecration of God's dwelling on Earth, Aharon is present and closest to severe deviations from God's path.

Later that day, in Vayikra 10:12, Moshe finds that Aharon and his remaining sons did not eat the sin offering that was specifically meant to atone for the community; instead they burned with the other burnt sacrifices. Aharon replies by asking if really God would want him to eat the sin offering in the wake of the day's events. Aharon is really asking Moshe, through his acrid question, if the atonement still applies after his own demonstrated inability to improve. (There may be other underlying aspects of legalities of his status as an onen (a mourner who is technically exempt from performing mitzvot).)

Our parsha opens reminding of us of the death of Aharon's sons, another of his failures. But the tone turns. While the second verse of the parsha describes what Aharon must not do, lest he die, God tells him that he can enter this holy place, if done properly. Every year, Aharon is given another chance to atone.

I find it deeply meaningful that this character at the center of religious disasters is also the primary character carrying the atonement of the entire Jewish people. These two roles that Aharon plays are not accidental features, but inherent to the process of repenting. The inherent nature of combining sin and service is demonstrated with the two goats of the Yom Kippur service. Their fates are determined by lot: one is marked for God and one for "azazel". Mishnah Yoma 6:1 teaches that these two goats are to be as identical as possible in regards to general appearance, size, and worth. Moreover, they should be taken as a pair, meaning if two are taken together and one dies after the lot has been drawn, two new goats must be found to replace both. The goat for God is slaughtered as a sin offering, the goat for azazel is sent off to wander in the desert with Aharon's confession riding it.

Vayikra 16:21 describes the confession part of the process thusly:

וְסִמָּךְ אֶהְרֹן אֶת-שְׁתֵּי יָדָיו, עַל-רֹאשׁ הַשְּׂעִיר הַחַי, וְהִתְוֹדָה עָלָיו אֶת-כָּל-עֲוֹנוֹת בְּנֵי יִשְׂרָאֵל, וְאֶת-כָּל-פְּשָׁעֵיהֶם לְכָל-חַטָּאתָם; וְנָתַן אֹתָם
עַל-רֹאשׁ הַשְּׂעִיר, וְשָׁלַח בְּיַד-אִישׁ עֵתִי הַמְדַבֵּר

Aharon will place his two hands on the head of the living goat, and confess upon it the iniquities of the children of Israel. All their misdeeds and sins he will place on the goat's head and he will send by the Timely Man into the wilderness.

Mishnah Yoma 6:2 details the words of the confession

אָנָּה ה'—עוּ פְשָׁעוֹ וְחַטָּאוֹ לַפְּנֵי עַמְךָ, בֵּית יִשְׂרָאֵל;
אָנָּה ה'—כִּפֹּר נָא לְעוֹנוֹת וּלְפְשָׁעִים וּלְחַטָּאִים, שָׁעוּ וּשְׁפָעוּ וּשְׁחַטְאוּ לַפְּנֵי עַמְךָ, בֵּית יִשְׂרָאֵל: כְּכַתּוּב בַּתּוֹרָה מִשֶּׁה עֵבֶדְךָ לְאֹמֹר
"כִּי בְיוֹם הַזֶּה יִכְפֹּר עֲלֵיכֶם, לְטַהֵר אֶתְכֶם: מִכּוֹל, חַטּוֹתֵיכֶם, לִפְנֵי ה', תִּטְהָרוּ" (וַיִּקְרָא טז, ל).
Please God, Your nation the House of Israel have committed iniquities, misdeeds, and sins before you. Please God, please forgive them for their iniquities, misdeeds, and sins, that Your nation the House of Israel committed before you. As it is written in the Torah of Moshe Your servant "on this very day He will forgive them to purify them from all of their sin. Before God they will be purified" (Vayikra 16:30).

The two goats must be similar, as if they are one being, despite their disparate paths. They parallel Aharon, his two roles as being burdened with sin while also being the vehicle for repentance. The two are meant to be inexorably intertwined, sinning and repenting. Only he that knows the meaning of iniquity, misdeed, and sin can confess and pray on behalf of Israel to be able, even if momentarily, to attain purity.

“So Long” vs “Thanks for All the Fish”: A New Reading of Sefer Yonah and Its Implications for Modern Orthodoxy³

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Imagine a man coming into Times Square looking and smelling like he’s spent considerable time inside a fish. The man climbs onto a soapbox and declaims: “The end is nigh!” How many people would pay any attention to him, let alone people of prominence and power?

Sefer Yonah asks us to believe that the cosmopolitan city of Nineveh reacted to such a declaration by engaging in mass repentance to an almost farcical extent, with the king ordering a fast and citizens dressing even their animals in sackcloth as a sign of mourning. The contrast to the impact of prophets on the Children of Israel is stark. In Israel, prophets with extraordinary literary gifts recited immortal religious poetry in the name of a G-d whom the people believed in, and yet they generally had minimal social impact. The temptation is strong to follow my college Creative Writing instructor in reading Sefer Yonah as a satire on the whole notion of effective hortatory prophecy.

I do not propose, however, to surrender to this temptation. Leaving aside the religious implications of such a reading, it ignores a broad range of textual phenomena. On the same ground I will reject any claim that the narrator merely chose to present the content of Yonah’s speech while radically truncating its form. Rather, I will contend that the brevity of Yonah’s speech to Nineveh needs to be understood in the context of his full-length formal song while inside the fish, and of the high rhetoric he employs in conversation with people and G-d. In other words, we need to understand why Yonah refuses to employ his rhetorical gift when speaking to the people of Nineveh, and perhaps also why he nonetheless – or as a result – inspires their repentance.

Now, Yonah’s refusal to speak well to Nineveh seems likely to be a shadow of his initial refusal to speak to Nineveh at all. Let us therefore turn our attention to that refusal.

Yonah’s Refusal to Speak to Nineveh

Sefer Yonah opens with G-d commanding Yonah to *rise* and *cry* against the great city Nineveh “because its evil has come *up* before me”. Yonah instead *rises* to flee⁴ from G-d’s presence. He goes *down* to Yafo, *down* into a ship, *down* to the bowels of the ship, and finally *descends* into trance. Yonah goes down instead of rising to G-d, and so far as we can tell communicates his resignation to G–d exclusively through action.

The beginning of Chapter 3, however, gives a very different picture. “Was this not *my* word while I was still on my land? That is why earlier I fled toward Tarshish, for I knew that You are a G-d gracious and merciful, long to anger and greatly kind, who regrets the bad.” Here Yonah’s flight is presented as following a notification of dissent, as his choice of “my word” over the word of G-d. Why is that notification absent in Chapter 1?

My reading of Chapter 1 is that Yonah’s rationale for flight is not merely left out, but rather deliberately censored (1:8-14)

³ The title is a play on So Long and Thanks for all the Fish, the fourth book of five in Douglas Adams of blessed memory’s “increasingly misnamed Hitchhiker’s Trilogy”. The reference in the original is to a message left by dolphins for humanity along with their present of a copy of Planet Earth, the original having been destroyed to make way for an interstellar bypass.

⁴ What Yonah expects flight to accomplish is unclear, since his statement in 1:9 that Hashem is G-d of land and sea is presumably not a new discovery. The midrashic claim that he sought to escape prophecy by leaving the Land of Israel is attractive, but does not explain why he needed an ocean voyage, and also does not explain how Yonah and Hashem could converse just outside Nineveh at the close of the book.

They said to him: “Tell us, please, for what – to whom – this evil is for us; what is your work, and from where will you come? What is your land, and from which nation are you?”

He said to them: “I am a Hebrew, and it is Hashem God of the heavens that I fear, Who made the sea and the dry land.:

The men were frightened with a great fear; they said to him: “What is this that you have done?” For the men knew that he was fleeing from before Hashem, for he had told them.

They said to him: “What will we do to you, and the sea will quiet from upon us?”

For the sea was continuing to storm.

He said to them: “Pick me up and הטיילני to the sea, and the sea will quiet from upon you, for I know that it is because of me that this great storm is upon you.”

The men sought a passage to return to the dry land, but they were not able;

for the sea was continuing to storm upon them.

They cried to Hashem; they said: “Please, Hashem, let us please not be lost in trade for the soul of this man, and do not place upon us innocent blood,

for You, Hashem, as You have wished You have done.”

Each verse in this section ends with a prepositional phrase beginning “for”. Only the meaning of the first verse, however, is changed by the “for” clause. The “great fear” that initially seems like the sailors’ reaction to Yonah’s powerful religious witness becomes instead a reaction to his disobedience; “What is this that you have done” changes from an inquiry to an accusation. This awkwardness, followed by such a formally beautiful structure, makes us realize that the narrative deliberately interrupts Yonah’s speech to provide the sailors’ reaction to its climax, and then provides the content of that climax anticlimactically.

