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Center for Modern Torah Leadership



חירות ואחריות

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"Taking Responsibility for Torah"

FACING THE HALAKHIC CHALLENGES OF THE CURRENT CRISIS

Rabbi Aryeh Klapper, Dean

The ongoing Covid-19 crisis presents our community with innumerable practical challenges. As with all political leadership, halakhic crisis management depends on effective communication as well as effective action. Led by the superbly Nachshonian RCBC, local and national Modern Orthodox leadership has done a superb job of communicating the absolute priority of social distancing. There have also been many substantive halakhic opinions issued on narrower issues. But the effectiveness of those opinions has sometimes been limited by challenges of communication.

Let me start with an example that is about the context of halakhah, rather than about halakhah itself. There have been many statements about the safety of mikvaot, and therefore the permissibility of immersion, for women who are not at high risk. These properly include caveats that our information about the virus is constantly being updated, which justifies the exclusion of high-risk women.

This is very important. But there are other issues that also must be dealt with. An excellent Israeli directive began with the following:

A woman who feels terrified by the necessity to go to mikveh – is not obligated to immerse.

Her life and peace of mind come before all.

From a halakhic perspective, she of course remains in a condition of prohibition until she next immerses.

Together with this, I will try to explain, as one who is in charge of the mikvaot of X, why in my humble opinion immersion in the mikvah is secure with a high degree of likelihood.

This creates an entirely different tone. It expresses a sensitivity to the possibility of spousal coercion, and validates a woman's right to make their own judgments about safety. It makes clear that trust must be earned rather than assumed. This makes it much more likely that trust will be earned. And that trust will be greatly needed.

At the same time, even this statement has no long-term plan for a community in which many women feel that the mikvaot are genuinely unsafe, let alone for the couples in which the women are being specifically told that they should not go, with no prospect of short-term change. There is also a possibility that experiencing the mikvah under hazmat conditions will be immensely stressful for a significant number of women, with long-term effects.

We also need a plan that can survive our being wrong a few times, as we inevitably will be. Some mikvah somewhere will likely become at least a suspected vector of infection at some point. What resources will we have to demonstrate that it is an anomaly, and that just about every mikvah is in fact punctiliously carrying out recommended best practices? I personally am reeling from the number of infections in Israel attributed to Purim celebrations.

There may be no such plan. But we also cannot casually expect mass religious heroism. In the absence of confidence that we have a humanly realistic plan, people will embrace other plans that seem humanly realistic, even if we strongly doubt their halakhic bona fides.

A major challenge here is that halakhah has a strong preference for dealing with exceptions to standard law in a private, case-by-case fashion. There are good reasons for that – making public exceptions weakens the law and leniencies are often abused. Keeping leniencies individual enables poskim to be more flexible in each case. But I suspect there is a tipping point at which everyone knows that there will have to be so many exceptions that a public rule is necessary.

It would be helpful if we could effectively teach ROSH's idea that some halakhic positions are totally out of bounds – except in emergencies. ROSH held that a dried out lulav was Biblically invalid under ordinary circumstances, but that when literally no other lulav was obtainable, one could make a blessing on a dried out lulav. One would be perfectly justified in denouncing someone who counseled the use of a desiccated lulav in an ordinary year. But what if there's a legitimate reason to fear that no lulavim will be available this year? The Raavad disagreed strongly with ROSH, and the Beit Yosef compromised – yes wave the lulav, but no berakhah. We need at least to make that compromise comprehensible to people (and for ourselves as well, clarify how it plays out with regard to DON'Ts).

The dispute among ROSH, RAAVAD, and Beit Yosef is also key to many of the conversations about virtual ritual. Almost everyone agrees that virtual davening communities do not have the depth of connection and spirituality of in-person communities. Almost everyone agrees that if we could allow mourners to say kaddish now, without fear that next year's mourners would be much likely to show up in person, we would. The question is whether it's possible to allow it now without the laity drawing the lesson that in principle it's good enough.

Crisis leniencies often face another tension. State the actual standard for leniency, and many people who desperately need that leniency, are perhaps even required to use it, will refuse to. State a lower standard, and of course many people will use it who should not be permitted to.

Last week's dvar Torah discussed this question with regard to relaxing the prohibition against kitniyot for the poor in a time of scarcity. Maharim MiBrisk held that it was necessary to relax the prohibition for all, lest the poor feel stigmatized and fail to have the halakhically required joy of yom tov. Divrei Malkiel disagreed. However, Divrei Malkiel conceded that in an economic crisis, many of the genteel poor, who were keeping up the appearances of their past condition, would refuse to take advantage of leniencies if that required acknowledging their poverty. He therefore conceded that in such a crisis Maharim MiBrisk's position would be justified.

This dynamic underlies the conversation about ZOOM seders and communication devices over a three-day yom tov. We all understand that three days without human contact on yom tov will pose a severe health challenge to some of our most vulnerable community members. If we publicly set the standard for leniency as medically verified risk of suicide, not many people will use it unjustifiably. However, it is equally certain that many people who are at risk will refuse to use it. They may be in denial about the severity of their condition (and for that reason may not even have a therapist). Or they may be unwilling to admit their condition to others. A specific aspect of permitting electronic communication is that it requires coordination with a second party. I can't ask you to ZOOM your seder unless we both classify it as pikuach nefesh.

On the other hand, we also all understand that separating families at the seder will cause enormous and profound unhappiness. If we set the standard for leniency at risk of great sadness, many people will use it who cannot plausibly be classified as in danger. Some rabbis may think that the lower standard is proper. But those who don't cannot escape choosing between Scylla and Charybdis.

This is a halakhic tension. But the fundamental issue is whether we can communicate one of these positions effectively enough that mostly the right people use the leniency without guilt, while the wrong ones don't use it at all.

It might help to think about setting up two committees. The first would discuss ways of credibly certifying the Covid-19 precautions of specific mikvaot. The second would engage in halakhic disaster planning. What if mikvaot become actually unsafe? What if we have a dramatic rise in marital unhappiness? What if the first days of yom tov show a dramatic spike in severe depression? Each of these committees must include representative men and women, as well as both halakhists and professionals or volunteers who can credibly convey the concerns and reaction of the community to proposed rulings. If we eschew a formal structure, we need to find ways to ensure that we have the conversations informally.

My belief is that having these conversations will yield both better policy and better communication.

Shabbat shalom!