In other words, the author not only censored Yonah, he wanted readers to notice that Yonah was censored. The interchange with the sailors is thus of a piece with Yonah’s apparent silence at the book’s outset, which we learn in Chapter 3 was not real.

My contention is that both omissions serve to prevent us from focusing on the substance of Yonah’s objection. The central theme of Sefer Yonah is the relationship between G-d and His prophet, not the issue between them.

Theme of Sefer Yonah: The Relationship between G-d and His Prophet

Indeed, without this recognition the plot of the book is a theological travesty. Why does G-d need Yonah to cry against Nineveh? Do not “thousands at His bidding speed and post o’er land and ocean without rest”⁵? Yonah’s unwillingness to serve should have led simply to his dismissal, and the reassignment of Nineveh to a different prophetic portfolio. Instead the heart of Sefer Yonah is G-d’s pursuit of His prophet, which tells us that the book must be about their relationship.

G-d’s pursuit apparently succeeds. Yonah does obey His second call to cry against Nineveh. But here we must return to Chapter 3’s quotation of Yonah as saying, “Was this not my word while I was still on my land?”, which tells us that Yonah’s substantive position has not changed at all⁶. Why, then, does he obey the second call after disobeying the first?⁷

Structural Analysis: Centrality of Yonah’s Poem

⁵ John Milton, “When I Consider How My Light is Spent”

⁶ My analysis here grows out of the brilliant analysis of “gap-filling” in Biblical narrative found in Meir Sternberg’s *The Poetics of Biblical Narrative*, and it is perhaps in order to acknowledge that almost every aspect of my analysis and appreciation of Tanakh is indebted to that work.

⁷ It is possible to argue that Yonah has simply been intimidated by the fish, that he was prepared to endure death by drowning for the sake of principle, but not death by drowning or piscine life imprisonment. But this reading seems to me to trivialize both prophet and story, and to eliminate the relationship that makes sense of the narrative structure.

The answer to this question also emerges from a structural analysis. Sefer Yonah is divided into three sections – two units of narrative prose surrounding a unit of poetry. Both units of prose begin with a Divine call. This structure leads us to see the poem as the fulcrum around which the action turns, and suggests that the key to Yonah’s shift must be contained within the poem.

Here a brief excursus on the role of poetry within Biblical narrative will be helpful. Bracketing problems of definition and of history, we can make the general statement that poetic interjections in Biblical narrative never add objective information necessary for plot. What they do instead is give us subjective perspectives on events that have been narrated objectively in prose. For example, the purpose of the Shirat HaYam is to let us understand how Bnei Yisroel experienced the splitting of the sea. It follows, then, that the poem in Sefer Yonah is there to tell us something about Yonah’s perspective on his experiences. When we recall that the narrative earlier contorted itself to avoid giving us Yonah’s perspective, this becomes highly significant.

Let us turn then to the poem (2:1-10)

Hashem appointed a great fish toward Yonah; Yonah was in the entrails of the fish three days and three nights.

Yonah prayed to Hashem his God from the entrails of the fish.

*He said: I have **cried** from trouble to me toward Hashem; He responded; from the belly of Sheol I pleaded; You heard my voice.*

You threw me מְצוּלָה in the heart(s) of seas, and a river surrounded me; all Your breakers and waves upon me passed.

But I had said: I was chased away from opposite Your eyes; instead I will continue to gaze toward Your Holy sanctuary.

Water overlapped me until it endangered my soul, the deep surrounded me; reeds saddled my head. To the ends of hills I descended; the land barred my way for eternity; but You caused my life to ascend from shachat, Hashem my G-d.

When my soul went faint on me, It was Hashem that I remembered, and my prayer came to you, to your holy palace,

Those who stand watch for meaningless hot air; they will abandon the objects of their chesed.

But I, with a sound of gratitude I will sacrifice to you; that which I swore I will repay. Salvation belongs to G-d!”

A reasonable expectation for the poem in context would be for it to contain descriptions of the claustrophobic insides of the fish and pleas to be removed from it. But it actually contains none of that – rather, it expresses Yonah’s thanks to Hashem for saving him from drowning, and his joy that, contrary to previous fears, he will be able to continue in G-d’s presence. These are strange sentiments for someone who has fled G-d’s presence willingly and apparently chosen death over what would be necessary to return to it.

One more point. Since Yonah, so far as we are told, never prays to leave the fish, why does G-d have the fish vomit him out? Note well that the text nowhere claims that G-d instructed the fish to vomit him out in response to a request from Yonah, but that it is nonetheless clear that the instruction comes only after G-d hears the poem. I argue as follows: If G-d has the fish vomit Yonah out, it must be that Yonah is no longer defying G-d, that G-d knows that Yonah will obey the second Divine call.

If Yonah did not ask to be released – and note the somewhat contemptuous description of him as being regurgitated, in stark contrast to the poem’s lyric of salvation – it follows that just as Yonah previously preferred death to obedience, he still prefers being inside the fish to obedience. But he no longer sees himself justified in disobeying a Divine command. What changes between Chapter 1 and Chapter 3 is not Yonah’s disagreement with the command, but rather his understanding of it as binding.

Yonah’s Understanding of Prophecy

I suggest that Yonah initially conceives of prophecy as an entirely one-way communication, with the prophet's only role being to understand what G-d wants, then salute and obey. He does not see prophets as having any role in choosing or defining their tasks. But Yonah believes strongly that power is not a sufficient basis for obeying G-d, that even ultimate might does not make right. He does not see why fear should lead to worship or service, and he assumes that G-d had no interest in human beings other than to command them. Certainly G-d has no interest in human opinions.

So when Yonah is assigned a mission that he disagrees with, he sees no option other than resignation. He tries to run away from G-d's presence, to end the prophetic relationship, in the hope that G-d will simply let him go. When G-d sends the storm, he understands with equanimity that his resignation has not been accepted, and prepares to die.

But Yonah is a deeply religious man, for whom awe of G-d is a dominant emotion. It is not easy for him to walk away from the core of his identity. His disobedience is the rebellion of the religious zealot rather than of the skeptic or secularist. He disobeys G-d, but only for G-d's sake.

Chazal convey this insight in a brilliant exegetical move by identifying Yonah ben Amitai, son of Truth, as the boy resurrected by Eliyahu⁸. Eliyahu's relationship with G-d is marked by his refusal to tell G-d what He wants to hear, and as the Talmud compellingly reads II Kings, by continual efforts to force His hand⁹. Yonah believes – as does the midrash – that G-d is, *kibiyakhol*, capable of self-deception, that his love of human beings causes Him to overlook their true nature¹⁰.

So when Yonah is commanded to go to Nineveh, he knows how his mission will likely end. He will give a stirring speech, the people of Nineveh will repent briefly, G-d will repent of punishing them and forgive their past sins, and the whole cycle will start over again. G-d will accept shallow service rooted entirely in fear, but Yonah wants no part of it. It may even be that Yonah has a deeply humanist motive for objecting. He may see G-d's acceptance of shallow repentance as a diminution of human dignity, as a statement that ultimately what we do matters little to Him.¹¹

Yonah resigns, not as a gesture of protest, but because he can do nothing else. When the storm comes, he may even welcome the opportunity to die, as the willing service of G-d that had previously justified his life¹² has been ripped away. But then G-d sends the fish.

The fish has two meanings. On the one hand, it tells Yonah that attempted escape is futile, that he cannot die and thereby avoid confronting the paradox of deriving all value from G-d but rejecting G-d's values; the cuneiform symbol for Nineveh was a fish. On the other hand, it tells Yonah that G-d values Yonah's speech. G-d says to him: I will maintain a relationship with you even when we disagree, and I will listen to and consider your opinion; why else would I bother to rescue you from drowning? Disagreement does not lead to execution or even excommunication, but rather to dialogue. So Yonah is given a real option – he can argue with G-d.

Yonah accepts, but he understands what acceptance implies. To engage in a decision process voluntarily initiated by a party that could act unilaterally, and wish that party bound by the outcome, means that one must genuinely accept the outcome of that process. G-d's only motive for listening to human beings, for

⁸ See II Kings 17. Eliyahu had been sent to a widow's house to experience the suffering caused by a famine he had decreed. When he fails to learn the lesson, as the Talmud understands the story, G-d kills the widow's son to force him to trade in the key of rain for that of resurrection. Eliyahu then resurrects the child, and the drought ends.

⁹ See my "The Temptation of Normalcy: A Spiritual Psychobiography of Eliyahu HaNavi" on the www.Torahleadership.org website.

¹⁰ Note that Yonah's bitter list of Divine attributes in 4:2 pointedly leaves out "Truth."

¹¹ In this regard see Rav Dessler on Rabbi Akiva's agonizing martyrdom as evidence that he received the ultimate reward of being allowed to try to live in a world without Divine Mercy, in which all human actions have their just consequences.

¹² Remember that according to the midrash he was saved miraculously while all around him died of drought; Yonah's life requires far more justification than does the average person's.

giving human beings the chance to change His mind, is His desire for their willing obedience.¹³ So Yonah recognizes that if he cannot convince G-d, he must obey Him.

So Yonah goes to Nineveh. He does so while still deeply opposed to his mission, and thus this eloquent poet walks into the Assyrian Times Square looking like he's been vomited out of a fish and says, essentially, "Repent for the end is nigh!" Never has a prophet tried harder to fail.

Yonah and the Relationship of Modern Orthodox Jews to Halakhah

I see Yonah as powerfully relevant to an aspect of the relationship many Modern Orthodox Jews have – to varying extents – with Halakhah. We too experience the power and beauty of Torah to the point that we cannot imagine ourselves without it, and yet many of us find particular halakhic rulings deeply troubling, not because they infringe on our own desires, but because they violate our image and experience of a just Divinity.

If Halakhah were a purely heteronomous phenomenon – if the Law were given to us cut and dried to the point where there was no room for human discretion and interpretation¹⁴, then perhaps we would be justified in rebelling and accepting the consequences. But it was not – G-d gave us an open Torah precisely so we could be partners in its creation, remembering all the while that our task is to fathom and obey His true will. We are eligible for partnership only so long as we obey our best current understanding of His Will, even if we wish it different.

This procedural point is critical not only theologically but to the relationship of *klal Yisroel* to her poskim. If individuals sense that poskim have no interest in their opinions and values, or if sub-communities sense the same about the broad halakhic community¹⁵, they will – sometimes legitimately – not feel bound by their decisions. It is therefore a particular responsibility for poskim and the halakhic community to listen to the voices of those who feel most disenfranchised. But when our poskim and/or our halakhic community listen and yet disagree, it is our job to obey, even if we have to grit our teeth to do so.¹⁶

The irony is that sometime mitzvot performed with gritted teeth are the most powerful¹⁷. Had Yonah walked into Nineveh in full rhetorical flourish, there is no reason to assume that lyric poetry would have been any more effective in Assyria than it was in Israel. Perhaps what overawed and inspired Nineveh was the power of watching someone perform their duty to G-d, of seeing someone genuinely subordinate their will to His¹⁸.

Nonetheless, this state of moral tension is not an ideal, and likely not long-term sustainable. When Nineveh indeed repents, and G-d as predicted forgives them, it turns out that for Yonah G-d's presence is not enough to overcome his sense of personal violation at having participated in a fraud.

¹³ In other words, G-d chooses to compel participation in a decision process rather than direct obedience to His decisions. Obviously, the process works only if both sides are genuinely open to persuasion. In this article I am not dealing with the philosophic problem of how G-d can change his mind, but simply saying kibiyakhol; I hope to address it in another context, very likely in a discussion of Yirmiyahu.

¹⁴ Cf. Masekhet Soferim 16:5

¹⁵ On this see my "The Halakhic Rights of Ideological Minorities" on the www.Torahleadership.org website

¹⁶ My wife notes that my contention that the relationship between Halakhah and community, or Halakhah and halakhically observant individual, is parallel to that between G-d and prophet, depends on the community or individual's acknowledgement that halakhic decisions with which they disagree are nonetheless the voice of G-d. I think this follows ineluctably from an acceptance that the Torah's command of *lo tasur* binds us to a decision process rather than to specific content.

¹⁷ When I served as Rabbinic Adviser to the Orthodox Minyan at Harvard Hillel, some well-meaning zealots would sometimes challenge the sincerity of my community's observance on the grounds of their feminist or other ideological convictions. I generally replied that observance in accordance with one's own opinions and preferences says far less about one's *kabbalat ol mitzvoth* than observance in conflict with them.

¹⁸ My wife comments that she has never seen "Acceptance of the yoke of the kingdom of Heaven" more deeply expressed than at the circumcision of children whose parents' every autonomous fiber sees the practice as barbaric.

G-d tried repeatedly to make Yonah appreciate His word. He allowed Yonah to board the ship, and then sent the storm, so that Yonah could experience firsthand the foxhole repentance of the sailors, and see that it was not without its genuineness, and that idolaters can have the virtue of resisting murder – however briefly – even at the risk of their own lives. But Yonah’s a priori convictions as to how the world should be run could not be overcome¹⁹

G-d’s final effort to convince Yonah is peculiar. He causes a vine to grow that shades Yonah from the hot sun outside Nineveh, then kills the vine the next day. When Yonah expresses anger about the death of the vine, G-d argues that His attachment to and investment in the Ninevites is much greater than Yonah’s to the vine, and thus he is compelled or at least entitled to save them. The analogy fails, of course, because the vine has done nothing to deserve destruction.

I mention the weakness of the analogy only to strengthen us against yet another interpretational temptation. Since G-d is given the last word, we might say, perhaps he convinces Yonah, and prophet and Divinity speak amicably ever after. But the last word of the book is not actually the last word of the dialogue.

The close of Chapter 3 tells us that, in the aftermath of Yonah’s declaration to the Ninevites that their end was nigh, a mass repentance on their part convinces G-d to cancel their punishment. At the start of Chapter 4, Yonah conveys to G-d his deep displeasure with this. G-d says in response only “Have you become angry for good reason?” Following this, Yonah leaves the city “until he would see what would be in the city”. But since G-d had already told him that nothing would happen, what was Yonah waiting for?

Possibly Yonah is waiting for to see whether the Ninevites’ emergency repentance will be sustained. Ibn Ezra however, suggests that the narrative is out of order, that the dialogue at the beginning of Chapter 4 takes place *after* Yonah has left the city. The chronological record of the conversation between G-d and Yonah accordingly is as follows.

Yonah left the city and settled to the east of the city. He made a booth there for himself, and he sat underneath it in the shade, until he would see what would be in the city. Hashem appointed a gourd-vine, and it ascended above Yonah to be a shade over his head to shade him from his ra. Yonah rejoiced over the gourd-vine a great rejoicing. Hashem appointed a worm at the rise of dawn the next day. It struck the gourd-vine and it dried out.

When the sun shone, G-d appointed a burning east wind. The sun struck on the head of Yonah and he fainted. He asked his soul to die, and said “My dying is better than my living.”

G-d said to Yonah: “Are you angry for good reason about the gourd-vine?”

He replied: “I am angry for good reason, to the point of death.”

Hashem said: You had pity for the gourd-vine, which you did not labor over or nurture, which came into being overnight and was lost overnight – should I not have pity for Nineveh the great city, which has in it more than 120,000 people who do not know their right from their left, and much cattle?

Yonah experienced a great ra (wrongness), and he was very angry.

He prayed to Hashem and said: “Please, Hashem – was this not my word while I was still on my earth. That was why I originally fled toward Tarshish, for I knew that You are a gracious and merciful divinity, long to anger and of great lovingkindness, Who changes his mind with regard to ra (causing

¹⁹ Here again, the identification of Yonah as the boy resurrected by Eliyahu is powerful. Yonah is the child of mercy, the one chink in Eliyahu’s armor of total devotion to G-d. He might have reacted against Eliyahu and justified all human beings – perhaps that is what G-d is hoping he will become. But instead, this midrash may be arguing, he seeks to outdo Eliyahu’s devotion to strict justice.

bad things to happen). Now, Hashem, please take my soul from me, for my dying is better than my living.”

Hashem said to him: “Are you angry for good reason?”

This ordering makes clear, as the formal end of the book does not, that Yonah is *never* convinced by G-d. The joy of relating to the Divine is once more insufficient. And so Yonah asks again for death, this time directly at the hands of G-d. The elated “Thanks for all the fish” becomes a dejected request for a final “so long”.

Relationships that address ultimate issues are not panaceas, and profound religiosity can lead to profound depression and frustration. Indeed, suicidal ideation seems almost an occupational hazard of prophecy. As the Rav strikingly declared²⁰, the Lord as shepherd Who makes us lie down in green pastures is a fantasy rarely achieved by the deeply religious in this world.

But communities need joy to survive, and Modern Orthodoxy cannot be built on constant moral self-denial. It is true that as subjects of Halakhah, our foremost duty is to find ways to obey even when our opinions are not followed. But as creators of Halakhah, we must work to make sure that every halakhically committed voice is genuinely heard. As stewards of Torah who seek to make halakhah a live option for every Jew, we must understand and acknowledge that obedience can be difficult for reasons other than self-interest, and make every effort to let the voices of our religiously passionate rebels find authentic expression in the practice of our community.

In other words – like Yonah, we must go to Nineveh whether we like it or not. But in *imitatio dei*, we should not ignore those who refuse to come with us. Rather, we should send storms, and fish, and sheltering vines, and miraculous resurrections, and whatever else we have at our disposal to start a genuine conversation with them. If, having listened, we are not convinced, we can be confident that Yonah’s degree of certainty and single-issue identity are rare, and pray that the joy of human and Divine relationship combined will nonetheless inspire them to full participation, as subjects and creators, in the halakhic process.

²⁰ *Halakhic Man*, footnote #4.

The Universal and the Particular in the Book of Yona

by Rivital Singer (MA 2015)

September 17, 2015

There's a *machloket* between Rabbi Eliezer and Rabbi Yehoshua in the *gemara* in *Rosh Hashana* about when the world was created and when redemption will come. Rabbi Eliezer says both dates are in *Tishrei*, but Rabbi Yehuda says they're in *Nissan*. This *machloket* reflects a greater question: Is the universal or the particular more important in Judaism? Which aspect led to Creation, and will ultimately be the source of Redemption?

Passover, which takes place in *Nissan*, represents the national aspect. On Passover we celebrate the start of our particular nation. Non-Jews are not allowed to take part in the Passover ceremonies (although converts may). *Tishrei* (specifically Rosh Hashana and Yom Kippur), however, is a universal time. G-d judges the whole world in *Tishrei*, and makes decisions as to how the year will turn out for everyone. When we pray on Rosh Hashana and Yom Kippur, we pray for the whole world, and anyone is welcome to take part in this time of forgiveness.

We also see the universal aspect of *tshuvah* in the story of Yona that we read on Yom Kippur. Yona is asked to help the people of Nineveh, who are not a part of the Jewish people, with the process of repentance/forgiveness. Yona refuses to accept that he has an obligation to non-Jews. He thinks that Jews need to stick together and be a good moral nation, and that we should keep apart from other nations as much as possible. Throughout the story, G-d tries to convince Yona that there is more to Judaism. Our job is not only to have our own society, based on justice and kindness, but that we spread our moral code to the rest of the world. Even though Yona doesn't want to, G-d makes him go through with helping Nineveh achieve repentance and forgiveness.

Amazingly, it doesn't seem that at any point in the story G-d succeeds in convincing Yona. When he's in the stomach of the big fish and he prays to G-d for three days, he never admits to changing his mind. He asks G-d to let him out, he praises G-d and he agrees to go through with G-d's request, but he still thinks that he shouldn't have to go to Nineveh. As he journeys, he continues to question G-d's judgment, and until the very end of the story, he is waiting for G-d to punish the people of Nineveh even though they repented.

Yona, who sees the Jews as a special "chosen people," feels very committed to his nation, and is unwilling to be a part of the universal world. He wants G-d to be the G-d of Pesach, who gives the Jews special treatment and saves us when we're oppressed. With Yom Kippur approaching, this is a good time for us to reflect on these two very important aspects of Judaism. How much should we be focused on making the Jewish community a better place, and keeping ourselves apart from the other nations, and how much should we be trying to be a part of the universal community and affect it, being "a light of the nations"? When asking for forgiveness, are we speaking for ourselves, for our people or for the whole world?

I hope that this Yom Kippur we can find the correct balance between caring about our nation the way Yona did, and caring about the world the way G-d wanted him to.

Why Didn't the Rabbis Eliminate Mamzerut? Part 1

September 13, 2019

Devarim 23:3 bans a *mamzer* and his or her descendants – even the 10th generation! – from marrying ordinary Jews. Mishnah Yebamot 4:13 records that Rabbi Akiva held that all Biblically forbidden relationships generate *mamzerut*; Shimon HaAmsuni held that *mamzerut* results only from relationships (other than *niddah*) punishable by *karet* (excision) or worse; and Rabbi Yehoshua held only from those relationships punishable by execution. The law follows the middle position of Shimon HaAmsuni, with the result that *mamzerut* results only from cases of adultery and incest.

All these Rabbis were fully aware that the law of *mamzerut* unfairly punishes children for their parents' sins. Yet we find no record of a position declaring that “there never was and never will be a *mamzer*.” Why not?

A moral critique of *mamzerut* is memorably articulated in Vayikra Rabbah (Emor 6) by Daniel the Tailor, who frames it as an interpretation of Kohelet 4:1

ושבתי אני ואראה את כל העשקים אשר נעשים תחת השמש
והנה דמעת העשקים ואין להם מנחם
ומיד עשקיהם כח ואין להם מנחם

I turned, and saw all the oppressions that take place under the sun.

Behold – the tears of the oppressed! and they have no comforter.

Power flows from the hands of their oppressors, and they have no comforter.

ושבתי אני ואראה את כל העשקים . . .

דניאל חייטא פתר קרייה בממזרים:

הנה דמעת העשקים –

אבותם של אלו עוברי עבירות, ואילין עלוביא, מה איכפת להון!?

כך אביו של זה בא על הערוה:

זה מה חטא ומה איכפת לו!?

ואין להם מנחם, אלא מיד עושקיהם כח –

מיד סנהדרין גדולה של ישראל שבאה עליהם מכחה של תורה

ומרחקתן על שום לא יבא ממזר בקהל ה'

ואין להם מנחם

אמר הקדוש ברוך הוא:

“עלי לנחמן,

לפי שבעוה”ז יש בהן פסולת,

אבל לע”ל אמר זכריה

“אנא חמיתיה אלו כורסוון כולו דהב נקי”

I turned and saw all the oppressions . . .

Daniel the Tailor interpreted this verse as referring to mamzerim –

Behold – the tears of the oppressed

Their fathers are transgressors, and they suffer: why is it their responsibility? !

So this one's father commits adultery:

what sin has the son committed, and why is it his responsibility?!

and they have no comforter, rather power flows from the hands of their oppressors–

from the hands of the Great Sanhedrin that comes against them with the force of Torah

and marginalizes them on the basis of the verse “a mamzeir may not enter the Congregation of Hashem”

and they have no comforter

Said the Holy One Blessed Be He:

“It is My responsibility to comfort them,”

for in this world they have in them impurities,

but in the Coming Future the prophet Zechariah said

“I have seen those thrones all of pure gold.”

The Bar Ilan Responsa Project records only one other statement by Daniel the Tailor. In Bereishis Rabbah 64:7, he reads Bereishis 26:14 as teaching that “If a person does not make himself like a slave to his slave, he has not acquired him.” One suspects that this principle was not enforced in rabbinic property courts. It seems safe to categorize Daniel the Tailor as a social critic of halakhah.

Rabbinic literature quotes Daniel’s critiques (albeit not in the Talmuds), without any explicit reservation or controversy. Nevertheless, Professor David Halivni argues that his critique of *mamzerut* boomeranged. Daniel argued powerfully and memorably that *mamzerut* was an inherently immoral institution. He thus directly challenged the morality of the Torah. Any subsequent elimination of *mamzerut* in practice would therefore feel like a confession that the Torah was morally imperfect. That was religiously untenable. So *mamzerut* continued.

I contend that Professor Halivni overstates the case. It is true that the Talmud records Tannaitic positions that the Rebellious Son, Idolatrous City, and House With Tzora’at never were and never would be. But each of these positions is immediately countered by a statement of certainty (framed as eyewitness testimony) that it had been, and the law does not follow the positions that make these cases impossible. Moreover, the House With Tzora’at is not a moral issue, so it’s not at all clear that those positions were generated by moral discomfort. So *mamzerut* would have continued anyway.

Moreover, Daniel the Tailor eventually has a profound influence on Halakhah. The sixteenth century Syrian Rabbi Yoshiyahu Pinto (Responsa Nivchar MiKessef 138) cites Daniel as his motivation for seeking to permit a specific *mamzer*, even while conceding that the mother had committed adultery and emphasizing the severity of that sin. More recently, Rav Ovadiah Yosef zt”l regularly cited Daniel in his responsa permitting alleged *mamzerim* and *mamzerot* to marry ordinary Jews (and also in his responsa permitting *agunot*, a topic requiring separate treatment).

The linchpin for Rav Ovadiah is that G-d says “It is My responsibility to comfort them” against those “that come against them with the force of Torah.” Clearly it would be better not to come against them in the first place, and spare Him the need to comfort them.

The nineteenth century Rabbi Yosef Shaul Nathanson (Responsa Shoeil uMeishiv 1:1:5) read Daniel very differently. He argued that because G-d promised to comfort the victims of His halakhah, we need not worry about creating them. Daniel was not seeking to overturn halakhah on moral grounds, but rather to reconcile halakhic decisors to the pain caused by their decisions.

Rabbi Nathanson’s reading does not seem to fit well with Daniel’s other preserved statement. Perhaps more importantly, Rabbi Nathanson offers his reading in the context of an argument against taking a lenient position in a specific case of adultery **before** the woman became pregnant. We don’t know whether he would have maintained this attitude when addressing the reality of a potentially unmarriageable child.

I don’t think Rabbi Nathanson would have lacked integrity if he had spent months laboring to permit that child. Because **everyone** in rabbinic tradition has always understood that *mamzerut* is morally troubling, because it punishes children for their parents’ sins. Daniel the Tailor is just the best articulation of a universally acknowledged reality. The proper question is and was: Can the good of preventing adultery (or incest) justify that unfairness?

Let’s approach this question via an apparently unrelated suggestion from my teacher Rabbi Aharon Soloveitchik zt”l. Rav Aharon argued that the death penalty in civil society, or Noahide Law, is justified only because it deters other acts of violence. Executions without deterrent impact are just murder. In the United States, he contended, there is no way to carry out the death penalty often enough to accomplish deterrence, without relaxing standards and procedures in ways that will lead to the unjustifiable execution of innocents. Therefore he opposed the death penalty in the U.S.

Rav Aharon's approach was in principle socially contingent. He did not challenge the morality of the Torah in permitting the death penalty, and he had no need to claim that the death penalty never had been and never would be carried out, or that all past judicial executions had actually been state-licensed murders. There may have been, and may yet be, societies where the proper balance of deterrence and punctiliousness can be maintained. But, he held, the United States in the late twentieth century was not such a society.

One can disagree with Rav Aharon in at least three ways. One can argue that

1. the death penalty has purposes other than deterrence (as Rav Aharon himself argued regarding the death penalty within Jewish society, that it grants the perpetrator atonement); or
2. that it is an effective deterrent as-is, or
3. that the relaxation of procedures necessary to allow it to be an effective deterrent would not make the execution of innocents more likely, or at least so much more likely as to outweigh the good of deterrence.

These grounds for disagreement likely reflect underlying different moral weightings of the different risks. But they enable dialogue and deliberation rather than dismissal or defenestration.

It seems likely that the closest we can come to justifying the status of mamzerut is the claim that it effectively deters adultery. (Granted this doesn't help us at all regarding mamzerut resulting from incestuous rape.) Otherwise, it is simple cruelty. It therefore becomes necessary to ask whether mamzerut is an effective deterrent in our time and place. I suspect reasonable people can differ about this question, and those differences may reflect the realities of different subcommunities.

What I think we can agree on is that mamzerut should be limited to the minimum number of cases necessary for effective deterrence. Very likely, precisely because mamzerut affects children rather than parents, effective deterrence requires only a barely plausible threat. We also must acknowledge that many American Jews are so far removed from halakhah that there is no possibility that any halakhic outcome could accomplish deterrence. Finally, the reality of effective birth control means that it is difficult for a potential effect on children to deter sexual behavior.

Since there are and probably always will be people who see marriage with factual mamzerim as a threat to the spiritual-genetic quality of the Jewish people, the risk that children will bear the consequences of parents' sins is always real, and those who can be deterred, will be. Humane poskim therefore can legitimately aim to resolve every case, so long as they can do so with integrity. This was plainly the approach of Rav Ovadiah, and is also the position of the Rav as conveyed to me by Rabbi Abraham Halbfinger of blessed memory.

The rub, of course, is what constitutes integrity. I plan to publish a follow-up essay soon reflecting on, illustrating, and hopefully illuminating that issue.

Why Didn't the Rabbis Eliminate Mamzerut? Part 2

September 20, 2019

Rabbinic law often seems radically more humane than the text of the Written Torah. This discrepancy leads some to conclude that the Rabbis of the Mishnah and Talmud consciously and deliberately overturned Biblical law when they found it morally disagreeable. This conclusion leads to a question/critique: Why don't contemporary rabbis do the same thing?

In Part 1, I briefly discussed cases where (some) Rabbis explicitly declared that a Biblical law “never was and never will be,” and why no such statement appears regarding mamzerut. I wrote that nonetheless “Humane poskim can . . . aim to resolve every case of mamzerut, so long as they can do so with integrity.” In other words, it is possible and legitimate for a contemporary halakhist to aim for the laws of mamzerut to never apply in practice, even though factually many pregnancies result from adultery or incest.

How can this be done with integrity? In what way is this different than eliminating a Biblical law on the basis of our own morality?

Mamzerut actually seems to be a more extreme case of elimination than the Rebellious Son, Idolatrous City, or House with Tzora'at. It's not just that the Rabbis didn't formally eliminate mamzerut; they actually extended it to new cases. Most dramatically, the Biblical prohibition, as understood by the Rabbis (Kiddushin 73a), applies only to a mamzer *vadai*/definite, but the Rabbis extended it to cases of *safek*/doubt! Contemporary halakhists who seek to resolve every case of mamzerut therefore seem to be diverging from the Rabbis as well as from the Torah.

This extreme version of halakhic authority is disturbing for another reason. We might cheer poskim when they undo stringencies that cause pain, but by doing so, are we also granting them the authority to undo leniencies? If the Torah does not constrain rabbis from imposing their morality on halakhah, why should we have more confidence in their morality than in the Torah?

Let's approach this issue through the specific lens of **Igrot Moshe**, the collected responsa of the great 20th century posek Rav Moshe Feinstein zt"l. I want to concede upfront that the synthetic position I develop below is not explicit in Rav Moshe's works, and some of the details are also derived or extrapolated. Nonetheless, I believe that it is a fair and accurate portrayal.

Mishnah Kiddushin Chapter 4 lists three groups of people with halakhic marriage-barriers that derive from *safek* rather than certainty: “*shtuki*, *asufi*, and *kuti*.” A *shtuki* is someone whose mother is known, but she refuses to name the father; an *asufi* is a foundling. (The *kuti* is unrelated to mamzerut issues.)

Rava (Kiddushin 73a) states that a *shtuki* and *asufi* are each Biblically permitted, but Rabbinically forbidden. Why would the Rabbis have created such a cruel prohibition? Since the Torah permits a *safek mamzer*, Rava reasons, the Rabbis cannot have been concerned for the minority possibility that these children are *mamzerim*. Rather, they must have been concerned that these children with unknown parents would **contract** an incestuous marriage, and thus give birth to *mamzerim*.

However, the Talmud (or Rava himself) rejects this explanation as far-fetched. It concludes instead that the reason must be מעלה עשו ביוחסים, literally “they created a higher standard in genealogical matters.”

This conclusion seems to abandon, without justification, the opening assumption that the Rabbis would not contradict the Torah's decision not to be concerned for the minority possibility of *mamzerut*. How can this be?

Rav Moshe notes that the Talmud explicitly includes only the *shtuki* and the *asufi* in the new Rabbinic prohibition. Perhaps all other *safek mamzers* remain permitted! This possibility appeals to him, but it runs aground on Mishneh Torah, Laws of Sexual Prohibitions 15:21.

דין תורה שספק ממזר מותר לבוא בקהל
– שנאמר לא יבא ממזר בקהל ה'
ממזר ודאי אסור לבוא בקהל, ולא ספק,
אבל חכמים עשו מעלה ביוחסין,
ואסרו גם הספיקות לבוא בקהל.

*The law of the Torah is that a safek mamzer is permitted to marry into the Jewish community because Scripture says: A mamzer must not enter the community of Hashem, a **definite** mamzer is prohibited to enter the community, but not a safek. But the Sages instituted a higher standard in genealogical matters, and forbade even the safeks from entering the community.*

This undisputed ruling of Maimonides makes it clear that the *shtuki* and *asufi* are only examples, and the Rabbis forbade all *safek mamzers*.

But, Rav Moshe notes, Maimonides also makes clear that the prohibition is the same for all *safek mamzers*. This means that the reason for the prohibition can never be a genuine concern that the child is a “biological” *mamzer*, but rather – as Maimonides states – that some form of higher standard is imposed here. But what is the difference between a “higher standard” and a “genuine concern?”

Igrot Moshe EH 1:11 has one answer to that question. A genuine concern, analogous to all other cases of *safek*, would apply for all halakhic matters. A “higher standard” would apply only to matters that affect a holiness status conferred by genealogy. It therefore does not apply to the marriage prohibitions for biological kohanim that do not have the holiness status of *kohanim*, such as a *petzua daka*.

EH 1:24 points toward a different answer. Please bear with the unavoidable technicalities, and the necessarily clinical discussion of a tragic case of rape.

Mishnah Ketubot 1:10 reports that an unmarried young woman was raped when she went to draw water from her city’s well, and subsequently gave birth to a daughter. Talmud Ketubot 15a asks: Is the daughter eligible to marry a kohen? That depends on whether the rapist/presumed father was a man whose daughters are eligible (i.e. not a *mamzer* or *netin* or *chala*), or not. The Talmud concludes that the daughter is eligible (according to the positions that matter for our discussion) if

1. most of the men in the city were “eligible,” and
2. there was a caravan of travelers near the city, and most of the men in the caravan were “eligible.”

The need for the presence of a caravan, and for the majority of the caravan to be eligible, is that a “higher standard” was implemented for genealogical matters – we require “two majorities,” not just one. Since a majority of the potential “city fathers” were eligible, and also a majority of the “caravan fathers,” this higher standard is met.

The obvious problem is that this “higher standard” does not affect the statistical likelihood of the daughter’s eligibility. If 90% of the men in the city were eligible, and 60% of the men in the caravan, then including the caravan makes things worse statistically than if there were no caravan! Regardless, the actual likelihood is a single percentage, drawn from the overall population of potential fathers/rapists. So in what sense is this “two majorities?”

It must be that the “higher standard” for marrying a *kohen* is not statistical, but rather formal. Rav Moshe contends that this is the nature of “higher standards.” It follows that in *mamzerut* cases as well, on a statistical basis one needs only to demonstrate that the person is a *safek*. This removes the Biblical prohibition, and leaves one only needing to meet the “higher standard.” To meet the “higher standard,” one needs only a second formal argument that generates a *safek*, even if that formal argument does not affect the overall odds.

In EH 4:17, Rav Moshe presents a third way in which *mamzerut* differs from ordinary halakhot (at least according to Rambam). In other areas, where there is no specific Biblical leniency for cases of *safek*, any

probability greater than 50% generates a prohibition. However, regarding *mamzerut*, the Biblical leniency applies to any case where the probability is less than 100%.

Formal rules of halakhah turn majorities into certainties, and so formal rules can create Biblical *mamzerut*. However, in Rav Moshe's view, informal/circumstantial evidence and judgments about reality can just about never create a Biblical prohibition. In practice, evidence for *mamzerut* is generally circumstantial, (e.g. fertilization cannot be witnessed, but only inferred). Therefore, even if we make the Biblical standard "certainty beyond a reasonable doubt," rather than absolute certainty, Biblical *mamzerut* will be extremely rare. Rabbinic *mamzerut* will be much more common – but it can be overcome by a formally distinct second argument that generates some degree of doubt, **even if that argument doesn't change the overall odds.**

If we now put it all together, Rav Moshe understands the Talmud to be saying that the Torah is not concerned about children born from adultery or incest marrying in the community; even children who most likely were born from such relationships are perfectly marriageable. The rabbis imposed a higher standard – but that higher standard creates a formal requirement, not a higher statistical bar.

The formal requirement means that every public case of suspected *mamzerut* requires a formal rabbinic permission. For the process to be taken seriously, both the public and the rabbis must acknowledge that it is possible that no grounds will be found for permission. But every rabbi involved must also understand that in any specific case, not finding such a permission is their failure; there is nothing in the Torah that requires this child to suffer for their parent or parents' sins.

The result is that Rav Moshe, and any posek following his approach, can with full integrity, and full belief in the Torah as interpreted by the Talmud, seek to resolve every potential case of *mamzerut* in the direction of leniency. This despite the fact that no one in halakhah has ever suggested that cases of *mamzerut* never have been and never will be.

Seeking to resolve every case does not mean that one will always succeed. Poskim adopting this approach will properly be held accountable by poskim who adopt other approaches, including those who believe that the goal of halakhah is to prevent people who are factually children of adultery or incest from marry within the community. Leniencies developed without the greatest attention to intellectual rigor will fail in practice.

It should also be clear that Rav Moshe's position about *mamzerut* has no necessary implications for any other area of halakhah. What drives Rav Moshe is the conviction that the Torah specifically permits any potential *mamzer* about whose status there is any doubt at all, and that the Rabbis had no intention or interest in practically expanding the category (at least when doing so would have no significant deterrent effect on adultery – see Part 1). Rav Moshe's interpretations and rulings result from belief rather than critique.

In Part 3, I plan to step back from the specific issue of *mamzerut* and revisit the general question of whether interpretations that make a halakhah wholly impractical are necessarily the result of moral or ethical discomfort.

Why Didn't the Rabbis Eliminate Mamzerut? Part 3

October 4, 2019

Moral critics of contemporary Orthodoxy often make the following argument:
Chazal interpreted Torah laws out of existence when they found them immoral.
We find Law X immoral.
Contemporary rabbis (should) agree with us that Law X is immoral.
They should act like Chazal and interpret Law X out of existence.

This series of essays challenges that argument.

Let me be clear that I am a strong advocate for the role of morality in halakhic interpretation, and for seeking whenever possible to interpret halakhah so as to avoid causing other people pain. My discussion is about the extreme limits of such interpretation.

I will also note that in my experience and evaluation, attempts at such extreme interpretation tend to cause lasting harm and only the illusion of progress, for two reasons:

First, such interpretations galvanize reactionaries who seek *davka* to implement the law, and who seek to tar all creative interpretations with humane implications as founded in moral critiques of the Torah. The result is that people who might otherwise have been easily helped become political footballs; arguments that might have drawn consensus support are excluded from the discourse; and no one is actually helped to flourish in the community of their choice. This state of affairs is itself ethically lamentable, and must be fought; but it must also be acknowledged, and the battle is pointless if it destroys the very people it is meant to help.

Second, at least outside the State of Israel, the people who suffer from halakhic restrictions are generally those who most strongly believe that halakhah is the will of G-d and in the necessity of Orthodox community; otherwise, they would just leave. They will generally refuse to accept help that, within their own plausibility structures, is inconsistent with those beliefs.

However, truth is a value in and of itself. So if the argument that opens this essay is correct, I would acknowledge it even if I thought using it in practice was unwise. But I do not think it is correct.

My primary countercase is the law banning *mamzerim* from marrying within the community. Part 1 of this series showed that Rabbinic literature acknowledges that this law violates the fundamental moral sensibility that children should not suffer for their parents' sins, and yet records no effort to interpret it out of existence. Part 2 noted that normative halakhah nonetheless encourages poskim to **try** to interpret every individual case out of the category of *mamzerut*, and showed how Rav Moshe Feinstein's position allowed one to accomplish this with integrity.

Let's now begin looking at the evidence for the assertion that Chazal interpreted Torah laws out of existence for moral reasons. Sanhedrin 71a cites anonymous *beraitot* stating that three Torah laws "never were and never will be," and there are several statements elsewhere that seem to make similar claims about other laws. Part 3 begins from the second case discussed on Sanhedrin 71a, the Law of the Idolatrous City.

כמאן אזלא הא דתניא:
עיר הנדחת לא היתה ולא עתידה להיות,
ולמה נכתבה? דרוש וקבל שכר.
כמאן? רבי אליעזר,
דתניא:
רבי אליעזר אומר:
כל עיר שיש בה אפילו מזוזה אחת – אינה נעשית עיר הנדחת.
מאי טעמא?

אמר קרא: ואת כל שללה תקבץ אל תוך רחבה ושרפת באש,
וכיון דאי איכא מזוזה לא אפשר, דכתיב לא תעשון כן לה' א-להיכם.
אמר רבי יונתן:

אני ראיתיה, וישבתי על תילה.

Which position does this beraita follow:

*“The seduced-into-idolatry city never was and never will be,
so why is it in Scripture? Expound and receive reward.”?*

*Which position? That of Rabbi Eliezer,
as we learned in a beraita:*

Rabbi Eliezer says:

Any city that has within it even one mezuzah – cannot be made a seduced-into-idolatry city.

Why?

*Scripture says: “All its loot you must gather into its public square, and burn it in fire,”
and since if there were a mezuzah this (burning) would not be possible,
as Scripture says: “Do not do thus (destruction) to Hashem your G-d.”*

Said Rabbi Yonatan:

I saw it, and I sat on its tell.

For this passage to instantiate the thesis that *Chazal interpreted Torah laws out of existence when they found them immoral*, we need to establish at least three things:

1. That Rabbi Eliezer interpreted the Law of the Idolatrous City out of existence
2. That he did so in the service of a moral agenda
3. That his position is a viable precedent

Careful reading of the passage shows that Rabbi Eliezer himself never states that the law is purely theoretical. Rather, that position is found in a *beraita* (also cited in the Tosefta). The Talmud argues only that this position is compatible with, or grounded on, the position of Rabbi Eliezer. We cannot tell from this whether Rabbi Eliezer's position is **intended** to make the law purely theoretical.

Here it is important to consider in what way Rabbi Eliezer's position can be understood as making the law purely theoretical. The argument (careful of the double negatives) is that no Jewish city would ever not have a single sacred object with G-d's Name. This is not a logical impossibility. Rather, like Rabbi Shimon's claim that no parent would bring their child to be punished as Rebellious, it is a claim of **practical impossibility**. Not “this could never happen,” but rather “this would never happen.” Why? because Jews would never behave in such a way as to trigger this law. If they ever did, the law would be just. (Note that Rabbi Shimon himself does not seem to have qualms about the Idolatrous City. Mishnah Sanhedrin 111b cites him interpreting a verse as G-d's assurance that carrying out that Law will be regarded by Him as the equivalent of bringing an *olah* sacrifice.)

Perhaps a useful contrast is this dispute recorded in Sifrei Devarim 94.

את יושבי העיר ההיא –

מיכן אמרו:

אין מקיימים את הטפלים;

אבה חנן אומר: לא יומתו אבות על בנים –

בעיר הנדחת הכתוב מדבר.

The inhabitants of that city –

Based on this they said:

One does not keep alive the children (of an Idolatrous City);

Abba Chanan says:

“Fathers must not die for children (and children must not die for fathers) –

Scripture is discussing the Idolatrous City.”

Here Abba Chanan explicitly rejects a legal position regarding the Idolatrous City on the basis of a moral principle! The Biblical verse he cites has no specific textual connection to the Idolatrous City; it simply

drives him to reinterpret *inhabitants* as excluding children. Abba Chanan had no qualms about openly basing his legal interpretation on moral principles. The burden of proof is therefore on the claim that Rabbi Eliezer could do so only covertly.

In any case, Rabbi Eliezer's position is not consensus. By asking "Which position," the Talmud tells us that the answer will be one side of a dispute. On Sanhedrin 113a, the Talmud identifies the other side of the disputant as the anonymous Mishnah on 111b.

(שללה – ולא שלל שמים.
מכאן אמרו:
ההקדשות שבה – יפדו;
ותרומות – ירקבו;
מעשר שני) וכתבי הקדש – יגזזו.
(Its loot – and not the loot of Heaven.
From here they said:
The 'sanctified' objects in it – must be redeemed;
the priestly portions – must rot;
the second tithe) and the Holy Writings – must be secreted.
מתניתין דלא כרבי אליעזר.
דתניא:
רבי אליעזר אומר:
כל עיר שיש בה אפילו מזוזה אחת – אינה נעשית עיר הנדחת,
שנאמר
ושרפת באש את העיר ואת כל שללה כליל,
והיכא דאיכא מזוזה – לא אפשר,
דכתיב
לא תעשון כן לה' א-להיכם.
This Mishnah is against Rabbi Eliezer,
as we learned in a beraita:
Rabbi Eliezer says:
Any city that has within it even one mezuzah – cannot be made a seduced-into-idolatry city.
as Scripture says:
All its loot you must gather into its public square, and burn it in fire entirely,
and where there is a mezuzah, this (burning) is not possible,
since Scripture says:
Do not do thus (destruction) to Hashem your G-d.

Maimonides Laws of Idolatry 4:16 rules like the anonymous Mishnah, against Rabbi Eliezer.

We must also note the odd statement of Rabbi Yonatan that "I saw it and sat on its tell." Firstly, Rabbi Yonatan is an Amora, and Amoraim generally do not take such direct issue with a Tanna! (Perhaps Rabbi Yonatan was only taking sides with the Anonymous Mishnah.) Second, Rabbi Yonatan made the identical comment about the Rebellious Son: "I saw him, and I sat on his grave." Perhaps Rabbi Yonatan, who as an Amora lived long after halakhic courts had the power to inflict capital punishment, led an archaeological tour of great halakhic execution sites? But many acharonim point out that Rabbi Yonatan was a kohen, and therefore could not have sat on the grave and tell. But then why did he say that he did?

The answer, I suggest, is that Rabbi Yonatan's statement should not be understood as literal. Rather, when kohanim swore, they liked to do so with a reference to their status, and one strong form was "I am as sure this happened as if I had become *tamei* to a corpse." Another example of this, if I am correct, is the statement of the kohen Rabbi Elazar bar Tzadok cited on Berakhot 19b that "We used to leap over coffins to greet Jewish kings." In what universe would the only path to greet a king require one to leap over coffins, regularly? Rather, Rabbi Elazar was as certain of the halakhah as if he had done it himself. So too, Rabbi Yonatan.

Rabbi Yonatan is not providing eyewitness testimony. We might have rejected that by saying that he had misidentified the gravesite, or that the executions in question had been rooted in legal error. Rather, he is staking out an ideological position **against** the claim that a Biblical law can be interpreted as purely theoretical.

Bottom line, the case of the Idolatrous City provides no evidence that Chazal deliberately reinterpreted a Biblical law out of existence, and no precedent for doing so ourselves. There is no evidence that the position “never was and never will be” generated a halakhic interpretation, rather than building off an independently arrived at plausible interpretation. The “never was and never will be” position is based on a practical rather than a moral claim. The halakhic interpretation associated with the “never was and never will be” position is one side of a Tannaitic dispute, and Rambam rules like the other side. Finally, the Amora Rabbi Yonatan appears to reject such a position in principle, not only in this specific case.

In Part 4, we’ll discuss the Rebellious Son, the second of the celebrated trio on Sanhedrin 111a. Part 5 will discuss the Leprous House, the third member. We’ll also discuss the position of Rabbi Akiva and Rabbi Tarfon about the death penalty in general. Finally, we’ll turn to a much less known Mishnah in Negaim that may prove a more useful precedent than any of those usually cited.

Why Didn't the Rabbis Eliminate Mamzerut? Part 4

October 8, 2019

Contemporary efforts to reinterpret ethically troubling Torah laws out of practical application generally raise theological hackles. Why? Didn't Chazal's interpretations do the same thing? Haven't many areas of Torah law been purely theoretical for a millennium or more?

In Part 1 of this series, I called attention to an apparent irony. Chazal explicitly acknowledge that mamzerut is ethically unjustifiable, and yet unlike for other laws, there is no record that any member of Chazal ever suggested that "mamzerut never was and never will be." I argued that aiming to resolve every actual case of possible mamzerut is nonetheless a proper goal for poskim.

In Part 2, I showed how Rav Moshe Feinstein set this goal for himself with complete integrity, and without arguing that this meant that mamzerut should be understood as a purely theoretical law. But I also showed that Rav Moshe regarded mamzerut as a special case, because Chazal interpreted the Torah as requiring poskim to rule leniently even in cases of probable mamzerut. Chazal nonetheless created an additional rabbinic restriction. However, consistent with their Torah interpretation, they allowed that restriction to be treated as a formal rather than as a substantive barrier.

Mamzerut is unquestionably special. On Kiddushin 71a, Rav Yitzchak rules that "a family of mamzers that has been subsumed (=allowed to marry within the community) – is subsumed." On Kiddushin 72b, Rabbi Yose holds that in the Future to Come all mamzers will be allowed to marry within the community. Rabbi Meir disagrees; but Rav Yehudah in the name of Shmuel declares that the halakhah follows Rabbi Yose. Rav Yitzchak is likely based on Rabbi Yose. If in the End all mamzers will be legitimated, it makes little sense to spend time and effort in our days "outing" them. It seems reasonable to argue that both Rabbi Yose and Rabbi Yitzchak were motivated by Tanakh's moral opposition to "visiting the sins of parents on their children." Probably, like Rav Moshe after them, they built off the universally accepted assertion on Kiddushin 73a that the Torah prohibits only a "definite" mamzer.

Because of its 'specialness,' mamzerut is not a sufficient precedent for contemporary attempts to adopt interpretations of halakhot that practically eliminate them. But 'special' is not necessarily 'unique.' Are there other halakhot that, like mamzerut, were understood by Chazal as ideally having minimal or no practical application? If yes, did Chazal regularly arrive at such understandings based on moral discomfort? If yes, is moral discomfort a legitimate basis for contemporary halakhists to interpret halakhot out of practical existence?

It turns out that there are quite a few halakhot that at least some members of Chazal understood as having minimal or no practical application. But it is much less clear whether those understandings were based on moral discomfort, or what precedent they provide for contemporaries.

Let's start our analysis by recognizing that there are several different ways to argue that a law is purely theoretical, or to interpret a law so that it becomes purely theoretical. One can argue that it is, or interpret it so that it is:

1. Physically impossible
2. Practically impossible
3. Morally impossible
4. Easily evadable
5. Logically impossible
6. Obsolete

These categories will be helpful as we survey the field.

Sanhedrin 71a cites anonymous *beraitot* stating that three Torah laws “never were and never will be.” Part 3 discussed the second case discussed on Sanhedrin 71a, the Law of the Idolatrous City. Let’s now move to the most famous of the three cases, the Rebellious Son/ *ben sorer umoreh*.

The Talmud asks:

*Which position does this beraita follow:
“The rebellious son never was and never will be,
so why is it in Scripture? Expound and receive reward.”?*

The question “which position etc.” assumes the existence of a dispute. The Talmud offers two alternative answers. The first is that the beraita follows Rabbi Yehudah. This is a reference to Mishnah Sanhedrin 71a, as interpreted by the Talmud. That interpretation is supported by another beraita.

*/Mishnah/
If his father wanted (to declare him a rebellious son) but not his mother, or vice versa –
he is not made (=legally treated as) a rebellious son,
until both of them want.*

*Rabbi Yehudah said:
If his mother was not fit for this father –
he is not made a rebellious son.*

*/Talmud/
What is the meaning of “not fit?”
If you say it means ‘not legally fit,’
in the end, his father is his father and his mother is his mother (so the conditions of the verse are met)!?
Rather, it means that his mother is (not) equivalent to his father.*

*A beraita said the same thing:
“Rabbi Yehudah said:
If his mother was not equivalent to his father in voice, appearance, and height –
he is not made a rebellious son.*

*Why?
Scripture says: He does not heed our (plural) voice (singular)” –
(and) once we require voice to be equivalent, we also require appearance and height to be equivalent.*

Once we understand Rabbi Yehudah’s “fitness” to mean that the parents must have indistinguishable voices, appearances, and statures, it makes sense to say that the law of the rebellious son is *physically impossible*.

Rabbi Yehudah’s position regarding voice is derived from a close reading: the parents jointly declare that the son does not heed their “voice,” singular. By contrast, the move from voice to requiring equivalent appearance and height appears almost sleight of hand, as nothing in the verse relates to appearance or height. Moreover, ‘speaking with a single voice’ might refer to compatibility of parenting method and aims rather than to anything physiological. That might even be what Rabbi Yehudah meant by “fit” in the Mishnah. For these reasons, it is a tenable hypothesis that Rabbi Yehudah’s ruling, as understood by the beraita and the Talmud, was driven by moral discomfort and had the intent of making the law purely theoretical.

But – the Talmud acknowledges that Rabbi Yehuda’s position, however understood, is controversial. The beraita stating that the rebellious son “has not been and never will be” follows Rabbi Yehudah against the anonymous opening position of the Mishnah. In such situations, the halakhah presumptively follows the anonymous Mishnah. In his Commentary on the Mishnah, Maimonides states that “the law does not follow Rabbi Yehudah,” and his Mishneh Torah (Laws of Rebels 7:10) agrees. For all we know, Rabbi Yehudah’s position was rejected precisely because it made the halakhah practically impossible, or

alternatively because it was obviously driven by a moral agenda rather than by textual fidelity. So his position may be a rejected precedent.

We might also decide that Rabbi Yehudah never meant the radical position the Talmud ascribes to him. Perhaps even in the *beraita* the Talmud cites to support its interpretation of him, he requires only physical compatibility, not identity. So no one ever actually interpreted the Torah so as to make the law of the rebellious son *physically impossible* because they found it *morally impossible*; that was just a thought experiment, which was rejected.

Alternatively, we might decide that Rabbi Yehudah adopted his radical interpretation only because he **already knew** that the law was *practically impossible*.

Why would we say this? The Talmud next identifies the position that the law is purely theoretical with a *beraita* in which Rabbi Shimon, unlike Rabbi Yehudah, states that conclusion explicitly. The identification with Rabbi Yehudah is mentioned first because the Talmud is organized around the Mishnah, so it first mentions the position that is in the local Mishnah. But substantively, we would only understand Rabbi Yehudah that way if we knew that he agreed with Rabbi Shimon.

Here are Rabbi Shimon's words:

*Said Rabbi Shimon:
Because this one ate a tartimar of meat and drank a half-log of wine,
his father and mother take him out to be stoned?!
Rather: This never was and never will be,
(so) why is it in Scripture? Expound and receive a reward.*

Rabbi Shimon argues that the law is *practically impossible*. The text explicitly requires the parents to actively bring their child to be punished, but they would never do such a thing.

Is Rabbi Shimon describing the law as it was presented to him, or describing the law based on his own interpretation? The Torah says that the parents must tell the elders that their child is *zolel v'sovei*, gluttonous and a drunk. Rabbi Shimon agrees with the anonymous position in Mishnah Sanhedrin 8:2 as to how much meat and wine that requires; Rabbi Yose there doubles the amounts. Is there an amount large enough that Rabbi Shimon would see as sufficient to motivate parents to take their child out to be stoned?

Parents sometimes deal with addicted children in ways they would never consider under other circumstances. Yet "tough love" does not extend to execution. Moreover, I can't believe that his evaluation would change if we adopted Rabbi Yose's required amounts, and I am not aware of any position that ever required more. So it seems to me most likely that Rabbi Shimon is describing the halakhah as it was presented to him. He can be used to argue that interpretations which yield the result of *practical impossibility* are reasonable and within the tradition, but not as a precedent for **developing** interpretations **with the intent** of making a law practically impossible.

Even though Rabbi Shimon is merely describing the law, the form of the Talmud's opening question tells us that his position is disputed. It is therefore not surprising that the Talmud follows his statement by citing Rabbi Yonatan as saying: "I saw him (a rebellious son), and I sat on his grave (after he was executed)."

We already discussed Rabbi Yonatan's apparent eyewitness report in Part 3. But let's note here that Rabbi Yonatan is an *amora* (Talmudic era), and the ordinary rules of the Talmudic game are that *amoraim* do not argue directly with *tannaim* (Mishnaic era) such as Rabbi Shimon. So we should be alert for a *tannaitic* position disagreeing with Rabbi Shimon. Such a position may be cited on Sanhedrin 72a.

*Rabbi Yose the Galilean says:
Because this one ate a tartimar of meat and drank a half-log of wine,*

the Torah says that he should be taken out to be stoned?!
Rather: The Torah fully understood the psychology of the rebellious son,
that in the end he will exhaust his father's possessions, seek his custom and not find it,
go out to the crossroads and rob the people/
(So) the Torah said: Let him die innocent and let him not die guilty . . .

Both the form and the substance of Rabbi Yose the Galilean's statement suggest that it was originally presented as a contrast with Rabbi Shimon. He agrees with Rabbi Shimon that the son's sins are trivial; but he trusts the Torah to be making a prediction that justifies the execution.

Rabbi Yose the Galilean starts by seeing the law as *morally* impossible. He responds to this impossibility with an apologetic; the law seems unjust to us, but only because we can't know what G-d knows about this young man's future. This is a kind of universal solvent for moral difficulties with Biblical law, and it provides no basis for reinterpreting the law in the face of moral difficulty.

Maybe Rabbi Yose the Galilean believes that even parents would be persuaded by his reasoning, and would bring their child to be punished. Or maybe he agrees with Rabbi Shimon that they **would** not, but *practical impossibility* does not bother him, at least so long as it is not the result of an interpretation driven by a claim of *moral impossibility*.

The bottom line is that the Talmud's discussion of the law of the rebellious son, and the positions that the rebellious son never was and never will be, are not valid precedents for interpreting a halakhah out of existence on the basis of moral objections. We showed in Part 3 that the Idolatrous City is also not a valid precedent. But Sanhedrin 71a discusses a third case, and there are cases beyond those three. Perhaps one of the others, or the overall pattern, will provide stronger precedents. Stay tuned for Part 5!